

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4751/Del/2015
Asstt. Year: 2008-09

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| Sonali Chandok 13, Palam Marg, Vasant Vihar New Delhi – 110 057 PAN ABVPC3697H | Vs. | ACIT Circle-2 Meerut |
| (Appellant) | | (Respondent) |

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|-----------------------|-------------------------|
| Assessee by: | Shri R.S. Ahuja, CA |
| Department by : | Shri K Youthong, Sr. DR |
| Date of Hearing | 11/03/2019 |
| Date of pronouncement | 07/ 06/2019 |

ORDER

PER AMIT SHUKLA, J.M

The aforesaid appeal has been filed by the assessee against the impugned order dated 12.5.2015 passed by Ld. CIT(Appeals) Meerut for the quantum of assessment passed u/s 263/143(3) for the assessment year 2008-09. In the grounds of appeal, assessee has raised following grounds :-

1. *“The learned CIT [A] has erred in confirming the addition of Rs 5,52,988 on account of re-imbusement of Marketing expenses - rejecting the contention that they are already credited to*

Marketing expenses , instead of being credited separately to the Profit & Loss account

2. *The learned CIT [A] has erred in confirming the addition by AO of Rs 10,00,000 on account of introduction of Capital on the presumption that it is a direction u/s 263 by the learned CIT - without looking into the order u/s 263 -which is a set aside of the assessment order to be passed after affording a reasonable opportunity.*
3. *The learned CIT [A] has erred in confirming the addition by AO of Rs43,40,987 on account of the Unsecured loans as on 31-3-2008 (which include opening j old loans also) on the presumption that it is a direction u/s 263 by the learned CIT -without looking into the order u/s 263 -which is a set aside of the assessment order to be passed after affording a reasonable opportunity.”*

2. The facts in brief for the first issue are that the assessee is engaged in the business/profession of education counselor and agent for foreign universities. Assessee derives income from commission from these universities for the students that join the universities for studies sent through her.

3. During the course of assessment proceedings, AO noted that assessee has shown receipt of Rs. 5,52,988/- in the gross receipt and in response to the show cause notice as to why this amount may not be added as income of the assessee, it was submitted that assessee has received reimbursement of some of the marketing expenses from foreign universities incurred on their behalf for sums amounting to Rs. 5,52,988/- which has been credited in the 'marketing expenses account' and by taking only the net expenses in the profit and loss account. Ld. AO held that in absence of any details, assessee's

explanation cannot be accepted. The same was added. This has been confirmed by the Ld. CIT(A) also on the ground that no evidence of record has been produced to substantiate that this amount represents reimbursement .

4. We have considered the rival submissions and also perused the relevant material placed on record. It has been contended before the authorities below that the amount was reimbursed by the foreign universities for incurring of marketing expenses Rs. 5,52,988/-which has been credited in the marketing expenses account. It was further submitted that before us by the Ld. Counsel that in fact assessee has not claimed this expense as she has claimed only the net expenses in the profit and loss account, instead she has shown total marketing expenses and separately crediting the receipt of expenses reimbursed. Thus, there was no reason to making any kind of disallowance. On the other hand, Ld. DR has strongly relied upon the order of the Ld. CIT(A).

5. On perusal of the account, it is seen that assessee has not claimed any such expenditure in the profit and loss account by amount of Rs. 5,52,988/- and in fact, same has been shown in the credit side as marketing expenses account and only net expenses in the profit and loss account has been debited. Thus, there is no reason to make any separate addition to the income of the assessee. The same is directed to be deleted.

6. Coming to the issue of Rs. 10 lacs on account of introduction of capital; and Rs. 43,40,987/- on account of unsecured loan as on 31st March, 2008, both AO and Ld. CIT(A) have held that these additions were not set aside by the Ld. CIT in his revisionary order u/s 263 and, therefore, same has to be added.

7. On perusal of the order passed u/s 263 dated 25.3.2013, passed by Ld. CIT Meerut, we find that Ld. CIT in his order has noticed that AO has failed to inquire the genuineness of introduction of fresh capital and unsecured loans and accordingly, he has set aside the assessment with the direction that a fresh order should be passed after examining the issue properly and also considering all the evidences and by affording reasonable opportunity to the assessee. The relevant concluding para of Ld. CIT in his revisionary order reads as under :-

“8. In the result, the assessment order passed by the AO is set aside with the direction that a fresh order after examining the issues properly and considering all the points stated above, as also after considering all evidences and affording reasonable opportunity to the assessee, be passed by the AO expeditiously.”

8. This direction and order of the Ld. CIT has grossly misinterpreted both by the AO and Ld. CIT(A) by holding that this issue has not been set aside and Ld. CIT herself has made the addition . Before us, Ld. Counsel has pointed out that all the relevant documentary evidences were filed before the AO and Ld. CIT(A) included all the documentary evidences. Further, he pointed out that, for example, AO has written letter to Smt. Vidhi Agarwal, lady who has given loan to the assessee and in response to the same, she has given her detailed reply alongwith all the documents, the copy of which are appearing from pages 72 to 77 of the paper book. It was further pointed out that assessee has also submitted detailed reply and pointed out that she has received unsecured loan of Rs. 16 lacs in this year instead of Rs. 43,40,987/- which is evident from the audited balance sheet and amount of Rs. 43,40,987/- was appearing as closing balance of unsecured loan. During the course of assessment

proceedings, the confirmations were filed and also notices were issued to the creditors. Despite all the evidences placed before the AO and inquiries conducted by him, he has not even mentioned anything in his assessment order and has simply made the addition. This fact was also brought on record before the Ld. CIT (A) in the written submissions filed before him vide letter dated 28.4.2015 . But Ld. CIT(A) too has ignored it completely. Thus no addition could have been confirmed.

9. On the other hand, Ld. DR though admitted that these issues were set aside by the Ld. CIT before the AO and same has not been adjudicated upon, therefore, matter can be restored back once again to decide the issue afresh.

10. After considering the relevant material placed on record, we find that the assessee before the AO and Ld. CIT(A) had placed all the necessary documents and evidences on both the issues. In so far as introduction of capital of Rs. 10 lacs is concerned, assessee has filed confirmed ledger account and also source of bank account. In so far as the issue of unsecured loan was concerned, it was specifically brought on record that during the year assessee has only received loan of Rs. 16 lacs and balance was coming from the earlier years and during the course of proceedings, the confirmation of the parties and all the details were submitted. Not only that, AO has issued notices to all the unsecured loans providers u/s 133(6) which were duly responded by them and all the confirmations have been received by the Assessing Officer directly. In wake of these circumstances, the entire approach of the AO and Ld. CIT(A) not only seems to be erroneous but also arbitrary. Thus, on facts of the case and on the basis of material placed on record, we do not find any reason for

sustaining these additions and accordingly, the same is directed to be deleted.

11. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 7th June, 2019.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 07/06/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi