

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.Nos.1752 & 1753/Del./2017  
Assessment Years 2010-2011 & 2011-2012

Shri Anil Bhalla, Farm No.4, Hyde Park, Prakrit Marg, Village Sultanpur, Mehrauli, New Delhi. PAN AEEP9416N	vs.,	The ACIT,  Central Circle-8,  New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri C.S. Aggarwal, Sr. Advocate.
For Revenue :	Shri Arun Kumar Yadav, Sr. D.R.

Date of Hearing :	03.07.2019
Date of Pronouncement :	04.07.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

Both the appeals by the same Assessee are directed against the different Orders of the Ld. CIT(A)-24, New Delhi, Dated 23.01.2017, for the A.Ys. 2010-2011 and 2011-2012,

challenging the addition of Rs.9,37,592/- and Rs.2 lakhs respectively on account of unexplained loan.

2. We have heard the Learned Representatives of both the parties and perused the material available on record. The appeals are decided as under :

A.Y. 2010-2011 :

3. Briefly the facts of the case are that a search and seizure operation under section 132 of the I.T. Act, 1961, was conducted at Vatika group of cases on 16.01.2013 and case of assessee was also covered under section 132 of the I.T. Act. Notice under section 153A was issued to the assessee on 20.08.2014, in response to which, assessee submitted the return of income on 07.10.2014 declaring total income of Rs.1.14 crores. Notice under section 143(2) was issued on 05.11.2014. Questionnaire was also issued under section 142(1). The A.O. noted that assessee has received loans and advances during assessment year under appeal in a sum of Rs.9,37,593/-. The assessee was asked to furnish

confirmations of loans and advances. However, no confirmation or bank statement were filed. The A.O, therefore, treated the same as unexplained under section 68 of the I.T. Act and made the addition vide Order Dated 30.03.2015. The assessee challenged the jurisdiction of the A.O. in the matter as well as addition before the Ld. CIT(A). The assessee moved an application for admission of the additional evidences under Rule 46A which are confirmation letters and bank statements. It was pleaded that amounts have been received through banking channel, therefore, it was genuine transaction. The Ld. CIT(A) however, noted that these additional evidences were not produced before A.O, therefore, he did not admit the same and rejected the application for admission of additional evidences and addition on merit was confirmed.

4. The assessee challenged the above addition and also raised another ground that Ld. CIT(A) should have admitted the additional evidences under Rule 46A. Learned Counsel for the Assessee submitted that assessee has filed the details and

additional evidences before the Ld. CIT(A) with a prayer that same may be admitted under Rule 46A for both the years. The details of the same are as under :

<i>Name &amp; address of Creditor</i>	<i>Amount of Addition made</i>	<i>Remarks</i>
<i>DLF Golf Resorts Pvt. Ltd.</i>	<i>67,040/-</i>	<i>Represents amount received on cancellation of membership which was paid earlier. The amount was received by cheque No.538726 dated 15.3.2010. Confirmation attached.</i>
<i>FCMN Project Pvt. Ltd.</i>	<i>3,675/-</i>	<i>Represents amount received as refund on return of alarm clock purchased earlier. No such exp. was claimed/ allowed in earlier years. Amount transferred to drawings in A.Y. 2012-13. Copy of Account attached.</i>
<i>Moly Bose 120C, Motilal Nehru Ground, Kolkata-700029 PAN: AKWPB5239L</i>	<i>3,40,000/-</i>	<i>Confirmation attached.</i>
<i>R.K. Ads. And Laminates</i>	<i>67,080/-</i>	<i>Amount received back paid earlier to the firm for getting certain lamination work done.</i>
<i>Sagise Holding</i>	<i>4,59,798/-</i>	<i>Cost of shares purchased in an overseas company. The payment was made later.</i>
<i>Total</i>	<i>9,37,593/-</i>	

*Assessment Year 2011-2012*

<i>Name &amp; address of Creditor</i>	<i>Amount of Addition made</i>	<i>Remarks</i>
<i>Molly Bose 120 C, Motilal Nehru Ground Kolkata 700029 PAN AKWPB5239L</i>	<i>2,00,000/-</i>	<i>Paid by RTGS dated 24.09.2010. Copy of confirmation and copy of bank statement of assessee attached.</i>

4.1. He has submitted that A.O. vide order dated 23.02.2015 called upon the assessee to furnish the details of loans and advances. Since Assessee's Counsel had been engaged in number of assessments in the cases of Vatika Group of companies, could not adequately respond to the A.O. However, the A.O. framed the assessment without giving fair opportunity to the assessee. The assessee obtained the confirmations from the parties along with necessary details and bank statements which should have been admitted by the Ld. CIT(A). The findings of the Ld. CIT(A) are incorrect that assessee has not given any reason for not filing the evidence before A.O. He has submitted that additional evidences should have been admitted by the Ld. CIT(A) and should have decide the addition on merit.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions. It is a case of search and case of assessee is connected with Vatika group of cases. The assessee submitted an application under Rule 46A of I.T. Rules before the Ld. CIT(A) in which complete details along with necessary facts and confirmations, copy of account and bank statements were filed with the prayer to admit the additional evidences. Learned Counsel for the Assessee explained that since Counsel for Assessee was busy in the main group of case i.e., Vatika group of cases, therefore, compliance could not be made on time. Thus, assessee was prevented by sufficient cause in not producing these details before A.O. at assessment stage, therefore, Ld. CIT(A) considering the case of search and that group of case, assessments were going on should have admit the additional evidences. Further we find from the details reproduced above that all these additional evidences are relevant to the matter in

issue and goes to the root of the matter. The Hon'ble Supreme Court in the case of Tekram 262 CTR 118 and Hon'ble Punjab & Haryana High Court in the case of Mukta Metal Works 336 ITR 555 considering the additional evidences to be relevant and required to be looked into directed for admission of the additional evidences. In the present case, considering the history of the assessee and group cases and that additional evidences are relevant to the matter in issue and shall have to be looked into by the authorities below, the Ld. CIT(A) being the First Appellate Authority having co-terminus power to that of the A.O. should have admitted the additional evidences. We, accordingly, set aside the Orders of the authorities below and admit the additional evidences. The matter in issue is restored to the file of A.O. with a direction to re-decide the matter in issue in the light of additional evidences so admitted above, by giving reasonable, sufficient opportunity of being heard to the assessee. Assessee is directed to file copies of all additional evidences before A.O. for final disposal of the matter.

7. In the result, appeal of Assessee is allowed for statistical purposes.

A.Y. 2011-2012 :

8. The issue is same in this assessment year as well as is considered in A.Y. 2010-2011. Following the Order for the A.Y. 2010-2011, we set aside the Orders of the authorities below and admit the additional evidences above. The matter in issue is restored to the file of A.O. with a direction to re-decide the issue in the light of additional evidences so admitted above, by giving reasonable, sufficient opportunity of being heard to the assessee. Assessee is directed to produce all the additional evidences before the A.O. for disposal. Appeal of Assessee is allowed for statistical purposes.

9. In the result, Appeal of Assessee is allowed for statistical purposes.

10. To sum-up, both the Appeals of the Assessee are allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 04<sup>th</sup> July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :  
Delhi.