

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 561/JP/2019
निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Goldway Enterprises Pvt.Ltd 203, Ambabari, Jhotwara Road Jjpr	बनाम Vs.	The ITO Ward- 4(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCG 8908 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar,, Advocate
राजस्व की ओर से / Revenue by : Shri Rajender Singh, (JCIT)

सुनवाई की तारीख / Date of Hearing : 01/10/2019
उदघोषणा की तारीख / Date of Pronouncement: 03/10/2019

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of CIT(A), Ajmer dated 11.03.2019 for the assessment year 2009-10 raising therein following grounds of appeal.

(i) In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the findings of AO in passing the

order u/s 143(3)/147 of the I.T. Act, 1961 which is ab initio void being in violation of the principles of equity and justice.

(ii) In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the findings of the AO in passing the order u/s 143(3)/147 of the I.T. Act, 1961 which is bad in law as the same has been passed without furnishing reasons for issuing notice u/s 148 of the I.T. Act, 1961.

(iii) In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the addition of Rs. 20,00,000/- without discussing the nature of addition. As the AO has made the addition u/s 56(1) of the I.T. Act, 1961 by holding that share capital and premium of Rs. 1,20,00,00,000/- is assessable as income of the assessee u/s 56(1) of the I.T. Act, 1961.

(iv) In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the finding of AO for applying the provision of section 56(1) of the I.T. Act, 1961 treating the share capital and premium as income of the assessee.’’

2.1 At the outset of the hearing, the Id.AR of the assessee had drawn our attention to the application filed by the assessee under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 by submitting that during the course of assessment proceedings as well as appellate proceedings, the assessee could not submit necessary documents and other evidences in support of creditworthiness and genuineness of the share applicants / share application money and payments. It was also submitted that documents placed in paper book at Serial No. 1 to 6 containing pages 1 to

30 could not be submitted before the lower authorities as the company had closed its business and were not traceable. The details of additional evidences are as under:-

- (i) Ledger account/confirmation of M/s Dhanvarsha Motor Finance Pvt Ltd.
- (ii) Bank account statement of M/s Dhanvarsha Motor Finance Pvt Ltd reflecting the transactions.
- (iii) Copy of acknowledgement of return and audit report along with all annexure of M/s Dhanvarsha Motor Finance Pvt Ltd for AY 2009-10
- (iv) Copy of acknowledgement of return of M/s Link Distributors Pvt Ltd for AY 2009-10
- (v) Ledger account/confirmation of M/s Link Distributors Pvt Ltd.
- (vi) Bank account statement of M/s Link Distributors Pvt Ltd.

The Id.AR of the assessee further submitted that when technicalities are pitched against the substantive discharge of justice, the later has to prevail, in a case where the bona fides are not in doubt (**Maruti Civil Works Vs. ITO [2011] 136 TTJ 448 [Pune]**). It is further submitted that all the judicial institutions —the Hon'ble ITAT being

one of them — are respected not on account of its power to legalize injustice on technical grounds but because these are capable of removing injustice. The assessee is only furnishing supporting evidences only. These are not cooked up or manipulated in any way. In view of this the Hon'ble ITAT is requested to admit the additional evidence and consider the same favourably. The following case laws are quoted in support for the admission of the additional evidence.

(i) National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC) :- Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee, notwithstanding the fact that same was not raised before the lower authorities.

(ii) CIT Vs. Raoraja Hanut Singh 117 Taxman 613 / 252 ITR 0528 : {Raj}”The position is that the Tribunal can admit the additional evidence if it requires it to enable it to pass orders.

(iii) Electra (Jaipur) Pvt Ltd. vs. IAC 26 ITD 236: If evidence produced by assessee is genuine, reliable and proves assessee's case than assessee should not be denied opportunity of it being produced even if he first time produces same before appellate authority.

(iv) Smt. Prabhavati S. Shah Vs. CIT 231 ITR 1 (Bom.): Production of additional evidence — assessee taking loans

from two creditors — ITO treating loans as income from undisclosed sources as summons could not be served on creditors — Assessee wanting to prove genuineness of loan by relying on fact that amount borrowed and repaid by cheques. Assessee producing Photostat copies of cheques and certificate from Bank before AAC . AAC refusing to admit additional evidence. AAC should have considered evidence produced by assessee regarding loan.

(v) CIT Vs. Gani Bhai Wahab Bhai 232 ITR 900 (MP): There is no prohibition for taking additional evidence at the appellate stage, the only condition being that the Department should not be prejudiced and should be given reasonable opportunity to rebut this additional evidence. In this case, no such request was made by the representative of the Department whether they disputed this certificate or not. Therefore, there is no illegality committed by the Tribunal which accepted the certificate of 46 per cent of the yield. In this view of the matter, the additional evidence entertained by the Tribunal cannot be said to be bad.

(vi) Smt. Surinder Kaur Vs. ITO (2008) 118 TTJ 710 (Luck):- Where additional evidence sought to be produced before Tribunal was a certificate relating to assessee's claim for deduction of a sum and if was relevant to decide claim of assessee, same was to be admitted for substantial cause and to enable tribunal to pass appropriate order in matter.

(vii) Mascon Global Ltd. Vs. Assistant Commissioner of Income Tax (2010) 37 SOT 202 (Chennai): Rule 29 permit the Tribunal to admit the additional evidence for any substantial cause.

2.2 On the other hand, the ld. DR opposed the application filed by the assessee under 29 of Income Tax (Appellate Tribunal) Rules, 1963 and submitted that the same is not maintainable.

2.3 We have heard the rival contentions and perused the materials available on record. From the contents of the application, we noticed that the assessee wanted to place on record documents in the shape of bank account statement, copy of acknowledgement of return, ledger accounts and confirmation etc. from two parties i.e. M/s. Dhanvarsha Motor Finance Pvt. Ltd and M/s. Link Distributors Pvt Ltd. As per facts, initially the addition of Rs. 1.20 crores were made by the AO. However, the ld. CIT(A) restricted the addition to Rs. 20.00 lacs as the assessee could not prove the creditworthiness of these two parties. Therefore, in these circumstances of the case, these documents are necessary to adjudicate upon the controversy arose between the parties and thus in our view no prejudice shall be caused to Revenue in case the application filed by the assessee is allowed and the documents raised at Serial No. 1 to 6 are admitted as additional evidence. We order accordingly.

2.4 Since we have allowed the application for leading the additional evidence of the assessee by admitting the documents placed at Serial No. 1 to 6 in the paper book which requires verification. Therefore, we restore this issue to the file of the AO to verify the following documents and also to pass afresh assessment order by providing adequate opportunity of being heard to the assessee.

- “1. Ledger account/ confirmation of M/s. Dhanvarsha Motor Finance Pvt. Ltd.
2. Bank account statement of M/s. Dhanvarsha Motor Finance Pvt. Ltd. reflecting the transactions.
3. Copy of acknowledgement of return and audit report alongwith all annexure of M/s. Dhanvarsha Motor Finance Pvt. Ltd. for A.Y. 2009-10.
4. Copy of acknowledgement of return of M/s. Link Distributors Pvt Ltd. for A.Y. 2009-10.
5. Ledger account/ confirmation of M/s. Link Distributors Pvt Ltd.
6. Bank account statement of M/s. M/s. Link Distributors Pvt Ltd. “

Thus the appeal of the assessee is allowed for Statistical purpose

3.0 In the result, the appeal filed by the assessee is allowed for Statistical purposes with no order as to cost.

Order pronounced in the open court on 03/10/2019.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 03 /10/2019.
*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Goldway Enterprises (P) Ltd., Jaipur
2. प्रत्यर्थी / The Respondent-The ITO, Ward- 4 (4)
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA No. 561/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar