

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 6069/Del/2014
(Assessment Year: 2010-11)

DCIT, Circle-4(1), New Delhi	Vs.	JTPL Townships (P) Ltd, F-82, District Centre Shivaji Place, New Delhi PAN: AAFCS9831D
(Appellant)		(Respondent)

CO No. 220/Del/2015
(In ITA No. 6069/Del/2014)
(Assessment Year: 2010-11)

JTPL Townships (P) Ltd, F-82, District Centre Shivaji Place, New Delhi PAN: AAFCS9831D	Vs.	DCIT, Circle-4(1), New Delhi
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	Shri Jagdish Ajmani, CA
Date of Hearing	20/08/2019
Date of pronouncement	18/11/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. ITA No. 6069/Del/2014 for AY 2010-11 is filed by the DCIT, Circle-4(1) against the order of the 1d CIT(A)-VIII, New Delhi dated 22.08.2014, wherein, the 1d CIT(A) has delete the certain additions. The 1d AO has raised the following grounds of appeal:-The revenue has raised the following grounds of appeal:-

- “1. *Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in treating the agricultural income of the assessee at Rs. 63,28,123/- against addition made u/s 68 amounting to Rs. 75,09,341/-, rejected the agricultural income ?*
- 2 *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s40(a)(ia) amounting to Rs.2,06,161/-?*

- 3 *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,19,901/- made by A.O. on account of commission paid?*
 - 4 *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 6,18,54,600/- made u/s 68 on account of unsecured loans?*
 - 5 *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 31,20,584/- paid as interest to the lenders?*
 - 6 *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
 - 7 *That the grounds of appeal are without prejudice to each other.”*
2. In the same appeal the assessee has filed cross objection in CO No. 220/Del/2015, wherein following grounds of appeal raised:-
- “1. *On the facts and circumstances of the case, the order passed by learned CIT(A) is bad both in the eye of law and on facts.*
 - 2(1). *On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law in confirming the disallowance of an amount to the extent of Rs. 7,50,000/- on account of agricultural income.*
 - (ii) *That the above said disallowance has been confirmed arbitrarily despite accepting the finding that the assessee is actually engaged in agricultural activity.*
 - (iii) *That the disallowance to the extent of Rs. 7,50,000/- has been made arbitrarily without there being any basis for the same.”*
3. The brief facts of the case shows that the assessee is a company who filed its return of income on 11.10.2010 declaring total income at Rs. 34,92,750/- wherein, certain additions were made. On appeal before the ld CIT(A), part of the additions were deleted and part of were retained against the additions deleted by the ld AO. The ld AO is in appeal before us and the assessee has filed cross objection challenging additions sustained by the ld CIT(A). We first take up the appeal of the AO.
4. We have heard the parties. The ld AR submitted his written synopsis mainly relying on the order of the ld CIT (A) on the appeal of the ld Ao. With respect to appeal of assessee on the issue of sustaining addition of agricultural income, he submitted that it is adhoc addition.
5. The ld DR relied up on the order of ld AO .
6. The first ground of appeal of AO and CO of assessee is against the order of the ld CIT(A) in treating the agricultural income of the assessee at Rs. 63,28,123/- against the addition made u/s 68 of Rs. 75,09,341/-.

7. Briefly stated the facts shows that during the year the assessee has shown agricultural income of Rs. 75,09,341/- after claiming deduction of expenditure of Rs. 4,31,218/- resulting into net income of Rs. 70,78,123/-. The Id AO held that the above income is chargeable to tax u/s 68 of the Act stating the assessee has failed to furnish the details of expenditure incurred for earning the above income completely. The details submitted were examined by the Id AO along with expenses incurred by the assessee and stated the amount claimed by the assessee as agricultural income is highly disproportionate in 85 acres of land cultivated by it. It was further stated that there is no details of crop sown, labour, manures, seeds etc. Further, the detail of transportation from field to Mandi was also not available. Further, the land was also within the Municipal areas of Karnal. The assessee has submitted form No. J for sale of agricultural produce which was rejected by the Id AO. The Id CIT(A) noted that for AY 2008-09, agricultural income of the assessee was Rs. 46.28 lacs was accepted in assessment made u/s 143(3) of the Act. Further for AY 2009-10 the assessee has shown agricultural income of Rs. 29.86 lacs which is also accepted without disturbing the return of assessee. The Id CIT(A) noted that the assessee has establish the nature of crop and expenditure on seed, manure, labour, watering and transportation. The assessee also has a tractor. The assessee also produced copies of the bills as well as details of the agricultural land proving its ownership and agricultural activity thereon. Therefore, he held that addition made by the Id AO without verifying the complete details. He further held that the assessee has also submitted the evidence of sale of agricultural produce through brokers in marketing committee of Karnal and to FCI godowns. He further noted that assessee has also dealing with in selling of agricultural land as residential plots. Thus, on the complete evidence and its possession he noted that agricultural income shown by the appellant is on higher side comparing to previous two years. He therefore noted that the expenditure shown by the appellant appears to be at lower side. Thus, he confirmed the addition of Rs. 7.5 lacs out of total agricultural sale of Rs. 7509341/-. Thus, he restricted the disallowance to the 10% of sale of agricultural produce to take care of normal business expenditure of travelling, telephone, electricity etc. This

order of the 1d CIT(A) is in challenge by the 1d AO as well as by the assessee in its cross objection.

8. The 1d AR contesting the confirmation of Rs. 7.5 lacs submitted that the assessee has submitted the complete details despite the fact that the 1d CIT(A) has confirmed the addition of Rs. 7.5 lacs merely on the basis that the expenditure incurred by the assessee to earn the agricultural income of around of Rs. 75 lakhs appears to be less. He submitted that assessee has submitted the voluminous documentary evidences of incurring those expenditure and with respect to agricultural income. He submitted that confirmation of the addition on ad hoc basis is not proper and therefore, it deserves to be deleted. With respect to the acceptance of the income of Rs. 6328123/- he relied upon the order of the 1d CIT(A).
9. The 1d Departmental Representative vehemently supported the order of the 1d AO with respect to the addition of Rs. 7509341/- as agricultural income which is disproportionate.
10. We have carefully considered the issue of agricultural income. The 1d CIT(A) has given categorical finding that in the last two years i.e. For AY 2009-10 assessee has shown agricultural income of Rs. 2986746/- which is accepted u/s 143(1) of the Act. Such return is not disturbed by the 1d AO. Further, for AY 2008-09 the assessee has shown the agricultural income of Rs. 4628281/- which is accepted by the 1d Assessing Officer u/s 143(3) of the Act. For AY 2010-11 the assessee has shown agricultural income of Rs. 7078123/- which is under dispute. The 1d CIT(A) noted that net agricultural income shown by the assessee for this year is on higher side compared to last two years. He further noted that expenditure on agricultural of Rs. 4 lakh is very less to earn the agricultural income of Rs. 75 lakhs. Therefore, he noted that due to rise in labour prices and other expenditure on inputs such as fertilizers, manure and seeds the expenditure shown by the assessee is very less. Therefore, out of the total income of Rs. 7509341/- and expenses of Rs. 431218/- is he estimated that Rs. 7.5 lakhs has been shown as excessive agricultural income compared to last two years. The substantial jump in the agricultural income was also not shown with adequate reason by the assessee. Further, the assessee did not produce crop grown as well as adequate expenditure incurred thereon. Though there

is no dispute with respect to agricultural land owned by the assessee and agricultural activities carried on but the income shown was found to be disproportionate with respect to the expenditure on agricultural activities. The ld CIT(A) has given the justification for the same which are incontrovertible. In view of this we do not find any infirmity in the order of the ld CIT(A) in treating the agricultural income of the assessee at Rs. 6328123/- against Rs. 7509341/- shown by the assessee. Accordingly, ground No. 1 of the appeal of the ld AO and cross objections filed by the assessee raising two grounds on this issue are dismissed.

11. The second ground of appeal is with respect to the disallowance deleted by the ld CIT(A) u/s 40a(ia) of the Act of Rs. 206161/-. The assessee has paid interest to three non banking financial companies on which tax should have been deducted u/s 194A of the Act which has not been deducted as noted by the ld AO. The ld CIT(A) noted that assessee has deducted tax source and Form No. 16A were also issued to those parties. Such certificates were also produced before us at page No. 360 to 363, 373 to 376 and 385 to 388. Same were not controverted by the ld DR. In view of the fact that assessee has already deducted tax at source on these interest payment the ld CIT(A) has correctly deleted the above disallowance. Thus, ground No. 2 of the appeal of the ld AO is dismissed.
12. Ground no. 3 is with respect to deletion of the addition of Rs. 519901/- on account of commission paid. The assessee has paid commission to two parties. The assessee was asked to produce these parties. Assessee was also asked that these persons are in Delhi whereas the land is situated at Karnal and Mohali. The ld CIT(A) deleted the addition for the reason that assessee produced the confirmation of those parties, TDS certificates, ledger accounts and fact of payment by account payee cheque. The ld CIT(A) noted that though summons to these parties were not served but assessee has submitted the confirmation as well as the permanent account no of those parties. Merely because of the difference in the place of those brokers and the impugned property such disallowance cannot be sustained. The ld Assessing Officer did not show that the commission payments were made to these parties, however, services have not been rendered. In view of this we

find no infirmity in the order of the ld CIT(A) in deleting the above addition. Ground No. 3 of the appeal is dismissed.

13. Ground Nos. 4 and 5 is with respect to the addition u/s 68 of Rs. 61854600/- on account of unsecured loan as well as corresponding interest thereon of Rs. 3120584/-. The ld Assessing Officer found that assessee has submitted the confirmation of the three companies from whom loan of Rs. 61854600/- were taken. However, the assessee could not show the creditworthiness and genuineness of the above payment. Therefore, addition was made. The ld CIT(A) noted that assessee has filed the confirmation of these parties, bank statement and income tax returns. These loans were through account payee cheque and in the subsequent year the same have been repaid. The confirmation of such repayment was also placed before the AO. Therefore, ld CIT(A) deleted the above addition stating that assessee has shown the identity, creditworthiness and genuineness of the above loan. In the present case during the course assessment proceedings the assessee has filed the confirmation, bank statement, ITRs of the parties from whom the loan of Rs. 6 crore is obtained. The ld Assessing Officer without making any further enquiry has reached at the conclusion that the assessee has failed to show the creditworthiness and genuineness of the above loan. Undoubtedly, above loan were on interest. The balance sheets of these companies also clearly shows that the party M/s. Bharat Insecticides Ltd from whom the loan of Rs. 3 crores is obtained is a company having turnover of more than Rs. 13 crores, fixed assets of more than Rs. 5.80 crores, current assets of more than Rs. 75 crores. It has secured loan from State Bank of India of more than Rs. 3 crores. It has investment in the mutual fund of approximately Rs. 2 crores. It has a manufacturing unit in which it manufactures concentrates, liquids and granules. Therefore, we do not find any reason to note that assessee has not shown the creditworthiness and genuineness of the company. The assessee has also taken a loan of Rs. 1.50 crores from Arunadya Holding Pvt. Ltd which is having the fixed asset of Rs. 1 crore in the form of land, inventories of Rs. 2.29 crores, cash and bank balance of Rs. 62 lakhs and secured loan of Rs. 80 lakhs from the Banks. Assessee has also entered into the various trading transaction and has reserve and surplus of Rs. 14.45 crores.

Therefore, in this company also the assessee has proved the creditworthiness and genuineness of the transaction. In the bank statement of the assessee substantial bank balances are shown over a period of time. In the HDFC Bank account balance as on 31.03.2010 Rs. 51.80 lacs is the balance shown. Therefore, the assessee has clearly established the identity and creditworthiness of these parties. A further loan of Rs. 1.5 crores was taken from Princet Trade and Finance Ltd whose annual accounts are also placed before us. According to those annual accounts the assessee has investment in property of Rs. 60 lakhs, investment in mutual funds of Rs. 11.45 lakhs, investment in equity shares of Rs. 1.5 crores. However, despite filing the confirmation and necessary evidence the ld AO did not carry out any enquiry with respect to these companies. If the ld Assessing Officer has any doubt about these companies then the ld AO should have summoned the directors of those companies. There is no allegation that any of these companies is an accommodation provider or companies operated by such persons. In view of this we find no infirmity in the order of the ld CIT(A) in deleting the addition u/s 68 of the Act. Further, the interest disallowance made by the ld Assessing Officer of Rs. 3120584/- is also pertaining to these lenders. As the identity, creditworthiness and genuineness of these companies are proved by the assessee by discharging initial onus cast upon it and the ld Assessing Officer has not made any enquiry to throw back the onus on the assessee, the addition u/s 68 as well as consequent addition of interest disallowance have been rightly deleted by the ld CIT(A). in view of this ground Nos. 4 and 5 of the ld AO are dismissed.

14. Ground no. 6 to 8 are general in nature, hence dismissed.
15. Accordingly, appeal of the assessee as well as the ld AO are dismissed.

Order pronounced in the open court on 18/11/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:18/11/2019
A K Keot

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1. Applicant

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

ASSISTANT REGISTRAR
ITAT, New Delhi