

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.753/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2011-12)

Santosh Patekar B-1304/1305, Bolivian ALPS, Bhakt I Park, Wadala (E), Mumbai-400037.	बनाम/ Vs.	DCIT 22(3) C 11 5 th Floor Bandra (E).
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHLPP6643E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Anil Thakrar	
Revenue by:	Shri Chaudhary Arun kumar Singh (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 15/11/2019

घोषणा की तारीख /Date of Pronouncement: 27/11/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 15.11.2017 passed by the Commissioner of Income Tax (Appeals) -26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

- “1. The Ld. CIT(A) is erred in adding a sum of Rs.33,07,000/- as undisclosed income u/s 68 even though assessee has duly submitted all the details along with the confirmations of creditors from whom advances had been received.
2. The Ld. CIT(A) is also erred in confirming addition of Rs.1,05,377/- as disallowed interest expenses.
3. The Ld. CIT(A) is also erred in confirming adhoc disallowance of expenses, and added sum of Rs.1,25,000/- to the total income.



4. *The appellant request to delete the addition confirmed by the CIT(A).*
5. *The appellant craves to add, alter or omit any or all of the above grounds of appeal before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee filed his return of income on 30.09.2011 declaring total income to the tune of Rs.36,57,890/- for the A.Y. 2011-12. The return was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny, therefore, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of selling of Club Membership of Royal Twinkle Star Club Ltd. and gets commission from the company. During the year under consideration, the assessee received commission from M/s. Royal twinkle star club Ltd. of Rs.98,64,667/- out of which he has claimed expenses of Rs.61,02,614/- and offered net profit of Rs.37,62,503/-. The assessee has also received advances from trade creditors of Rs.33,07,000/- which has been reflected under sundry creditors in the balance sheet. On appraisal of the balance-sheet, it was found that the assessee has received an amount of Rs.33,07,000/- during the year from 175 parties in cash all ranging between Rs.18,000/- to 19,500/-. The notice was given and after the reply of the assessee, the said amount was added to the income of the assessee as unexplained trade advance u/s 68 of the Act. The assessee has also claimed the interest in sum of Rs.2,23,496/- as interest on loan and an amount of Rs.69,660/- as legal and professional fees but the assessee failed to deduct the tax at source (TDS), hence, the amounts of Rs.2,93,156/- was added to the income of the assessee u/s 40(a)(ia). The assessee also claimed the business promotions expenses of Rs.5,61,528/-, conveyance expenses of Rs.2,59,056/-, meeting and salary expenses to salesman (Rs.8,08,351/- etc. Since the assessee failed to substantiate his claim, therefore, an amount of



Rs.2,50,000/- has been disallowed on estimation basis and added to the income of the assessee. Feeling aggrieved, the assessee an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds raised above, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The assessee has challenged the confirmation of addition in sum of Rs.33,07,000/- as undisclosed income u/s 68 of the Act. The assessee is in the business of selling of Club Membership of Royal Twinkle Star Club Ltd. and gets commission from the company. The assessee has received the commission from M/s. Royal twinkle star club Ltd. in sum of Rs.98,64,667/-. The assessee also claimed the expenses in sum of Rs.61,02,614/-. The assessee confirmed the net profit in sum of Rs.37,62,503/-. The assessee received the trade advances of Rs.33,07,000/- which has been reflected under sundry credit in the balance-sheet. The AO raised the addition on the basis of this fact that the credit worthiness and genuineness of the transaction have not been proved. The trade creditors were 175 in number who paid cash all ranging between 18,000/- to 19,500/-. The AO examined the 82 parties and arrived at this conclusion that the parties are not credit worthiness .The Ld. Representative of the assessee has argued that the CIT(A) has confirmed the addition raised by the AO on the basis of surmises and conjectures. It is also argued that the no cogent and convincing reason has been given to decline the claim of the assessee. It is also specifically argued that the assessee has given the name of the trade creditors, PAN number, Bank-Statement & ITR etc. to substantiate the claim, therefore, the claim of the assessee is liable to be allowed. However, on the other hand, the Ld. Representative of the



Department has refuted the said contention and placed reliance upon the finding of the CIT(A) in question. We noticed that the assessee has given the name of the parties, PAN number, address and amount of the parties which lies at page no. 49 to 59 of the paper book. The AO examined the 89 transactions and arrived at this conclusion that the same are not credit worthiness and genuine. The AO has given the following reasons to decline the claim of the assessee.

“I The dates of receipt and the amounts received from ‘trade creditors’ furnished by the assessee vide their letter dated 10.01.2014 and the loan confirmation submitted is different in many cases.

ii. Many of the trade creditors from whom membership deposits are received are common to both the assessee, his wife and also to M/s Royal Twinkle Star Club Ltd.

iii. Many of such trade creditors are not even filing their returns of income.

iv. Many of such trade creditors are reflecting merely a meagre commission income.

V. The bank statements on record do not reflect withdrawals for advancing such amount to the assessee or his wife.

vi. The assessee has merely filed certain confirmations to prove the identity of the persons. In all the cases the genuineness and the nature of transactions remains unexplained. In all the cases barring a few, the capacity of such persons to make even these small advances remains unproved. Those with sufficient income are themselves members of M/s Royal Twinkle Star Club Ltd.

vii. The assessee could not provide any documentary evidences as to whether the concern from whom they are receiving such commission income allows them to have such membership deposits. The assessee has stated that they have merely paid membership fees to M/s Royal Twinkle Star Club Ltd and do not have any agreement with them.

viii. Even when it was specifically pointed out to the assessee that the explanations and confirmations did not reveal the trade transactions and the assessee was asked to furnish the ledger accounts from these parties for subsequent years, the assessee did not furnish the same. Thus, the benefits to these parties on account of such transaction with the assessee are not furnished which confirms the fact that no benefit accrued to them from these transactions. Even when confronted with the fact that the



nature of transactions with these 'trade creditors' remained unproved, the assessee did not produce even a single party.

ix. These 'membership deposits' are not returned/ refunded till date.

X. No interest is paid on these 'deposits'.

xi. How these deposits helped the assessee in conducting the business of convincing the public in large to invest in MIs Royal Twinkle Star Club Ltd remains unexplained.

xii. What benefit arose from the assesses to these trade creditors remains unexplained.

xiii. The assessee has even reflected advances from his employees and his wife's employees, to increase the number of deposits, to ensure that each deposit remains below Rs.20.000/-.

xiv. Some of these confirmations are invalid and in some cases the PAN is invalid, in some cases the PAN has been obtained subsequent to the date of such transaction i.e. as late as 2013. All these reflect that some PANs have been obtained to lend authenticity to the transactions."

5. The explanation of the assessee is that the assessee was receiving the deposit for time sharing having lock period 3 to 5 years on demand as per mutual understanding between trade creditors and assessee. The assessee provided the confirmation, PAN, Bank statement & and ITR and address of the parties. The assessee was convincing the public in large to invest in the Royal Twinkle Star Club Ltd. for different type of beneficial scheme including holiday package, food service. The assessee was getting the commission for the investment. The assessee was also arranging the meeting at different places for which he has to go on tour and to meet and to attend the conference and to provide the gift to the clients.

6. It is to be seen whether the explanation of the assessee is justifiable or not. The assessee was getting the commission for selling club memberships of Royal Twinkle Star Club Ltd. The assessee was acting as a commission agent. The subscription amount goes with the club on which the assessee was getting commission. The assessee has shown the trade



advances but the purpose is not clear. It nowhere seems justifiable that the trade creditors were depositing the amounting in advance to get the membership of Royal twinkle star club Ltd. No business has been shown in the books of account except getting the commission for getting the club membership of Royal twinkle star club Ltd. Moreover, the AO examined the credit worthiness and the genuineness of the transaction of all the advances and examined 175 parties. AO found that 82 parties were not filing the income tax return. The bank-statement nowhere showed the genuineness of the claim. The trade advances were not returned till finalizes of the assessment i.e. on dated 19.03.2014. The confirmation letter of 21 persons were found unsigned. Among 119 persons, the 75 persons nowhere filed the return of income. The return was furnished in 35 cases and the income of the persons was found between 15,020 to Rs.50,000/- and in 5 cases it ranges between Rs.51,000/- to Rs.1,00,000/- and in 16 cases it ranges between Rs.1,00,000/- to Rs.2,00,000/- and in 4 cases between Rs.2,00,000/- to Rs.2,50,000/- and in 2 cases above Rs.2,00,000/-. It nowhere seems chewable where income is ranging from 15,020/- to Rs.50,000/- would advances the loan to the assessee in sum of Rs.36,000/- to Rs.38,500/- (both to the assessee and his wife) at mutually locked for a period of 3 to 5 years. Moreover, in all the cases the advance was in cash below 20,000/-. No doubt the confirmation was filed, identity was given and PAN number of some persons was given. But it is not sufficient to prove the transaction because no credit worthiness and genuineness of transaction has been proved. The transaction nowhere seems justifiable specifically in the circumstances when the assessee failed to prove the claim by giving cogent and convincing evidence. The CIT(A) has relied upon the decision of the Hon'ble Supreme Court in the case of **Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC)** wherein it has been specifically



held that any transaction where no direct evidence is available then the transaction should be inferred on the basis of surrounding circumstances and by applying the test on probabilities. Taking into account, all the facts and circumstances, we are of the view that the finding of the CIT(A) is quite correct which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the revenue against the assessee.

ISSUE NO.2

7. This issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

ISSUE NO.3

8. Under this issue the assessee has challenged the confirmation of addition in sum of Rs.1,25,000/- on account of Promotion expenses, Conveyance expenses and Salary etc. The AO disallowed the claim of the assessee to the extent of Rs.2,50,000/- on the basis of this fact that the expenses were in cash and on the basis of self-made vouchers. The AO for want of verification and also on the basis of Personal element declined the expenses to the extent of 2,50,000/-. However, in appeal, the CIT(A) has restricted the addition to the extent of 1,25,000/-. At this stage also, the facts are not distinguishable. The self-made vouchers were not verifiable and expenses of personal element cannot be declined. Accordingly, we find it justifiable, the disallowance in sum of Rs.1,25,000/-, therefore, we affirm the finding of the CIT(A) on this issue and decide this issue in favour of the revenue against the assessee.



ITA No. 753/M/2018
A.Y.2011-12

9. In the result, the appeal filed by the assessee is hereby ordered to be dismissed.

Order pronounced in the open court on 27/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/11/2019

Vijay/Sr. P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai