

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1513/Del./2016
(Assessment Year : 2011-12)**

ACIT, Circle 27 (2), vs. M/s. Zamil Air Conditioners
New Delhi. India Pvt. Ltd.
1st Floor, H-9/B-1,
Mohan Cooperative Industrial Estate,
Mathura Road, Badarpur,
New Delhi.

(PAN : AAACA0907F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Manomeet Dalal, AR
Shri Yishu Goel, AR

REVENUE BY : Shri Saras Kumar, Senior DR

Date of Hearing : 28.11.2019

Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, ACIT, Circle 27 (2), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 01.12.2015 passed by the Id. Dispute Resolution Panel-2, New Delhi in consonance with the orders passed by the TPO/AO under section 144C (5) of the

Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2011-12 on the grounds inter alia that:-

“On the facts and in the circumstances of the case, the DRP-2 erred in directing AO to delete the addition made by AO in respect of unsecured loan of Rs.44,68,21,921/-, after tallying the amounts of unsecured loans from documents furnished by the assessee. The DRP further, failed to appreciate that the assessee company had failed to produce the parties at the time of passing the assessment order and the genuineness and credit worthiness of the parties were not proved.”

2. Assessee is engaged in the business of manufacturing of air-conditioners & its part and having its manufacturing units at Nalagarh and Bahadurgarh. The assessee is also into exports from its Bahadurgarh Unit-II.
3. During the assessment proceedings, Assessing Officer (AO) has shown increase in the unsecured loan to the tune of Rs.44,68,21,921/- during the year under assessment, detailed as under :-

<i>Sl.No.</i>	<i>Name of parties from whom loans taken</i>	<i>Amount</i>
<i>1</i>	<i>K.G. Embroidery Ltd.</i>	<i>55,00,000</i>
<i>2</i>	<i>Vilkhu Life Science Ltd.</i>	<i>3,25,50,000</i>
<i>3</i>	<i>Amrit Sales Promotion Pvt. Ltd.</i>	<i>1,40,00,000</i>
<i>4</i>	<i>Vinjyoti Tracom</i>	<i>75,00,000</i>
<i>5</i>	<i>Gurvinder Pal Singh</i>	<i>14,46,85,582</i>
<i>6</i>	<i>Loksheel International Pvt. Ltd.</i>	<i>7,75,86,339</i>
<i>7</i>	<i>S.E. Investment Ltd.</i>	<i>16,50,00,000</i>
	<i>Total</i>	<i>44,68,21,921</i>

4. On failure of the assessee to discharge the onus to prove the genuineness of the transaction, creditworthiness and identity of the creditors, AO made addition of Rs.44,68,21,921/- under section 68 of the Act on account of non-genuine/bogus transactions.

5. The assessee carried the matter before the Id. DRP, containing transfer pricing issues also, by raising objections. Ld. DRP decided the issue in favour of the assessee by directing the AO to delete the addition after tallying the amount of unsecured loans from documents furnished by the assessee. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Before Id. DRP, it was the case of the assessee that adequate opportunity of being heard was not given by the AO during the assessment proceedings to substantiate its claim qua unsecured loans. Ld. DRP, after entertaining the additional evidence, called remand report from the AO and proceeded to delete the addition by returning following findings :-

“DRP has duly examined the issue. The panel hereby admits the additional evidence furnished in reference to unsecured loans as these are vital to decide the issue. It is note that the assessee had furnished necessary evidence in respect of two parties during the assessment proceeding and in respect of remaining parties during proceedings before DRP. The AO has not drawn any adverse inference in respect of these evidences. By furnishing name, address, PAN and bank statement/tax return, the assessee had discharged its onus. The panel therefore directs the AO to delete the addition after tallying the amounts of unsecured loans from documents furnished by the assessee. The objection is disposed off accordingly.”

8. When assessee has duly furnished name, addresses, PAN, bank statement and income-tax return to prove the unsecured loans disputed by the AO and during the remand proceedings, the AO has not taken any adverse inference qua the evidences produced by the assessee, we find no illegality or perversity in deleting the addition by the Id. DRP.

9. Now, the second issue arises for determination as raised by the Id. DR for the Revenue, is as to whether Id. DRP was empowered to entertain additional evidence and to call the remand report from the AO to decide the issue in question.

10. We are of the considered view that since proceedings before the Id. DRP are in continuation of the assessment proceedings initiated by the AO and the findings of the Id. DRP would further enable the assessee to avail of the remedies before the appellate authorities, we are of the considered view that it was within the purview of Id. DRP to entertain the additional evidence to call the

remand report and then decide the issue. Moreover, ld. DRP has proceeded to decide the issue by following the rule of natural justice by providing opportunity of being heard to the assessee which encompasses entertaining of the additional evidence, calling the remand report and after hearing the parties, decide the issue in question.

11. Identical issue has already been decided by the Hon'ble High Court of Bombay in case of Vodafone India Services (P.) Ltd. in favour of the assessee by returning following findings :-

“47. However as no final assessment order has y t been passed by the Assessing officer and the issues are still at large before the DRP the same could be urged before the DRP. In the facts of the present case we are not inclined to set aside the draft assessment order of the AO or the order of the TPO and remand the matter to AO, because the AO has already filed an affidavit contesting the petition on merits and justifying the stand that the alleged shortfall in premium upon issue of shares is chargeable to income tax under Chapter X . Hence, instead of remanding the matter to the AO to examine this question, we are of the view that the merits of this question must be considered by DRP under Section 144C(5) read with Section 144C (8). In a given case if the DRP requires any further material, DRP may exercise its powers either under Section 144C(7) or (5) i.e. by directing the Assessing officer to make enquiry into this aspect of the matter and report or alternatively decide it itself and give final directions to the assessing officer. The process before the DRP is a continuation of the assessment proceedings as only thereafter would a final appealable-assessment order be passed. Till date there is no appealable assessment order. The proceeding before the DRP is not an appeal proceeding but a correcting mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assessee. It is a continuation of the Assessment proceedings till such time a final order of assessment which is appealable is passed by the Assessing Officer. This also finds support from Section 144C(6) which enables the DRP to collect evidence or cause any enquiry to be made before giving directions to the Assessing Officer under Section 144C(5). The DRP procedure

can only be initiated by an assessee objecting to the draft assessment order. This would enable correction in the proposed order draft assessment order) before a final assessment order is passed. Therefore, we are of the view that in the present facts this issue could be agitated before and rectified by the DRP.”

12. In view of what has been discussed above, we are of the considered view that ld. DRP being well within power to call the additional evidence, call for remand report, decide the issue in controversy in favour of the assessee on the basis of facts and law applicable thereto in right earnest. Moreover, judicious exercise has been carried out by the ld. DRP to stop the multiplicity of the proceedings and to impart the justice which cannot be denied on the basis of hyper technicalities. So, finding no illegality or perversity in the impugned order passed by the ld. DRP, the present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 29th day of November, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 29th day of November, 2019

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-12, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**