

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BENGALURU
BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**I.T.A No.773/Bang/2017
(Assessment Year: 2005-06)**

M/s. Reddy Structures Pvt. Ltd.,
No.1, Mahaveer Towers, 3rd Floor,
24th Main, 5th Phase, JP Nagar,
Bangaluru – 560 0478.

The Asst. Commissioner of
Income Tax,
Circle-(1)(1),
Bangaluru.

[PAN: AACCR 6953L]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Narendra Sharma,Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Smt. R. Premi, JCIT
सुनवाई की तारीख/ Date of hearing	:	27.11.2019
घोषणा की तारीख /Date of Pronouncement	:	05.12.2019

ORDER

PER D.S. SUNDER SINGH, A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Bengaluru (hereafter referred as “CIT(A)”) in ITA No.142/195(A-1)/CIT(A)-5/2014-15 dated 02.02.2017 for the assessment year 2005-06.

2. Grounds No.1 & 10 are general in nature which does not require any specific education.

3. Ground No.2 is related to sustaining the disallowance of donation and charities of Rs. 26,115/- out of the total disallowance of Rs.1,17,551/- by the Ld. CIT(A). The Assessing Officer (AO) during the assessment proceedings found that the assessee had debited the amount of Rs. 1,17,551/- towards the donations and charities but not made the disallowance, therefore, the AO disallowed the said amount of Rs.1,17,551/- and added back to the income. On appeal, the Ld. CIT(A) confirmed the addition of Rs. 26,115/- and allowed the remaining expenditure under section 37(1) of the Income Tax Act, 1961 ("the Act"). Against which the assessee filed appeal before this tribunal.

4. We heard the rival submissions and perused the material placed on record. The Ld. CIT(A) considered the assessee's submission on donations which was said to be incurred during the puja and rituals carried on by the assessee in the conduct of business and allowed the sum of Rs.91436/- and the balance of amount of Rs. 26,115/- was confirmed. During the appeal of hearing, the Id. AR could not substantiate that the amount of Rs. 26,115/- was not the donation and charity and laid out for the purpose of business. Therefore, the appeal of the assessee on this ground is dismissed and the order of Ld. CIT(A) is sustained.

5. Grounds No.3 & 3.1 are related to the sustaining the disallowance of 25% of expenditure incurred through credit cards, since, the expenditure was personal in nature. The Assessing Officer (AO) during the

assessment proceedings found that the assessee debited the amount of Rs.3,20,631/- through various credit cards under the head "business promotion expenses". During the course of assessment proceedings, the assessee was asked to produce the credit card statement, which the assessee failed to produce the details. In the absence of the details, the AO disallowed 75% of the credit card expenses as personal expenses. On appeal before the Ld. CIT(A), the Ld. CIT(A) restricted the disallowance to the extent of 25%. Against which the assessee filed appeal before this Tribunal.

6. We have heard the arguments of both the sides and find from the order of lower authorities that the assessee has failed to furnish the details of expenses incurred through credit card cards. In the absence of the details of the expenditure incurred through credit cards the Ld. CIT(A) restricted the disallowance to the extent of 25% and allowed the remaining expenditure. During the appeal hearing the Ld.AR could not substantiate that the expenses were incurred for the purpose of business. Therefore, we do not see any infirmity in the order of Ld. CIT(A) and the same is upheld. Appeal of the assessee on this ground is dismissed.

7. Ground No.4 related to sustaining 50% OF addition in respect of foreign travel and domestic travel expenditure. The AO during the course of assessment proceedings found that the assessee had incurred the travelling expenditure of Rs. 11,65,065/-, out of which a sum of Rs.

9,52,999/- was incurred for foreign travel. The assessee was asked to produce the bills for the same and from the bills the AO found that the travel was undertaken to Dubai and Egypt by Shri Praveen, the Director of the company his family members and others who has no business connection and nor the Officials/Executives of the company. The assessee was unable to prove the relation between the people who travelled and the business activities of the company. The assessee also did not establish the necessity of foreign travel for the purpose of business activity, therefore, the AO disallowed Rs. 9,25,999/- as the expenditure not made out for the purpose of business. The AO further found that the assessee has debited the amount of Rs. 81,974/- on 14.04.2004 towards travelling expenditure of Shri Praveen, Director and his family members. The AO observed that except the Director no other members of the family were related to the company's activities and the travel undertaken to Delhi has no relation to the company. Since, the assessee failed to prove any relation between the members travelled and the business activity of the company, the AO disallowed Rs. 81,974/- and added back to the income. The aggregate disallowance was Rs. 10,07,973/- under the head "travel expenses". Against which the assessee filed appeal before Ld. CIT(A).

8. The Ld. CIT(A) found that the Director and his wife along with other members have travelled abroad and Delhi and the expenditure was borne by the assessee company. Except the Director Shri Praveen no other person has business connection with the assessee-company.

Therefore, the Ld. CIT(A) was of the view that entire the expenditure was not wholly and exclusively held to be for the purpose of business, however, restricted the disallowance to the extent of 50% and allowed the appeal partly. Against which the assessee is in appeal before us.

9. We have heard the rival submissions and perused the material placed on record. In the instant case, Mr. K. Praveen, the Director of the company has travelled to abroad i.e., Dubai and Egypt along with his wife, daughter, infant Snigdha, Infant Deekshita, Mr.Prabhakara Reddy, Mr. Veeragowda and Smt Nela Veeragowada. Except Mr. Praveen no other members who travelled abroad have business connection directly or indirectly with the assessee. Similarly, Mr. Praveen and seven others travelled to Delhi were also not connected to the business directly or indirectly of the company. The assessee could not establish the business connection of other members who travelled along with the director to the abroad and Delhi. As per the provisions of Income tax Act the expenditure wholly and exclusively laid out for the purpose of business is only allowable expenditure. Since, the assessee failed to prove that the expenditure incurred on foreign travel as well as domestic travel was for the purpose of business, we hold that the Ld. CIT(A) rightly allowed 50% of expenditure, hence, we do not find any infirmity in the order of the Ld. CIT(A) and the same is upheld. The appeal of the assessee on this ground is dismissed.

10. Ground No.5 is related to the addition of Rs. 5,00,000/- in respect of loan from Shri Piyush Kumar u/s. 68 of the Act. The assessee did not submit any details or furnish the confirmation from the creditor, therefore the AO made the addition. Against which the assessee went on appeal before the Ld. CIT(A), and filed additional evidence before the Ld. CIT(A) in the form of confirmation letter but not furnished the PAN number, therefore, the Ld.CIT(A) confirmed the addition made by the AO. Against which the assessee is in appeal before us.

11. We have heard rival contentions and perused the material placed before us. Before the AO, the assessee neither furnished the confirmation nor furnished the details. However, before the Ld. CIT(A) the assessee furnished the confirmation letter with detailed address and without PAN number. The Ld. CIT(A) confirmed the addition made by the AO, since the assessee has not even furnished the PAN number. From the perusal of the confirmation letter of Shri Piyush Kumar, it is seen that Shri Piyush Kumar did not explain the source and even did not furnish the PAN number for giving loan of Rs. 5,00,000/- to the assessee. The confirmation letter was undated and the date of loan mode of giving the loan, source of loan etc., was also not furnished in the confirmation letter. However, the creditor has furnished the full address and the Ld.CIT(A) has confirmed the addition without making the enquiry. Having admitted the additional evidence the Ld. CIT(A) ought to have made the enquiry and given the finding. Since, the creditor has given the complete address we, are of the

view that enquiry required to be made before confirming the addition. Therefore, we remit the matter back to the file of AO to re-examine the issue in detail and decide the issue afresh on merits. Accordingly, ground No.5 of assessee is allowed for statistical purpose.

12. Ground No.6 is related to the addition of Rs.5,00,000/- loan received from Shanta Devi. The assessee has neither furnished the address nor any other details with regard to the creditor, inspite of repeated requests made by the AO. The assessee produced one leaf of bank pass book purportedly belonging to Shanta Devi Gulecha which shows withdrawal of Rs. 5,00,000/- on 07.03.2005 and it does not contain even the name of the assessee. As per the bank pass book, the creditor was having balance of Rs. 2,34,453/- on 01.03.2005. Subsequently, the deposits were made amounting to Rs. 1,60,000/- and Rs. 2,20,000/- and withdrawn the amount of Rs. 5,00,000/- on 07.03.2005. The source was not explained hence, the AO disbelieved identity, genuineness and creditworthiness of the creditor and accordingly, made the addition of Rs. 5,00,000/- u/s. 68 of the Act. Against which the assessee filed appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition and the assessee is in appeal before us.

13. We have heard rival contentions and perused the material placed before us. Before the AO the assessee placed the copy of the bank account. The Ld.A.R furnished confirmation letter in respect of Smt. Shantha Devin Gulecha in Page No.37 of the paper book. As per the

order of the Ld.CIT(A) in para 12.1 it is observed that the assessee has furnished the confirmation letter before the Ld.CIT(A). However the Ld.CIT(A) confirmed the addition under the impression that the same was not furnished. It appears there was some confusion with regard to the confirmation furnished by the assessee in respect of the creditor. Therefore, we are of the view that the correct information is not forthcoming from the order of the Ld.CIT(A), hence, in our consider opinion this issue require verification at the end of the AO. Hence we, remit the matter back to the file of the AO with a direction to reexamine the issue and decide afresh on merits. Needless to say that the assessee must cooperate with the AO and the AO should afford reasonable opportunity to the assessee. Thus this ground of appeal is allowed for statistical purposes.

14. Ground No.7 is related to the addition of Rs.2,90,000/- u/s 68 of the Act, relating to the loan received from Sri Gurumurthy. Before the AO and the Ld.CIT(A) the assessee neither furnished the details nor the confirmation letter. Therefore, the Ld. CIT(A) confirmed the addition. During the appeal hearing also the Ld. AR did not place any material to controvert the decision of the Ld.CIT(A), therefore we, do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the assessee on this ground is dismissed.

15. Ground No.8 is related to the addition of Rs.10,00,000/- loan received from Mahendra Nayakam. The AO has examined Shri Mahendra Nayakam, by issue of summons u/s. 131 of the Act. The creditor Shri Mahendra Nayakam appeared before the AO and confirmed that he has given the loan of Rs. 10,00,000 in the year 2005 and further sum of Rs. 10,00,000/- in the year 2006. Before the AO the creditor did not produce the bank account statement and did not explain the source. The creditor is a salaried employee in the assessee's company working for monthly salary of Rs.10000/- for the last three years without having any additional source of income. Therefore, the AO disbelieved the genuineness and creditworthiness of the creditor and made the addition of Rs. 10,00,000/- u/s. 68 of the Act. Against which the assessee filed appeal before the Ld. CIT(A) and the Ld.CIT(A) confirmed the addition observing that the assessee failed to establish the genuineness and credit worthiness of the transaction.

16. Aggrieved by the order of the Ld.CIT(A) the assessee filed appeal before us. During the appeal of hearing, the Id. AR submitted that the summons u/s. 131 of the Act were issued to the creditor and he has confirmed the transaction, thus, argued that the assessee had established the identity and genuineness of the transaction. Since, the assessee explained the source, there is no case for making the addition in hands of the assessee. The Id. AR further submitted that it is not the duty of the assessee to explain the source of source and it is for the department to

make the inquiries and disprove the transaction for making the addition. Having accepted the loan transaction before the AO, the Id. AR argued that the AO ought not to have not made the addition. The Id. AR further submitted that the assessee cannot submit the bank pass books and income tax returns of the creditor since he is not having access to the same. Therefore, argued that the assessee has discharged it's burden and it is for the AO to make further inquires and disprove the genuineness or otherwise hence, argued that the AO has no material to make the addition accordingly, requested to delete the addition made by the AO.

17. On the other hand, the Ld. DR argued that Shri Mahendra Nayakam though accepted the loan he failed to explain the source to establish the genuineness and creditworthiness of the transactions. The creditor has no source and he was unable to explain the source for giving the loan. He is an employee of the assessee-company drawing salary of Rs. 10,000/- and there was no accumulation of money available to the creditor, therefore, argued that the assessee failed to establish the creditworthiness and genuineness of the transaction. Thus, argued that the Ld. CIT(A) has rightly upheld the addition and no interference is called for.

18. We have heard the rival submissions and perused the material placed on record. Shri Mahendra Nayakam has confirmed the loan transaction in the statement given u/s. 131 of the Act but he could not explain the source for giving the loan to the assessee. The creditor has

filed returns only for the AY 2005-06 and AY 2006-07 related to the assessment year of transaction involving the loan. There was no evidence of accumulation of funds to the creditor i.e in the year in which the loan was given. The creditor did not produce bank account copy inspite of specific request made by the AO. Though the loan was given for interest the assessee has not paid any interest to the creditor till date.

19. The creditor is an employee working with the assessee-company for a salary of Rs. 10,000/- per month and though the creditor has stated to have done some contract works there was no evidence having carried out the contract works and the creditor did not furnish the income tax returns declaring the contracts income of earlier years. As seen from the assessment order, though he was working for monthly salary of Rs. 10,000/- per month with the assessee he was not paid the interest till the date of finalization of assessment order. The creditor stated that he had received the gift of gift of Rs. 25,00,000/- from his brother but has not furnished any evidence to show the gift transaction. Further, he was residing in Hyderabad and filed the returns of income in Bangaluru, which shows that the income tax returns were filed to explain the loan transaction. The assessee's AR produced the bank statement of the creditor from which it was found that there was no entry in the bank statement of Shri Mahendra Nayakam between 23.08.2004 to 18.05.2005. From the above facts, it is found that Shri Mahendra Nayakam is not a man of means and the income earned by the assessee is insufficient to

accumulate the sum of Rs. 20 lakhs which is stated to be given as loan. Though the creditor explained the source as gift from his brother no evidence was furnished by the creditor to establish the receipt of gift. It is the obligation of the assessee to establish the identity, genuineness and the creditworthiness of the creditor to explain the source to the satisfaction of the AO for the sum found credited in the books of the assessee. In the instant case, the assessee failed to establish the genuineness and creditworthiness of the creditor therefore, we hold that the Id. CIT(A) rightly confirmed the addition and no interference is called for. Accordingly, the appeal of the assessee is dismissed.

20. Ground No.9 is with regard to levy of interest which is mandatory and consequential. We, direct the AO to levy the interest correctly on giving effect to this order. Accordingly this ground is allowed for statistical purposes.

21. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 5th December, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bengaluru, Dated: 05 -12-2019

EDN

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore