

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Choudhary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4245/Del/2016 : Asstt. Year : 2013-14

Ved Prakash Agarwal, 36/78, West Punjabi Bagh, New Delhi	Vs	ACIT, Central Circle-30, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJPA5292M		

Assessee by : Sh. Akshat Jain, CA

Revenue by : Sh. Abhishek Kumar, Sr. DR

Date of Hearing: 06.02.2020

Date of Pronouncement: 07.02.2020

ORDER

Per N. K. Choudhary, Judicial Member:

This present appeal has been filed by the assessee against order dated 16.05.2016 of Id. CIT (A)-30, New Delhi.

2. Following grounds have been raised by the assessee:

"That on the facts and in circumstances of the Appellant's case, the Ld. CIT(A) erred both on facts and in law in confirming the addition of Rs 50 lacs being undisclosed investments u/s 69 of the Act on account of alleged cash loan given

a) by holding content of dumb documents i.e. page 93, 94 and 95 seized from the business premises of M/s Prakash Industries Limited during search action as true.

b) without considering the fact that content of the affidavit have been confirmed by Ld. AO through cross examination of the deponents and by recording their statement during remand proceedings.

c) by holding that retraction of statement by appellant, filing of affidavits and denying of receipt of loan by the parties (deponents) in their statement is just after thought without bringing any material in support of his contention."

3. Brief facts of the case are that a search and seizure operation was conducted on 30.10.2012 at the premises of Prakash Industries and the assessee.

4. During the search at corporate office of Prakash Industries Ltd., three loose pages - 93, 94 and 95 were found and seized and Annexurised as A-12. These loose paper was confronted to Ved Prakash Agarwal, Chairman Prakash Industries Ltd. during his statement recorded u/s 132(4) on 31.10.2012, he stated that page no. 93 and 95 are repeats and page 95 is receipt given by C.B. Bansal, Advocate for cash loan of Rs.15 lacs given to him sometimes in October, 2012 and page no. 94 is receipt given by Mahamantra Das for cash loan of Rs.20 lacs given to him sometimes in April, 2012 out of which Rs.3.6 lacs has been repaid.

5. The Assessing Officer made an addition u/s 69 of the Income Tax Act, 1961 of Rs.50,00,000/- on the basis of said lose papers seized and statement recorded of the assessee during the course of search. The Id. CIT (A) confirmed the addition.

6. During the arguments before us, the Id. AR relied on the submissions taken before the Id. CIT (A) and on the paper book containing pages 1 to 84. The Id. DR strongly supported the order of the Id. CIT (A) especially sub-para no. Xii of para 4.7.

7. Heard the arguments of both the parties and perused the material available on record.

8. Statement on oath u/s 132(4) of the Income Tax Act, 1961 has been recorded by the ADIT(Inv.), Unit-6(3), during the proceedings of search wherein the assessee while answering the details regarding the seized pages numbered 93, 94 and 95, has submitted as under:

"Question no. 38: I am showing you page no. 93, 94 and 95 of Annexure A-12 seized from you premises at Brijwasan. Please explain the contents of these pages.

Answer: Page No. 93 and 95 are repeats. Page No. 95 is a receipt given by Sh. C.B. Bansal, Advocate R/o Laxmi Nagar Area for the cash loan (loan given in cash) given by me to him. This loan of Rs.15 lacs was given to him sometimes in the month of October 2012. Out of my cash balance page n. 94 is a receipt given by Mahamantra Das of Iskcon Temple for the loan given in cash by me to him amounting to Rs.20 lacs. This loan was given by me in the month of April, 2012 and he has repaid in cash as amount of Rs.3.6 lacs."

9. Subsequent to the above statement recorded on 31.10.2012, the assessee has filed a letter before the Addl. DIT(Inv.), Unit-3 retracting the statement given before the authorities on 31.10.2012. The relevant portion of the letter dated 02.11.2012 retracting the earlier statement is as under:

"After two days of interrogation and mental torture and threats the officers compelled me to sign on sheets of questions and answers which were written by them late in the evening on 31st October 2012. I was not even allowed to read the answers which had been written by the Departmental officers. I believe that I was made to sign all written sheets of papers wherein I had purportedly/allegedly confessed that one Shri Aggarwal from Calcutta helped me in bringing unutilized cash in the form of share capital, share premium, share application and unwarranted loan. The officers also made me sign on some chart of companies which were said to be paper companies from whom share capital, share premium etc has been received. I was also made to sign on a reply framed by the officer that unaccounted cash

brought in share capital etc was generated due to suppression of profit on which, income tax has not been paid.

12. At the very inception, I completely deny, withdraw and retract from all the aforesaid confessions which I was compelled to sign. There is not even a rupee of undisclosed income earned by me or the group of companies in any manner. There was not even an iota of evidence found by the Department to even remotely establish that any undisclosed income was made by me or any of the group companies. There was also no evidence what so ever to show that any cash has been generated or paid to anybody for bringing any share capital, share application or unsecured loan. Hence, I can say with authority and conviction and full knowledge that none of the allegations made against me and the group is backed by any documentary evidence found during the course of search. I was compelled to sign documents/statements which, respectfully submitting, were mere figments of the imagination of the concerned officers. I, therefore, completely and totally retract from the disclosure of Rs. 77.74 crores extracted from me on behalf of the company."

10. Further, on perusal of the receipts reveal that the receipts have been undated and unsigned. There is no signature of either the recipients or the payer. The name mentioned on the receipts are Sh. C.B. Bansal and Mahamantra Das. During the remand proceedings, the statement of Sh. C.B. Bansal R/o A-40, Nirman Vihar, New Delhi has been recorded wherein Sh. C.B. Bansal denied on receiving any cash loan from the assessee. The relevant part of the statement recorded by the Assessing Officer is as under: (page no. 65, 66 marked)

"Question No. 5: Whether you have taken loan of Rs.15 lakh from M/s Prakash Industries Ltd. and Rs.15 lakh from Sh. Ved Prakash Agarwal and when it was repaid?

Ans: No. I have not received any loan amount and question of repayment does not arise.

Q.No. 6: I am showing you two documents seized during the search operation of corporate office of M/s Prakash Industries Ltd. Srivan, Bijwasan in which receipt of two loans of Rs.15

lakh each from M/s Prakash Industries Ltd. and Sh. Ved Prakash Agarwal is mentioned. Please comment?

Ans.: As stated earlier, I have not taken any kind of loan from M/s Prakash Industries Ltd. and Sh. Ved Prakash Agarwal.

Q.No. 7: In the statement recorded u/s 132(4) of the Act during search Chairman of M/s Prakash Industries Ltd. Group Sh. Ved Prakash Agarwal admitted that you had received of Rs.30 lakh (15+15) as loans from him (Sh. Ved Prakash Agarwal) as declared this amount as additional income. How you are denying the receipt. Particularly, in view of the effect that you have not brought any record/documents.

Ans.: I am not aware of the same.

Q.No. 8: Where are you assessed to tax?

Ans.: I am presently assessed with Circle 58(1), Delhi and my PAN No. is AATPB5963C.

Q.No.: How do you know M/s Prakash Industries Ltd.?

Ans.: I am consultant of M/s Prakash Industries Ltd."

11. In addition, Sh. C.B. Bansal has also filed an affidavit dated 10.03.2015 before the Assessing Officer reaffirming his statement.

12. Further, the Assessing Officer has also recorded statement of Sh. Mahamantra Das (Kamla Shankar Dubey, the other name) R/o 165, Ground Floor, ISKCON wherein he categorically refused of having taken any loan from the assessee. The relevant part of the statement recorded by the Assessing Officer is as under:

"Question No. 3: Do you know Sh. Ved Prakash Agarwal and M/s Prakash Industries Ltd.?"

Ans: Yes, Sh. Ved Prakash Agarwal is known as Vedyas Das in our society. He is very committed devotee of Lord Krishna. He is my good brother. He is running M/s Prakash Industries Ltd.

Question: Do you had any transaction with Sh. Ved Prakash Agarwal or M/s Prakash Industries during the last 6 years?

Ans.: I had never took loan from Sh. Ved Prakash Agarwal or M/s Prakash Industries Ltd.

Question: Now I am showing you receipt of loan for Rs.20 lakh from Sh. Ved Prakash Agarwal in the F.Y. 2012-13. Please explain on the same?

Ans.: This receipt not signed by me and the same does not pertains to me.

Question: This receipt was found at the premises of M/s Prakash Industries Ltd. during the course of search and Sh. Ved Prakash Agarwal admitted that unaccounted money of Rs.20 lakh was given by me to Mahamantra Das. In his statement recorded u/s 132(4) of the I.T. Act what you want to say in this regard?

Ans.: I have not taken loan from anybody in theincluding Sh. Ved Prakash Agarwal."

13. In addition, Sh. Mahamantra Das has also filed an affidavit dated 20.03.2015 before the Assessing Officer reaffirming his statement.

14. We find all these facts have been available before the Id. CIT (A). However, the Id. CIT (A) did not accept the evidences filed by the assessee during the remand report and held that the statements and affidavits are nothing but an afterthought and only to help the assessee.

15. Holding this, he confirmed the addition. We also find that the Id. CIT (A) has also confirmed the fact that "the three unsigned receipts are incriminating documents found in the search and seizure action u/s 132, which shows actual transactions have been taken place. On going through the entire factual position, we are unable to accept with the observation of the Id. CIT (A) who has confirmed the addition and at the same time accepting the fact that the receipts are unsigned and yet

treating them as incriminating documents. The sequence of events are reiterated as under:

30.10.2012 *Search conducted and statement recorded u/s 132(4).*
02.11.2012 *Statement retracted.*
10.03.2015 *Affidavit filed by Sh. C.B. Bansal refuting receipt of loan.*
20.03.2015 *Affidavit filed by Sh. Maha Maya Das refuting receipt of loan.*
04.03.2016 *Statement of Sh. Maha Maya Das recorded.*
10.02.2016 *Statement of Sh. C.B. Bansal recorded.*

16. Having gone through the material facts on record as narrated above viz. the statements of the assessee as well as the counter parties, affidavits, the receipts *per se* and also the observation of the Id. CIT (A) that the receipts are unsigned, we hereby hold that no addition is called for based on these documents and hence, the addition made by the Assessing Officer on this account is hereby directed to be deleted.

17. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 07/02/2020.

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Sd/-

(N. K. Choudhary)
JUDICIAL MEMBER

Dated: 07/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR