

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
ITA.No.663/Del./2019
Assessment Year 2012-2013

Shri Roop Kishore Madan, A-9/4, Vasant Vihar, New Delhi. PAN ABWPM6914G	vs.	The DCIT, Central Circle – 16, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Salil Agarwal, Advocate And Shri Shailesh Gupta, C.A.
For Revenue :	Smt. Sushma Singh, CIT.DR
Date of Hearing :	04.03.2020
Date of Pronouncement :	13.05.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-28, New Delhi, Dated 26.12.2018, for the A.Y. 2012-2013.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. On Ground No.1, assessee challenged the addition of Rs.10 lakhs under section 69C of the I.T. Act, 1961, on account of unaccounted business expenses not debited in P & L Account.

3.1. The assessee is an individual and filed return of income declaring income of Rs.25,71,810/-. The assessee has business income and income from other sources. The assessee is proprietor of M/s. Rhea Distribution Co which is engaged in the business of trading of Fabric. From the perusal of P & L A/c of said concern it is seen that assessee achieved sales of Rs.9,37,98,738/- against which purchases have been made at Rs.9,37,50,576/-. The fixed assets schedule of the assessee shows value of the fixed assets at Rs.1.41 crores as on 31-03-2012 which includes plant and machinery added during the year at Rs.12,94,658/-. The fixed assets include furniture & Fixtures, computer, vehicles, Copier machine, Plant & Machinery and Air Conditioners etc. But the assessee in P & L a/c of M/s. Rhea Distribution Co. has claimed expenses of Rs. 22,472/- on audit fee only and no other expense have been claimed in

P & L A/c. The A.O. noted that it is not understood as to how the assessee running a business without incurring expenses which are necessary in a normal course of business. The assessee is showing huge list of fixed assets, but, no electricity charges have been claimed by the assessee. Several vehicles are in the business, but no fuel/maintenance expenses have been claimed. No staff expenses have been paid. In the absence of any explanation and non-production of books of account, A.O. made addition of Rs.10 lakhs on account of unexplained expenditure u/s 69C of I T Act. The Ld. CIT(A) confirmed the addition. The assessee has also taken the alternative contention before the Ld. CIT(A) that assessee may be allowed depreciation on fixed assets while disallowing the above expenditure. The Ld. CIT(A) noted that assessee has failed to provide details of the fixed assets before A.O. as well as before him, therefore, depreciation was not allowed.

4. Learned Counsel for the Assessee submitted that there is no evidence available on record of incurring of any expenditure as alleged by the A.O. Further burden is upon

A.O. to prove that assessee incurred expenses, therefore, addition is wholly unjustified.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee has not claimed any expenses in the P & L A/c which cast doubt on the explanation of assessee. Therefore, addition is justified.

6. After considering the rival submissions, we are of the view that addition is excessive in nature. Considering the nature of business of assessee and that no evidence has been brought on record by the A.O. of incurring all these expenses, the estimate made by the A.O. of Rs.10 lakhs expenditure is wholly unjustified. Further, it is a fact that assessee has not claimed any expenditure of routine business expenses, electricity expenses, fuel expenses which are necessary for running of the business. Therefore, considering the totality of the facts and circumstances of the case, we restrict the addition to Rs.3 lakhs as against Rs.10 lakhs made by the A.O. The Orders of the authorities below

are therefore modified to that extent and A.O. shall make addition of Rs.3 lakhs only.

6.1. Further, alternate claim of assessee before the Ld. CIT(A) with regard to claim of depreciation which is statutory in nature. The A.O. has noted the details of the asset and addition made to the asset in assessment year under appeal. The balance-sheet is before A.O. Therefore, it being the statutory deduction in nature, A.O. is directed to allow depreciation to the assessee as per Law, by giving reasonable, sufficient opportunity of being heard to the assessee. Assessee may produce other evidences before A.O, if necessary or called for by the A.O. on this issue. With these directions Ground No.1 of the appeal of the Assessee is partly allowed.

7. On Ground No.2, assessee challenged the addition of Rs.24,50,91,663/- on account of unexplained credit shown as addition to assessee's capital account in the proprietary of M/s. Rhea Distribution Co.

8. As per AIR information, the assessee is found to have deposited cash amounting to Rs.19,28,19,000/- in his bank accounts during the period under consideration. The assessee was also found to have paid Rs.4,49,65,022/- towards various credit cards bills and also has deposited Rs.1.85 crores in cash in his saving bank account during the year under consideration. The assessee was asked to explain the source of the cash deposited in various Bank accounts and credit card payment. The assessee explained that cash deposited by the assessee in various bank accounts were to the tune of Rs.9,72,59,500/- and not Rs.19,28,19,000/- as shown in the AIR statement for the reason that 21 entries of cash deposits have been repeated twice/thrice in the AIR statement. The A.O. sought confirmation from the bankers of the assessee under section 133(6) of the I T Act and the explanation of the assessee found in order, but, the source of the cash deposits were still required to be explained. It was further found from the balance sheet that assessee has made addition to his capital account to the extent of Rs.24,50,91,663/- as transfer from

personal assets (Net). The information regarding addition in capital was also received through system as one of the reasons for selection of the case under scrutiny. The assessee was required to file the following details :

- (i) Statement of affairs for A.Y 2012-13 and A.Y. 2011-12.
- (ii) Details of net capital addition to the tune of Rs.24,50,91,663/- in the capital account of the assessee as on 31-03-2012 with evidence.
- (iii) Justification of cash deposits of Rs.9,72,59,500/- with supporting evidences.
- (iv) Loans and advances receivable to the tune to Rs.25,61,01,000/- along with supporting evidences.

8.1. The A.O. noted that assessee has not furnished the requisite details. Therefore, both the above amounts remain unexplained. The A.O, therefore, made addition of Rs.9,72,59,500/- and addition to the capital account to the

tune of Rs.24,50,91,663/-, totaling to Rs.34,23,51,163/- under section 69 of the I.T. Act, 1961.

9. The assessee challenged the addition before the Ld. CIT(A). The detailed written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that as per Question No.18 of the assessee's statement recorded under section 132(4) on 17.09.2010, an amount of Rs.15.92 crore was surrendered and it was duly stated that out of the said income, Rs.15 crore was still to be received. Copy of the assessment order for the A.Y. 2011-2012 under section 143(3) was filed which contain the fact of surrender of the above income. No addition to capital account was made in that year. Hence, it was apparent from the record that income surrendered was assessed on which tax paid, but, income was still to be received. It was submitted that in the assessment proceedings before A.O. that entire cash deposits were out of income surrendered and assessed in A.Y. 2011-2012 but received during the year under consideration. The A.O. took no steps to verify this fact. Since cash out of the

surrendered amount has already been assessed and deposited in the Bank account, therefore, cash deposited in the Bank account is explained which is added to the capital account. Therefore, A.O. has erred in making both the additions. It was further submitted that Rs.9,72,59,500/- stands added twice, which as such was part of income surrendered in A.Y. 2011-2012, but, realized and received in A.Y. 2012-2013 under appeal.

9.1. As regards loans and advances and addition to capital account, the assessee submitted details of the same along with documentary evidences along with bank statements to explain cash deposits. The documents could not be submitted before A.O. because of the medical condition of the assessee was beyond control. The Ld. CIT(A) referred to the documentary evidences to the A.O. for calling the remand report. The remand report is reproduced in the appellate order in which the A.O. has stated that assessee was asked to submit copy of the ITR and bank statements of entries forwarding unsecured loans of Rs.3.98 crores for the assessment year under appeal, details of the land sold along

with sale deed resulting in short term capital gain of Rs.15.92 crores which the assessee has surrendered in A.Y. 2010-2011 during the search. The A.O. noted that assessee has however not submitted details of the short term capital gains, but, an affidavit was filed that income has been surrendered and declared in A.Y. 2011-2012, on which, taxes have been paid. The assessee was asked to furnish confirmations and bank statements and ITR of the parties from whom unsecured loans have been taken. The assessee in response thereto filed details of the loans and advances along with confirmations, balance-sheet and details of the sources along with bank statements. The details of the loans and advances of Rs.9,02,95,000/- were also submitted by the assessee which are 10 in number. The A.O. issued notice under section 133(6) on test check basis which were served upon 06 parties and they have filed their replies along with documentary evidences. Further details were also submitted with regard to the source of the deposits, therefore, remand report was submitted stating that issue may be decided on merit. Since general

comments were given by the A.O, therefore, A.O. was further asked to submit detailed remand report on all the above issues. The A.O. further filed the remand report which is also reproduced in the appellate order in which detailed investigation carried-out by the A.O. have been mentioned with regard to unsecured loans and advances received by the assessee and unsecured loans received in the Bank account of M/s. Rhea Distribution Co. and cash surrendered during the course of search. The A.O, however, noted that assessee failed to explain these issues. The assessee in the rejoinder reiterated the same facts and submitted that all issues have been explained, therefore, there were no justification to make any addition against the assessee.

9.2. The Ld. CIT(A) in principle confirmed the addition of Rs.9,72,59,500/-, but, considering it to be double addition, deleted the addition. However, the balance amount of Rs.24,50,91,663/- was confirmed.

10. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred

to statement of fact filed in the appeal papers which contain the details of cash surrendered, cash deposited etc. and total addition made to the capital account. The same reads as under :

A. Details of Cash Surrendered	
Total Income Surrendered on 17.09.2010 on account of STCG	15,92,00,000/-
Less: Amount seized out of Locker and Adjusted in Tax Demand.	70,00,000/-
Balance	15,22,00,000/-
Less: Amount seized out of Locker and adjusted in Tax demand	55,70,000/-
Balance of Cash out of Surrendered Income (Total A)	14,66,30,000/-
B. Details of cash consumed/deposited in bank out of above.	
During A.Y. 2012-13	
Cash Deposited in Bank	13,11,34,500/-
Cash utilized in Rhea Distribution Company	38,86,000/-
Total Addition in Rhea Distribution Co. (in Capital Account)	13,50,20,500/-
During A.Y. 2013-14	
Cash received out of surrendered income	1,16,09,500/-
Total (B)	14,66,30,000/-

Thereafter it has been explained that the details of addition to Capital Account of Rs.24,50,91,663/- in his prop. concern M/s. Rhea Distribution Company was as under :-

A. Cash received during A.Y. 2012-13 (Out of income surrendered) (Deposited in various Bank accounts and then introduced in capital account of	Rs.13,50,20,500/-
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<i>Rs.13,11,34,500/- and cash introduced directly in firm and utilised in firm Rs.38,86,000/-).</i>	
<i>B. Unsecured Loan received in bank account of Rhea Distribution Co. (Prop. Firm) (in the ITR shown as capital)</i>	<i>Rs.3,98,00,000/-</i>
<i>C. Loan and Advances given by the Proprietor Roop Kishore Madan in preceding years from his proprietorship concern Roop International and transferred to the balance-sheet of another proprietorship concern M/s. Rhea Distribution Company.</i>	<i>Rs.9,02,95,000/-</i>
<i>D. Less :- Drawings of the Assessee</i>	<i>Rs.2,00,23,837/-</i>
<i>Total addition to Capital Account (A+B+C-D)</i>	<i>Rs.24,50,91,663/-</i>

10.1. Learned Counsel for the Assessee submitted that on all the above issues documentary evidences were submitted which are filed in the paper book. He has referred to assessee's capital account which is submitted in the paper book-1 at pages 53 to 55. The assessee filed confirmations along with assessee's bank statements with regard to addition of Rs.3.98 crores, copies of which are submitted in PB-1 at pages 58 to 70. The confirmations and bank statements of assessee's proprietorship-firm evidencing that money was advanced in preceding years of a sum of Rs.9,02,95,000/- to 10 parties is submitted in PB-1 at pages 71 to 204. With respect to addition of

Rs.13,50,20,500/-, the assessee submitted copy of statement of the assessee recorded during the course of search on 17.09.2010 wherein with regard to Question No.18 it was submitted by assessee that documents so seized are income of assessee of Rs.15.92 crores out of which Rs.15 crores have not been received by the assessee. However, the same was surrendered. It was further stated that as and when the said cash is received by the assessee, the same will be introduced in the books of account of the assessee [PB-1 pages 118 to 119]. It was further submitted that out of the total cash received of Rs.13,50,20,500/- during the assessment year under appeal, cash deposit of Rs.13,11,34,500/- was made in assessee's Bank account and balance of Rs.38,86,000/- was utilised in assessee's proprietorship business [PB-1 pages 16 & 17 and 23]. It was further submitted with reference to PB-1 page-23 that balance cash of Rs.1,16,09,500/- was received in subsequent year 2013-2014 which was also deposited in assessee's Bank account which was accepted by the A.O. vide assessment order Dated 28.12.2017 under section

143/147 of the I.T. Act, 1961, copy of which is placed on record. The assessee filed confirmation from the lender along with their bank statements, copies of which are filed in the paper book-1 at pages 92 to 204, 289 to 294, 206 to 225. The affidavit of the assessee in support of the same was also filed. The remand report from the A.O. was called for and complete details were submitted before A.O. in the remand proceedings, on which, no adverse comments have been made by the A.O. The assessee also proved source of the source. In response to notice under section 133(6) of the I.T. Act, 1961, 06 parties have confirmed and documentary evidences have also been filed before A.O. The assessee in the rejoinder reiterated the same facts along with documentary evidences, on which also no adverse comments have been made by the A.O. Learned Counsel for the Assessee, therefore, submitted that since during the course of search statement of assessee was recorded in which he has surrendered Rs.15.92 crores, on which, taxes have been paid, but, Rs.15 crores was not actually received which cash was later on received and introduced in the

books of account, therefore, this amount was available with the assessee to explain the addition of Rs.13,50,20,500/-. The assessee further explained that balance cash of Rs.1,16,09,500/- was received in subsequent A.Y. 2013-2014 which was also deposited in the Bank account of assessee which have been accepted by the A.O. in the Order under section 143(3) of the I.T. Act, 1961. There were thus no justification to make addition of Rs.13,50,20,500/-.

10.2. Learned Counsel for the Assessee as regards addition of Rs.3,98,00,000/- reiterated that assessee filed confirmations along with bank statements and income tax returns. Therefore, initial onus upon assessee have been discharged. The A.O. has not brought any material on record to dispute the contention of assessee. He has relied upon decisions of Hon'ble Delhi High Court in the cases of CIT vs., Diamond Products Ltd., 177 Taxman 331 (Del.), CIT vs., Dwarkadhish Investment Pvt. Ltd., 330 ITR 298 (Del.) and decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs., Metachem Industries 245 ITR 160 (M.P.). The parties have also responded to the notice issued under

section 133(6) and confirmed the transaction with the assessee. The documentary evidences have not been rebutted by the A.O. Learned Counsel for the Assessee relied upon Judgment of Hon'ble Supreme Court in the case of CIT vs., Orissa Corporation Ltd., 159 ITR 78 (SC) and Judgment of Hon'ble Delhi High Court in the case of PCIT vs., Laxman Industrial Resources Ltd., 397 ITR 106 (Del.). Learned Counsel for the Assessee with regard to addition of Rs.9,02,95,000/- regarding loans and advances reiterated that same were supported by income tax return, confirmations and bank statements and even source of the source have been explained. Notice under section 133(6) were issued to all parties which have been complied with. The A.O. did not make any adverse comments upon the same, therefore, assessee explained the entire addition of Rs.24,50,91,663/-.

11. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that no details were submitted before A.O. Source of the cash deposited in the Bank account is not explained. Only 06

parties have responded to the notice under section 133(6) of the I.T. Act, 1961. The A.O. issued summons under section 131 to all the parties, but, no full compliance have been made. Unsecured loans have not been explained by the assessee. The Ld. D.R. relied upon the following decisions :

- (i) Judgment of Hon'ble Delhi High Court in the case of Krishan Kumar Sethi vs., CIT 403 ITR 189 (Del.).
- (ii) Judgment of Hon'ble Punjab & Haryana High Court in the case of Smt. Kavita Chandra vs., CIT 398 ITR 641 (P&H).
- (iii) Judgment of Hon'ble Delhi High Court in the case of Dinesh Kumar Jain vs., PCIT 407 ITR 65 (Del.).

11.1. The Ld. D.R, therefore, submitted that since cash deposited in the bank account and capital account have not been explained, therefore, this ground of appeal of assessee has no merit and the same may be dismissed.

12. We have considered the rival submissions and perused the material on record and documentary evidences. It is not in dispute that in A.Y. 2011-2012 assessee made surrender of Rs.15.22 crores as additional income which have been accepted by the A.O. in the Order under section 143(3) of the I.T. Act, 1961, copies filed at page 122 of the PB. The assessee during the course of search has made a statement that out of total amount of Rs.15.92 crores, Rs.15 crore is still to be received. Thus, the assessee paid taxes on the entire surrendered amount in preceding A.Y. 2011-2012, but, according to explanation of assessee Rs.15 crores is yet to be received. The explanation of assessee had been that this Rs.15 crore was received in assessment year under appeal which is introduced in the books of account of the assessee. therefore, to that extent assessee is able to explain the source of Rs.15 crores, on which, no adverse inference have been drawn by the A.O. as well in the remand proceedings, therefore, there were no justification to make any addition to the extent of Rs.15 crores against the assessee.

12.1. As regards other two additions are concerned, the assessee produced sufficient documentary evidences on record i.e., confirmation of the creditors, their balance-sheet, their bank statements etc., which clearly show that they are assessed to tax and have source of giving loan and advance to the assessee. The loan and advance have been taken directly to the proprietary concern of the assessee as well as in their Bank account. Therefore, assessee produced documentary evidences on record and has been able to explain the source of the deposits in his Bank account. All the documentary evidences have been filed in the paper book and referred to during the course of submission by Learned Counsel for the Assessee. The A.O. in the remand report did not make any adverse comments on the documentary evidences filed by the assessee. In case of addition of Rs.9,02,95,000/- most of the amounts are opening balances coming from earlier years, therefore, cannot be added in assessment year in appeal. Thus the assessee has been able to explain the source of the cash deposited as well as addition made to the capital account.

The decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case to explain the above addition of Rs.24,50,91,661/-. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue. It may also be noted here that since surrender have been made in earlier year as well as in subsequent year of the amounts in question and taxes have been paid and the amount which was surrendered in earlier year have been realized in assessment year under appeal, therefore, same would not be taxable in assessment year under appeal. This reason alone is sufficient to delete the addition against the assessee. Considering the totality of the facts and circumstances of the case and documentary evidences on record and explanation of assessee, we do not find any justification to sustain any addition against the assessee. In view of the above discussion, we set aside the Orders of the authorities below and delete the entire addition. Ground No.2 of the appeal of assessee is allowed.

13. In the result, appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 13th May, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.