

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.2829/Del/2017
Assessment Year: 2010-11

Rano Singh,
D-1058,
New Friends Colony,
New Delhi.

Vs ACIT,
Circle-28(1), Civic Centre,
Jawahar Lal Nehru Marg,
New Delhi.

PAN: AOCPS6836E

(Appellant)

(Respondent)

Assessee by	:	Shri D.C. Garg, CA
Revenue by	:	Shri Saras Kumar, Sr. DR
Date of Hearing	:	06.07.2020
Date of Pronouncement	:	21.07.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24th March, 2017 of the CIT(A)-10, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and is proprietor of M/s Reproduction, which is engaged in manufacture of furniture, trading in electric apparatus and investment and trade in securities and consultant as interior decorator. She filed her return of income on 09.10.2010 declaring the

total income at Rs.79,27,180/-. The AO completed the assessment u/s 143(3) on 26th March, 2013 determining the total income at Rs.1,64,03,400/- wherein he made various additions totaling to Rs.84,76,223/-. In appeal, the Id.CIT(A), after obtaining a remand report from the AO and the rejoinder of the assessee to such remand report, partly sustained the various additions made by the AO.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

ö1. For that the Id CIT(A) grossly erred in inferring that there exists a difference of Rs. 20,90,000/- in the opening balance in the account of M/s. Gulab Farms Pvt. Ltd. and in erroneously adding the same to the income of the appellant as alleged unexplained credit. For that being unsustainable both in law and facts, the addition so made is liable to be deleted.

2. For that the Id CIT(A) erred in inferring that there exists a difference of Rs. 5,21,935/- in the account of M/s. V.C. Solutions (P) Ltd. and in erroneously adding the same to the income of the appellant as alleged unexplained credit. For that being unsustainable, the addition so made is liable to be deleted.

3. For that the Id CIT(A) erred in arbitrarily dismissing the contention of the appellant that the addition of Rs. 4,20,000/- made by the Id Assessing Officer as notional income from Flat No. F-2, Palam Marg, Vasant Vihar, New Delhi is not sustainable in view of the provisions of section 23(1)(c) of the Income-tax Act, 1961. For that the Id CIT(A) erred in not taking into consideration the various decisions relied upon by the appellant in this behalf. Being unsustainable, the addition so retained is liable to be deleted.

4. For that the appellant craves leave of this flonøble Tribunal to add to, and/or amend, and/or delete, and/or modify, and/or alter the aforesaid grounds of appeal as and when the occasion so demands.

All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.ö

4. The Id. Counsel for the assessee, at the outset, did not press ground No.3 for which the Id. DR has no objection. Accordingly, ground No.3 is dismissed as not pressed. Ground No.4 being general in nature, is dismissed.

5. So far as Ground No.1 is concerned, the AO, during the course of assessment proceedings, observed from the confirmation furnished by the assessee in respect of M/s Gulab Farms Pvt. Ltd. that they have credited the following bills as on 31.03.2010:-

i) Amount of bill No.259 and 260	Rs.24,40,125/-
ii) Amount of Bill No.269	<u>Rs.14,23,125/-</u>
Total	<u>Rs.38,63,250</u>

6. From the details submitted by the assessee while reconciling the balance sheet, he noted that the assessee has claimed the difference as due to bill No.259 and 260 dated 12th May, 2010 and 269 dated 25th May, 2010 which have been accounted for by Gulab Farms Pvt. Ltd., on 31.03.2010. According to the AO, if the bills of the assessee were dated 12th May, 2010 and 15th May, 2010, how Gulab Farms Pvt. Ltd., should have entered them on 31.03.2010. This, according to the AO clearly shows that these amounts were not actually advance, but, the actual services/supplies were duly made by the assessee during the year itself and in order to reduce its profitability the amount was shown as advance received. He, therefore treated the amount of Rs.38,63,250/- as income of the assessee.

7. In appeal, the Id.CIT(A) deleted the addition of Rs.38,63,250/-. However, he directed the AO to make an addition of Rs.20,90,000/- being the difference in the opening balance of the claim of advance received by observing as under:-

4.2 I have carefully considered the assessment order passed by the AO, remand report submitted by the Assessing Officer and rejoinder to the remand report filed by the Ld. AR. From the assessment order passed, it is noticed that AO has made the addition of Rs.38,63,250/- on the basis of confirmation filed by M/s. Gulab Farms P. Ltd. including three bills No. 259, 260 & 269 amounting to Rs.24,40,125/- (Bill No. 259 & 260) and Rs.14,23,125/- respectively. From the assessment order, it is evident that these three bills were accounted for by M/s. Gulab Farms P. Ltd. for the period ending on 31.03.2010 whereas these bills pertained for the sales made on 12.05.2010 and 25.05.2010 i.e. sales for the subsequent financial year and not related to the period relevant to assessment year under consideration. Due to this reason, Assessing Officer treated the amount of Rs.38,63,250/- as amount received against services/supplies made and not as an advance. However, this issue was remanded to the Assessing Officer, and the submissions made in the remand report, reproduced above, are self explanatory on the issue involved. On careful perusal of copy of ledger account of M/s. Gulab Farms P. Ltd. in the books of the appellant filed during the appellate proceedings revealed that the opening credit balance was shown at Rs.45,50,280/- however during the remand proceedings, Ld. AR has filed copy of ledger account of the appellant in the books of M/s. Gulab Farms P. Ltd. wherein the opening debit balance has been shown at Rs.66,40,280/-. This fact clearly proves that there is inconsistency as far as veracity of transactions recorded in the ledger account of both the appellant and M/s, Gulab Farms P. Ltd. During the remand proceedings, though it is being claimed that the difference in the balances shown on account of advances occurred due to incorporation of three bills i.e. Bill Nos. 259, 260 amounting to Rs.24,40,125/- and Bill No. 269 of Rs.14,23,125/- which have wrongly been accounted for by M/s Gulab Farms P. Ltd. for the period 01.04.2009 to 31.03.2010 which in fact related to sales made in the subsequent financial year i.e. on 12.05.2010 and 25.05.2010, but the fact cannot be denied that even if this version of the appellant is accepted, there is difference in the opening balance as on 01.04.2009 which as per ledger account of M/s. Gulab Farms P. Ltd. in the books of the assessee is Rs.45,50,280/-, whereas in the remand proceedings, vide letter dt.12.05.2016, the same has been reported by M/s. Gulab Farms P. Ltd. in its books as Rs.66,40,280/-. Needless to mention here that even during the assessment stage vide letter dt.21.03.2013, a copy of ledger of the appellant was provided in the books of M/s Gulab Farms Pvt. Ltd. wherein too the opening balance as on 01.04.2009 was shown at Rs.66,40,280/-. Considering these facts in view, the submissions of the appellant do not found to be in consistent with the documentary evidence available on record. In view of these facts, I am

inclined to agree with the comments of the Assessing Officer that the veracity of ledger accounts produced to explain the reconciliation in respect of M/s. Gulab Farms P. Ltd. cannot be relied upon. However, on appreciating the ledger account available on record of M/s. Gulab Farms P. Ltd. in the books of the assessee and ledger of assessee in the books of M/s. Gulab Farms P. Ltd., the fact cannot be denied that there were different figure of opening balances with regard to advances made to the appellant. At the time of assessment proceedings, addition has been made by the AO by treating the amount of Rs.38,63,250/- as income of the assessee for the year under consideration against the services/supplies made by the assessee whereas details available on record makes it clear that M/s. Gulab Farms P. Ltd. made certain advances to the appellant against which supplies were made by the appellant in the period subsequent to assessment year under consideration vide three bills i.e. Nos. 259, 260 and 269 totaling to Rs.38,63,250/-. No adverse comments have been provided by the Assessing Officer as far as above three bills are concerned which pertained to the period subsequent to assessment year under consideration as per details available on record. However, there is found to be difference in the opening balance in the claim of advance received by the assessee from M/s. Gulab Farms P. Ltd. to the extent of Rs.20,90,000/- (Rs.66,40,280/- minus Rs.45,50,280/-), which is being treated as unexplained credit not recorded in the books of account maintained during the normal course of business. Accordingly, the same is being treated as income of the assessee for the liability out of books of account to be met out of income not recorded in the books. However, appellant gets part relief of Rs,17,73,250/- in respect of this ground of appeal.ö

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

9. The Id. Counsel for the assessee submitted that the Id.CIT(A) did not appreciate the facts correctly. Referring to page 18 and 20 of the paper book, he submitted that the ledger account in the book of M/s Gulab Farms Pvt. Ltd., would show a balance of Rs.66,40,280/- whereas the ledger of M/s Gulab in the books of the assessee shows the opening balance of Rs.45,50,280/-. This ledger further shows that there is an entry of 20,10,000/- of the cheque No.506703 dated 31.03.2010 received and deposited in the bank on 2nd April, 2010. He submitted

that it is clear from the above that M/s Gulab Farms issued a cheque No.506703 for Rs.20,90,000/- on 31.03.2010 which was accounted for on the same day by them whereas it was accounted for in the assessee's books when it was received. He submitted that merely because a receipt was accounted for in the next accounting year, it can never be treated as unexplained credit. He accordingly submitted that the addition made should be deleted.

10. The Id. DR, on the other hand, while supporting the order of the AO and the CIT(A) submitted that this requires verification at the level of AO since the assessee had never reconciled the difference in the opening balance either before the AO or Id. CIT(A). He accordingly submitted that he has no objection if the issue is restored to the file of the AO.

11. We have heard the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We find, although the Id.CIT(A) has deleted the addition of Rs.38,63,250/-, he directed the AO to make an addition of Rs.20,90,000/- being the difference in the opening balance in the books of the assessee and well as the books of M/s Gulab Farms Pvt. Ltd. It is the submission of the Id. Counsel that M/s Gulab Farms issued cheque No.506703 for Rs.20,90,000/- on 31.03.2010 and accounted for on the same day whereas the same was accounted for by the assessee in the next year for which the difference arose. Although the Id.CIT(A) called for a remand report from the AO while deciding the issue, the AO has not asked anything about this

difference nor the CIT(A) has given any opportunity to the assessee to explain the same. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the AO with a direction to give an opportunity to the assessee to substantiate the difference in the opening balance in the books of the assessee as well as M/s Gulab Farms Pvt. Ltd., and decide the issue as per fact and law. Ground No.1 by the assessee is accordingly allowed for statistical purposes.

12. So far as Ground No.2 is concerned, the facts of the case, in brief, are that an amount of Rs.22 lakhs was paid by M/s V.C. Solutions as consultancy charge to the assessee for the year under consideration, but, no income was shown by the assessee on this amount and no satisfactory explanation was given by the assessee. The AO, therefore, made addition of Rs.22 lakhs to the total income of the assessee. In appeal, the Id.CIT(A) deleted the addition of Rs.22 lakhs, but sustained the addition of Rs.5,21,935/- by observing as under:-

õ4.4 On this issue, the addition has been made by the AO on the same basis as was made in respect of other advances received from M/s. Gulab Farms P. Ltd. and M/s. Columbia Estates P. Ltd. In the remand report, AO has reported that during the remand proceedings, M/s. V.C. Solutions P. Ltd. failed to file the ledger account of the appellant in its books of accounts despite being given the opportunity to provide the same, therefore, he held that the genuineness of the transactions cannot be relied upon. However, as per details available on record, in the shape of ledger accounts of M/s. V.C. Solutions P. Ltd. on the basis of audited books of accounts, it is to be noted that the fact cannot be denied that certain advances were received by the assessee from M/s. V.C. Solutions P. Ltd. including opening balance of Rs.10,00,000/-. However, during the appellate proceedings, Ld. AR has filed a certificate from M/s. V.C. Solutions P. Ltd. wherein it has been certified that there is debit balance of Rs.34,94,435/- as on 31.03.2010 whereas in the ledger account provided by

the appellant, the balance of M/s. V.C. Solutions P. Ltd. has been shown at Rs.29,72,500/-. Hence, there is a difference of Rs.5,21,935/-, which is in the nature of unexplained credit, which has not been shown in the books of account by the appellant. Therefore, the same is treated as income of the assessee for the year under consideration.ö

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

14. The Id. Counsel for the assessee, submitted that the Id.CIT(A) has not appreciated the facts correctly. He submitted that it is correct that balance on 31.03.2010 as appearing in the certificate and ledger provided by M/s VC Solutions is Rs.34,94,435/- which is verifiable from page 27 and 28 of the paper book. Referring to ledger of VC Solutions in the books of the assessee, copy of which is placed at page 29 of the paper book, he submitted that the assessee has received the following amount, i.e., Rs.5 lakh on 26th May, 2009, vide cheque No.586427, Rs.10 lakhs on 22.10.2009, vide cheque No.470175, Rs.4,72,500/- on 21.03.2010 vide cheque No.813011 and has shown in the books of account. Referring to page 27 of the paper book, he submitted that M/s VC Solutions recorded transactions after grossing up of the amount of TDS which is shown as under:-

- | | | |
|-------------------------------|----------------|---------------------------------|
| i) 26 th May, 2009 | Chq. No.586427 | Rs.5 lakhs + TDS Rs.690/- |
| ii) 22.10.2009 | Chq. No.470178 | Rs.10 lakhs + TDS Rs.1,11,110/- |
| iii) 22.03.2010 | Chq. No.813011 | Rs.4,72,510/- + TDS Rs.52,500/- |

15. Referring to page 31A of the paper book, he submitted that in addition, the assessee recorded an amount of Rs.2,94,435/- as advance for supply on 12.11.2009, vide chq. No.593021 which was shown in the name of M/s Chandni. Hence, there is no difference in both the accounts. He accordingly submitted that the addition so sustained by the CIT(A) should be deleted.

16. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). He, however, submitted that he has no objection if the argument as advanced by the Id. Counsel is remanded to the file of the AO for verification and adjudication afresh.

17. We have considered the rival arguments and perused the orders of the AO and the CIT(A). We have also gone through the paper book filed on behalf of the assessee. We find, the AO, in the instant case, made addition of Rs.22 lakhs being the receipt amounting to Rs.22 lakhs paid by M/s VC Solutions as consultancy fee for the year under consideration on which no income was shown by the assessee. We find, the Id.CIT(A) while deleting the above addition has directed the AO to sustain the addition of Rs.5,21,935/- being the difference in the balance as per ledger account of assessee and M/s V.C. Solutions which is in the nature of unexplained credit. It is the submission of the Id. Counsel that the difference is due to the grossing up of amount of TDS by M/s VC Solutions and the assessee has shown the net amount excluding the TDS and there was wrong credit in the name of Ms Chandni amounting to Rs.2,94,435/-. In our opinion, although the

ld.CIT(A) has called for a remand report from the AO, this issue was not properly explained by the assessee during the remand proceedings to the AO nor the CIT(A) has considered the same properly in the light of the arguments advanced by the ld. Counsel. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to grant an opportunity to the assessee to substantiate its case and decide the issue as per fact and law. We hold and direct accordingly. This ground of the assessee is accordingly allowed for statistical purposes.

18. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21.07.2019.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 21st July, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi