

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

Before Ms. Sushma Chowla, Vice President

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

(E-Court Module)

ITA No. 2448/Del/2017 : Asstt. Year : 2012-13

| | | |
|---------------------------------------|----|--|
| DCIT, HUDA City Centre, Bhiwani | Vs | Amit Kumar Garg, Prop. M/s Amit Sales Corporation, Plot No. 2, Near Over Bridge, Circular Road, Bhiwani |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ADCPG3789K | | |

CO No. 146/Del/2017 : Asstt. Year : 2012-13

| | | |
|---|----|---------------------------------------|
| Amit Kumar Garg, Prop. M/s Amit Sales Corporation, Plot No. 2, Near Over Bridge, Circular Road, Bhiwani | Vs | DCIT, HUDA City Centre, Bhiwani |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ADCPG3789K | | |

Assessee by : Sh. Gautam Jain, Adv.

Revenue by : Sh. Jagdish Singh Dahiya, Sr. DR

Date of Hearing: 15.07.2020

Date of Pronouncement: 10.08.2020

ORDER

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

The present appeal has been filed by the revenue against the order of the Id. CIT(A), Hisar dated 24.01.2017.

2. Following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in deleting the addition made by the AO at Rs.2,22,16,952/- on account of investment

from undisclosed source, USL, interest disallowance without appreciating the facts that the additions are made on the facts of the case and the documentary strength impounded during the survey u/s 133A.

2. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in deleting the addition made by the AO at Rs. 7,53,000/- on account of unsecured loan received without appreciating the facts that the additions are made on the facts of the case that the creditworthiness/genuineness have not proved during the assessment proceedings which are not a business income.

3. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in deleting the addition made by the AO at Rs. 23,25,000/- on account of disallowance of interest in proportionate to non-business advances given out of interest bearings funds and interest is claimed as expenses without appreciating the facts that such interest expenses are claimed after estimation of Gross Profit.

4. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in deleting the addition made by the AO at Rs. 92,79,740/- on account of undisclosed investment made from undisclosed source and earned interest there upon without appreciating the facts that the additions are made on the strength of impounded documents.

5. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in deleting the addition made by the AO at Rs. 98,59,212/- on account of undisclosed investment without appreciating the facts that the additions are made on the strength of impounded documents."

3. In CO No.146/Del/2017, following grounds have been raised by the assessee:

"That Id. CIT (A) Rohtak has grossly erred both in law and on facts in not concluding that impugned order of assessment dated 31.03.2015 u/s 143(3) of the Act was in excess of jurisdiction since the addition made of Rs.11,13,296/- and Rs.98,59,212 are beyond the scope of assessment is otherwise to untenable and unsustainable."

4. Brief facts of the case are that the assessee e-filed return of income declaring an income at Rs.2,41,147 on 12.09.2012, which was processed u/s 143(1) of the Income Tax Act, 1961. Later on, the case was selected for scrutiny through CASS. A survey u/s 133A of the Act was carried out at the business premises of the assessee on 02.09.2014. The impounded material has been duly examined while completing the assessment proceedings. The AO has brought to tax, the alleged unexplained investments based on the impounded material. The Id. CIT (A) has deleted the addition which were based on such material on the grounds that no separate addition is warranted when the profits of the assessee are estimated taken into consideration the gross profit of the year. Aggrieved the revenue filed appeal before the Tribunal and the assessee has filed Cross Objection.

5. Ground No. 1: Investment from Undisclosed Source – Comprehensive, dealt in detail in other grounds.

Ground No. 2: Unsecured Loans

6. The AO observed that the assessee has received the following loans during the year:

| S. No. | Name of the Party | Amount brought to tax as income | | |
|--------|----------------------------|---------------------------------|----------|----------|
| | | Principal | Interest | Total |
| 1. | Parveen Kumar Bhardwaj | 1,00,000 | 5,000 | 1,05,000 |
| 2. | Lalita Devi | 1,00,000 | - | 1,00,000 |
| 3. | Balkishan Sugla | 1,00,000 | | 1,00,000 |
| 4. | Hukam Chand Rajender Kumar | 4,00,000 | 48,000 | 4,48,000 |
| | Total | 7,00,000 | 53,000 | 7,53,000 |

7. The assessee has filed copy of account of these persons and copy of ITR. In the case of Bhardwaj, the AO held that the assessee has not furnished the ID proof and bank statement. Similarly, in the case of Lalita Devi, the AO was not satisfied with the copy of the ITR acknowledgment. The AO held that in the case of Balkishan Sugla and Hukam Chand Rajender Kumar, the assessee has not filed the primary documents to prove the genuineness of the transactions.

8. The Id. CIT (A) deleted the addition on the grounds that the income of the assessee has been estimated by calculating the GP, hence no separate addition is called for on account of unsecured loans.

9. Before us, the Id. DR taken up arguments in two folds,

1. That the decision of the Id. CIT (A) that no separate addition is called for on account of loans, once the income has been estimated is totally on a wrong interpretation of judgments and facts of the case.
2. It was argued that the assessee has failed to discharge the onus of identity, genuinity and creditworthiness of the four loan parties. It was further argued that the AO has clearly mentioned that the basic details to prove identity, genuinity and creditworthiness of the loan parties have not been provided.

10. Before us, the Id. AR reiterated the arguments taken before the Id. CIT (A).

11. Regarding the addition on account of loans received, it was argued that loans were received from identifiable parties and

through banking channel. It was, thus argued that burden of the assessee in respect of the loans received from various parties stands discharged and therefore no addition is tenable. It was argued that once the amount has been received by account payee cheques and the creditors have duly confirmed the transactions no adverse reference can be drawn. In addition, the Id. AR relied on the following judgments:

- *Addl. CIT vs Hanuman Agarwal 151 ITR 150 (Pat)*
- *Mather & Platt (India) Ltd vs CIT 168 ITR 493 (Cal)*
- *Addl. CIT Bihar vs Bahri Bros P. Ltd. 154 ITR 244 (Pat)*
- *Nemi Chand Kothari vs. CIT 136 Taxman 213 (Gau)*
- *Labh Chand Bohra vs. ITO 219 CTR 571 (Raj)*

12. Heard the arguments of both the parties and perused the material available on record. We find that the decision of the Id. CIT (A), that no separate addition on account of unsecured loans is warranted as the income of the assessee has been estimated for the year is found to be on incorrect interpretation of the ratio laid down by the Hon'ble Courts. The Id. CIT (A) misread the judgments and combined, transpolated, bamboozled herself in considering the items of P&L account with that of balance sheet items interchangeable. The case laws referred pertains to purchases, disallowances u/s 40A(3) and on account of expenses on trading account. Extrapolation of judgments rendered in connection with the items of trading account cannot be extended to the addition of unsecured loans which is balance sheet item. The unsecured loans do not have impact on the estimation of gross profit as they do not constitute a part of the trading account. Hence, the issue of unsecured loans has to be adjudicated independently on the merits of the case.

13. With regard to the loans from four people, while the Id. DR argued that even the copy of the bank statement has not been furnished by the assessee thus failing to discharge the primary onus in the case of the loans received from various parties, we find from the paper book, the relevant documents proving identity, genuineness and creditworthiness of the loaners. We find that all the bank statements of the loan parties have been duly submitted before the AO. The revenue has not disputed the presence of the primary documents before the Id. CIT (A) at this juncture. Hence, it can be held that the assessee has discharged the primary onus to prove the loans whereas the revenue has not acted upon such evidences filed by the assessee to bring anything contra. The addition has been made without conducting any enquiry on the grounds that the assessee has not filed the primary documents necessary to prove the genuineness of the loans, the observation of which, we find contrary to the facts on record. Hence, the addition made on account of the loans from the above parties is directed to be deleted.

Ground No. 3 : Disallowance of Interest

14. The AO held that the assessee has advanced Rs. Rs.1,99,35,720/- to various parties and no interest has been received. The AO calculated interest @ 12% on these advances and disallowed an amount of Rs.23,25,000/- and deducted the same from the interest expenses paid.

15. Before us, it was submitted that perusal of the financial statements on record would show that the assessee had claimed

expenditure on interest of unsecured loan of Rs. 5,84,432/- and Rs. 24,56,648/- on interest on loan raised from the bank. Thus, aggregate interest on expenditure claimed is Rs. 30,41,080/-. It was submitted that the secured loan stood at Rs. 1,77,05,427/- at the end of the year, which is a CC limit rised from the bank against the hypothesis of the stock. It was submitted that the stock outstanding lying at the close of the year as per the balance sheet is Rs. 2,31,50,849/-. It was thus submitted that apparently, no disallowance could have been made in respect of interest paid on secured loan received from the bank as the entire borrowed money stood represented by stock at the close of the year and therefore, disallowance made to this extent was absolutely untenable and there can be no ground for diversion of money raised from the bank for non business purposes. It was argued that the disallowance was made on assumption that advances have been made by the assessee for non business purposes and therefore, interest claimed as business expenditure has been disallowed on presumptive basis is absolutely uncalled for and therefore, untenable. It was submitted that as regards interest paid on unsecured loan of Rs. 5,84,432/-, the submission of the assessee was that such interest has been paid on unsecured loans aggregating to Rs.63,51,020/- from 25 parties. It was submitted that the aforesaid loan raised stood invested in the form of stock and advances paid to the suppliers and sundry creditors and hence, no disallowance was called for. It was submitted that out of the aforesaid loans of Rs. 63,51,020/- loan aggregating to Rs.52,51,020/- had been raised in the earlier years and a respect of which, interest has been paid in earlier year also and

stands allowed and no disallowance made in the preceding assessment year.

16. The facts are undisputed by both the parties. Hence, we proceed to adjudicate this issue on merits of the case. The total expenditure on account of interest claimed by the assessee was Rs.30,41,080/- out of which an amount of Rs.24,56,648/- has been paid to the bank on account of the CC limit rised. The remaining amount of Rs.5,84,432/- has been paid nearly to 25 outstanding unsecured loan parties. Hence, it cannot be said that the amount debited on account of interest hasn't been utilized for business purpose. The notional interest calculated on the advances given is without any legal basis and hence hereby directed to be deleted.

Ground No. 4: Undisclosed Investment

17. During the survey operation, the revenue impounded document No. 78 wherein the following entries could be read:

| Amount | Period | | Month | Rate | Interest amount |
|-----------|-----------|-----------|-------|--------|-----------------|
| | From | To | | | |
| 90,58,000 | Sep. 2009 | Oct. 2011 | 25 | @25 ps | 5,66,125/- |
| 50,58,000 | Nov. 2011 | Aug. 2013 | 22 | @25 ps | 2,78,190/- |

18. On enquiry by the AO, the assessee explained that this page is a rough calculation of interest on the advance amount given to one M/s S.K. Traders Hansi. It was explained that due to the dispute between the parties, minimum interest was calculated to settle the dispute but the party did not agree and the assessee ultimately received the principle amount in the year 2013-14. It was also stated that as on 31.03.2012 an amount of Rs.65,23,720/- was shown in the balance sheet in

the schedule of loans and advances. The Assessing Officer brought the amount of Rs.90,58,000/- along with interest to tax.

19. Before us, it was submitted that this page pertains to old loan received from one M/s S.K. Traders which has been duly reflected in the regular books of accounts from the financial year 2008-09. The amount as it 31.03.2009 was Rs.85,23,720/- and as on September 2009, it was Rs.90,23,720/-. It was argued that an amount of Rs.65,23,720/- has been shown in the balance sheet of the assessee under the head "loans and advances" for the assessment year 2012-13. There is no dispute that this is a financial transaction involving receipt of money either on cash basis or mercantile basis.

20. Heard. Since, the advance of Rs.65,23,720/- has been duly reflected in the balance sheet, no addition on this account is required. That leaves us with the question whether the interest accrued on this amount can be brought to tax or not. We find that the assessee has been following mercantile system of accounting and the fact of advance given to M/s S.K. Traders is not in dispute. Hence, in tune with the accounting procedure and as per the impounded document, the interest @3% per annum stands accrued to the assessee on the advance of Rs.65,23,720/- which the assessee omitted to show as interest receipt. Hence, we confirm interest @ 3% on the principle amount of Rs.65,23,720/-. The principle amount of Rs.65,23,720/- stands reflected in the name of M/s S.K. Traders, in the regular books of accounts of the assessee, hence, we hold that no addition of this amount is required.

21. **Ground No.5** relates to addition on account of unexplained investment based on the impounded material. The relevant part of the assessment order is as under:

"8. The assessee was asked to explain the entries on the pages 89, 90, 91 & 92 of impounded document No. 82. In response to same the assessee replied that these pages may belong to his father Sh. Prem Kumar Garg, who is popularly known as Amit Ji/Amit Dharam Kanta wale.

There is no force in assessee's contention these pages are inter related and on the top of page No. 92 "Amit Ji Bhiwani" has been written. This page is a ledger account of Amit in the books of same one else. On the credit side the other person has credited Amit (assessee) on 20.11.2011 by an amount of Rs.55,25,880/- on account of 40% share of plot at Rohtak Road. This is nothing but the investment. Other entries also reflect in other dates. On 07.05.2011 the assessee has paid advance against "Rohtak Road Plot" amounting to Rs.13,33,332/- other entries of investment are 10,00,000/- on 10.07.2011, Rs.10,00,000/- on 16.07.2011, Rs.7,50,000/- on 12.11.2011 and Rs.2,50,000/- on 30.03.2012. In this way the total investment comes to Rs.98,59,212/- (55,25,880 + 13,33,332 + 10,00,000 + 7,50,000 + 2,50,000). The assessee has failed to explain the entries mentioned in this page which is his ledger account and simply said that this paper may relate to this page which is his ledger account and simply said that this paper may relate to his father. The assessee has not brought any evidences in this regard. These entries showing investment has not been shown by the assessee in his return of income and therefore, the unexplained investment of Rs.9859212/- is added to the total income of the assessee."

22. During the argument before us, the Id. AR argued that no addition is warranted for the reason that it do not show any investment made by the assessee during the year. It was vehemently argued that there is no such plot at Rohtak Road, and no purchase of plot was made. Even, the department could not prove the existence and purchase of the said plot. It was argued that at the most it can be considered as some financial transaction as there was narration such as "lene baaki". It was argued that there are entries on the left side of the paper and on the right side of the paper and the AO has mislead himself to treat one side of entries as the unexplained investment of the assessee. He was also argued that the document do not belong to the assessee hence no addition in the hands of the assessee is warranted.

23. On the other hand, the Id. DR argued that the regular flow of the accounts and the exactness of the figures will reveal that this is not a dumb document and that this document is a custodian of the business transactions and the investments of the assessee. It was argued that the onus is on the assessee to prove that the document which was found at the premises of the assessee doesn't belong to them. It was argued that the noting of "Rohtak Road jagah" on the document proves the investment at Rohtak Road. Regarding the other entries, he argued that they also pertain to the purchase of property and the payments made on different dates for acquisition of such property. He argued that the addition has been rightly made hence needs to be confirmed.

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

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| Sl. No. | Date | Particulars | Amount | Remarks |
|---------|------------|-------------|-------------|------------|
| 1 | 20-11-2011 | LMIC Rate | 3812000 | 15.08.2009 |
| 2 | 20-09-2011 | | 500,000 | 03.10.2009 |
| 3 | 20-09-2011 | | 12,60,043.2 | 20-09-2011 |
| 4 | 07-05-2011 | | 46163 | 20-09-2011 |
| 5 | 10-07-2011 | | 100,000 | 25-05-2011 |
| 6 | 16-07-2011 | | 1,000,000 | 24-08-2011 |
| 7 | 12-11-2011 | | 1,000,000 | 05-09-2011 |
| 8 | 20-03-2012 | | 700,000 | 22/03/2012 |
| 9 | 14-06-2012 | | 500,000 | 25-03-2012 |
| 10 | 23-04-2012 | | 700,000 | 25-04-2012 |
| 11 | 01-07-2011 | | 550,000 | 02-08-2012 |
| 12 | 20-09-2012 | | 4596,163 | |
| 13 | 20-09-2012 | | + 27,84,345 | |
| 14 | 20-09-2012 | | 73,80,508 | |
| 15 | 20-09-2012 | | - 64,47,603 | |
| Total | | | 17,60,000 | |
| Total | | | 17,60,000 | |

25. We find that the amount of Rs.55,72,043/- being the transactions on both sides of the paper can certainly be an absolute financial transaction. This figure pertains to the financial year 2009-10 (AY 2010-11). However, we also find that the revenue has not brought anything on record as to what are these transactions. While the assessee explains that there was no purchase of alleged plot at Rohtak Road, the revenue went on making addition on account of purchase of a plot which have not been proved. The figures reflect as under:

| Left Side | | | | Right Side | |
|----------------------|------------|-----------|-------------------------------|----------------------|-----------|
| S. No. | Date | Amount | Narration | Date | Amount |
| 1. | 07.05.2011 | 13,33,332 | Bayana Rohtak Road Plot | 27.05.2011 | 1,00,000 |
| 2. | 10.07.2011 | 10,00,000 | Bayana Tukan Mandi | 24.08.2011 | 10,00,000 |
| 3. | 16.07.2011 | 10,00,000 | No narration | 05.09.2011 | 10,00,000 |
| 4. | 12.11.2011 | 7,50,000 | Bayana | 22.03.2012 | 7,50,000 |
| 5. | 30.03.2012 | 2,50,000 | No narration | 25.03.2012 | 5,00,000 |
| 6. | 14.06.2012 | 8,00,000 | No narration | 05.04.2012 | 7,00,000 |
| 7. | 23.04.2012 | 5,00,000 | No narration | 02.03.2013 | 5,50,000 |
| 8. | 01.07.2011 | 3,15,631 | Amit Ji Purchi | | |
| 9. | 20.09.2013 | 4,98,600 | Hisar Byaz | | |
| Total Rs.64,47,603/- | | | | Total Rs.64,47,603/- | |

26. We find that the total of the sides is Rs.64,47,603/-. The amounts vary from assessment years 2012-13 to 2014-15. This at the most could be a comprehensive sheet containing the transactions of the assessee over a period of three years. In such circumstances, the revenue has to brought on record, the sum and substance of such transactions mentioned on the document. We have specifically asked the revenue as to the statement recorded on the date of survey and the reply of the

assessee pertaining to these transactions on the date of survey. We find no mention of statement recorded at the time of survey either on the assessment order or in the order of the Id. CIT (A). No statement recorded at the time of the survey has been produced even before us as to what the transactions pertain to. No enquiries have been conducted by the revenue to substantiate to unexplained investments. The figures pertaining to three different years cannot be brought to taxation without proving as to what type of transactions the document signifies. Hence, in the absence of any primary, secondary or corroborative evidences, no addition can be made based on the impounded document. The revenue could not even prove with certainty to whom the document belongs nor tested the hand writing on the document either by the way of statement or by the way of forensics. Hence, keeping in view the entire gamut of events peculiar to the facts of this case, we hereby hold that no addition is warranted in the hands of the assessee for the instant year.

27. With regard to the Cross Objection of sustaining of Rs.11,13,298/- made by the AO on account of estimation of GP, having heard the arguments and keeping in view the market averages, the GP is reduced to 25% from 35% on the sale of scrap and from 15% to 10% on the sale of other electronic goods. The AO is hereby directed to re-compute the taxable income taking into consideration the revised GP rate.

28. In the result, the appeal of the revenue is dismissed and Cross Objection by the assessed partly allowed.

Order Pronounced in the Open Court on 10/08/2020.

Sd/-

(Sushma Chowla)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/08/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR