

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
[THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 3642/Del/2018
Assessment Year: 2013-14

M/s Board & Paper Laminators
E-7, 2nd Floor,
CC Colony Rana Pratap Bagh
New Delhi-110009
PAN-AADFB0277F
(ASSEESSEE)

Income Tax Officer,
Ward-36(5), New Delhi

(RESPONDENT)

Revenue by: Sh. Nitin Gulati, CA
Assessee by: Sh. Vipul Kashyap, Sr. DR

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the assessee against the impugned Order dated 13.12.2017 passed by the Ld. CIT(A)-12, New Delhi relating to Assessment Year 2012-13 on the following grounds:-

- 1. That under the and circumstances, the Ld. AO grossly erred in law as well as on merits in making addition u/s 68 for the loans received from the following parties, although, apart from other facts, both the loans were returned back much prior to commencement of asstt. Proceedings and both loans were interest bearing and interest subjected to TDS.*

S. No.	Name	Amount (Rs.)
1.	ABO Investment (P) Ltd.	30,00,000/-
2.	Subhlabh Trade Vin (P) Ltd.	10,00,000/-
	Total	40,00,000/-

2. *That under the facts and circumstances, the Ld. AO again erred in law as well as on merits in disallowing the interest of Rs. 36,165/- on the above loans.*
3. *That under the facts and circumstances, there is absolutely no legality and justification in disallowing intt. of Rs. 35,446/- paid to Kotak Mahindra Ltd. u/s 40(a)(ia)."*

2. The facts relating to the issue in dispute is that the assessee filed its return of income of Rs. 17,31,370/- by E-return filed by the assessee on 23.09.2013. Subsequently, the case of the assessee was selected under scrutiny through CASS for the assessment year 2013-14. Notice under section 143(2) was issued on 12.09.2014 and the detailed questionnaire alongwith the notice under section 142(1) was issued on 17.7.2015. In response to the same, the learned AR of the assessee appeared and filed all the necessary details / information as called for which were verified and placed on record by the Assessing Officer.

3. During the assessment proceedings, after examining the detailed information filed by the assessee, the Assessing Officer is of the view that assessee has taken unsecure loan amounting to Rs. 30,31,660/- from ABO Investment (P) Ltd., Rs. 10,00,986/- from Subhlabh Tradevin Pvt. Ltd., in the Financial Year 2012-13. The Assessing Officer called for the details of these two loans which was submitted by the assessee during the course of assessment proceedings. The Assessing Officer found that the return of income of ABO Investment (P) Ltd. is only (-Rs. 942/-) and return income of the Subhlabh Trade Vin Pvt. Ltd., is Rs. 3,820/- only and assessee does not prove the creditworthiness and this creates doubt in the mind of the Assessing Officer. Accordingly to verify the identity, genuineness and creditworthiness of the loan transaction, notices under

section 133(6) were issued to these two parties on the address provided by the assessee and asking to furnish some details. The Assessing Officer found that M/s Subhlabh Trade Vin Pvt. Ltd., was received back in the office as unserved and as regard to the reply to the notice under section 133(6) of M/s ABO Investment (P) Ltd., merely submitted the detail of transaction entered into with the assessee M/s Board & Paper Laminators alongwith copy of acknowledgment of ITR showing losses only of Rs. 942/-. The Assessing Officer also deputed his Inspector to serve the summon under section 131 of the I.T. Act, 1961 to the assessee and the Inspector visited the premises and submitted his report and confirmed that no company / firm in the name of M/s ABO Investment (P) Ltd., existed at the address provided by the assessee.

4. Finally, after examining the documentary evidence filed by the assessee as well as the case law mentioned in the assessment order, the Assessing Officer feel not satisfied with the explanation given by the assessee and made the addition under section 68 of the Income Tax Act of Rs. 40,36,165/- on account of disallowance interest expenses and Rs. 35,446/- on account of disallowance under section 40(a)(ia) and completed the assessment under section 143(3) of Income Tax Act, 1961 on 28.03.2016. Aggrieved by the assessment order dated 28.03.2016, assessee filed an appeal before the learned First Appellate Authority who vide impugned order dated 13.12.2017 dismissed the appeal filed by the assessee and uphold the assessment order.

5. At the time of hearing, learned counsel for the assessee stated that assessee has filed all the documentary evidence for substantiating the claim of the assessee before the Assessing Officer as well as before the learned First Appellate Authority which has not been properly appreciated by both the authorities. He further stated that issue in dispute has already been decided in favour of the assessee by the ITAT Delhi Bench "SMC-2", New Delhi in ITA No. 5140/Del/2019 Assessment Year 2010-11 in the case of M/s Neotech Nutrients Pvt. Ltd. vs. ACIT, Circle-18(1), New Delhi dated 29.09.2020. He further stated that learned Judicial Member is the author of this order. He has also filed a copy of the same with advance copy to learned DR. Finally, he stated that when the assessee has filed all the documentary evidence supporting the claim of the assessee and the Assessing Officer has not made any enquiry to falsify the documentary evidence filed by the assessee then the question of making addition in dispute does not arise. Assessee has also made the payment in dispute by cheque which has been entered in the books of accounts as well as by the other two parties also. Therefore, the provision of section 68 is not applicable in the case of the assessee. He requested that the appeal filed by the assessee may be allowed and the additions in dispute may be deleted.

6. Learned Sr. DR relied upon the order passed by the authorities below and stated that assessee has not filed any evidence before the Assessing Officer as well as learned First Appellate Authority for substantiating its claim therefore, the authorities below has rightly

dismissed the appeal filed by the assessee. He requested that appeal filed by the assessee may be dismissed.

7. We have heard both the parties, perused the relevant record available with us especially the order passed by the Revenue authority alongwith order dated 29.09.2020 passed by ITAT Delhi Bench in which the Judicial Member is the author of the order. After going through the order dated 29.09.2020, we are of the considered view that facts and circumstances explained by the assessee alongwith evidences filed by the assessee before the Assessing Officer as well as the learned First Appellate Authority, the issue in dispute is squarely covered in favour of the assessee therefore, respectfully following the order dated 29.09.2020 passed by the ITAT Delhi Bench (supra), the addition in dispute is deleted and the appeal filed by the assessee is allowed.

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

Order pronounced on 15/10/2020.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Date: 15/10/2020

SH

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

By Order,

Assistant Registrar, ITAT, Delhi Benches