

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 8068/Del/2019
(Assessment Year: 2014-15)**

Shri Deepak Makhija, Delhi.	Vs.	ITO, Ward- 47(2), New Delhi.
PAN No: AASPK5007D		
APPELLANT		RESPONDENT

**ITA No:- 8067/Del/2019
(Assessment Year: 2013-14)**

Shri Deepak Makhija, Delhi.	Vs.	ITO, Ward- 47(2), New Delhi.
PAN No: AASPK5007D		
APPELLANT		RESPONDENT

Assessee By : Ms. Sumangla Saxena, Adv. and
Shri Shyam Sundar, CA
Revenue By : Shri Jagdish Singh, Sr. DR

Per Anadee Nath Misshra, AM

(A) The aforementioned appeals in the case of the Assessee are taken up together for the sake of convenience and brevity; and are hereby disposed off through this Consolidated Order. Grounds taken in these appeals of Assessee are as under:

ITA No. 8068/Del/2019.

"1. That Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming the disallowance of Rs.17,74,972/- on account of interest paid on loan received from Ms Varrenyam Securities Pvt. Ltd. merely because such loan was not accepted in AY 2013-14 while nature and source of the loan cannot be doubted because:

- a) Identify cannot be doubted being NBFC, an income tax assessee declaring huge income of Rs.1.33crores.
- b) Genuineness of the lender company can also not be doubted as this company is regularly granting loans and assessee has also taken loan through account payee cheques and interest was paid on such loan by deducting TDS.
- c) Creditworthiness cannot be doubted as loan was received from the bank account of the lender having sufficient balance of over Rs.12 cr before giving loan to the assessee company.

2. That Ld. CIT(Appeals) has further erred in law as well as on facts in not appreciating that :

- i) The various documents filed in support clearly establishing nature and source of the credit being satisfactorily explained.
- ii) Not a single material was found to the contrary by the AO in relation to the transaction made with the assessee by M/s Varrenyam Securities Pvt. Ltd.
- iii) The evidence referred to by the AO during assessment for AY 2013-14 relates to previous period when lender company was established and brought money in its bank and books of account from various sources which has no connection with the assessee company.
- iv) The money received by M/s Varrenyam Securities Pvt. Ltd. was already assessed in their hands in AY 2012-13 which was invested with the assessee company and the same cannot be taxed again in the hands of the assessee.
- v) The AO did not allow any opportunity during assessment for AY 2013-14 to cross examine the persons, statement of whom was relied upon by him and so such evidence cannot be used against the assessee.

3. The Ld. Commissioner of Income Tax (Appeals) has also erred in law as well as on facts in confirming the adhoc disallowance @10% on expenditures claimed under various heads i.e. Business promotion, repair and maintenance, staff welfare, conveyance, vehicle maintenance, telephone,

vehicle depreciation because :

- a) No expenditure claimed u/s 37 can be disallowed merely on doubts, because incurred in cash, without pinpointing the particular expense found to be not verifiable.
- b) She has failed to notice that there is no element of personal use as various expenditure incurred on other car, maintained by wife, or mobiles, separately used, were not claimed."

ITA No. 8067/Del/2019.

"1. That Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming the addition of Rs.5,20,00,000/- made by the AO u/s 68 of the Income Tax Act, 1961, on account of loan received from Ms Varrenyam Securities Pvt. Ltd. whose nature and source cannot be doubted because:

- a) Identify cannot be doubted being NBFC, an income tax assessee declaring huge income of Rs.1.33 crores.
- b) Genuineness of the lender company can also not be doubted as this company is regularly granting loans and assessee has also taken loan through account payee cheques and interest was paid on such loan by deducting TDS.
- c) Creditworthiness cannot be doubted as loan was received from the bank account of the lender having sufficient balance of over Rs.12 cr before giving loan to the assessee company.

2. That Ld. CIT(Appeals) has further erred in law as well as on facts in not appreciating that :

- i) The various documents filed in support clearly establishing nature and source of the credit being satisfactorily explained.
- ii) Not a single material was found to the contrary by the AO in relation to the transaction made with the assessee by M/s Varrenyam Securities Pvt. Ltd.
- iii) The evidence referred to by the AO relates to previous period when lender I company was established and brought money in its bank and books of account from various sources which has no connection with the assessee company.
- iv) The money received by M/s Varrenyam Securities Pvt. Ltd. was already assessed in their hands in AY 2012-13 which was invested with the assessee company and the same cannot be taxed again in the hands of the assessee.
- v) The AO did not allow any opportunity to cross examine the persons, statement of whom was relied upon by him and so such

evidence cannot be used against the assessee.

3. *The Ld. Commissioner of Income Tax (Appeals) has also erred in law as well as on facts in confirming the adhoc disallowance @10% on expenditures claimed under various heads i.e. Business promotion, repair and maintenance, staff welfare, conveyance, vehicle maintenance, telephone, vehicle depreciation because :*
 - a) *No expenditure claimed u/s 37 can be disallowed merely on doubts, because incurred in cash, without pinpointing the particular expense found to be not verifiable.*
 - b) *She has failed to notice that there is no element of personal use as various expenditure incurred on other car, maintained by wife, or mobiles, separately used, were not claimed.*
4. *That both the lower authorities have failed to appreciate that loan was given by M/s Varrenyam Securities Pvt. Ltd. to the assessee because*
 - i) *The assessee has an established business of sale and purchase of gold for more than 25 years whose creditworthiness in the market has already been established and*
 - ii) *The loan was received by the assessee after knowing the credentials of the NBFC Company who is engaged in granting loans and also wanted to make investment in gold with the assessee company.*
5. *That the learned CIT(A) has grossly erred both in law and on facts in sustaining the addition on misconceived and irrelevant facts and hence the order of the learned CIT(A) is vitiated in law."*

(B) At the outset, the Ld. Counsel for the Assessee informed us that the assessee has filed a declaration under Vivad Se Vishwas Scheme ("VSVS", for short) and that the assessee has already filed the relevant forms. The Ld. Counsel for assessee also drew our attention to letter dated 25.11.2020 filed in Income Tax Appellate Tribunal ("ITAT", for short) giving intimation for the same.

(B.1) At the time of hearing before us, the Ld. Counsel for assessee as well as the learned Senior Departmental Representative ("Ld. Sr. DR", for short) submitted before us that these appeals may be treated as withdrawn and may be dismissed on account of the

aforesaid VSVS; subject to settlement of the disputes in these appeals, under the aforesaid VSVS. After due consideration, in view of the foregoing; and as both sides have agreed to this; we treat both these appeals as withdrawn on account of the aforesaid VSVS. Accordingly, both these appeals are dismissed, subject to settlement of the disputes in the appeals, under the aforesaid VSVS.

(B.2) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under these appeals before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of any or both of these appeals, in accordance with law.

(B.3) With these directions, the aforesaid appeals of the assessee are dismissed, being treated as withdrawn.

(C) In the result, these appeals are dismissed.

These orders were already pronounced on 25th November, 2020 in Open Court, in the presence of Representatives of both sides; after conclusion of the hearings.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 25/11/20
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	