

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(Through Video Conferencing)

ITA No.3736/DEL/2017
Assessment Year: 2012-13

Asst. Commissioner of Income Tax, Central Circle-18, Jhandewalan, New Delhi.	v.	M/s. SPG Finvest Pvt. Ltd., 1111, New Delhi House, 27 Barakhamba Road, Connaught Place, New Delhi.
TAN/PAN: AABCS3934P (Appellant)		(Respondent)

Appellant by:	Shri Vipul Kashyap, Sr.D.R.		
Respondent by:	Shri Ved Jain, CA, Shri Ashish Goel and Ms. Umang Luthra, Adv.		
Date of hearing:	17	11	2020
Date of pronouncement:	27	11	2020

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 27.03.2017, passed by Id. CIT (Appeals)-XXVII, New Delhi for the quantum of assessment passed u/s.143(3)/144 for the Assessment Year 2012-13. In the grounds of appeal, the Revenue has raised following grounds:-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the additions made by the Assessing Officer by admitting fresh evidence overlooking the provisions laid down by Rule 46A where the assessee has not

explained any cause which prevented it from providing evidence before the Assessing Officer.

2. *On the facts and in the circumstances of tire case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.3,00,00,000/- on account of share capital and share premium overlooking the fact that the assessee company failed to explain tire reasons for high share premium/capital which was not commensurate with the assets depicted by the assessee company.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 27,88,000/- on account of unsecured loan wherein the assessee company failed to prove the genuineness, creditworthiness and identity of the lender and the additional evidence filed by tire assessee company is not material evidence in support against the said addition.*

4. *On the facts and in the circumstances of tire case, tire Ld. CIT(A) has erred in law in deleting tire addition of Rs. 1,31,27,449/- on account of unexplained investments overlooking the fact that the assessee company made investment in new companies at much higher price than its real worth in the previous and the year under consideration and tire details filed as additional evidence by tire assessee company are incomplete and inadequate.*

5. (a) *The order of tire Ld.CIT(A) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the*

hearing of the appeal.”

2. At the outset, ld. counsel for the assessee, Mr. Ved Jain submitted that here the main addition pertains to; i) share capital and share premium of Rs.3 crore; ii) addition of Rs.27,88,000/- on account of unsecured loan and; iii) lastly, addition of Rs.1,31,27,449/- on account of unexplained investments. However, most of these additions which have been made u/ss. 68 and 69 does not pertain to the impugned assessment year but pertain to earlier assessment year. He strongly relied upon the findings given by the Ld. CIT(A) in this regard.

3. On the other hand, ld. DR has strongly relied upon the order of the Assessing Officer and submitted that during the course of assessment proceedings, the assessee could not furnish any details, and therefore, he was justified in making the addition.

4. We have carefully considered the relevant findings given in the impugned orders as well as material referred to before us. In so far as the issue raised in ground no.1 that ld. CIT (A) has urged in deleting the additions by admitting fresh evidence overlooking the provisions of Rule 46A, we find that the Ld. CIT (A) has forwarded the additional evidences filed before him under Rule 46A to the Assessing Officer to examine and verify and inquire the same after giving due opportunity to the assessee of being heard and submit his remand report. The reasons mentioned by him for admitting

the additional evidences was that, in the respect of all the additions made by the Assessing Officer no show cause notice was issued by the Assessing Officer and therefore, there was no occasion the assessee could have filed such evidences in the assessment proceedings. He further observed that there is no proper averment by the Assessing Officer with regard to the admission of additional evidences particularly when huge additions have been made which included the amount added u/ss. 68 & 69 which are carried forward from the earlier years, and this fact is clearly borne out from the material already on record before Assessing Officer. The additional evidences were in the form of confirmed copy of ledger accounts, confirmations and bank statement, etc. Since, as brought on record by the Ld. CIT(A) there was a clear violation of natural justice by the Assessing Officer, therefore, we hold that Ld. CIT(A) was justified in not only admitting the additional evidence but has also given due opportunity to the Assessing Officer to examine the same. The remissness on the part of the Assessing Officer cannot partake the principles of natural justice. Accordingly, ground no.1 as raised by the Revenue is dismissed.

5. In so far as the addition of Rs. 3 crores on account of share capital and share premium, it has been brought on record before the Assessing Officer as well as before the Ld. CIT (A) that all the share capital and share premium was received in the books in the earlier year and not in this year which was evident from the balance sheet itself:-

<i>Particulars</i>	<i>Opening Balance as on 01.04.2011</i>	<i>Closing Balance as on 31.03.2012</i>
<i>Authorized share capital</i>	<i>Rs.89,00,000/-</i>	<i>Rs.89,00,000/-</i>
<i>Paid Up Share Capital</i>	<i>Rs.88,55,480/-</i>	<i>Rs.88,55,480/-</i>
<i>Share Premium</i>	<i>Rs.6,17,05,920/-</i>	<i>Rs.6,17,05,920/-</i>

The assessee has specifically submitted before the Assessing Officer that there was no increase in the paid up share capital of the company and has also not received any share application money in the year under consideration. However, Assessing Officer has wrongly observed that assessee has not submitted the details of share premium and share capital and has made the addition of Rs.3 crore as unexplained cash credit u/s.68.

6. Ld. CIT(A) has deleted the addition by observing that addition u/s.68 cannot be made, because the amount of Rs.3 crore are being carried forward from earlier years which is evident from letter dated 4th March, 2015 filed before the Assessing Officer and there has been no increase in paid up share capital. This fact has not been controverted by the Assessing Officer and accordingly, the addition made u/s.68 was deleted. On these facts, we do not find any infirmity either in law or on facts because such an addition cannot be made u/s.68 in the relevant Assessment Year. Accordingly, ground no.2 as raised by the Revenue is dismissed.

7. In so far as addition of Rs.27,88,000/- on account of

unsecured loan, it was pointed out by the assessee before the authorities below that the loan amount of Rs.27,88,000/- was received from M/s. DMC Education Ltd., but most of the loan was received in the earlier assessment year and this year assessee had received only loan of Rs.2,88,000/-; and the balance amount of Rs.25 lacs was opening balance. Regarding the fresh loan of Rs.2,88,000/- the assessee had filed copy of confirmation, ledger account, copy of income tax return of the lender and also copy of bank statement of the lender. All these evidences were filed as additional evidence before the Ld. CIT (A), because these documents were never required by the Assessing Officer during the course of assessment proceedings. These evidences were forwarded to the Assessing Officer for its remand report, which has been incorporated in the impugned appellate order. After considering the entire gamut of material and assessee's submission, the Ld. CIT (A) has deleted the addition after observing and holding as under:

“8.4 This issue is with regard to the addition of Rs.27,88,000 on account of unsecured loans. The allegation of the Assessing Officer is that the assessee has failed to produce the evidence regarding the genuineness, credit worthiness and identity of the lenders. Ld AR brought to my notice the fact that unsecured loans on 31st March 2011 were amounting to Rs.60,63,790 out of which an amount of Rs. 25 lakhs pertained to DMC Education Limited and the remaining amount of Rs.35,63,790 pertained to all other unsecured loans. During the year all other loans were paid back, apart

from DMC Education Limited. In this way it was stated that only an amount of Rs.2,88,000 pertained to the loans received during the relevant assessment year and the only lender is DMC Education Limited. Evidence under Rule 46A, in this regard were filed in the form of ledger account, confirmation, return of income of DMC Education Limited and Bank statement of DMC Education Limited, showing the out flow of cash. The only objection in this regard raised by the Assessing Officer in his remand report was that the PAN of the DMC limited was not provided. However the Ld. AR in his rejoinder to the remand report clarified that the ITR of DMC Limited has been filed as the additional evidence, whereby the PAN number of the same is duly mentioned. With regard to the A.O's contention in the remand report that cash has been deposited before the payment of this amount. I observe that only an amount of Rs.30,000 in cash has been deposited before the issue of cheque amounting to Rs.2,88,000. In view of all these documentary evidences I find that assessee has successfully demonstrated by way of documentary evidences the identity and creditworthiness of DMC Education Limited and also the genuineness of the transaction. In view of this addition made by the Assessing Officer on account of loan received from DMC Education Limited amounting to Rs.2,88,000 is hereby deleted. Since other loans pertain to earlier years, no addition under section 68 can be made. This ground is allowed in favour of the assessee.”

8. On the perusal of the relevant finding and also the submission made by the assessee before the authorities below, we find that out of addition of Rs.27,88,000/-, amount

of Rs.25 lacs pertained to the earlier assessment year and was appearing as unsecured loan in the balance sheet as on 31.03.2011. Most of the unsecured loan where in fact paid back during the year and only amount of Rs.2,88,000/- was received in this year as fresh loan. Ld. CIT(A) examined the genuineness of fresh loan of Rs.2,88,000/- and found that identity and creditworthiness of the lender M/s. DMC Education Ltd. and also the genuineness of the transaction has been substantiated by the assessee by way of various documentary evidences. The aforesaid finding of the Ld. CIT (A) based on proper appreciation of facts cannot be tinkered without any contrary material to rebut. Accordingly, the finding of the Ld. CIT (A) is upheld.

9. Lastly, as regards the addition of Rs.1,31,27,449/-, the facts in brief are that assessee had shown investment in equity instruments amounting to Rs.1,31,27,449/- which has been added by the Assessing Officer alleging that these investments have been made from undisclosed source. It was pointed out before the Ld. CIT(A) that out of total closing investment of Rs.1,31,27,449/-, investment amounting to Rs.48,27,449/- pertains to the earlier years and hence, no addition can be made with respect to said amount in this year. As regards, the balance investment of Rs.83 lacs, it was pointed out that same has been made out of the funds duly disclosed in the books of account which has not been doubted by the Assessing Officer. Accordingly it cannot be concluded that investment made u/s.69 was out of

undisclosed sources. Ld. CIT (A) after examining the material placed on record, the remand report submitted by the Assessing Officer and the submissions made by the assessee has observed and held as under:

“This issue is with regard to investment of Rs. 1,31,27,499 made by the assessee in government and other securities. The Assessing Officer made this addition on account of unsecured investments alleging that the investments have been made from the undisclosed sources of income of the assessee. In the documents filed under rule 46A, the assessee explained that the investment have been made in five companies namely Top Class Enterprises Private Limited, RMR Build Com. Private Limited, Mili and Investment Trade Private Limited, Magnolia Advertise Private Limited, Viz-Wise Commerce Private Limited and K.K. Kabra Mail amounting to Rs.89,284 and viz-wise Commerce Private Limited amounting to Rs.47,37,625 made in the earlier years and not in the year under consideration. Confirmed copies of ledger account of these two entities were filed as additional evidences. With regard to the remaining investment, evidences in the form of copy of Form No. 2 pursuant to section 75(1) of the companies Act. In this respect of allotment of share and the copy of Bank statement of the respective entities showing the investment made by the assessee were filed as additional evidence. The objection raised by the A.O. in his remand report is that the documents were unsigned with respect to the two entities namely K.K. Kabra Mail and Viz-Wise. With regard to this the assessee clarified that none of the investments in these entities during the year were made, the amounts were arising out of earlier

year. The accounts have been statutorily audited and Tax audit was also carried on. The other contention raised by the Assessing Officer in the remand report is with regard to the fact that under the list of allottees filed by respective entities there is a mention of 'allotments against cash'. However from the appraisal of bank statement filed before me, it is quite clear that the investment have been made through proper banking channels. The Ld AR explained and correlated each and every entry before me. In view of all these documentary investment I observe that from the copy of Form No.2, it cannot be inferred that no investment has been made by the assessee in these entities. Further from the bank statement, it is quite clear that the investments have been made through cheques. In the list of allottees appended with Form No.2, every entity, name of the assessee is appearing. In view of these evidences, I do not find the inference drawn by the Assessing Officer that these investments are out of undisclosed sources to be correct. I hereby direct the Assessing Officer to delete the addition. This ground of appeal raised by the assessee is decided in his favour."

10. First of all, out of total addition of Rs. 1,31,27,449/-, amount of Rs.48,27,449/- pertains to the earlier year which is not in dispute and accordingly the Ld. CIT(A) has rightly deleted the said amount from the addition made by the Assessing Officer. With regard to the balance amount, we find that there is a clear cut finding based on material on record that investments have been made by the assessee through proper banking channels and each and every entry have been

duly explained from the books of account and bank statement. Once the investments have been made through cheques duly disclosed in the books of account, the same cannot be added as investment made outside the books or from undisclosed sources u/s.69. Therefore, the order of the Ld. CIT(A) is upheld and accordingly the grounds raised by the Revenue is rejected.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 27th November, 2020

Sd/-

[G.S. PANNU]

VICE PRESIDENT

DATED: 27th November, 2020

Pkk

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER