

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH: 'G', NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 AND
 SHRI O.P. KANT, ACCOUNTANT MEMBER
 (THROUGH VIDEO CONFERENCE)

ITA NO. 4777/DEL/2013

A.Y. : 2008-09

M/S SINGH CONSULTANCY PVT. LTD., 1813, KOTLA MUBARAK PUR, NEW DELHI - 110 003 (PAN: AAKCS550J)	Vs.	DCIT, CIRCLE 8(1), NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Suresh Kumar Gupta, CA
Department by	Sh. H.K. Choudhary, CIT(DR)

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the impugned order dated 31.12.2012 passed by the Ld. CIT(A)-11, New Delhi in relation to assessment year 2008-09 on the following grounds:-

"On the facts and in the circumstances of the case and in law the authorities below erred in making following additions to the returned income:

- 1. Rs. 10,77,00,000/- on account of share application money received treating the same as unexplained income taxable u/s. 68 of the Act;*
- 2. Rs. 57,72,41,461/- being the amount of unsecured loan treating the same as unexplained income u/s. 68 of the Act;*
- 3. Rs. 1,55,15,178/- on account of interest paid on unsecured loans on conjectures and surmises;*
- 4. Rs. 13,00,000/- being the amount of cash deposited in bank treating the same as unexplained;*
- 5. Rs. 6,88,872/- disallowed u/s. 14A of the Act.*

All the above actions being arbitrary, erroneous, unlawful and unjust must be quashed with directions for relief.

2. The brief facts of the case are that assessee filed its return of income on 30.9.2008 declaring total income of Rs. 6,60,57,340/-. The assessee company is engaged in trading of shares and securities and future and option. The case of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as Act) and subsequently, the case was selected for scrutiny. Questionnaire and notices u/s. 142(1) of the Act were issued on 30.7.2020. In response to the same, the AR of the assessee appeared from time to time and filed necessary details and the case was discussed with the AR in light of information available on the record. After discussions, the AO made the various following additions. As regards addition of Rs. 10,77,00,000/- is concerned, the AO observed that assessee has not been able to prove the identity or creditworthiness of the creditor and the genuineness of the transaction and a sum of Rs. 10,77,00,000/- was found credited in the books of accounts as share application money

and no explanation was given by the assessee about the nature and source thereof and the amount credited was considered to be unexplained. Similarly, in respect of addition of Rs. 57,72,41,461/-, the AO observed that assessee has not been able to prove the identity or creditworthiness of the creditor and the genuineness of the transaction and the sum of Rs. 57,72,41,461/- was found credited in the books of the assessee and no explanation was given by the assessee about the nature and source thereof, hence, this amount was also considered as unexplained and AO made the addition of the same amount. As regards the addition of Rs. 1,55,15,178/- is concerned, AO observed that assessee is paying interest on loans and is diverting these funds for non-business purposes and assessee has not been able to show how the funds were used for business purposes, hence, the addition of Rs. 1,55,15,178/- was made. As regards, addition of Rs. 13,00,000/- u/s. 68 of the Act is concerned, the AO observed that Assessee did not given any explanation about the source of cash deposited and AO in the remand report has justified the addition. As regards the addition of Rs. 6,88,872/- u/s. 14A of the Act is concerned, the assessee has earned dividend income

and has not shown any expenses in relation to the said income. The assessee has stated that the assessee did not earn any expenditure to earn the dividend separately. Hence, the earning of dividend would require certain expenditure like expenditure on salary, administrative expenses. Therefore, the AO was directed by the Ld. CIT(A) to work out the disallowance under section 14A as per Rule 8D. By making the aforesaid additions, totaling to Rs. 70,24,45,511/-, the AO completed the assessment at Rs. 76,85,02,851/- u/s. 143(3) of the Act vide order dated 30.12.2010. Against the order of the AO, Assessee appealed before the Ld. CIT(A), who vide her impugned order dated 31.12.2012 has dismissed the appeal of the assessee. Against the impugned order dated 31.12.2012, the assessee is in appeal before the Tribunal.

3. At the time of hearing, with regard to ground no. 1, Ld. Counsel for the assessee draw our attention towards the impugned order as well as the order of the AO and the documentary evidences filed by the assessee before the AO as well as Ld. CIT(A). He stated that AO as well as Ld. CIT(A) has not appreciated all the documentary evidences filed by the

assessee for substantiating the claim of the assessee. He also draw our attention towards the relevant paragraphs of the impugned order and stated that Ld. CIT(A) has rejected the claim of the assessee in a routine manner without considering, appreciating and examining the documentary evidences filed by the assessee. He further stated that in the remand report on the issues in dispute, the AO has not commented negatively against the assessee and also has not filed any contrary evidence for the claim of the assessee. He requested that keeping in view of the non-consideration of the documents by the authorities below, the impugned order passed by the Ld. CIT(A) may be cancelled and addition in dispute may be deleted.

3.1 As regards other grounds are concerned, Ld. Counsel for the assessee almost argued in the same way as argued in ground no. 1 as aforesaid and stated that Ld. CIT(A) has not considered, examined and appreciated the evidences filed by the assessee in support of the claim of the assessee, hence, he stated that additions involved in other grounds may also be deleted.

4. Ld. DR relied upon the orders of the revenue authorities and stated that assessee has not substantiated the claim in dispute before the revenue authorities. AO and Ld. CIT(A) has rightly rejected the claim of the assessee, therefore, the appeal filed by the assessee may be dismissed.

5. We have heard both the parties and perused the relevant records available with us, especially the documentary evidences filed by the assessee in the shape of paper book as well as the impugned order on the issues in dispute. We are of the considered view that no doubt the assessee has filed all the documentary evidences for substantiating the claim in dispute before the AO as well as Ld. CIT(A). Ld. CIT(A) has also sought the Remand Report on the evidences filed by the assessee, but AO has not commented negatively in his Remand Report on the claim of the assessee. We are not commenting upon the merits of the case because this will prejudice the mind of the Ld. CIT(A) and in the interest of justice, we are of the considered view that the issues involved in the present appeal require reconsideration at the level of the Ld. CIT(A). Therefore, in the interest of justice, we are setting aside the

issues mentioned in the grounds of appeal to the file of the Ld. CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

6. In the result, the Assessee's Appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 07.12.2020.

SD/-
(O.P. KANT)
ACCOUNTANT MEMBER

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

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi