

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI WASEEM AHMED, AM & MS. MADHUMITA ROY, JM

आयकरअपीलसं./I.T.A No.1721/Kol/2019
(निर्धारणवर्ष / Assessment Years: 2013-14)

DCIT, Central Circle-2(3), Kolkata	Vs.	JMD Proteins Pvt. Ltd. 5/24, Ramesh Nagar, New Delhi-110015.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACJ2727Q		
(Appellant)	..	(Respondent)

Appellant by : Shri Manish Kanojia, CIT-DR
Respondent by : Shri Jagdish Ajmani, AR

सुनवाईकीतारीख/ **Date of Hearing** : **10/11/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **16/12/2020**

आदेश / O R D E R

Per Ms. Madhumita Roy:

The instant appeal filed by the Revenue is against the order dated 29.04.2019 passed by the Commissioner of Income Tax (Appeals)-5, New Delhi arising out of the order dated 29.03.2016 passed by the ITO, Ward-13(4), New Delhi u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). for the assessment years 2013-14.

2. Deletion of addition of Rs.21,66,30,814/- made u/s 68 of the Act has been challenged before us by the Revenue. Such addition has been made into following two parts:

i. Addition of Rs.13,82,40,814/- u/s 68 on account of difference in amount realized from trade debtors as against amount outstanding.

ii. Addition of Rs.7,83,90,000/- u/s 68 on account of difference in amount realized from trade debtors as against amount outstanding.

3. The brief facts leading to the case in this remains that the assessee made trade advances to various parties in the current year as well as in the earlier year as per business requirements. During the course of assessment proceedings, it was found from the balance sheet that the opening balance outstanding against trade debtors was of Rs.93,507,574/- whereas the amount realized from the debtors of Rs.231,748,388/-. The Ld. A.O, from the figures of audited balance sheet arrived at a conclusion, that the assessee had realized excess amount of Rs.138,240,814/- from trade debtors and added the same back to the income of the assessee invoking section 68 of the Act which was in turn reversed by the Ld. CIT(A). The ld. DR, therefore, relies upon the order passed by the Ld. A.O.

4. The case of the assessee is that the assessee had received cheques of Rs.17,31,90,000/- on the last week of March 2012 from one M/s Kwality Dairy India Ltd., a listed company of which the assessee had a running account from year to year. After the receipt of cheques, the corresponding balances of the parties was reduced in the books of account and the amount was adjusted against the bank account as per accepted accounting practice. However, due to some exigencies these cheques could not be encashed and accordingly in the next financial year the entry was reversed. Such particular fact was brought to the notice of the Ld. A.O during the course of assessment proceedings along with the relevant records. However the same was not accepted and addition was made to the tune of Rs.13,82,40,814/- u/s 68 of the Act. The said addition was deleted by the ld. CIT(A) accepting the case made out by the appellant. Hence the instant appeal is before us. The Ld. AR, therefore, relied upon the order of deletion of addition made by the Ld. CIT(A).

5. We have heard the respective parties and perused the relevant materials available on records. We find that the ld. DR relies upon the order passed by the ld. A.O and he repeatedly argued that no proper evidence was ever submitted before the ld. A.O during the course of assessment proceedings.

5.1 We find that while deleting the addition made by the ld. A.O, the ld. CIT(A) observed as follows:

“5.2 Ground no. 1 relates to the addition of Rs. 13,82,40,814/-, where this addition has been made by AO, invoking the provisions of section 68 of the Act due to the reason that this amount received from various persons during the year under consideration has been more than the opening balance of loans and advances shown, which is not duly explained. Accordingly the excess payment received amounting to Rs. 13,82,40,814/- was added to the income of appellant.

5.3 It is contended by the appellant, as reproduced above that this amount is not a loan received during the year but regular business transactions and money received from trade debtors. It is also submitted that AO has not taken into consideration the different amounts advanced during the year to the tune of Rs. 9,98,93,689/-. It is further stated that in the case of M/s Kwalitiy Ltd., the appellant has received Rs. 17,31,90,000/- by cheque at the fag end of the last financial year, however the cheque was not realized though the entries have been made in the books for repayment. Subsequently the same was written back due to the reason that the cheque was not realized. This payment has been duly received during the year under consideration. By no such stretch of imagination it can be said that appellant has received this amount twice and this amount is unexplained.

5.4 It is further stated that the amount has been realized through banking channels, books of accounts are duly audited and balance sheet has been realized, confirmation from the different parties have been received, verifying the transactions shown by the appellant and these transactions are carried out in the regular course of business through trade debtors

5.5 It has been further argued that identity of the persons are duly proved, having trade transactions with them since long and they are having PAN, bank account. The transactions has been duly confirmed and thus creditworthiness and genuineness of transaction are also not in doubt.

5.6 It is observed that as per the balance sheet and the details provided by the appellant, the appellant has also advanced money to various persons amounting to Rs. 9,98,93,689/, Which includes Kwalitiy Ltd., Delta Agrotech Pvt. Ltd. (earlier known as JMD Veg Oils P. Ltd.), JMD Oils Pvt. Ltd. and others. Therefore, the contention of AO that appellant has received excess amount over the opening balance of loans and advances is not found Correct, to the extent of money advanced, not taken into consideration by AO.

5.7 Further, it has been duly demonstrated by the appellant that the amount written back as received from M/s Kwalitiy Ltd. has been with respect to its earlier year's transaction, which is realized during the year under consideration and balance is shown as nil on 31.03.2013. Similarly in other cases the money has been received out of the outstanding amount of the earlier year and the persons from whom such money have been received are having transactions since past. All the transactions are routed through banking channel and duly incorporated in the books of accounts. The AO has not rejected the books of accounts.

5.8 The appellant has also provided the confirmation from all the parties and bank reconciliation account to explain the outstanding amount, especially in the case of M/s Kwalitiy Ltd. Further, the amount of Rs.17,31,90,000/- from Kwalitiy Ltd. as written back

due to not realization of cheque may not be a proper presentation, however it will not have any impact on the income of appellant, looking to the fact of this case that this amount was shown as received through banking channel, which was not realized earlier and subsequently the outstanding amount is written back. There is no double receipt or any suppression of income.

5.9 Therefore, looking to the facts and circumstances of this case and in law, considering the submission and the details brought out by the appellant which is borne out of record and as discussed in foregoing paragraphs, it is not established that appellant has excess realization of loan amount and the provisions of section 68 is not found applicable over such trade debtors. Therefore, the addition made amounting to Rs. 13,82,40,814/- is directed to be deleted. This ground of appeal is allowed.”

6. It appears that the details of bank accounts of the earlier year were submitted by the assessee evidencing the cheques as received from the debtors i.e. M/s Kwaliti Dairy India Ltd. since not encashed during the previous year i.e. the financial year 2011-12 and it is the same entry which has been reversed back in the current year. A copy of the accounts of the M/s Kwaliti Dairy India Ltd. for the year under reference duly confirmed by the other parties specified that an entry of Rs.17,31,90,000/- have been reversed by the assessee on account of cheque issued but not encashed in the earlier year; the copy of balance sheet of both the years showing no additional amount has been received and there is no difference in the balance sheet upon considering which the Id. CIT(A) deleted such addition which according to us is without any infirmity so as to warrant interference. Hence the order passed by the Ld. CIT(A) is confirmed.

6. Regarding the deletion of addition of Rs.7,83,90,000/- u/s 68 of the Act on account of difference in amount realized from trade debtors as against amount outstanding, the assessee submitted that the said amount was received from one of its trade debtors M/s Dewana Dairy from whom sales were made in earlier years and the trade debtors had a running account with the company from years to years. The Ld. A.O ignored that during the year the assessee has advanced sum of Rs.3,11,90,000/- to the trade debtors which has been sought to be justified by the assessee through the copy of the account of the firm and from the bank account too. The cheques so received has not been reflected in the books of accounts as

also the case made out by the assessee. However, in the absence of creditable explanation and reasons advanced by the assessee, the same was added to the total income of the assessee u/s 68 of the Act which was reversed by the Id. CIT(A). Hence, the appeal before us.

7. Heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record. Following tabular statement was also provided by the assessee as appears from the records of the case:

<i>Name</i>	<i>Opening balance</i>	<i>Entry reversed in the year on account of cheque not encashed in earlier year</i>	<i>Amount advanced during the year</i>	<i>Amount realized during the year</i>	<i>Net amount due as on 30.03.2013</i>
<i>Dewana Dairy</i>	<i>22,67,983</i>	<i>45,425,400</i>	<i>31,190,000</i>	<i>78,390,000</i>	<i>493,383</i>

7.1 It reflects from the above that there was an opening balance of Rs.22,67,983/- and Rs.45,425,400/- was written back on account of cheque received in the earlier year but not encashed. The advance made by the assessee to the tune of Rs.3,31,90,000/- against which realization of Rs.78,390,000/- leaving a balance of Rs.4,93,383/- is also reflecting from the said tabular form which is further evident from the supporting documents too. The entire factual matrix of the matter has been duly taken care of by the Id. CIT(A) in the following manner:

“6.2 During appellate proceedings, it is contended by the appellant, as reproduced above that the appellant received this amount from its trade debtor M/s Dewana Dairy to whom sales were made in earlier years and has running account with the appellant company since past years. It is also provided in a tabular form that there was an opening balance of Rs.22,67,983/- and Rs. 4,54,25,400/- was written back on account of cheque received in earlier year, but not encashed. The appellant has also advanced an amount of Rs. 3,31,90,000/- given to them and an amount of Rs.7,83,90,000/- has been realized/received during the year, leaving a balance of Rs. 4,93,383/-. For the amount written back of Rs. 4,54,25,400/- the appellant has provided the same arguments as for M/s Kwalitiy Ltd. mentioning that AO has ignored the amount advanced to the said party of Rs. 3,31,90,000/- and also stated that the cheque received at the close of the year and could not be encashed thus the entry was reversed in the current financial year.

6.3 It is observed that M/s Dewana Dairy is a regular trade debtor from whom the transactions are being carried out in past years. Further, AO has not considered the amount given during the year under consideration, which is borne out of record and to be

considered being duly confirmed by the said party. It is also seen that there has been various sales to this party earlier and therefore it cannot be said that identity is in doubt.

6.4 Further, with regard to the contention of appellant that the cheque Was received at the fag end of the close of financial year, which was though taken and amount was treated as received, however subsequently written back as not realized and finally paid, the AO could not establish that this is an additional payment received by the appellant. It is also observed that being a trade debtor, creditworthiness and genuineness of transaction is not disproved by the AO, especially when an amount of Rs. 3,31,90,000/- has been given by the appellant to the said company during the year and further amount has been realized, leaving a balance of only Rs. 4,93,383/-. This transaction is almost similar to the transaction of M/s Kwality Ltd., as discussed in ground no. 1.

6.5 Therefore, considering the facts and circumstances of this case and in view of the discussions is foregoing paragraphs, it is held that AO could not establish that the amount of Rs. 7,83,90,000/- is unexplained income of the appellant within the meaning of provisions of section 68 of the Act and accordingly the same is directed to be deleted. The appellant gets a relief of the total amount, added. This ground of appeal is allowed.”

7.2 It appears that being a trade debtor, creditworthiness and genuineness of the transaction is not disapproved by the Ld. A.O particularly when the amount of Rs.3,31,90,000/- has been advanced to the said company and realized subsequently leaving only a balance of Rs.4,93,383/- similar to the transaction made in the case of the earlier addition in respect of M/s Kwality Dairy Ltd. which has been rightly taken into consideration by the ld. CIT(A) without any ambiguity so as to warrant any interference. Hence, we confirm the same. The challenge made by the Revenue is thus without any basis and thus rejected. In the absence of any merit, the appeal preferred by the Revenue stands dismissed.

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

Order is pronounced in the open court on 16.12.2020.

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

कोलकाता /Kolkata;
दिनांक/ Date: 16/12/2020
RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- DCIT, Central Circle-2(3), Kolkata
2. The Respondent- JMD Proteins Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.