

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 1693/DEL/2016  
[Assessment Year: 2011-12]

Shri Anupam Kasera  
30, Netaji Subash Marg  
Darya Ganj, New Delhi

Vs.

The J.C.I.T  
Range - 30  
New Delhi

PAN : AALPK 3189 R

[Appellant]

[Respondent]

Date of Hearing : 12.01.2021  
Date of Pronouncement : 19.01.2021

Assessee by : Shri Soumil Agarwal, Adv  
Revenue by : Shri Vinay Choudhary, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A)-16, New Delhi dated 03.02.2016 pertaining to A.Y 2011-12.

2. The assessee is aggrieved by the following additions/ disallowances:

- i) Rs. 18,83,198/- on account of commission expenses;
- ii) Rs. 30,80,000/- on account of unsecured loan; and
- iii) Rs. 7,27,226/- on account of interest paid on unsecured loan.

3. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has debited Rs. 23,83,198/- to his profit and loss account on account of commission paid. The assessee was asked to furnish the list of payees alongwith their addresses. On the given addresses, the Assessing Officer issued letters u/s 133(6) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] and directed the payees to furnish the following information:

- "1. Copy of account of the above noted person in your books of account for the year ending 31-03-2011, duly confirmed by you.

2. Full details of services provided by you to the above noted person.
3. Details of clients arranged by you for the above noted person.
4. Copy of sale orders procured by you for the above noted person.
5. Copy of agreement entered in to by you with the above noted person and with the parties whom the sales were made by the above noted person through you.
6. Copy of the correspondence made by you with the above noted person and the clients arranged by you for the above noted person,
7. Details of the basis of commission charged by you from the above noted person.
8. Whether you have provided similar services to other parties, if yes details of the same.
9. Copy of the acknowledgement of your return of income for the A.Y. 2011-12 and the copy of your statement of income for the above noted A.Y.

10. Copy of your bank account depicting the transactions made with the above noted during the F.Y. 2010-11."

4. The following details were not furnished:

i) Full details of services provided by you to the above noted person.

ii) Details of clients arranged by you for the above noted person.

iii) Copy of sale orders procured by you for the above noted person.

iv) Copy of agreement entered in to by you with the above noted person and with the parties whom the sales were made by the above noted person through you.

v) Copy of the correspondence made by you with the above noted person and the clients arranged by you for the above noted person.

vi) Details of the basis of commission charged by you from the above noted person.

vii) Whether you have provided similar services to other parties, if yes details of the same.

5. On not receiving complete details, the Assessing Officer further issued summons calling for details mentioned elsewhere. The Assessing Officer observed that none of the persons complied with the summons. The Assessing Officer formed a belief that the payment of commission is not proved and, accordingly, allowed expenditure of Rs.3 lakhs only and made addition of Rs.18,83,198/-.

6. The assessee carried the matter before the CITA but without any success.

7. Before us, the learned counsel for the assessee stated that the assessee has furnished complete details along with confirmations of the payees. It is the say of the learned counsel that all payments are supported by invoices of the commission agents and, therefore, no disallowance should be made.

8. Per contra, the ld. DR strongly supported the findings of the CITA.

9. We have given careful consideration to the orders of the authorities below and have also considered the relevant documentary evidences brought to our notice. No doubt, payments are supported by invoices and

confirmations but the moot point is that no evidence has been submitted for rendition of services by the payees. It is true that in earlier assessment years, similar commissions were allowed to some parties and also in subsequent assessment year. But the question remains as to whether in the year under consideration there was any rendition of services by the payees. Merely because the payees have shown commission income in their respective return of incomes and transactions have been done through banking channels would not suffice, as rendition of services have to be proved.

10. Considering the facts of the earlier assessment years and subsequent assessment years, where similar commission has been allowed, we are of the considered view that in those years the assessee must have established/proved the rendition of services. Considering the facts in totality, in our considered opinion, 50% of the commission disallowed by the Assessing Officer needs to be allowed. We, accordingly, restrict the disallowance to Rs.9,40,000/- and direct the Assessing Officer to delete the balance. Ground No. 1 is partly allowed.

11. Ground No. 2 relates to addition on account of unsecured loans received from the following parties:

- i. Sapebelle Trader Linkers Pvt Ltd
- ii. Ishwar Das Gupta
- iii. Shri Binod Choudhary

12. The assessee was asked to explain the genuineness of the loans taken from the aforementioned parties in light of section 68 of the Act. The assessee filed confirmations, copy of ledger account and income tax returns of the aforementioned parties. The Assessing Officer issued summons to the parties calling for confirmations and source. The Assessing Officer observed that the summons were not complied with. The Assessing Officer formed a belief that the loans are not genuine and, accordingly, made addition.

13. The assessee carried the matter before the ld. CIT(A) but without any success.

14. Before us, the learned counsel for the assessee drew our attention to the documentary evidences to prove the genuineness of the transactions. It is the say of the learned counsel of the assessee that in case of Sapebelle Trader Linkers Pvt Ltd and Ishwar Das Gupta, the loans have been repaid in subsequent years and in the case of Vinod Choudhary, the learned counsel relied upon his submissions made before the ld. CITA.

15. The Id. DR strongly supported the findings of the Assessing Officer and vehemently stated that the assessee has not discharged the initial burden cast upon him by provisions of Section 68 of the Act.

16. We have given thoughtful consideration to the orders of the authorities below and have also considered the relevant documentary evidences brought on record in the form of paper book.

Sapebelle Trader Linkers Pvt Ltd

17. On perusal of confirmation of account, we find that in this case there was an opening credit balance of Rs. 39.58 lakhs which means that this creditor is coming from the earlier A.Y. Therefore, its identity cannot be questioned in the year under consideration. Out of the opening balance, Rs. 20 lakhs was repaid on 15.04.2010. Thereafter, the loans of Rs.25 lakhs, 20 lakhs and Rs.15 lakhs were taken. Rs.10 lakhs was repaid on 3.02.2000 and closing balance at the end of the year was Rs.75.26 lakhs. Copies of income tax returns and statement of accounts of this company are also placed in the paper book and have been duly considered by us.

18. The bank statements of this company are also at pages 2 to 23 of the paper book. The bank statement of this company shows transactions in crores. Therefore, it can be safely concluded that this company has sufficient credit worthiness to give the impugned loan. Considering the fact that there was opening balance and part of loan has been repaid during the year and full loan has been repaid in subsequent year, we are of the considered view that the appellant has discharged the initial onus cast upon him by provisions of section 68 of the Act. Therefore, no addition is called for in the case of Sapebelle Traders Linkers Pvt Ltd. The Assessing Officer is directed to delete the impugned addition.

Ishwar Dass Gupta

19. The Assessing Officer and the Id CITA proceeded by examining the documents, treating Shri Ishwar Das Gupta as an individual, whereas the documents referred to and relied upon by AR show that Shri Ishwar Das Gupta is HUF. The income tax return is also that of HUF and bank statement is also that of HUF. Since the facts are not clearly coming out from the orders of the authorities below, we restore this addition to the file of the Assessing Officer. The Assessing Officer is directed to examine this transaction afresh in light of the statement made by the Id. counsel

for the assessee that the loan has been taken from Shri Ishwar Das Gupta, HUF. The assessee is directed to furnish necessary evidences before the Assessing Officer and the Assessing Officer is directed to examine the same after giving reasonable opportunity of being heard to the assessee. This addition is allowed for statistical purposes.

Shri Binod Choudhary

20. The ld. counsel for the assessee has heavily relied upon the submissions made before the CIT(A), which means that he has nothing more to add to what has been already stated before the lower authorities. We find that the assessee has only filed copy of ledger account of Shri Binod Choudhary in the books of Delhi Sugar Company which has not been confirmed by Shri Binod Choudhary though the PAN is mentioned there. No other evidence has been brought to our notice. Therefore, we do not find any merit in the submissions of the learned counsel which have been duly considered by the CIT(A) during the first appellate proceedings. Addition on account of loan from Shri Binod Choudhary is, accordingly, confirmed. Ground Nos. 2 and 3 taken together are partly allowed.

21. Next addition relates to interest paid on unsecured loan considered hereinabove. Qua our findings given hereinabove, we direct the Assessing Officer to allow interest payment to Sapebelle Traders Linkers Pvt Ltd keeping in abeyance the allowance of interest in respect of Ishwar Das Gupta after deciding the issue as per our directions given hereinabove and disallow the interest paid to Shri Binod Choudhary. Ground No 4 is accordingly decided.

22. In the result the appeal of the assessee in ITA No. 1693/DEL/2016 is allowed in part for statistical purposes.

The order is pronounced in the open court on 19.01.2021.

**Sd/-**  
**[KULDIP SINGH]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated : January, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	12.01.2021
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	