

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.7991/Del./2019
Assessment Year 2011-2012

TRN Impex Pvt. Ltd., New Delhi – 110 092. PAN AACCT0829M C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi-085.	vs.	The Income Tax Officer, Ward – 25 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri Ved Prakash Mishra, Sr. DR

Date of Hearing :	15.02.2021
Date of Pronouncement :	17.02.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-9, New Delhi, Dated 08.07.2019, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.10 lakhs under section 68 of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Briefly the facts of the case are that original return of income was filed by the assessee-company on 29.09.2011 declaring income of Rs. 1,23,511/-.The DDIT (Inv.), New Delhi informed that there is a news items in the electronic and print media during first half of February 2015 about donation given to Aam Aadmi Party (“AAP”) by four allegedly bogus companies. A search was conducted in the residential and office premises of Shri Deepak Agarwal and Shri Mukesh Kumar which reveal certain documents. Several statements were recorded during the pre-search and post-search operation. From the material on record and statements of these persons, it was revealed that both have been providing entries to other companies. An FIR was also registered by the Economic Offence Wing of Delhi Police. It was also found that beneficiaries have provided commission for arranging entries. It was found that M/s Paryog India Pvt. Ltd. [“PIPL”] is controlled by these two persons i.e., Shri

Mukesh Kumar and ShriLDeepak Agarwal who have provided accommodation entries, of Rs.10,00,000/- to the assessee-company. The A.O. reopened the assessment by recording reasons. The assessee was asked to furnish the documents i.e., copy of ITR and bank statements of this party. The assessee submitted the same. The A.O. on the basis of statements of Shri Mukesh Kumar and Shri Deepak Agarwal found that they have controlled the Investor Company PIPL who have provided accommodation entry to the assessee company. The A.O. on the basis of statements of these two persons and material on record, made addition of Rs.10 lakhs against the assessee in the re-assessment order passed under section 147/143(3) of the I.T. Act, 1961, Dated 24.12.2018.

3.1. The assessee challenged the reopening of the assessment as well as addition on merits before the Ld. CIT(A). The detailed written submissions of the assessee is reproduced in the appellate order in which it was submitted that there was no basis to reopen the assessment in the case of the assessee and that assessee has filed

documentary evidences before the A.O. which are (i) Request form for the allotment of shares by PIPL (ii) Copy of Memorandum of Association and Articles of Association of PIPL, (iii) Copy of ITR for the A.Y 2011-12 of PIPL (iv) Balance sheet of PIPL for the A.Y. 2011-2012 (v) Copy of Board resolution of PIPL for making investment in shares of assessee company. (vi) Copy of bank statement of PIPL (vii) Copy of the affidavit of the Director of PIPL confirming transaction with assessee company. (viii) Copy of acknowledgment of receipt of shares by PIPL. The assessee submitted that no independent enquiry have been conducted on these documentary evidences by the A.O. and even the Investor has not been summoned for recording their statement. The A.O. did not provide any opportunity to cross-examine to the statements of Shri Deepak Agarwal and Shri Mukesh Kumar which is the basis for making addition against the assessee, despite specific request is made by assessee. therefore, such statements cannot be read in evidence against the assessee. The assessee relied upon Judgment of the Hon'ble Supreme Court in the case of

Kishanchand Chellaram vs., CIT 125 ITR 713 (SC) and Judgment of Hon'ble Delhi High Court in the case of CIT vs., SMC Share Broker Limited 288 ITR 345 (Del.). The assessee, therefore, prayed for reopening of the assessment may be quashed and addition on merit may be deleted. The Ld. CIT(A), however, did not accept the contention of assessee and held that the right to cross-examine of the person whose statement have been used against the assessee is not an absolute right of the assessee. The Ld. CIT(A), accordingly, dismissed the appeal of assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to the reply filed by assessee before A.O. PB-38. PB-77 which is letter of the assessee Dated 11.10.2018 filed before A.O. asking to allow the assessee an opportunity to cross-examine Shri Deepak Agarwal and Shri Mukesh Kumar which was however rejected by the A.O. vide his letter Dated 05.11.2018 PB-75-76. He has, therefore, submitted that no addition may be made against the assessee. He has relied upon Order of the ITAT, Ahmedabad Bench in the case of EI

Dorado Biotech Pvt. Ltd., Dated 11.11.2020 and Order of ITAT, Indore Bench in the case of Ariba Foods Pvt. Ltd., Dated 11.01.2021.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions and perused the material on record. It is not in dispute that reopening of the assessment was made on the basis of the search conducted in the cases of Shri Deepak Agarwal and Shri Mukesh Kumar. Their statements were also recorded which were adverse in nature against the interests of the assessee. Certain documents were also found during the course of search from their premises to reveal that they have been providing accommodation entries. However, the details of the same have not been mentioned in the assessment order. Thus, the basis for reopening of the assessment and making addition against the assessee was on the basis of statement recorded by Investigation Wing of Shri Deepak Agarwal and Shri Mukesh Kumar implicating the assessee company of providing accommodation entries

to the assessee company. The assessee made a specific request before A.O. to provide an opportunity to cross-examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar, but, it were denied by the A.O. vide his letter Dated 05.11.2018 PB-75-76. The A.O. in his letter has mentioned that primary onus is upon assessee to prove its case and under such circumstances by asking for cross-examination, the assessee is trying to shift the burden of proof on the Department. Therefore, request of assessee was declined. The Ld. CIT(A) instead of deciding the issue in proper perspective as per Law has also held that right of cross-examination to the statements of witnesses used against the assessee is not an absolute in nature. However, it is well settled Law that any material collected at the back of assessee or statement recorded at the back of assessee cannot be used in evidence against the assessee, unless the same is confronted to the assessee at assessment proceedings and right of cross-examination have been granted to assessee to such statements. We rely upon the Judgments of Hon'ble Supreme Court in the cases of Kishan

Chand Chellaram (supra) and Andaman Timber Industries 281 CTR 214 (SC) and Judgment of Hon'ble Delhi High Court in the case of CIT vs., SMC Share Broker Ltd., (supra). In view of the above, it is clear that right of assessee have been denied by the authorities below in not allowing the assessee to cross-examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar. Thus, these statements recorded at the back of the assessee which were adverse in nature to the interest of assessee cannot be relied upon against the assessee and no addition could be made on that basis. The decisions relied upon by the Learned Counsel for the Assessee above also apply to the facts and circumstances of the case. Thus, there is no material left on record with the Department to justify the addition of Rs.10 lakhs against the assessee. It may also be noted here that assessee has produced the above documentary evidences noted above which clearly shows that the Investor company has made investment in assessee company which is confirmed by the Investor in their confirmation and affidavit of the Director. The balance-sheet of the Investor shows that

they have made investment in assessee company and they have sufficient balance to make the investment in assessee company which was made through banking channel. No cash was found to have been deposited in the account of the Investor before making investment in assessee company and actual shares were also allotted to the Investor by the assessee company. Thus, documentary evidences on record have not been rebutted by the A.O. through any evidence or material on record. No independent enquiry has been made against these documentary evidences. Therefore, such documentary evidences clearly supports the explanation of assessee that genuine investment have been made in the assessee company. We rely upon Judgments of Hon'ble Delhi High Court in the cases of CIT vs. Fair Investment Ltd., 357 ITR 146 (Del.); CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.); CIT vs. (i) Dwarakadhish Investment P. Ltd., (2011) 330 ITR 298 (Del.); CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603 (Del.); CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) and CIT vs., Kureli Papers Mills P. Ltd., 380 ITR 571 (Del.).

6.1. Considering the totality of the facts and circumstances of the case and that there is no adverse material available on record against the assessee so as to make the impugned addition of Rs.10 lakhs and that no investigation have been made by the A.O. on the documentary evidences submitted by assessee, we are of the view that addition of Rs.10 lakhs is wholly unjustified. We, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.10 lakhs. In view of the above, there is no need to decide the issue of reopening of the assessment which is left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

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

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 17th February, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.