IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1778/Del/2016 : Asstt. Year : 2011-12

Vidya Education Investments Pvt. Ltd., 5C, Old Friends Colony (West), Main Mathura Road, New Delhi-110065	Vs	DCIT, Circle-17(1), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AABCV9413E		

Assessee by : Sh. P. C. Yadav, Adv.
Revenue by : Sh. Bhopal Singh, Sr. DR

Date of Hearing: 08.03.2021		**Date of Pronouncement: 26.04.2021**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the ld. CIT(A)-9, New Delhi dated 18.02.2016.

2. Following grounds have been raised by the assessee:

"1. Whether on the facts and circumstances of the case the learned CIT(A) was right in not deleting the addition made by the Assessing Officer u/s 68 of the Income Tax Act, of Rs.50,00,000/- in respect of the advance received by crossed account payee cheque from M/s Kakade Stone Crushers, for which confirmation and PAN particulars and bank details were furnished.

2. Whether on facts and circumstances of the case the learned CIT(A) was justified in disallowing the

fee of Rs. 13,51,175/- paid to an Architect for maintenance of school building during the year.

3. Whether on facts and circumstances of the case the learned CIT(A) erred in not deleting the additions of Rs. 1,00,00,000/- made by the A.O. in respect of interest paid on secured loan, utilized for construction of school building, in respect of which full rental income of Rs.2,75,00,000/- is included in the computation of taxable income of the assessee.

4. The CIT(A) grossly erred in computing the ALV of the School Building at Rs. 3,47,77,778/- by applying the rate of 8% on total cost of land and building. Thus enhancing the ALV of the school building, let out by lease agreement for consideration of Rs. 2.75 crore per annum, and thereby enhancing the taxable income by Rs. 72,77,778/-."

3. Ground No. 1 relates to addition of Rs.50,00,000/- on account of unexplained cash credit. The AO has observed that during the course of the assessment proceedings, the assessee had shown to receive a loan of Rs.50,00,000/- as an advance for sale of land at the village Shilatne, Maral, Lonawala, from M/s Kakade Stone Crushers. The assessee has submitted a confirmation in this regard. Notice u/s 133(6) was issued by the AO on 25.11.2013, for which the recipient failed to comply. The AO treated the amount as unexplained cash credit u/s 68. The ld. CIT (A) upheld the action of the AO on the grounds that the assessee failed to prove identity, genuineness and creditworthiness of the depositor.

4. Aggrieved the assessee filed appeal before us.

5. During the hearing, the ld. AR submitted that an amount of Rs.50,00,000/- received as advance from M/s Kakade Stone Crusher. Argued that the assessee has placed on record

complete address and PAN of M/s Kakade Stone Crusher. The Rs.50,00,000/- was received by account payee cheque from the said party on 27.01.2011 and refunded the said amount on 23.07.2011 by crossed account payee cheque. All bank entries are appearing in the assessee's bank account and in books of accounts. It was argued that the assessee has discharged its responsibility to disclose, all the particulars of the party which is duly identifiable by the PAN card.

6. The ld. AR argued that the assessee cannot be held responsible, if M/s Kakade Stone Crusher does not comply to the notice u/s 133(6) issued by the department. If, M/s Kakade Stone Crusher is responsible for any misdemeanor or non-compliance, then M/s Kakade Stone Crusher should be treated as in default but not the assessee.

7. It was argued that the amount was received by account payee cheque and also returned back on 23.07.2011 by cross account payee cheque. The assessee has disclosed all the particulars and PAN so identity was proved.

8. On the other hand, the ld. DR argued that the assessee absolutely failed to prove the identity, genuineness and creditworthiness and the onus is much more on the assessee especially when there was no compliance to the notices issued u/s 133(6) to the loan party. The ld. DR supported the order of the ld. CIT (A) which placed reliance on the judgment of Hon'ble Delhi High Court in the case of Globus Securities and Finance Pvt. Ltd. Reported in 264 CTR 481 while confirming the addition. The relevant findings are as under:

"Section 68 of the Income-tax Act, 1961- Cash credit [Burden of proof/share capital]- Assessment year 2006-07 whether merely reliance on neutral documentary evidence cannot always be regarded as satisfactory discharge of onus- held, yes- whether genuineness of transaction in all cases is not established by only showing that transaction was through banking channels or account payee instruments; surrounding and corroborative factual details are equally important- held, yes- in respect of issuing shares, Tribunal had notices but not given due credence to surrounding circumstances which included a huge premium equivalent to four times of face value of shares, credit entries in bank accounts before transfer of money to assessee, failure of companies to file details of inventories/schedule of investments and fact that assessee-company had not charged any premium earlier- It was not known why and for what reasons assessee was not able to produce principal officer or director of shareholder companies- Whether all these aspects were required to be gone into the Tribunal in detail- held, yes [Para 11 to17] [Matter remanded] IT; Creditworthiness of shareholders and genuineness of transaction in all cases is not established by only showing that transaction is through banking channels or account payee instrument; surrounding and corroborative factual details are equally important."

9. Heard the arguments of both the parties and perused the material available on record.

10. We find that the advance of Rs.50,00,000/- has been received by the assessee on 27.01.2011 and repaid on 23.07.2011. The return for the relevant assessment year was

filed on 28.09.2011 and the notice u/s 143(3) was issued on 10.09.2012 which primarily shows that the transactions have been completed before filing of the return. The assessee from their side reproduced the relevant details and documents to prove the identity, genuineness and creditworthiness of the loan party and the transactions. Since, the amount has already been paid, the assessee could no more exert any influence on the loan party. At the same time, the assessee can be said to have discharged his primary onus with regard to the advance. There was no information with the AO before or during the assessment proceedings to point out any suspicion with regard to the deposit and its sources either in the form of cash deposits or any other enquiries conducted. The addition has been made merely on the grounds that there was no compliance from M/s Kakade Stone Crusher to the notice issued u/s 133(6). We have also gone through the judgment relied upon by the ld. CIT (A) while confirming the addition. We find that the judgment has been delivered while dealing with the question of genuineness of the huge premium paid on the shares. The addition was confirmed owing to presence of abundant corroborative evidences which is not show in the instant case.

11. Having gone through the entire factum of the case, we hereby hold that the addition made by the AO cannot be sustained as the assessee has discharged the primary onus casted upon them and the revenue has not brought on record to treat the amounts u/s 68.

12. Appeal of the assessee on this ground is allowed.

13. Ground no. 2 deals with the disallowance of Rs.13,51,175/- on account of architect fees. The AO observed that during the year the assessee company paid a sum of Rs.13,51,175/- as architect fees to M/s Fourth Dimension Architects Pvt. Ltd. and the amount needs to be capitalized. The ld. CIT (A) confirmed the addition on the same loans.

14. Before us, it was submitted that the architect fee has been paid owing to rendering of services regularly on monthly basis for project management consultation to the management of the company. The Architects are engaged to manage the property of the assessee and are paid for monthly charges as professional fee. Since, this is revenue expense and hence charged to profit and loss account.

15. The ld. DR argued that the assessee is receiving only rental income against which it is claiming standard deduction and interest on borrowings. Further, this expenditure is not administrative expenses as claimed buy it in the profit and loss account, rather it is an architect fees paid for the project of school building for which it has already claimed and allowed statutory deduction.

16. On going through the facts on record, we find that the assessee is receiving rental income against which interest and others statutory deduction are claimed and hence no other deduction on account of maintenance charge or any other nomenclature is not an allowable deduction. Appeal of the assessee on this ground is dismissed.

17. Ground Nos. 3 & 4 relates to disallowance of interest paid on loan raised for construction of the school building and computation of ALV @ 8% of the total of the land and building.

18. At the outset, both the parties agreed that the matter stands covered by the order dated 22.06.2018 of the Tribunal in ITA No. 6177/Del/2014 for the assessment year 2010-11 in the assessee's own case. For the sake of brevity and ready reference, the relevant part of the said order are reproduced hereunder:

Para 17 – on the issue of interest

"17. We have considered the rival submissions and do not find any justification to sustain the addition. The interest paid on borrowed funds used for the acquisition and construction of the property is an allowable deduction under section 24(b) of the I.T. Act. The authorities below have disallowed 50% of the interest because no bifurcation of the funds used for land and building and other assets have been- provided by the assessee. The assessee has, however, given complete details before the Ld. CIT(A) to show how much own funds are available to assessee and how much amounts have been borrowed from the Bank and other institutions. The assessee claimed that the borrowings as on 31.03.2010 were only Rs.25,13,58,904/-, on which, above interest have been paid. The assessee has invested a sum of Rs.43,46,57,917/- in the school land, and building. This itself proves that assessee utilized the entire borrowed funds for construction of school building. Learned Counsel for the Assessee also referred to page-10 of the synopsis to show bifurcation of the land and building of the

demise property and other assets and submitted that the other net addition on other assets in assessment year under appeal is only Rs.60,35,902/ which is not disputed by the Ld. CIT(A), because, such Schedule-5 of the fixed assets was also filed before authorities below. He has, therefore, rightly contended that the entire borrowed funds have been used for the purpose of acquisition and construction of the school building. Similar deduction of interest claimed in earlier year not disputed by authorities below. Therefore, interest is allowable. We, accordingly, set aside the orders of the authorities below and delete the addition. This ground of appeal of assessee is allowed."

Para 10 – on the issue of ALV

"10. We have considered the rival submissions and perused the material on record. The operative words in Section 23(1)(a) are "the sum, for which, the property might reasonably be expected to let from year to year". These words provide a specific direction to the Revenue for determining the fair rent. The A.O. having regard to the aforesaid provisions is expected to make an enquiry as to what would be the reasonable rent that the property under reference might fetch. If the A.O. finds that actual rent received is less than the fair rent/market rent because of certain reasons, the A.O. can take necessary exercise in that behalf. Hon'ble Delhi High Court in the case of CIT vs. Moni Kumar Subba (supra), in para-20 has given its conclusion, reproduced above, in which, it was observed that willingness of the lessor and lessee shall have to be considered and extraneous considerations should, be avoided. Such annual

letting value, however, cannot exceed the standard rent as per Rent Control Legislation applicable to the property. If the standard rent has not been feed by the Rent Controller, then, it is the duty of the A.O. to determine the standard rent as per provisions of Rent Control enactment. The standard rent is upper limit, if the fair rent is less than the standard rent, then, it is the fair rent which shall be taken as annual letting value and not the standard rent. In the present case, the assessee explained all the facts, before A.O. with regard to rent received and that the property was let out earlier and in the case of lessee CVT, it is pleaded before ITAT, Mumbai Bench that the rent has been gradually increased from time to time. This fact has not been disputed by the Revenue Department. Therefore, the A.O. accepted the claim of assessee of receiving fair and reasonable rent of Rs.1.80 crores in assessment year under appeal. The Ld. CIT(A) was however, influenced by the fact that the assessee company and the lessee is controlled by Shri Vineet Nayyar and his family members and investment in building. Therefore, he has considered that assessee has received a low rent. However, it is an extraneous consideration, which has no bearing on the issue of determination of annual letting value of the property. The Ld. CIT(A) did not undertake any necessary exercise to compute annual letting value of the assessee as per above guidelines. No comparable case have been brought by him on record. Ld. CIT(A) simply rejected the claim of the assessee for applying 8% of the total investment to compute annual letting value. He has not determined the standard rent in the case of assessee as per Rent Control Legislation and has also not considered even municipal value determined by the municipality. The Ld. CIT(A) also failed to

note that the lessee was a charitable institution providing education to the students. Therefore, it could not be compared with commercial or residential occupancy of demised property which is not involved in charitable institution. For commercial and residential user of the property, the rent may be high as compared to property given on rent to the educational and charitable institutions. Thus, there were no basis for Ld. CIT(A) to enhance the annual letting value of the property in question We may also note that identical issue was considered in the case of lessee i.e., CVT by ITAT, Mumbai Bench and the entire addition made by the A.O. have been deleted by tire Tribunal. Though this case pertains to subsequent A.Y. 2011-2012, but the fact remains that the Tribunal accepted the claim of lessee of fair rent paid by them to assessee. The demised property was let-out though agreement which follow in year under appeal. So, facts are identical. The claim of assessee has been supported by opinion/report of M/s. Atharva Land Developers who have determined fair rent against which Ld. CIT(A) has not brought any report of expert. So, it could not be disputed. In the case of assessee and lessee, the rent paid in earlier year have not been disputed by the Revenue Authorities. Considering the totality of the facts and circumstances and in the light of decisions relied upon by the Learned Counsel for the Assessee, we are of the view that the lessee has paid fair reasonable rent to the assessee. Therefore, there were no basis to enhance the fair rent paid by lessee to the assessee-company. We, accordingly, set aside the orders of the Ld. CIT(A) and delete enhancement in rent made by him of Rs. 1,67,74,073/-. We may also note that Ld. CIT(A) while enhancing rental income, did not decide the issue of service tax paid by assessee, Ld. CIT(A) admitted

the additional evidences which are service tax paid by the assessee through challan and service tax returns filed for assessment year under appeal. It would support the explanation of assessee that assessee paid service tax for assessment year under appeal, out of rent received from the lessee because there were no mention of the service tax in the rent agreement. Since the service tax is a liability upon the assessee-company which have been discharged as per Service Tax Act, therefore, it is an allowable deduction in favour of assessee, because in the service tax, assessee has no right to claim it as a rent. The authorities below were, therefore, not justified in making addition of Rs. 16,80,870/-. The orders of the authorities below to that extent are also set aside and this addition is also deleted."

19. Since, the matters stands squarely covered by the earlier order of the case of the assessee, in the absence of any material change in the facts of the case, the addition made by the revenue is hereby directed to be deleted.

20. As a result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 26/04/2021.

Sd/-

(Bhavnesh Saini)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 26/04/2021
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR