

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D': NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER,

ITA No. 6496/Del /2013
[A.Y : 2009-10]

The I.T.O
Ward 4(3)
New Delhi

Vs. M/s Landcraft Developers Pvt. Ltd
309, 3rd Floor, Plot No. 13,
Parmesh Corporate Towers
Community Centre, Karkardooma
Delhi

[Appellant]

PAN : AABCL1391 F

[Respondent]

Date of Hearing : 30.03.2016

Date of Pronouncement: 06.05.2016

Appellant by : Shri Shravan Gotru, Sr-DR

Respondent by : Shri Raj Kumar Gupta, CA

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the Revenue is directed against the order of the CIT(A)-VIII, New Delhi, dated 17/09/2013 for AY 2009-10.

Ground No. 1

“1. Whether on the facts and circumstances of ht case and in law the ld. CIT(A) erred in deleting the addition of Rs. 50 lakhs made u/s 68 of the Income tax Act, 1961 [for short, 'the Act'].”

2. Facts apropos Ground No. 1 are that the assessee received interest bearing loan of Rs. 25 lakhs each from M/s Adharshila Marketing Pvt. Ltd on 26.3.2009 and from M/s Bajra Pharma (P) Ltd on same day i.e. 26.3.2009 aggregating to Rs. 50 lakhs. During the course of assessment proceedings, the AO noticed that huge amount of cash was deposited in specific bank accounts which were instantly routed to the bank accounts of the assessee through M/s Adharshila Marketing Pvt. Ltd and M/s Bajra Pharma Pvt Ltd. When enquiries were conducted and summons were issued u/s 131 of the Act the directors of the company did not come forward with any plausible explanation and replied in a very casual manner. The AO considered verification was necessary in view of the fact that as per the FIR lodged by the CBI, the directors had provided fictitious entries of loan/investments to various persons. But instead, the assessee replied vide its letter dated 26.12.2011 that the FIR lodged against both the companies, namely M/s Adharshila and M/s Bajra, by the CBI had nothing to do with the issue of genuineness of loan taken by the assessee from both the companies. Accordingly, the AO came to the conclusion that the origin of money by way of huge deposits of cash in the bank accounts of M/s Shree Krishna Iron and Steel Works and M/s Prabhat Trading Co alongwith number of other accounts inter connected with such accounts maintained with certain banks ascertained that these were feeder accounts for layering of black

money. Both the companies had deposited the cash in the shape of unsecured loan. The AO further observed that the assessee miserably failed to discharge the onus shifted upon its office letter dated 19.12.2011 with reference to provisions of section 68 of the Act. Hence the AO added an amount of Rs. 25 lakhs each from M/s Adharshila Marketing Pvt. Ltd and M/s Bajra Pharma Pvt Ltd totalling to Rs. 50 lakhs to the income of the assessee u/s 68 of the Act. Aggrieved, the assessee went in appeal before the ld. CIT(A) who deleted the addition. Now the Revenue is aggrieved against the deletion of addition and has come in appeal before the Tribunal.

3. We have heard the arguments of both the sides and carefully perused the relevant material placed on record before us. The ld. DR supported the action of the AO and the ld. AR supported the first appellate order of the ld. CIT(A) and reiterated the contentions raised before the AO and ld. CIT(A) and stand taken by the AO for making addition. We find that the assessee has received an amount of Rs. 25 lakhs each from the above mentioned two companies through cheque bearing Nos. 511460 and 830582 on 26.3.2009. The ld. AR submitted that the loans were received through account payee cheques and interest of Rs. 1,50,000/- was given for A.Y 2010-11 and Rs. 34,836/- was given for A.Y 2011-12. The ld. AR further submitted that TDS of Rs. 15,000/- was deducted in A.Y 2010-11 and Rs. 3,483/- in A.Y 2011-

12. The loan was returned back through account payee cheques alongwith interest. Adharshila and Bajra Pharma (P) Ltd had sent a copy of its bank statement from where Rs. 25 lakhs were given and also details of source of Rs. 25 lakhs credited in bank out of which Rs. 25 lakhs was given on loan to the assessee. The assessee had also explained the source and source of source. In spite of explaining all these to the AO during the assessment proceedings, the ld. AR submitted that the AO got confused and mismatched the source. The ld. AR submitted that the assessee had discharged the full onus cast upon it u/s 131 of the Act. Lastly, the ld. AR relied on various decisions including the case of CIT Vs. Kinetic Capital Finance Ltd reported at 202 Taxman 548 [Del] and CIT Vs. Ayachi Chandrashekar Narsangh reported in 221 Taxman [Guj] 146.

4. After considering the rival submissions, we find that the ld. CIT(A) at page 25 of his order has given a categorical finding which reads as under:

“I have perused the assessment order, written submission of the AR, grounds of appeals and discussed the matter with the AR very carefully. The appellant had taken loan from M/s Adharshila Marketing Pvt. Ltd (ADMPL) and M/s Bajra Pharma Pvt. Ltd. (BPPL) of Rs. 25,00,000/- lakh each on 26.03.2009 by banking channel. The appellant company had returned the loan amount with interest and deducted TDS on interest while

repaying the loan. The return of loan happened before issue of notice u/s 143(2) notice by the A.O for A.Y. 2009-10 (the year under appeal). These facts should have been enquired by AO at the time of scrutiny also. This has not been done by A.O nor he believed on the facts stated by appellant at scrutiny stage. The AR had sighted so many case laws of Hon'ble High Court and Supreme Courts, where A.O had no power to enquire on source of source of unexplained credits u/s 68 of the I.T Act. In such situation, how the revenue will gain anything by bypassing the legal interpretations through various case laws of superiors courts. In such situation AO should have intimated the facts to the AO of Sri Krishna Iron & Steel Works, Delhi & Pravat Trading Company & Shree enterprises where cash deposit was found in its account. As per the above diagrammatic picture and AR's written submission, it is found that the money deposited in the accounts of above lender sources are from sale of shares of M/s Agro Forex and Holdings (P) Ltd. dt24.03.2009 of Rs. 10 Lakhs, 10 Lakhs, 5 lakhs which cannot be denied by AO. The AO had taken the plea that it was cash deposit, but AR says it was cheque deposit. Then where is the question of unexplained credit u/s 68 arising-. At the time of scrutiny, AO should enquire facts properly and pass on the information to concerned AO having jurisdiction of case who had introduced cash in its bank accounts. This is the only way where we may succeed in taxing that the company who had introduced cash in its accounts. In the present case, loan has been taken by cheques and repaid by cheques with interest and TDS is deducted on interest u/s 194 A of IT Act. In such circumstances, the AR

proved the loans of Rs. 50,00,000/- from M/s AMPL & Bajra Ltd. to be genuine and explained.

The AO's finding that information on account opening form from the bank and other information with CBI, does not give any finding on genuineness or not of the transaction. If the transaction is routed through bank accounts, there is another way to tax the person where cash was introduced in his accounts. The AO should have called information u/s 133(6) from CBI on relevant issues into record and assessment order. The appellant further writes that there is no CBI enquiry pending against directors of AMPL or Sri Krishna Iron and Steel Works, Delhi.

The AO is directed to pass on the information of cash introduction in the accounts of the Shree Krishna Iron and Steel Works, Delhi. Pravat Trading Company and Shree Enterprises to their respective AO's for enquiry, investigation and taxing the same, if any unexplained cash credit/undisclosed income found there.

The business of appellant company is to acquire land in different subsidiary's ownership, which needs huge funds. In course of business activities, loans are required for short term periods. As the loans are repaid with interest and TDS is deducted, the genuineness of transaction is strengthened. Hence the identity, genuineness and credit worthiness of loans of Rs. 25 lakhs each from AMPL & BPPL being proved by appellant, the addition of Rs. 50 lakh by AO is deleted. This ground of appeal is allowed."

5. We also find substance in the submission of the ld. AR that the AO has duly allowed the interest expenses of this loan at Rs. 1,50,000/- in A.Y 2010-11 and Rs. 34,836/- in A.Y 2011-12 to the assessee in assessment framed u/s 153A of the Act. We find force in the submission that a bald statement/observation for some CBI enquiries going on without any findings cannot be basis for not accepting the genuineness of the transaction. Accordingly, we hold that the FIR on a third party has no relevance to the case of the assessee in hand. Therefore, we hold that the ld. CIT(A) was quite justified in deleting the addition so made by the AO without any basis simply on surmises and conjectures. Ground No. 1 raised by the Revenue being devoid of merits stands dismissed.

Ground No. 2

“Whether on the facts and circumstances of the case and law, the ld. CIT(A) was erred in deleting the addition of Rs. 77,71,138/- on account of interest income under the head income from other sources on the ground that by making the separate additions, the AO has made double addition and this would not effect the P & L Account because of increase in financial expenses [interest by the corresponding amount.”

6. Brief facts relating to the second issue are that the assessee incurred a sum of Rs. 2,21,85,329/- as interest expenses on secured and unsecured loans. The assessee also earned interest income of Rs.

88,73,731/- on loans and advances given on interest out of above funds. In the P & L account, the assessee declared net interest expenses of Rs. 1,33,11,592/-. Out of Rs. 88,73,731/- the AO added Rs. 77,71,138/- as income from other sources. However, when the assessee went in appeal, the ld. CIT(A) deleted the said addition. Now the Revenue is aggrieved against the action of the ld. CIT(A) and is in appeal before the Tribunal.

7. We have heard the arguments of both the sides and carefully perused the relevant material placed on record before us. We find that the AO, in the assessment order, has held that it would not effect the P & L account on 31.3.2009 because the corresponding increase in financial expenses would be offset by interest income amounting to Rs. 77,71,138/-. The AO further held that following the statutory provisions, the assessee would be allowed gross amount of interest pertaining to capital borrowed for the purposes of business and interest received by the assessee cannot be reduced from the interest paid. We find force in the submission of the ld. AR that the effect of this addition will be neutralised since the AO has himself held that the interest expenses claimed will be increased by Rs. 77,71,138/-. The ld. AR's further contention that whether gross interest expenses are shown in the expenses side and gross interest income is shown in the income side will be of same effect if the

interest expenses are shown in the expenses side by netting off the interest expenses and interest received, fortifies his submission. In view of the above submissions of the ld. AR, the ld. CIT(A) was right in deleting the addition so made by the AO by holding that by making separate addition as income from other sources, the AO had made double addition which is not justified. Accordingly, finding no merit in the ground of appeal raised by the Revenue, we dismiss ground no. 2 raised by the Revenue.

Ground No. 3

“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 14,59,685/- made u/s 14A of the Act by the AO”.

8. Facts pertaining to this ground are that the AO, during the course of assessment proceedings noticed that interest expenses are not directly attributable to any particular income or receipt and that for maintaining such investments and other investment related activities, administrative expenses were attributable to them. Accordingly, he disallowed a sum of Rs. 14,59,685/-. Aggrieved, the assessee went in appeal before the ld. CIT(A) who deleted the addition. Now the aggrieved Revenue is in appeal before the Tribunal.

9. We have heard the arguments of both the sides and carefully perused the relevant material placed on record before us. We find that the AO, by applying Rule 8D of the Income tax Rules, 1962 r.w.s 14A of the Act, calculated disallowance at Rs. 14,59,685/-. However, the ld. CIT(A) observed that the assessee was a land developer having holding company status over many subsidiary companies with 99% share holding and later on these companies were merged with the assessee company on the order of the Hon'ble High Court of Allahabad dated 11.3.2011. We find no infirmity in the finding of the ld. CIT(A) that when there is no claim of exempt income on credit side of P & L account, disallowance u/r 14A would be NIL. The decisions relied upon by the assessee in the case of CIT Vs. Holcim India Ltd reported in 272 CTR 282 [Delhi] and Joint Investments [P] Ltd Vs. CIT reported in 372 ITR [Delhi] support his case. Hence, finding no merit in the ground of appeal raised by the Revenue, we dismiss ground No. 3.

10. In the result, the appeal of the Revenue stands dismissed.

The order is pronounced in the open court on 06.05.2016.

**Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER**

**Sd/-
(C.M. GARG)
JUDICIAL MEMBER**

Dated: 06th May, 2016

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi