

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5494/Del/2017  
Assessment Year: 2009-10**

**Malik Enterprises Pvt. Ltd.,  
2144, Turkman Gate, Delhi.**

**vs. Income-tax Officer,  
Ward 16(2), New Delhi.**

**PAN : AAACM1403C  
(Appellant)**

(Respondent)

Appellant by : None

Respondent by: Sh. Ramesh Kumar, Sr. DR

Date of hearing: 07/07/2021

Date of order : 07/07/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 09/06/2017 passed by the learned Commissioner of Income Tax (Appeals)-38, New Delhi ("Ld. CIT(A)") for the assessment year 2009-10, Malik Enterprises Pvt. Ltd. ("the assessee") filed this appeal.

2. Brief facts, as are necessary for disposal of this appeal, are that the assessee filed return of income for assessment year 2009-10 on 29.09.2009 declaring an income of Rs.1,34,069/-. Assessment u/s. 143(3) of the Income Tax Act (for short "the Act") was completed by making an addition of Rs.29,15,560/- u/s. 41 of the Act. In appeal against such an order, the CIT(A) observed that the Assessing Officer should have made

the addition u/s. 68 of the Act instead of section 41 and keeping in view such directions, proceedings u/s. 147 were taken up and order u/s. 147/148/144 of the Act was passed on 19.12.2014 by making an addition of Rs.3.45 lacs in respect of the sum received by assessee on 20.12.2008 by way of cheque from M/s. Shiv Craft, holding it to be unexplained credits in the books of account of assessee.

3. Aggrieved by the same, assessee preferred an appeal before the CIT(A) and argued that the party, M/s. Shiv Craft is a customer of assessee company to whom the assessee made sales worth Rs.3.45 lacs during the Financial Year 2011-12 against the sale advance balance of Rs.3.45 lacs as on 31.03.2009 and therefore, such sum of Rs.3.45 lacs cannot be held as unaccounted credit in the books of account of assessee to make an addition u/s. 68 of the Act. Assessee submitted the copy of ledger account of the customer, confirmations for the years 2008-09, 2009-10 and 2011-12 before the authorities to establish the fact of receipt of advance of Rs.3.45 lacs during F.Y. 2008-09 and sale in respect of which was concluded in F.Y. 2011-12.

4. When the matter is called, there is no representation from the assessee. Notice was sent to the address given in form No. 36. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Non-service of notice is solely attributable to the conduct of assessee. In

these circumstances, we proceed to decide the appeal basing on the material available on record.

5. Learned DR places reliance on the orders of the authorities below, but fairly submitted that there was no adverse inference drawn by the Revenue against the conclusion of sale worth Rs.3.45 lacs in F.Y. 2011-12.

6. We have gone through the record in the light of submissions made by Id. DR. It is an admitted fact that the Assessing Officer formed a belief of escapement on the basis of credit entry worth Rs.3.45 lacs as on 31.03.2009 in the name of M/s. Shiv Craft and the assessment order reads that the assessee filed letters dated 26.07.2014 and 30.06.2014 containing the confirmed copy of ledger account to that extent. Assessee also submitted that the transaction does not involve any unsecured loan since the assessee did not take any loan from this party, inasmuch as there are regular running transactions of sale and receipts against the sale made by the assessee. Assessee further submitted that in subsequent assessment years in some cases there are debit balances and in so far as M/s. Shiv Craft is concerned, it was nil by the end of F.Y. 2011-12.

7. In so far as these facts are concerned, absolutely there is not dispute. Authorities did not make any adverse comment on the conclusion of sale in F.Y.2011-12. Learned CIT(A), however, observed that it is inconceivable that any trade creditor will make payment of Rs.3.45 lacs and would not confirm the transaction and this arises doubt as to the genuineness of the transaction. It is a mere doubt without any substance to conclude that there were any unsecured loans, much less from M/s. Shiv Craft. It is only because the Assessing Officer did not receive any

confirmation, the Assessing Officer had taken stand that this particular entry of Rs.3.45 lacs relates to unsecured loans whereas in respect of other similar transactions, the Assessing Officer believed those to be sale transactions and the receipt of advance amounts towards such sales. Learned CIT(A), however, noted that copy of DVAT-31 was filed with the Sales Tax Department reflecting the names of the parties to whom sales were made during the quarter ended on 30.09.2011 during the F.Y. 2011-12, resulting in nil balance; and the copy of ledger account duly confirmed by M/s. Shiv Craft alongwith name, address and APN for the A.Y. 2009-10, 2010-11, 2011-12 and 2012-13 already submitted before the Assessing Officer. On the face of all these details furnished, there was ample opportunity for the Assessing Officer to verify whether this was a real sale transaction or a transaction of unsecured loan. Mere suspicion cannot be a basis to make addition when there are sufficient evidence on record to disprove such a suspicion or at least affording a ground for verification. In the circumstances, we find that the conclusion of facts reached by the authorities below have no factual basis to sustain. We, therefore, delete the addition.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 7<sup>th</sup> day of July, 2021.

Sd/-  
**(PRASHANT MAHARISHI)**  
ACCOUNTANT MEMBER

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated: 07/07/2021

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