

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5048/Del/2017
(Assessment Year: 2013-14)

ACIT, Circle-55(1), New Delhi	Vs.	Hyvolt Electricals, B-36, Jjhilmil Industrial Area, GT Road, Shahdara, Delhi PAN: AAAFH1571M
(Appellant)		(Respondent)

Revenue by :	Ms. Anima, Sr. DR
Assessee by:	None
Date of Hearing	14/07//2021
Date of pronouncement	14/07/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Id AO/ ACIT, Circle-55(1), New Delhi against the order of the Id CIT(A)-19, New Delhi dated 20.05.2017 for the Assessment Year 2013-14, raising solitary ground of appeal stating that the Id CIT(A) has restricted the addition of Rs. 1.70 crore made by the Id AO on account of loan provided by Mr. VK Mittal to Assessee to only Rs. 15 lakhs.
2. The revenue has raised the following grounds of appeal:-
 - “1. On the facts and in the circumstances of the case, the order of the Ld. CIT (A) is bad in law and not in consonance with the facts of the case.
 2. On the facts and in the circumstances of the case , the Ld. CIT(A) has erred in restricting the addition of Rs. 1,70,00,000/- to Rs. 15,00,000/- made by AO on account of loan provided by Sh. V.K. Mittal.
 3. on the facts and in the circumstances of the case, the Ld. CIT (A) has failed to appreciate the fact that assessee could not explain the source of withdrawals, he has made from bank account on 03.04.2012, 08.05.2012 and 11.06.2012. The relevant proof was not produced either during assessment proceedings or appellate proceedings at any stage. Further, despite having lakhs of rupees as cash balance, the assessee has withdrawn paltry amount at a later stage. Moreover, no prudent business would keep more than Rs. 50, 00,000/- cash for more than six months at his home.”

3. The brief facts of the case shows that the Assessee is a partnership firm and carrying on the business of manufacturing of copper and aluminum alloys, wires and conductors.
4. The Assessee filed its return of income on 19.09.2013 declaring income of Rs. 84,54,400/-. The assessment u/s 143(3) of the Act was made on 18.03.2016, wherein, the addition of Rs. 1.70 lakhs on account of loan taken by the Assessee from one Shri V. K. Mittal u/s 68 of the Act. Certain other additions were also made which are not disputed before us and accordingly the assessed income of the Assessee was made at Rs. 3,39,90,840/-.
5. The Assessee preferred an appeal before the Id CIT(A), wherein, on the basis of the cash flow statement the addition was restricted to Rs. 15 lakhs as in the cash flow statement there were a negative balance of Rs. 14,95,690/-. Therefore, aggrieved by the order of the LD CIT (A) the LD AO is in appeal before us.
6. The LD DR extensively read the order of the LD AO and relied up on it. It was submitted that the LD CIT (A) has looked at the cash flow statement but has not given any plausible reason about holding of huge cash in the hands of the Shri V. K. Mittal. Therefore, the deletion of the addition was unwarranted.
7. Despite notice to the Assessee none appeared on behalf of the Assessee. On earlier two occasions also the notice were issued to the Assessee by registered AD, but none appeared. In view of this the issue is decided in absence of the Assessee on the material available on record.
8. We have carefully considered the rival contentions of the Sr. DR and the orders of the lower authorities. The facts have already been culled out that Shri V. K. Mittal is one of the partner in the firm having a profit sharing of 40% and amount of loan taken during the year is Rs. 4,62,58,000/-. The Id AO noted that there were three bank accounts of that person wherein, prior to issue of cheque to the Assessee equivalent amount of cash was deposited and further, prior to deposit of cheque with the Assessee the amount of credit was received from another partner's account and in that person account cash was deposited. Based on this the Id AO was of the view that Mr. VK Mittal was having the bank account and what were the need to keep

huge cash in his account even if it is out of earlier withdrawals. The LD AO issued summons u/s 131 to Shri V. K. Mittal along with others who are the partner of the firm. In response to summons Mr. V. K. Mittal did not attend but the LD AR of the Assessee contended that he is an aged man and thus his personal appearance may be exempted. The Assessee submitted a written submission on his behalf. The Assessee submitted that Shri V. K. Mittal had withdrawn cash with intent to purchase agricultural land and deal could not materialize, the above sum re-deposited in his bank account and subsequently, deposited immediately in the firm. The LD AO rejected this explanation of the Assessee and made an addition to the extent of Rs. 1.70 lakhs on account of loan from Shri V. K. Mittal u/s 68 of the Act. On appeals, the LD CIT (A) verified the cash flow statement prepared by the Assessee and found that prior to the deposit of the funds through cheque in the Assessee's firm there were credits in the bank account of the lender by deposit of cash. The cash deposit was also found to be arising out of the earlier cash withdrawal. Mostly The difference of the day between cash withdrawal from the bank account and once again deposit in the bank account is hardly 7 days. The transactions are also made of such nature for only 2 and 3 times. In one occasion a sum was withdrawn of Rs. 50 lakhs on 04.07.2012 and was deposited part on that withdrawal in the month of January 13. The ld CIT(A) verified the cash flow statement which is placed at page No. 6 of his order which clearly shows that at the end of the year there was book negative balance of Rs. 14,95,690/- and therefore, he has confirmed the addition to the extent of Rs. 15 lakhs. No presumption can be drawn against the Assessee in absence of any enquiry by the LD AO that earlier cash withdrawal was for purchase of agricultural land and as deal could not materialize, the same cash re-deposited in the bank account. If the ld AO could not penetrate the enquiry by asking about the situs of the land which was agreed to be bought at the approximate price, the name of the person with whom the deal was going on and also examine those persons about facts stated by the Assessee then only the ld AO could have rejected the explanation of the Assessee. In absence of any evidence or any enquiry, merely rejecting the explanation of the Assessee cannot lead to addition. In view of this, we do not find any infirmity in the order of the LD

CIT (A) in deleting the above addition. Accordingly, the appeal of the LD AO is dismissed.

The order is pronounced in the open court on 14.07.2021 after conclusion of the hearing.

-Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:14/07/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi