

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA.Nos.5303, 5304, 5305, 5306, 5307, 5308 & 5309/Del./2017

Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-2013

M/s. Bansal Infinlease Pvt. Ltd., 5, Pushpanjali, Vikas Marg, Extension Delhi – 110 092. PAN AAACB3813B	vs.	The ACIT, Central Circle-14, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Mayank Patawari, C.A.
For Revenue :	Smt. Sushma Singh, CIT-DR

Date of Hearing :	29.07.2021
Date of Pronouncement :	03.09.2021

ORDER

PER BENCH :

These batch of seven appeals filed by the Assessee are directed against the separate Orders Dated 12.05.2017 of the Ld. CIT(A)-30, New Delhi, relating to the A.Ys. 2006-2007 to 2012-2013 respectively. Since identical grounds have been raised by the assessee in all these

appeals, therefore, these appeals are heard together and are being disposed of by this common order.

ITA.No.5303/Del./2017 – A.Y. 2006-2007 :

2. The facts of the case, in brief, are that a search and seizure operation under section 132 of the Income Tax Act, 1961 was initiated by the Investigation wing of the Department on 11.04.2011 in the case of Sh. R.S. Bansal. The documents/bills belonging to the assessee, M/s Bansal Infinlease Ltd., 5, Pushpanjali, Vikas Marg Extn., New Delhi-110092 were also found and seized from the office premises of Sh. Radhey Shyam Bansal, Address-308,5-524, Vikas Marg, Shakarpur, Delhi-110092 in whose name search warrant of authorization was issued. The case was centralized with Central Circle - 2, vide order under section 127, Dated 12.10.2011. Subsequently, assessee's case was centralized with Central Circle-14, New Delhi vide order Dated 16-09-2013. The satisfaction note in this regard was recorded. Accordingly, notice under section 153C r.w.s. 153A of the Income Tax Act was issued to the assessee on 20.01.2014. In response to the same, the assessee stated

that return declaring an income of Rs.19,703/- filed on 31.01.2014 may be treated as return in response to notice issued under section 153C.

2.1. Subsequently, the A.O. issued notice under sections 143(2) and 142(1) of the Income Tax Act, 1961 along with a questionnaire Dated 31.01.2014. The assessee on 21.03.2014, filed copy of Memorandum and Articles of Association and annual return filed with ROC and shareholding pattern downloaded from ROC. No Books of accounts were however produced. During the course of assessment proceedings, the A.O. noted that the assessee has earned income from business and profession. The assessee has received share capital of Rs.62,72,500/- and share premium money and also received an amount of Rs.74,44,325/- in its Bank accounts. Since there was no proper compliance from the side of the assessee for explaining the various entries in the bank accounts to the satisfaction of the Assessing Officer, , the A.O. in the Order passed under section 153C read with Section 143(3) determined the total income of the assessee at Rs.1,60,60,028/- wherein he made the following additions.

1.	On account of unexplained Bank credits.	Rs.74,44,325/-
2.	On account of Share application money	Rs. 5,00,000/-
3.	On account of Share Premium received	Rs.18,23,500/-
4.	On account of Share Capital received	Rs.62,72,500/-

2.2. Similar additions have been made by the A.O. for the other assessment years which are as under :

I.T.A.No.	A.Y.	Addition made by A.O.	Amount in Rs.
5304/D/2017	2007-2008	On account of unexplained Bank credits.	Rs.47,73,937/-
		On account of Share application money	Rs.13,69,000/-
		On account of Share Premium received	Rs.13,69,000/-
5305/D/2017	2008-2009	On account of unexplained Bank credits.	Rs.22,32,855/-
		On account of Share application money	Rs. 9,57,000/-
		On account of Share Premium received	Rs.31,92,500/-
5306/D/2017	2009-2010	On account of unexplained Bank credits.	Rs.84,00,639/-
		On account of Share application money	Rs.16,93,000/-
		On account of Share Premium received.	Rs.16,93,000/-
		On account of unexplained Bank credits.	Rs.26,88,897/-

5307/D/2017	2010-2011	On account of Share application money	Rs. 5,58,500/-
		On account of Share Premium received	Rs. 5,58,500/-
5308/D/2017	2011-2012	On account of unexplained Bank credits.	Rs.73,11,548/-
		On account of Share application money	Rs.12,35,000/-
		On account of Share Premium received	Rs.54,44,000/-
5309/D/2017	2012-2013	On account of unexplained Bank credits.	Rs.73,03,031/-
		On account of Share application money	Rs.15,07,000/-
		On account of Share Premium received	Rs.15,07,000/-

2.3. In appeal, the Ld. CIT(A) upheld the additions made by the A.O.

3. Aggrieved with such Order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in*

rejecting the contention of the assessee that the order passed by the learned AO under Section 153C is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

- 3. On the facts and circumstances of the case, the order passed by the A.O. u/s 153A read with Section 153C is bad in law and liable to be quashed on account of lack of jurisdiction, in view of provision of proviso to Section 153C(1) of the Act.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee the proceedings initiated under Section 153C are bad in law and without jurisdiction in the absence of any incriminating material belonging to the assessee being found during the course of the search.*
- 5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and the*

assessment framed under Section 153C is bad and liable to be quashed in the absence of any satisfaction being recorded by the AO of the searched person that the incriminating material belonging to the assessee was found during the course of the search.

- 6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.85,96,000/- made by A.O. on account of share capital.*
- 7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the above said addition despite the assessee bringing on record all material evidence on record to prove the identity and creditworthiness of the share applicants as well as the genuineness of the transaction.*
- 8. (i) On the facts and circumstances of the case, the learned CIT has erred, both on facts and in law, in confirming the above said addition despite the fact*

that as per AO's own allegation the above said amount represents the opening share capital of the company during the year under consideration.

(ii) That the above said addition is untenable under the provisions of Section 68 of the Act in the year under consideration.

9. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.74,44,325/- on account of credits in the bank account of the assessee.*

(ii) That the addition was made despite the fact that the bank account is the duly disclosed account, as such no addition can be made on this account.

10. *Without prejudice to the above and in the alternative, the addition of Rs.74,44,325/- on account of the credit in the bank account tantamount to double addition in view of the fact that addition of Rs.29,40,000/- being made on account of share capital received by the assessee in the bank account itself.*

11. Without prejudice to the above and in the alternative an amount of Rs.97,418/- being bank interest having already declared as income of the assessee, making addition of the same tantamounts to double addition.

12. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

3.1. Similar grounds have been raised by the assessee in all other appeals.

3.2. The Learned Counsel for the Assessee raised preliminary objection stating that the A.O. has made high-pitched assessment which has been upheld by the Ld. CIT(A). He submitted that all credits in the Bank account have been added including the cancelled cheques. The additions have been affirmed by the Ld. CIT(A) disregarding the explanation and nature given by the assessee for each and every transaction. He submitted that double additions on account of Bank interest, dividend income and share application money received through banking channels have been made. He submitted that primary evidence proving the

genuineness of the share application money received from relatives has been disregarded by the Ld. CIT(A) despite not drawing any adverse inference. He submitted that provisions of section 68 cannot be applied for share application money received from relatives since as per the amended Act, the same is applicable w.e.f. 01.04.2013. He accordingly submitted that the matter may be remanded back to the file of A.O. with a direction to consider the submissions made by the assessee from time to time and decide the issue afresh.

4. The Ld. D.R. on the other hand, heavily relied upon the Orders of the A.O. and the Ld. CIT(A). She submitted that Ld. CIT(A) has thoroughly discussed the issue and has given part relief to the assessee. Since the assessee has not discharged the onus cast on it by proving the three ingredients of Section 68 of the I.T. Act, 1961, i.e., identity and creditworthiness of the loan creditors / share applicants and genuineness of the transaction, therefore, the additions made by the A.O. was rightly sustained by the Ld. CIT(A). Further, the assessee has not explained each

and every transaction in the Bank account. Since the Ld. CIT(A) after thoroughly discussing the issue has given part relief wherever it is possible and has sustained the addition to the extent the assessee failed to discharge its onus, therefore, the Order of the Ld. CIT(A) be upheld and the grounds raised by the assessee should be dismissed.

5. In his rejoinder, the Learned Counsel for the Assessee while referring to various pages of the paper book submitted that all details are filed explaining each and every entry in the Bank account. Therefore, disregarding the various evidences filed by the assessee, the additions made by the A.O. and sustained by the Ld. CIT(A) is not justified. He accordingly submitted that the Order of the Ld. CIT(A) be set aside and the grounds raised by the assessee should be allowed.

6. We have considered the rival arguments made by both the sides, perused the Orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by both the sides at the time of hearing. We find the A.O. in the

instant case made addition of Rs.1,60,40,325/- to the returned income of the assessee on account of unexplained Bank credits, unexplained share application money, unexplained share premium and unexplained share capital, the details of which are given at page 4 of his order on the ground that the assessee failed to discharge the onus cast on it by proving the various transactions entered into by it to the satisfaction of the Assessing Officer. We find the Ld. CIT(A) after admitting the additional evidences filed before him and after obtaining the remand report from the A.O. granted part relief to the assessee. It is the submission of the Learned Counsel for the Assessee that although some part-relief has been granted by the Ld. CIT(A), however, all credits in the Bank account have been added including the cancelled cheques disregarding the explanation given by the assessee. Further it is also his submission that double additions on account of Bank interest, dividend income and share application money received through Banking channels and which have already taxed have been made. It is also his submission that one more opportunity may be given to the assessee to explain each and every transaction

to the satisfaction of either of the lower authorities. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of A.O. with a direction to grant one more opportunity to the assessee to substantiate its case by filing the requisite details to his satisfaction and explaining each and every transaction including reconciliation. The Assessing Officer is directed to delete the addition, if any on account of cancelled cheques and wherever double addition has been made. He is also directed to exclude the income which has already been taxed such as Bank interest, dividend income and share application money etc.. The Assessing Officer shall also consider the evidence filed by the assessee regarding the share application money received from relatives and applicability of amended provisions of section 68 .w.e.f. 01.04.2013. The A.O. shall decide the issue *de novo* as per fact and Law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the A.O. and substantiate its case by producing the requisite details without seeking any adjournment under

any pretext, failing which, the A.O. is at liberty to pass appropriate Order as per Law. We hold and direct accordingly. Grounds raised by the Assessee are accordingly allowed for statistical purposes.

7. In the result, ITA.No.5303/Del./2017 of the Assessee is allowed for statistical purposes.

ITA.Nos.5304, 5305, 5306, 5307, 5308 & 5309/Del./2017 -

[Assessment Years : 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-2013]

8. After hearing both the sides, we find the grounds raised by the Assessee in the above appeals are identical to the grounds raised in ITA.No.5303/Del./2017 for the A.Y. 2006-2007. We have already decided the issue and the matter has been restored to the file of A.O. for fresh adjudication with certain directions. Following similar reasonings, all the above appeals are also restored to the file of A.O. for fresh adjudication. The grounds raised by the assessee in all the above appeals are allowed for statistical purposes.

9. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 03.09.2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 03rd September, 2021

VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.