

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G": NEW DELHI]
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. Nos. 5771 & 5772/Del/2018
(Assessment Years: 2013-14 & 2015-16)

| | | |
|--|-----|---|
| M/s. TMR Projects Ltd., 16-D, Basant Lok, Community Centre, New Delhi - 110 057. PAN: AADCT7013J | Vs. | ACIT, Central Circle : 13, New Delhi. |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---|
| Assessee by : | Shri Vinod Kumar Bindal, C.A. & Ms. Sweety Kothari, C. A.; |
| Department by : | Shri H. K. Chaudhary [CIT] - DR; |
| Date of Hearing | 15/09/2021 |
| Date of pronouncement | 15/09/2021 |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are two appeals are filed by the assessee for Assessment Year 2013-14 and 2015-16 against the order of the Id Commissioner of Income Tax (Appeals) - XXVI, New Delhi dated 01.08.2018 for both years.
2. For Ay 2013-14 assessee has raised the following grounds of appeal:-
 - "1. *The learned CIT (A) erred in law and on facts in holding that the assessment framed u/s 153A is valid ignoring that the assessment was a completed assessment and not abated besides that no incriminating material was found during the course of search. Thus no addition can be made u/s 153A of the Act and thus the additions so made should be deleted.*
 2. *The learned CIT (A) erred in law and on facts in confirming the disallowance of expenses of Rs. 4,51,032/- incurred for running the business of the assessee and duly recorded in the books of account*
 - a) *ignoring the details of expenses placed on record and without pointing out any discrepancy in them*
 - b) *ignoring that no incriminating material was found to show*

that the said expenses were not incurred for business and

c) without recording any finding in this regard in the appellate order.

Thus the expenses incurred for business purpose should be allowed as deduction.

3. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."

3. The assessee is challenged the only issue that the assessment framed u/s 153A and second addition made thereon are not proper because the assessment was concluded assessment and not abated and further, no incriminating material was found during the course of search and therefore, no addition could have been made for Assessment Year 2013-14.
4. The fact for Assessment Year 2013-14 shows that assessee filed original return of income on 29.9.2013. It was not picked up for scrutiny. Search u/s 132 of the Act was conducted on 23.07.2015 on Shri Deepak Aggarwal and other group of cases. The case of the assessee company was also covered u/s 132 of the Act as one of the beneficiary and incriminating papers etc were found and seized in 'group cases'. Accordingly, notice u/s 153A was issued on 10.07.2017. In response to the notice, assessee submitted original return declaring income of Rs . 2,99,208/- . Thereafter the assessment proceedings were concluded by the Id AO/ ACIT, Central Circle-13, New Delhi by making an addition of Rs. 15,07,982/-. This addition was made on the finding that assessee has given an accommodation entry of sales and has earned commission at the rate of 1% on such sales. The total sales for this year was 15,07,98,240/-. Consequently, the assessment order was passed u/s 153A on 28.12.2017. The assessee aggrieved with that order preferred appeal before the Id CIT(A). Appeal of assessee was allowed by scaling down the commission income to 0.5 % instead of 1 %. Jurisdiction u/s 153A was confirmed. Therefore assessee is in appeal.
5. Assessee preferred an appeal before the learned CIT – A. Before him assessee submitted that it has originally filed its return of income on 29.09.2013, search took place on 23.07.2015 and therefore, as on the

date of search the assessment for Assessment Year 2013-14 was concluded assessment. Therefore, any addition that could have been made to the return of income of the assessee should have been made only on the basis of incriminating material found during the search. It was submitted that there is no incriminating material found and therefore, the assessment as well as the addition deserves to be deleted. The Id CIT(A) held that no regular books of account of the assessee were available in the business premises of the assessee at the time of the search. Further, the director of the company has stated that the assessee is not doing any business and therefore, the Id AO is correct in making the addition. He also confirmed the addition made @1% is on the higher side as the assessee has already took certain expenses therefore, he reduced margin @0.5% of the sale. The assessee is aggrieved with that has preferred this appeal.

6. The Id AR reiterated the submission made before the Id CIT(A) and stated that there is no material found during the course of search and therefore, addition could not have been made.
7. The Id DR relied upon the orders of the lower authorities.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the assessee has filed original return of income on 29.09.2013 and search took place on 23.07.2015. Therefore, assessment for Assessment Year 2013-14 was concluded assessment as on the date of search. From order of the Id AO we do not find that addition has been made on the basis of the any incriminating material found during the course of search. The Id CIT(A) has also merely relied upon the statement of director and other person recorded during the course of search. Further, merely statement could not have been used in absence of any incriminating material found during the course of search corroborating such statement. Further, merely because the books of account was not available during the course of search such non availability of books of account also cannot be used against the assessee to make an addition in a concluded assessment. In view this, we find the issue is squarely covered by the decision of the

Hon'ble Delhi High Court in CIT Vs. Kabul Chawla 380 ITR 573. Even during the course of hearing also Id DR could not show us any incriminating material based on which the addition has been made. Accordingly, we direct the Id AO to delete the above addition made without any incriminating evidence and reverse the orders of the lower authorities.

9. Accordingly, appeal of the assessee for Assessment Year 2013-14 is allowed by allowing ground No. 1 of the appeal.
10. The ground No. 2 is not required to be adjudicated in view of our decision in ground number one of the appeal.
11. Accordingly, appeal of the assessee for assessment year 13 – 14 is allowed.

Assessment Year 2015-16

12. The assessee has raised the following grounds of appeal in ITA. 5772/Del/2018 for Assessment year : 2015-16 :

"1. *The learned CIT(A) erred in law and on facts in confirming the disallowance of expenses of Rs. 7,41,179/- incurred for running the business of the assessee and duly recorded in the books of account.*

- a) *ignoring the details of expenses placed on record and without pointing out any discrepancy in them.*
- b) *ignoring that no incriminating material was found to show that the said expenses were not incurred for business and*
- c) *without recording any finding in this regard in the appellate order.*

Thus the expenses incurred for business purpose should be allowed as deduction.

2. *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."*

13. In this appeal the assessee challenged the disallowances of expenses of Rs. 7,41,179/- incurred for running the business of the assessee.
14. The fact shows that assessee filed it's return of income on 13.10.2015. The assessment u/s 153A pursuant to search dated 23.07.2015 was completed on 28.12.2017 wherein, total income of the assessee was

computed @ 1% total sales of Rs. 1,87,17,200/- applying rate of earning ratio @1%. Consequently, total income was assessed at Rs. 1,87,180/-.

15. The assessee challenged it before the Id CIT(A) who in fact reduced the net profit to 0.5% instead of 1% determined by the assessee. Before the Id CIT(A) the assessee submitted that even if it is considered that assessee is acting as a conduit and providing accommodation entry, that is the business of the assessee. Therefore, those expenses incurred by the assessee for carrying out such business are also allowable to the assessee as deduction. It was stated that the assessee has incurred total expenditure of Rs. 7,41,179/- which was shown in profit and loss account of the assessee, same should be allowed as deduction and only net loss of Rs. 6,22,256/- should be considered for the purpose of the taxation.
16. In respect of income of Rs. 1,87,180/- we find that the Id CIT(A) has reduced the margin of the assessee @0.5% instead of 1% for same reason that the assessee has apparently booked certain expenditure therefore, the Id CIT(A) has reduced the quantum to 1% to 0.5% .
17. The learned authorised representative vehemently submitted that assessee has incurred certain expenditure amounting to ₹ 741,179/- which was shown in the profit and loss account of the assessee and therefore same should be allowed as a deduction to the assessee has assessee is allegedly found to have been carrying on the business of the accommodation entry provider. The learned authorised representative therefore stated that when the business income of the assessee has been taxed from the accommodation entry, the relevant expenditure incurred by the assessee for carrying on such business are also allowable to the assessee to determine the correct income of the business of the assessee. He further submitted the copy of the audited financial statement which were produced before the Id CIT(A). Copies of the purchase and sales bills were also produced, VAT returns are also shown to the Id AO. It was stated that the assessee has been alleged as a conduit company.
18. The Id DR vehemently objected the same and submitted that the learned assessing officer has rejected the books of accounts of the assessee as it was found to be bogus and merely used for providing accommodation

entry of the bogus sales bills to various parties. The learned assessing officer has determined the net profit of the assessee at the rate of 1% of the bogus sales. The learned CIT – A has reduced it to 0.5%. Therefore all the expenditure are subsumed in the above adjustment by the lower authorities. He therefore submitted that even if there are certain expenditure accounted for in the profit and loss account of the assessee same cannot be now allowed to be deducted from the above sum. He therefore supported the orders of the lower authorities.

19. We have carefully considered the rival contentions and perused the orders of the lower authorities. In fact on reading of the assessment order it is apparent that the income of the assessee was arrived at by rejecting books of accounts of assessee in terms of provision of section 145(3) of the act. He has determined profit of the assessee at 1% of the total bogus sales issued by the assessee. Such determination of the profit at the rate of 1% which was reduced by the learned CIT – A2 0.5% has resulted in deriving at the net profit of the assessee after deduction of all the expenses incurred by the assessee. Therefore, there is no room for allowance of any expenditure to the assessee where net profit is determined. Even otherwise the Id CIT(A) has reduced the quantum of percentage from 1% to 0.5% for allowing the expenditure to the assessee. In view of the above facts we do not find any infirmity in the order of the lower authorities.
20. Accordingly, appeal of the assessee for Assessment Year 2015-16 is dismissed.
21. Accordingly, appeal of the assessee for Assessment Year 2013-14 is allowed and for Assessment Year 2015-16 is dismissed

Order pronounced in the open court on 15/09/2021.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15/09/2021

AK KEOT

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi