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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.458/Del./2018
Assessment Year 2014-2015

M/s. Chandeep Leasing & Finance Co. (P). Ltd., 2532, Gali No.7, Block-M Beadon Pura, Karol Bagh, New Delhi – 110 005 PAN AAACC2843A	vs.	The Income Tax Officer, Ward – 6 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. DR

Date of Hearing :	26.08.2021
Date of Pronouncement :	30.09.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 28.07.2017 of the Ld. CIT(A)-25, New Delhi, relating to the A.Y. 2014-2015.

2. This appeal was earlier dismissed by the Tribunal for want of prosecution. Subsequently, the Tribunal vide

M.A.No.630/Del./2019 order dated 16.09.2021 recalled its earlier order. Hence, this is a recalled matter.

3. The grounds raised by the Assessee are as under:

1. *The learned Commissioner of Income Tax (Appeals] 25, New Delhi has erred in not appreciating either the facts or circumstances of the case or submissions of the appellant and has further erred in confirming the addition which is bad in law and on facts.*

2. *The lower authorities has erred both in law and on facts in sustained the notional addition of Rs.14,53,800/- being 6% entry fees on the investment of Rs.2,42,30,000/- without appreciating that the appellant has made the investment in equity shares in the previous year relevant to the Asst. Year 2012-13 in the companies M/s. Srishti Gems & Jewels Private Limited & M/s. Twinkle Estates Pvt. Ltd. and no dividend was received in the following years.*

2.1. *The learned Commissioner of Income Tax (Appeals), New Delhi has erred in sustaining the estimated notional addition of Rs.14,53,800/- at the rate of 6%*

on the investment of Rs.2,42,30,000/- without appreciating that the appellant has not made any alleged accommodation entries transactions in the year under appeal against which the impugned income has been estimated.

2.2. The lower authorities have erred in making /confirming the addition based on surmises, conjecture & suspicious without brining any iota of evidence on records.

The appellant crave leave to add, alter or amend any of the grounds before or at the time of hearing."

4. Facts of the case, in brief, are that assessee filed its return of income on 18.03.2015 declaring total income of Rs.10,020/-. During the course of assessment proceedings, the A.O. noted that the total investment of assessee company in unlisted companies amounts to Rs.2,42,30,000/-. However, the assessee has declared only negligible income and the company is existing only as an entry operator. He, therefore, asked the assessee to explain as to why income @ 6% of the total investment, which is the

usual present rate for entry operators prevalent in the market, should not be applied in his case. The assessee vehemently opposed before the A.O. for his proposition to treat the assessee as an entry operator. It was submitted that the assessee is engaged in genuine business. However, the A.O. rejected the explanation given by the assessee. He observed that assessee has made investment of Rs.2.42 crores in unlisted securities from where there is no income whatsoever has been received which is against the normal human behaviour. He noted that in another company namely M/s. Prosafe Investment Pvt. Ltd., the Ld. CIT(A) has confirmed an addition of Rs.2.58 crores shown by that assessee as share application money/share premium. Accordingly, the A.O. held that the assessee M/s. Chandeep Leasing & Finance Co. Pvt. Ltd., is only an entry operator and the investment made by it in unlisted shares of various other companies are also in the nature of accommodation entries. Accordingly, the A.O. applied rate of 6% being entry fee received for such accommodation entry and made an

addition of Rs.14,53,800/- to the total income of the assessee.

4.1. In appeal, the Ld. CIT(A) confirmed the order of the A.O. by observing as under :

"8. DECISION :

8.1 The Appellant is a Company and for the year under consideration disclosed Income of Rs.10,020/- vide Return for AY 14-15 E-filed on 18.03.15. The case was picked up for Scrutiny through CASS.

8.2 Subsequently, the case was assessed u/s 143(3) vide Order dated 17.11.16 assessing the Income at Rs.14,63,820/- after making an addition of Rs.14,53,800/- as Fee for giving accommodation entries @ 6% of the entries. The Appellant being aggrieved with the Assessment Order has filed this appeal.

8.3 Sh. Abhinandan Jain, CA, the Learned Counsel of the Appellant, stated that during the year, the Appellant has earned Commission Income of Rs.34,100/-, and after claiming modest expenses, the Appellant had declared Taxable Income of Rs.10,024/-. It was stated by the Learned Counsel that the Appellant had made investment of Rs. 2,42,30,000/- in the previous year relevant to the Asst. Year 2012-13 out of the Share Capital and Reserve & Surplus of Rs. 55,80,000/- & Rs. 2,31,52,667/- respectively, and that the Assessing Officer has not appreciated such investment and held that the company is a Entry Operator without brining any material on record for such assumption and further erred in estimating the alleged notional Income of Rs. 14,53,800/- at the rate of 6% on the said total Investment of Rs. 2,42,30,000/- on surmises & conjectures. It was further submitted that there was no provision in the Income Tax Act which authorized the Assessing Officer to make an addition on notional Income. It was further submitted that the notional Income from the investment was not taxable in the absence of specific provision in the Income Tax Act.

8.4 Perusal of the Assessment Records of the Assessment Order shows that the Appellant Company shows very nominal receipts and Income, and that too in Cash. The Returned Income of the Appellant Company for the past few years are as under :

(i)	2011-12	-	Rs. Nil
(ii)	2012-13	-	Rs. 4,530/-
(iii)	2013-14	-	Rs. 9,779/-
(iv)	2014-15	-	Rs.10,020/-

8.5 It was claimed that the Assessing Officer had erred in holding that the Company was a Entry Operator and estimating the notional Income of Rs.14,53,800/- @ 6% on the Total Investment of Rs.2,42,30,000/-.

8.6 It is seen that the Appellant could not substantiate its claims made. The Learned Assessing Officer has very clearly made the observation that the Assessee Company was an Entry Operator on the basis of the facts of the case.

8.7 It has been submitted that the Assessee Company is engaged in genuine business. However, the small Income declared as also from operations and that too in Cash cannot justify the contentions of the Appellant. It is seen that the Appellant Company has made an investment of Rs.2.42 crore in unlisted securities from where there is no Income whatsoever. It was observed by the Learned Assessing Officer that this was against normal human behaviour as no prudent person shall invest in a non Income yielding investment. Further, no effort was made by the Assessee Company to change the investment pattern, once it came to its notice that the investment was not growing and no dividend Income is arising on its investments.

8.8 In view of the entire facts of the case it is held that there is no reason to interfere in the findings of the Learned Assessing Officer who has held that the Appellant Company is an Entry Operator and earned Profit @ 6% as Fee for giving accommodation entries. Hence, the addition of Rs.14,53,800/- is fully justified. Accordingly, the addition of Rs.14,53,800/- is hereby confirmed.

4.2. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. Learned Counsel for the Assessee submitted that there was no such addition in the preceding or subsequent assessment years. He submitted that during the A.Y. 2011-2012 the assessee has declared NIL income, for A.Y. 2012-2013 the assessee declared income at Rs.14,530/- and for A.Y. 2013-2014 income was declared at Rs.9,779/- has been accepted by the A.O. Therefore, making such baseless addition by estimating the profit is not justified. Even in subsequent assessment year also the return of income has been accepted and profit has not been estimated. 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. Referring to the decision of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., Excel Industries Ltd., [2013] 358 ITR 295 (SC), the Learned Counsel for the Assessee submitted that the Hon'ble Supreme Court in the said decision has held that *income cannot be levied on hypothetical income. Income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purpose of taxability that the income is not hypothetical and it has really accrued to the assessee.* He submitted that it has further been held that *when a consistent view had been taken in favour of the assessee on the questions raised, then, there was no reason for the Court to take a different view unless there were very convincing reasons.* He accordingly submitted that in view of the rule of consistency also, the addition made by the A.O. and sustained by the Ld. CIT(A) should be deleted.

7. The Ld. D.R. on the other hand strongly supported the orders of the A.O. and the Ld. CIT(A).

8. I 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. I have also considered the various decisions cited before me. I find the A.O. in the instant case made an addition of Rs.14,53,800/- being entry fee @ 6% on the investment of Rs.2,42,30,000/- by the assessee in the shares of unlisted companies treating the assessee as an entry operator and that the assessee is not showing any income which according to him is against the normal human behavior. According to him, no prudent person would made investment in non-income yielding investments and no effort has been made by the assessee company to change the investment pattern. We find the Ld. CIT(A) upheld the action of the A.O. the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Learned Counsel for the Assessee that no such addition has been made in the preceding and

subsequent assessment years and the Revenue has no other material to prove that assessee has in fact earned any income other than what has been declared. Therefore, making addition by estimating notional income @ 6% on the investment is not justified.

8.1. I find some force in the above arguments of the Learned Counsel for the Assessee. The submission of the Learned Counsel for the Assessee that in the preceding assessment years i.e., A.Ys.2011-12, 2012-13 and 2013-14 or in the subsequent assessment years, no addition has been made on such account could not be controverted by the Ld. D.R. In fact, the A.O. at Para 2.1 of his order has also reproduced the income declared by the assessee which is as under :

(i) 2011-12 - Rs.NIL

(ii) 2012-13 - 4,530/-

(iii) 2013-14 - 9,779/-

8.2. Nothing has been brought on record that the income of the assessee in the preceding years has been estimated by adopting profit rate of 6% on the investments. I, therefore, find merit in the arguments of the Learned Counsel for the Assessee that in view of rule of consistency alone no addition is called for.

8.3. I find the Hon'ble Supreme Court in the case of CIT vs., Excel Industries Ltd., (supra) has observed as under:

> *"Applying the three tests laid down by various decisions of this court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income*

but only hypothetical income had accrued to the assessee and section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.

Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

In Radhasoami Satsang v. *CIT [1992] 193 ITR 321 (SC) this court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same

"fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this court referred to an interesting passage from Hoystead v. *Commissioner of Taxation [1926] AC 155 (PC) wherein it was said (page 328 of 193 ITR):*

"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle — namely, that of a setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or

assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

Reference was also made to Parashuram Pottery Works Co. Ltd. vs. I*TO [1977] 106 ITR 1 (SC) and then it was held (page 329 of 193 UR) :*

"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter — and if there was no change it was in support of the assessee — we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken."

8.4. Considering the fact that no such addition has been made in the preceding or in the subsequent assessment years on account of notional income on investment @ 6% as adopted by the A.O. in the instant case and upheld the Ld. CIT(A), therefore, respectfully following the decision of the Hon'ble Supreme court in the case of Excel Industries Ltd., cited (supra), I hold that the Ld. CIT(A) is not justified in sustaining the addition made by the A.O. I, therefore, set aside the order of the Ld. CIT(A) and direct the A.O. to delete the addition. Grounds raised by the assessee are allowed.

9. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 30.09.2021.

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

Delhi, Dated 30th September, 2021

VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.