

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.517/Ind/2018
Assessment Year 2005-06

DCIT, 3(1)
Indore : Appellant

V/s
Shri Mukesh Agrawal
Indore : Respondent
PAN ABTPA2081K

Revenue by	Shri Amit Soni, Sr. DR
Assessee by	Shri C.P. Rawka, & Venus Rawka, ARs
Date of Hearing	08.10.2021
Date of Pronouncement	30.11.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2005-06 is directed against the orders of Ld. Commissioner of Income Tax(Appeals)-II(in short 'Ld.

CIT], Indore dated 07.03.2018 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 24.12.2017 framed by ACIT-3(1), Indore.

2. Brief facts of the case as culled out from the records are that the assessee is an individual engaged in the business of trading in Jute Bags. Return for A.Y. 2005-06 was filed on 25.10.2005 declaring income of Rs.1,86,900/-. Case selected for scrutiny followed by serving of notices u/s 143(2) & 142(1) of the Act. When the case was fixed non attended. Again an opportunity was given and assessee filed written submissions. However, books of accounts were not produced and thereafter there was no appearance on behalf of the assessee. Ld. Assessing Officer proceeded to complete the assessment on the basis of return of income and annexures and documents attached thereto and written submission filed including the tax audit report. Ld. Assessing Officer examined the details of unsecured loans and in absence of necessary details to explain the unsecured loans he made the addition for unsecured loan of Rs. 81 lacs received during the year of which some amount was repaid during the year and the remaining was paid in subsequent years. Ld. Assessing Officer also made the addition for unsecured loan of Rs.1,18,66,871/- u/s 68 of the Act for the loan

received during the year from existing loan creditors. Ld. Assessing Officer also disallowed expense of Rs. 33,47,709/- claimed in the profit and loss account for want of verification. Disallowance also made u/s 40(a)(ia) of the Act, towards Motor, Bhada Expenses of Rs.4,77,446/-. Addition also made towards purchase of scrap of at Rs.9,39,798/- for non-furnishing of necessary details. Ld. Assessing Officer also made addition u/s 68 of the Act for the sale consideration received at Rs.2,71,500/- which was part of the sale of capital asset and shown by the assessee in the computation of income. After making all the above additions income of the assessee assessed at Rs.2,50,00,324/-.

3. Aggrieved assessee preferred an appeal before the ld. CIT(A) and partly succeeded.

4. Now revenue is in appeal before this Tribunal raising following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case, Ld. CIT(A) is justified in deleting the addition made by the Assessing Officer under the head business income by considering the Gross profit of Rs. 35,44,709/- as income from business of the assessee when the assessee has not submitted the books of accounts, bills and vouchers in support of its claim?"

2. Whether on the facts and in the circumstances of the case, Ld. CIT(A) is justified in deleting the addition in respect of unsecured loan of Rs. 81 Lakhs and Rs. 1,18,66,871/- without appreciating the fact that the assessee did not submit with cogent evidence to substantiate identity

and the capacity of the creditors and genuineness of the transactions.

3. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in not considering the remand report submitted by the Assessing Officer wherein the Assessing Officer has given clear cut finding of each and every loan creditor and given his finding in detail in the remand report which proves that the creditworthiness, genuineness and identity are not proved to the satisfaction of the assessing officer as per the provisions of Section 68 of the Income Tax Act, 1961.

4. Whether on the facts and in the circumstances of the case, Ld. CIT(A) is justified in deleting the addition of Rs. 9,39,798/- made by the AO in respect of purchase of scrap without appreciating the factual position that the assessee has not submitted any purchase bill and not furnished any TCS certificate to support the purchase?

5. Whether on the facts and in the circumstances of the case, Ld. CIT(A) is justified in deleting the addition made by the AD in respect of disallowance made u/s. 40(a)(ia) of the Income Tax Act, 1961 amounting to Rs. 4,77,446/- ignoring the finding of assessment order.

6. Whether on the facts and in the circumstances of the case, Ld. CIT(A) is justified in deleting the addition made by the AD in respect of capital gains in which the assessee has not furnished the relevant documents to explain the capital gains?

7. The appellant craves leave to add to, deduct from or otherwise amend the above grounds of appeal.

5. Ld. DR vehemently argued supported the finding of Ld. Assessing Officer.

6. Per contra Ld. Counsel for the assessee heavily relied on the finding of Ld. CIT(A) referred to various documents filed before the lower authorities which are placed in the paper book dated 21st May 2019 containing 148 pages and argued referring to the written submission placed on record.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the finding of Ld. CIT(A) and the documents placed in the paper book.

8. Apropos to the first ground raised by the revenue relating to addition of gross profit of Rs.33,44,709/- (wrongly mentioned by the revenue at Rs.35,44,709/- in the grounds of appeal) made by the Ld. Assessing Officer for adopting the gross profit figure of Rs.33,44,709/- as income and not allowing the claim of expenses made in the profit and loss account. This addition has been deleted by the Ld. CIT(A) observing as follows:-

Ground No 04 This ground of appeal is with regard to treating the gross profit of Rs 35,44,709 as net income from business in place of Rs.1,77,798 / - as net profit. I have carefully gone through the assessment order as well as submission of the appellant in this regard. The appellant has stated that the AO had not allowed any of the expenses on the ground that books of account, bills and vouchers for verification of expenses claimed were not produced and disallowed the same. The appellant has further submitted that the audit report, prima facie showed the correct position of affairs and was conducted by examining on a test basis the evidence supporting the amounts. In support of his case the appellant has submitted that in 17 ITR page 355 the Hon'ble Orissa High Court had held that a best judgment assessment cannot be made capriciously in utter disregard to the material on record. It is submitted that all the expenses as claimed are proper and accordingly to business needs and stood audited by the auditor.

6.2 Thus, in light of the above judicial decisions and facts of the case, it is clear that the appellant had claimed proper expenses and the audit report also supported the said expenses. Hence, in light of the above facts, the addition so made by the AO is hereby deleted and this ground of appeal is allowed.

8.1 From perusal of the above finding of Ld. CIT(A) and also going through the details in the paper book we find that the assessee is carrying on business consistently. Since the tax audit report has been filed, the facts remain undisputed that the books of account are regularly maintained. In the profit and loss account, various expenses incidental to running the business have been claimed. These expenses are duly supported by the Audit Report. Looking to the consistent running of business of the assessee this action of the Ld. Assessing Officer of disallowing all the expenses claimed in the profit and loss account was not justified. Ld. CIT(A) has rightly deleted the addition which calls no interference. Thus ground no.1 raised by the revenue stands dismissed.

9. Apropos to ground no.2 & 3 which relates to addition made u/s 68 for unsecured loan of Rs.81 lacs and Rs.1,18,66,871/- made by the Ld. Assessing Officer we find that Ld. CIT(A) deleted this addition giving following finding of facts:-

This ground of appeal is with regard to making addition of Rs.81,00,000/- Rs.1,18,66,871/- u/s 68 of the IT, Act 1961, addition of Rs.2,71,500/- as capital gains and addition of Rs.9,39,798/- on account of purchase of scrap. I have carefully gone through the assessment order as well as submission of the appellant in this regard.

5.1 The appellant has stated that as far as addition of Rs 8100000 was concerned, Rs 4050000 were squared up loans during the year for which copy of account and even confirmation letter was also submitted in appeal proceedings. Further, the appellant has

also submitted that the AO had neither examined nor commented on this issue in his remand report. As regards the balance addition of Rs 4050000 was concerned, it has been claimed that the confirmations were duly submitted by the appellant. The appellant has submitted in his submission that the entire amount of Rs 4050000 was repaid by the appellant in subsequent year i.e. A. Y.-2006-07 and the confirmation of the said amounts were also submitted. The appellant has thus argued that with regard to addition made at Rs 8100000 the appellant had discharged its onus as stated above to prove the same but the AO did not comment on the same in his remand report.

5.2 As regards protective addition concerned, it was submitted that no subs-a n made in individual cases. In spite of ha Submitted the confirmation and requisite details to AO by speed post during the course of assessment proceedings and during the remand proceedings also. It has been stated that during the course of assessment proceedings, the entire papers signed by different persons were not accepted and returned back unnerved from the AO. Thus, it is clear from the above discussions that the appellant had submitted confirmation letters during the appellate proceedings as well as before the AO and also at remand stage and had discharged his onus to prove the genuineness of the said transactions. The AO had not I pointed out any reason in his remand report regarding the above additions whereas the appellant had provided confirmation letters before the AO.

9.1 From perusal of the above finding as well as gone through documents filed in the paper books which are placed before lower authorities, we find that the assessee took, unsecured loan of Rs.1,18,66,871/- from existing loan creditors in other words those parties which have already given unsecured loan to the assessee in preceding years further gave loan to the assessee during the year. Nothing has been brought on record that whether identity, genuineness and creditworthiness of these cash creditors were ever disputed by revenue authorities in the preceding years as no such

material was put forth by the Ld. DR.

9.2 As regards remaining amount of Rs. 81 lack is concerned we find that out of this sum amount of Rs.40,50,000/- was received and was repaid during the year itself and for the remaining amount of unsecured loan of Rs.40,50,000/- was repaid in subsequent A.Y. 2006-07.

9.3 We also find that the assessee had filed complete details of confirmation of account, copies of Income Tax Return of the cash creditors along with bank statements to explain the identity, genuineness and creditworthiness of all the alleged unsecured loans. Revenue authorities failed to find any discrepancy in these documents and even before us also Ld. DR could not file any evidence to challenge the evidences filed by the assessee. Under these given facts and circumstances of the case we find merit in the finding of Ld. CIT(A) and the same stands confirmed. Accordingly, ground no.2 & 3 raised by the revenue stands dismissed.

10. Apropos to ground no.4 relating to addition of Rs. 9,39,798/- for the disallowance of purchase iron scrap, we find that the addition was deleted by ld. CIT(A) holding it to be an addition made on ad hoc basis without correlating to the specific expenditure. We

find that the Ld. Assessing Officer made the disallowance for want of verification of purchase. The assessee placed these details before the ld. CIT(A) who after going through the same and also in view of the details appearing in the audited financial statement deleted the disallowance of purchase of Iron Scrap of Rs.9,39,798/-. Before us Ld. DR failed to controvert the finding of Ld. CIT(A) which therefore, in our view needs no interference. Accordingly ground no.4 raised by the revenue stands dismissed.

11. Apropos to ground no.5 relating to disallowance made by the Ld. Assessing Officer u/s 40a(ia) of the Act for non-deduction of tax at source and the Motor Bhada Expenses, we find that Ld. Assessing Officer was supplied with the relevant details of the Motor Bhada Expenses claimed in the profit and loss account. Before the Ld. CIT(A) it was stated that none of the payment exceeded the limit provided u/s 194C of the Act i.e. Rs.20,000/- per transaction and Rs.50,000/- in aggregate for transaction with one party during the year. Further there is no adverse remark in the tax audit report and also Ld. CIT(A) has examined the documents to arrive at the finding that TDS was not deductible on the alleged expenses of Rs.4,77,466/-and this finding of Ld. CIT(A) remains uncontroverted by ld. CIT-DR, we therefore, find no

inconsistency in the finding of Ld. CIT(A). Accordingly ground no.5 raised by the revenue stands dismissed.

12. Apropos to ground no.6 we find that it relates to addition made by the Ld. Assessing Officer u/s 68 of the Act for the sale consideration received from sale of capital asset. We note that in the computation of income while computing the short Term Capital Gain assessee has shown sale of security liable to STT for Rs.67,822/- and claimed of cost of acquisition at Rs.66,000/-. The assessee has also claimed Long Term Capital Gain from sale of land for a consideration of Rs.2,05,500/- Ld. Assessing Officer made the addition for the total sale consideration received from sale of land at Rs.2,05,500/- and also made addition for cost of acquisition of equity share of Rs.66,000/-. We further find that when the matter was carried before the Ld. CIT(A) the assessee had filed the details of cost of assets and calculation of capital gain and the same were found to be correct. We find that the ld. Assessing Officer failed to allow the deduction for cost of acquisition of equity shares against the sale of securities and similarly failed to give deduction for cost of acquisition of land purchased during the F.Y. 1994-95 & 1991-92 as claimed in the computation of income. Since necessary enquiries were carried out by the ld. CIT(A) by

calling remand report and examining documentary evidences before deleting the impugned addition, we find that Ld. CIT(A) has rightly examined the facts of this issue and the finding of Ld. CIT(A) remains uncontroverted before us by the Revenue authorities. We, thus confirm the finding of Ld. CIT(A) and dismiss the revenue's ground No.6.

13. In the result, Revenue's appeal in ITANo.517/Ind/2018 is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 30.11.2021.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 30.11.2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore