

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.3715/Del/2018
Assessment Year: 2012-13

Pearls News Network Pvt. Ltd., Vs DCIT,
705, 7th Floor, Manjusha Building, Circle-19(2),
Nehru Place, New Delhi.
New Delhi.

PAN: AAECP3680L

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Anil Gandhi, Sr. DR
Date of Hearing	:	07.12.2021
Date of Pronouncement	:	21.12.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 14th July, 2017 of the CIT(A)-31, New Delhi, relating to assessment year 2012-13.

2. None appeared on behalf of the assessee at the time of hearing. No application seeking adjournment of the appeal has been filed. A perusal of the order sheet entries shows that although the case was fixed for hearing on various dates, no one was appearing. Further, the notices sent by RPAD were returned by

the Postal Authorities with the remark -left.ø The assessee has also not taken any step to intimate the change of address, if any. Further, the notice was directed to be served by the Revenue and the Departmental notice server who was deputed to serve the Dasti Summons has reported that the premise of the assessee was closed and no one was residing there for which the notice was fixed at the gate of the assessee company. The report of the notice server is also placed on record. Under these circumstances, we deem it proper to decide the appeal on the basis of the material available and after hearing the Id. DR.

3. Facts of the case, in brief, are that the assessee company is engaged in the business of advertisement and event management. It filed its return of income on 29th September, 2012 declaring the loss of Rs.4,07,47,345/-. The case was selected for scrutiny under CASS. Despite issue of various notices and granting adjournments, the assessee company did not provide the requisite details, information and supporting evidences so as to enable the AO to complete the assessment proceedings. The AO had recorded the details of such notices issued at para 3 of the assessment order. Subsequently, the AO also gave a final opportunity to the assessee. However, again, there was no compliance. The AO, therefore, proceeded to complete the assessment u/s 144 of the IT Act.

3.1 From the balance sheet, the AO noted that the assessee has a closing balance of unsecured loan of Rs.4 crores. Since the assessee did not furnish the complete

details as asked by the AO, therefore, invoking the provisions of section 68 of the IT Act, the AO made addition of Rs.4 crores to the total income of the assessee.

4. Similarly, from the Profit & Loss Account of the assessee, the AO noted that the assessee has debited the following expenses:-

a) Article Magazine expenses	-	26,08,208/-
b) Printing Expenses	-	1,19,88,374/-
c) Other expenses	-	<u>1,59,19,502/-</u>
Total	-	<u>3,05,16,084/-</u>

4.1. In absence of furnishing of any details and justification of all the expenses with relevant bills, vouchers and evidences of TDS deducted, the AO disallowed 10% of such expenses on ad hoc basis and made addition of Rs.30,51,608/-. Thus, the AO determined the income of the assessee at Rs.23,04,260/-.

5. In appeal, the Id.CIT(A) upheld both the additions made by the AO after considering the remand report and rejoinder of the assessee to such remand report.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds of appeal:-

01. On the facts and in the circumstances of the case the order passed by the Ld. CIT (A) is erroneous and also bad in the eyes of law in general.

2. 1(a) Without prejudiced to above on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in rejecting the admission of vital additional evidence/documents when there was sufficient reason, which prevented the assessee to submit these before Ld AO.

1(b). Without prejudiced to above on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law by not considering additional evidences submitted by the appellant, which goes to the root of the disputed additions under challenge.

3. On the facts and in the circumstances of the case Ld. CIT(A) has erred in law by upholding the addition of rupees 4 crores made by Ld. A.O.as Unsecured Loan u/s 68 of I.T.Act 1961 received from Public Limited, corporate entity.

4. On the facts and in the circumstances of the case Ld. CIT(A) has erred in law by upholding the addition of 'adhoc disallowances made of various expenses' by estimating 10% for disallowances made by Ld. A.O., amounting to rupees 30,51,608/-.

4.1 Without prejudice to above The Ld. CIT(A) erred in law by invoking the provision of section 37(1) of IT Act 1961 for testing the allowbility of business expenses ,which are covered u/s 30 to 36 of I.T Act 1961.

4.2 The Ld. CIT(A) has erred on facts and in law by affirming the disallowance of expenses termed "uniform" at page 5/15 vide serial no. "g" of listed each expenses with 10% cap of disallowance determining at Rs 1021010/- against the correct figure of Rs 150/- being 10% out of total Rs. 1500/- uniform expenses incurred.

5. The Ld. CIT(A) has erred on facts and in the circumstances of the case by not issuing clear directions to the Ld. AO for allowance of brought forwarded assessed business loss & unabsorbed depreciation in a time bound period.

6. Levy of interest u/s 234A and 234B for the additions sustained by Id CIT(A) is not justified and fair on the facts and in the circumstances of the case.

7. The above grounds are without prejudice to each other.

8. The Assessee craves the leave to add/alter/delete/withdraw any ground or grounds during the appellate proceedings.ö

7. We have heard the ld. DR and perused the orders of the Assessing Officer and CIT(A). We do not find any infirmity in the order of the CIT(A) in sustaining both the additions made by the AO. So far as the addition of Rs.4 crore is concerned, it is an undisputed fact that despite numerous opportunities granted by

the AO, the assessee did not file the requisite details for which the AO was constrained to make addition of Rs.4 crores to the total income of the assessee. We find, the Id.CIT(A) upheld the action of the AO by observing as under:-

87. I have carefully considered the findings recorded by the Id. AO as per the impugned order, the submissions of the appellant, the remand report, the position of law and the facts of the case on record.

8. It is trite that the initial burden is upon the assessee to explain the nature and source of the cash credits received by it. In order to discharge this burden, the assessee is required to prove (i) the Identity of the creditors, (ii) the genuineness of the transaction, and (iii) the creditworthiness of the creditors. However, in the case under consideration, the above onus was not discharged by the appellant. During the assessment proceedings/the Id. AO asked the appellant to justify the cash credit of Rs. 4 Crores appearing in its books of account alongwith necessary supporting evidences, however, no reply was furnished by the appellant. During the appellate proceedings, the AR of the appellant filed additional evidences which were forwarded to the AO for verification. The appellant filed a copy of bank statement allegedly to be of the creditor i.e. PACL India Ltd. However, the same is not tenable as neither the name of the account holder nor the bank account number appears on the same. Similarly, the other documents filed by the appellant i.e. the copy of income tax return, balance sheet etc. do not sufficiently establish the cash credit of Rs. 4 Crores as the same does not establish the creditworthiness of the creditor. Moreover, in order to verify the cash credit, the Ld. AO issued notice to PACL India Ltd., which refused to receive the same and it was returned by the postal authority. The Ld. AO has, therefore, averred that this amounts to service of the notice upon the creditor which failed to give any submission and hence the addition may be upheld. It is trite that just because an amount has been transferred through banking channels; it cannot be called genuine. In the case under consideration, the appellant has failed to discharge its onus of establishing the creditworthiness of the creditor and genuineness of the transaction, an onus which is cast upon it by law.

8.1 It is important to mention here that in the case of CIT Vs Durga Prasad More (1971) 82 ITR 540 (SC), it was held by Honøble Supreme Court as under:

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. But a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or

taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour, then the door will be left wide open to evade tax. The taxing authorities are not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents-.”

8.2 Further, it was held in the case of ITO Vs K. Jayaraman (1987) 168 ITR 757 (Mad) that if a doubt arises as to the validity or the genuineness of a document filed, for the limited purpose of a proceeding before the authority under the Act, such authorities are bound to go into the question of genuineness and validity. In view of this, the onus automatically shifts to the assessee to establish the identity of the creditors their creditworthiness and the genuineness of the transaction.

8.3 In the case of CIT versus Nova Promoters and Finlease (P) Ltd. (342 ITR 169), Honøble jurisdictional High Court has held that section 68 of the Act permitted the Assessing Officer to add credit appearing in the books of account of the assessee if latter offers no explanation regarding nature and source of credit or explanation offered is not satisfactory.

8.4 The reliance is also placed on the decision of Honøble Delhi High Court in the case of CIT vs Reliance International Corpn. (P) Ltd. (196 Taxman 387), wherein the ratios laid down is squarely applicable to the case under consideration. In this case, their lordships held as under:

“14. We are of the opinion that there is no evidence worthy enough on the basis of which the assessee could claim that it has satisfactorily proved the source of the said entries or the nature of cash received. One also cannot lose sight of the fact that Mr. M.M. Sehgal not only controlled M/s. Sehgal Papers Ltd., but also the assessee company. That is what is recorded by the CIT (A) itself. In such circumstances, money purportedly coming from M/s. Sehgal Papers Ltd. and getting invested in the appellant's company under assumed named reveals much. The CIT (A) or the Tribunal did not even notice this important aspect from which inference can clearly be drawn that the moneys shown as deposits/loans in five different names, in fact, belonged to the assessee and the assessee has not been able to discharge the onus that it belonged to some third party.

15. We, thus, answer the question in negative, i.e., in favour of the revenue and against the assessee.”

8.5 Reliance is also placed on the decision of Hon'ble Apex Court in the case of Sumati Dayal (214 ITR 801).

8.6 In view of the aforesaid discussion and the case laws as mentioned above, I hold that since the appellant has not been able to explain the source of the cash credit of Rs.4,00,00,000/- and has failed to discharge the onus of proving the identity and credit worthiness of the creditors and establishing the genuineness of the transactions as cast upon it by section 68 of the Act, the learned AO rightly treated the aforesaid amount as its income as per the provisions of the said section. Accordingly, the addition is confirmed and the ground no. 2 is rejected.ö

8. We do not find any infirmity in the order of the CIT(A) who has passed a very detailed and exhaustive order relying on various decisions and observing that the assessee failed to discharge the onus cast on it. It is the settled proposition of law that for allowing any cash credit, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. Since the assessee, in the instant case, has failed to discharge the onus cast on it, therefore, we do not find any infirmity in the well reasoned order of the CIT(A) on this issue. We, therefore, uphold the same and the first issue raised by the assessee in the grounds of appeal is dismissed.

9. So far as the second issue is concerned, the same relates to the order of the CIT(A) in sustaining the disallowance of Rs.30,51,608/- being 10% of various expenses. Here also, due to non-submission of the details such as bills, vouchers, etc., to substantiate the genuineness of the expenditure, the AO disallowed the

above amount on ad hoc basis being 10% of such expenses. We find, the

Id.CIT(A) upheld the action of the AO by observing as under:-

ø9. As regards the disallowance of Rs.30,51,608/- being 10% of various expenses, it is seen that the documentary evidences and other relevant material in respect of the expenses claimed were not produced by the assessee when it was required to do so by the Id. AO, and thus he failed to satisfy the conditions laid down u/s 37(1) that only the expenses incurred wholly and exclusively for business purpose shall be allowed as deduction. Not only the appellant failed to produce necessary supporting bills and vouchers, telephone register, vehicle log book etc. during the assessment proceedings, but also he did not produce anything in support of the expenses during the remand proceedings, despite a number of opportunities given. So much so that the appellant did not avail the opportunity of filing a rejoinder to the remand report, which was received by it on 19.06.2017, for which a hearing was fixed on 28.06.2017. On the said date of hearing, none appeared nor any request for adjournment was made nor any submission was furnished. A fresh notice was issued on 29.06.2017 fixing the date of hearing on 10.07.2017 on which date the counsel requested for last opportunity till 12.07.2017 with the condition that no more adjournment shall be asked for and in the event of failure to comply, the appeal may be decided ex-parte on the basis of material on record. Once again on 12.07.2017, none appeared nor any request for adjournment was made nor any submission was furnished.

9.1 The ratio of the judgment of Honøble Delhi High Court in the case of Modi Stone Ltd. pronounced on 06.05.2011 in ITA No. 1203/2006 is directly applicable to the facts of the case under consideration, in the said case, it has been observed by the Honøble High Court that the Commissioner of Income Tax (Appeals) rightly noted that it was for the assessee who had made certain claim to produce relevant material before the Assessing Officer to satisfy him with respect to such claim. It was obligatory for the assessee to produce relevant evidence before the Assessing Officer to prove the claim of deduction made. Once it was found that the onus of proving the alleged claim was on the assessee and he had not produced any evidence to prove such claim, the appellate authorities cannot allow the deduction, without having any material before them to substantiate such claim. In the end it was held for the reasons given above, that the onus of proving being on the assessee and no evidence having been produced by the former to prove such claim, and thereby misplacing the burden of proof on the Revenue was not correct.

9.2 Honøble Bombay High Court in the case of Mount Finance Ltd. vide order dated 28th July, 2011, while dealing with the claim of deduction u/s 37 of the Act, deliberated upon the issue of the importance of evidence and

observed that the ITAT in its order has recorded a finding of fact that no evidence in support of the claim were filed either before the Assessing Officer or before the CIT(A) or even before the ITAT. The Tribunal has further recorded that when the details of expenses were asked for, the assessee merely stated that the said charges must have been paid. Therefore, in the absence of any evidence to support the claim of the assessee, the decision of the ITAT in rejecting the claim was found justified.

9.3 In view of the earlier mentioned facts and circumstances, when the appellant has not been able to challenge the order of the Id. AO with any credible evidence and relying upon the aforesaid decisions, I find no reason to interfere with the order of the Id. AO. Thus, the additions made are confirmed and the ground no. 3 is dismissed.ö

10. We do not find any infirmity in the order of the CIT(A) on this issue. It is the settled proposition of law that for claiming any expenditure as allowable business deduction, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the allowability of such expenses. In the instant case, the assessee failed to file the requisite details before the AO for which the AO was constrained to pass the ex parte order. Nothing was filed before the CIT(A) to substantiate the genuineness of such expenditure. Even the assessee did not file any rejoinder to the remand report although opportunity was granted by the CIT(A). We, therefore, do not find any infirmity in the order of the CIT(A) in sustaining the disallowance of 10% of the expenses made by the AO. The second issue raised by the assessee in the grounds of appeal is accordingly dismissed.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 21.12.2021.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 21st December, 2021.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi