

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7027/Del/2018 : Asstt. Year : 2014-15

Income Tax Officer, Ward-40(3), New Delhi-110002	Vs	Anil Kumar Kanodia, D-627, Saraswati Vihar, Pitampura, New Delhi-110034
(APPELLANT)		(RESPONDENT)
PAN No. AAIPK0145L		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 07.12.2021

Date of Pronouncement: 08.02.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-14, New Delhi dated 30.08.2018.

2. Following grounds have been raised by the Revenue:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.15,11,85,776/- made by the AO on account of unexplained cash credits in bank.

2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in relying upon the additional evidences submitted by the assessee during the appellate proceedings without properly verifying the details and the material available on record.

3. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in allowing entire amount of Rs.15,11,85,776/- as explained including those credit amount also which could not be verified even during the remand proceedings since the enquiry

letters issued by the AO at the address given by the assessee returned unserved."

3. On perusal of bank statement of State Bank of Travancore, account No. 67010515342, total deposits in the account was found to be Rs.30,71,72,552/-. The assessee in his reply dated 27.12.2016 has stated that this account is the current account in the name of M/s Ganga Traders, Prop. Sh. Anil Kumar Kanodia and all the sales receipts are entered in this account.

4. The Assessing Officer has added an amount of Rs.15,11,85,776/- treating the same as undisclosed income of the assessee.

5. Aggrieved the assessee filed appeal before the Id. CIT(A)

6. During the proceedings, the Id. CIT(A) the assessee in his written submissions has submitted that the addition made by the AO is unjustified and bad in law since the amount of Rs.15.11,85,776/ added by him was never doubted by him during the course of assessment proceedings, the appellant further submitted that no reasonable opportunity of being heard and to Submit documentary evidences during the course of assessment proceedings.

7. As regards the deposits in the current account, the appellant has submitted party wise breakup as follows:

S. No.	Particulars/Party Name	Credits as per bank Statement AY 13-14 Amount(Rs.)
1.	the Malt Co. India, Gurgaon	9,40,60,771.00
2.	The Malt Co. India, Kanshipur	2,86,45,354.00
3.	Nischint Traders Pvt. Ltd.	11,07,32,512.00
4.	Mahalaxmi Malt Products	12,60,454.00
5.	Haryana Suraj Malting	12,00,000.00
6.	Mahalaxmi Trading Company	19,00,000.00
7.	Nischint Foods Pvt. Ltd. Delhi	2,49,25,000.00
8.	Linnet Creation Pvt. Ltd.	2,21,00,000.00
9.	3 S Buildcon Pvt. Ltd.	2,61,60,000.00
10.	Kanodia Enterprises	5,87,504.00
11.	HDFC Bank A/c Balance Cheque	1,13,433.77
12.	Anil Kumar Kanodia	2,04,86,291.14
13.	Cash Deposit	5,90,000.00
	Total	33,27,61,319.91

8. The assessee has submitted that the total credits appearing in the bank account is Rs.33,27,61,319/- as against Rs.33,71,72,552/- reported by the Assessing Officer in the Assessment Order. Further, in order to substantiate the nature and source of funds/deposits appearing in the current account, the assessee has submitted the following additional evidences under Rules 46A.

- i. Copy of Purchase and Sales register of m/s Ganga Traders for the period
- ii. Copy of VAT Returns
- iii. Copy of Debtors Reconciliation
- iv. Copy of Bank Book of M/s. Ganga Traders
- v. Copy of Reconciliation statement with bank Account
- vi. Copy of Ledger Account related to the parties from whom any amount is received during the year
- vii. Copy of Cash Book of M/s. Ganga Traders
- viii. Copy of ITR, Balance Confirmations and M/s. Ganga Trader's Ledger Account, from the parties from whom any amount is received during the year
- ix. Copy of Bank Book of assessee

9. As regards the reason for admission of additional evidences under Rule 46A, the appellant has submitted that the documents filed as additional evidences were never required by the Assessing Officer during the course of assessment proceedings. The appellant in order to substantiate the same submitted that during the assessment proceedings a show cause notice dated 16.12.2016 was issued which was served on him on 21.12.2012. In the said show cause, the query raised by the AO was with respect to the peak balance appearing in the current account of the assessee which was duly responded vide reply dated 27.12.2016. Thereafter, no further query was raised or any dissatisfaction was shown by the AO towards the reply submitted by the assessee and the assessment has been completed on 30.12.2016, making an addition of Rs.15,11,85,776/- without issuing any show cause notice with respect to the said addition.

10. The appellant further pointed out before the Id. CIT(A) that no reasonable opportunity of being heard was given even for the reply show cause notice dated 16.12.2016 and the said show cause notice was served on the appellant on 21.12.2016 and the date of hearing was fixed for 23.12.2016, meaning thereby only two days were given for the reply of show cause. Accordingly, even if the AO would have required in the said show cause, the assessee to explain the credits in the bank account with documentary evidence, it would not have been possible for him to submit the voluminous documents in such short span of time. In this background, the assessee has pleaded that since no reasonable opportunity of being heard was given during the course of assessment proceedings. Additional evidence should be admitted at this stage.

11. The submission of the appellant was considered by the Id. CIT(A) and the additional evidences were sent to the AO for his remand report on the same. The AO has submitted his remand report dated 04.05.2010 in this regard. In the remand report, he has not rebutted the submission made by the assessee with respect to the reason for admission of additional evidences under Rule 46A though he has opposed admission of the same during the appellate proceeding.

12. The Id. CIT(A), in the interest of fair play and justice and admitted the additional evidences for the judicious disposal of the appeal.

13. The Assessing Officer in the remand report has mentioned to have made due verification of the additional evidences submitted by the assessee by issuing notice u/s 133(6). The Assessing Officer has submitted that all the parties have submitted their replies whether they have confirmed the business transactions with the proprietorship concern of the assessee to m/s Ganga Traders and have submitted additional evidences in the form of confirmed ledger account, copy of ITR and bank statement. The Assessment order has further mentioned to have issued summon u/s 131 of the Act to three parties which appeared to be suspicious to the Addl. CIT, Range-40. In response to the summon issued Shri Ashwin Garg, Manager Accounts o M/s Malt Company (India) Pvt. Ltd, Kashipur and M/s Malt Company (India) Pvt. Ltd., Gurgaon who confirmed the supply material made by the assessee and payment made by them for the same in the year under consideration.

14. Further, Mr. Nischint Kanodia, Director of M/s Nischint Traders Pvt. Ltd also appeared before the Assessing Officer and

his statement was recorded on oath wherein he has confirmed the amount paid to M/s Ganga Traders on account of purchase of material and business advances during the year under consideration. The AO has further mentioned to have conducted field enquiry through his inspectors with respect to M/s Nischint Traders Pvt. Ltd. and M/s Nischint Foods Pvt. Ltd.

15. The inspector in his report has stated to have visited the registered address of the two companies and has confirmed that the two companies are active and working at the given address. The inspector has also inspected the premises of the companies and has noted the presence of employees and necessary infrastructure in the premises.

16. The assessee in this regard has submitted his rejoinder to the remand report wherein it has been submitted that the documentary evidences filed by it as additional evidences have been duly verified by the AO during the remand proceedings by way of making enquiries under section 133(6), 131 and field enquiries. The appellant submitted that the AO has acknowledged the correctness and the genuineness of the business transactions done by him with the respective parties and has not pointed out any discrepancy in the additional evidences submitted by him.

17. On perusal of the facts of the case and the remand report submitted by the AO, the Id. CIT(A) held that the credits / deposits in the bank account of the appellant are from 10 different parties transactions which have been duly verified by the AO during the remand proceedings. The AO in order to verify the transactions have called for relevant documentary evidences from the parties in the form of confirmed ledger

account, ITR and bank statement which have been duly submitted by all the parties.

18. The Assessing Officer has not doubted the documentary evidences submitted by the parties and the assessee. The Assessing Officer in order to verify the genuineness of the claim of the assessee has also stated to have recorded statement under oath and field enquiries of some of the parties. In addition these documents, the assessee has also submitted the purchase and sale register of the proprietorship concern along with VAT return as additional evidences. These documentary evidences submitted by the assessee have not been doubted by the Assessing Officer in his remand report neither has he pointed out any discrepancy in the same.

19. Owing to the remand report submitted by the Assessing Officer after conducting due enquiries, the Id. CIT(A) has deleted the addition made by the AO as no discrepancies were found by the AO during the remand proceedings. In a way, the remand report has given a clean chit to the affairs of the assessee. Hence, the decision of the Id. CIT(A) which was wholly based on the remand report cannot be interfered with.

20. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 08/02/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 08/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR