

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA.No.7189/Del./2019
Assessment Year 2015-2016

Blossom Landeal Pvt. Ltd., 149A, 1 st Floor, Baba House, Kilokari, Opp. Maharani Bagh, New Delhi PIN – 110 014 PAN AADCB0166E	vs.	The DCIT, Central Circle-4, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Gurjeet Singh, C.A. & Shri Shantanu Jain, C.A.
For Revenue :	Smt. Sushma Singh, CIT-DR

Date of Hearing :	15.11.2021
Date of Pronouncement :	11.02.2022

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the order dated 25.06.2019 of the Ld. CIT(A)-23, New Delhi, relating to the A.Y. 2015-2016.

2. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of real estate business of purchase and selling of immovable properties. It filed its return of income on 16.09.2015 declaring NIL income which was duly processed under section 143(1) of the I.T. Act, 1961. A Search under section 132 of the I.T. Act, 1961 was conducted on 28.02.2017 at the various business premises of the assessee from where certain papers/documents belonging to the assessee were found and seized. In response to notice under section 153A of the I.T. Act, 1961 issued on 16.08,2018, the assessee filed its return of income on 20.09.2018 declaring NIL income. The A.O. issued notices under section 143(2) and 142(1) along with a questionnaire dated 09.10.2018.

2.1. During the course of assessment proceedings, the A.O. observed from the balance sheet that the assessee-company had taken unsecured loan of Rs.10 lakhs during the year under consideration. He, therefore, asked the assessee to provide ITR, bank statements and confirmation of the party who provided the unsecured loan to the

assessee-company in order to prove the identity, credit worthiness of the parties and genuineness of the transaction. Since the assessee-company failed to provide any of the above mentioned documents, the A.O. asked the assessee to explain as to why the amount of Rs.10 lakhs should not be considered as bogus/unaccounted income of the assessee.

2.2. The assessee in its response submitted that during search, document at Page number.46 of Annexure-10 seized from the premises 17/6, Hanspal Industrial Complex, Mathura Road, Faridabad, clearly states that finally Shri Abhay Salwan made payment of Rs.75 lakhs from his various firms. Accordingly, an amount of Rs.10,00,000/- was received in the hands of Blossom Landeal Pvt. Ltd., from SBN Constructions vide RTGS on 28.04.2017 and 06.05.2014. The A.O, therefore, asked the assessee to explain the entry of SBN Construction reflected in unsecured loan ledger which was seized from the premises 17/6, Hanspal Industrial Complex, Mathura Road, Faridabad. The assessee submitted that it has not

paid any interest to SBN Construction. However, the A.O. was not satisfied with the arguments advanced by the assessee. He noted that first the assessee could not provide any document in respect of his claim of unsecured loan received during the year. Secondly, the assessee is contradicting itself when it is mentioning that Rs. 10 lakhs received from SBN Constructions is actually a payment made by Sh Abhay Salwan against the loan given by Shri Vishnu Garg in earlier years. According to the A.O. as per submission made by the assessee, this payment should have been shown as bad debt recovered or loan recovered in the hand of the person i.e. Shri Vishnu Garg and not as unsecured loan in the hands of the assessee-company. Moreover, the assessee-company has shown this payment received as a liability in its books of accounts. That liability still exists in book of accounts of the assessee-company as on 31.03.2017. Further as per the Unsecured ledger A/c seized from the premises 17/6, Hansapal Industrial Complex, Mathura Road, Faridabad, entry of Rs11,20,000/- is outstanding against SBN Construction as on 31.03.2010.

On perusal of balance sheet for the A.Y. 2016-17, he noted that the assessee-company has capitalized interest of Rs.1,20,000/- on Rs.10,00,000/- being unsecured loan from SBN Construction in subsequent years which clearly shows that the assessee-company was trying to hide the actual nature of receipt and colouring it with character of liability in its balance sheet. Therefore, the A.O. held that the assessee-company not only failed to prove the identity, genuineness and credit worthiness of the unsecured loan, but also tried to hide the actual nature of the payment in showing it as a liability in its books of accounts. Therefore, he treated the said amount of Rs.10 lakhs shown as unsecured loan received as undisclosed income of the assessee-company under section 68 read with section 115BBE of the Income-tax Act, 1961 and added to the total income of the assessee-company for year under consideration. The A.O. accordingly made addition of Rs.10 lakhs to the NIL income of the assessee-company.

2.3. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of

assessment in absence of any incriminating material found during the course of search.

2.4. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. So far as the validity of assessment proceedings in absence of any incriminating material is concerned, he dismissed the ground raised by the assessee by observing as under :

“4.3. Vide ground No. 2, the appellant has contested the assumption of jurisdiction u/s 153 A on the ground that there was no incriminating material emanating from search.

4.4. Search and seizure proceedings under section 132 of the Income Tax Act, 1961, (hereinafter 'the Act') were conducted in the cases of Shri Vishnu Kumar Garg, Smt. Lata Garg, appellant and other group concerns on 28.02,2017.

4.5. The appellant has raised a contention that no incriminating material was found in respect of additions made in this year and therefore, the addition

is beyond jurisdiction. During the arguments, the AR basically relied on the ratio of the Hon'ble Delhi High Court laid down while delivering judgment in case of CIT (C)-fll vs. Kabul Chawla (Delhi) [2015] 61 taxmann.com 412 (Delhi), 234 Taxman 300 and various other judgments of later date on the similar lines.

4.6. *I have gone through the impugned assessment order, carefully. It is observed that as per the impugned assessment order, only one additions has been made in respect of unsecure loan of Rs.10,00000/-*

4.7. *The perusal of reply submitted by the appellant (quoted in the impugned Assessment order), it is seen that the appellant had itself said that this money was received form Shri Abhay Salwan's Company namely SBN construction as a part repayment to the loan of Rs.75,00.000/-, earlier paid to Shri Abhay Salwan. it is noted that during the search various papers were found and seized regarding loan to Sh. Abhay Salwan and its re-payment. Moreover, it is mentioned in para 5.3 of the impugned assessment*

order that the entry of SBN Construction is reflected in the unsecured loan ledger seized from premises 17/6, Hanspal Industrial complex, Mathura Road, Faridabad. Therefore, it is held that there is incriminating material emanating from the search which is related to the impugned addition. Therefore, this ground (No. 2) of the appeal is dismissed”.

2.5. So far as merit of the addition is concerned, he upheld the action of the A.O. by observing as under :

“5.1. *Vide ground No. 3, the appellant has contested the action of the AO in terms of making the addition of Rs.10,00,000/- by invoking provisions u/s 68. It was contention of the AR that this addition is not maintainable on merits.*

5.2. *It is a trite that under section 68, the onus is upon the appellant to prove three things namely, i) identity of creditor, ii) credit worthiness of the creditor and iii)*

genuineness of the transaction. Certainly, there is nothing on record to prove identity and creditworthiness of the creditor, namely, M/s SBN construction. It was never a contention of the AR that i) identity and credit worthiness of the creditor were proved. Regarding genuineness of the transaction, the averment of the AR that it was actually repayment of earlier extended loan (via cash) speaks against the genuineness of the transaction. Therefore, the appellant fails on all three counts.”

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

1. *Because the action for initiation, continuation and conclusion of assessment proceedings u/s 153A at an amount of Rs.10,00,000/- is being challenged on facts & law.*

2. *Because the action is being challenged on facts & law for making additions in assessment proceedings u/s 153 A when there is no incriminating material/document found during the course of search u/s 132 of the Act for the impugned year.*
3. *Because the action is being challenged on facts & law for making the addition of Rs.10,00,000/- by invoking provisions u/s 68, which is ignoring and overlooking the explanation and without assigning the reason to the basis of rejection of the explanation hence mechanically passing the assessment order.*
4. *Alternatively and without prejudice to above, the action for not allowing telescoping of addition on account of unsecured loan against addition on account of undisclosed income of group concerns/director is challenged on facts and law as both additions cannot be made.*

5. *For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

4. The assessee has also raised the following additional grounds :

- i) *Because the action is being challenged on facts & law for completing the assessment u/s 153A as the search action u/s. 132 was not conducted at business premises of assessee company i.e., 149A, 1st Floor, Baba House, Kilokari, Opp. Maharani Bagh, New Delhi-110 014 and therefore, there was no search on the assessee company and the assessment initiated and completed u/s. 153A was bad in law.*
- ii) *Because the action is being challenged on facts & Law for completing the assessment u/s. 153A as*

the search at the premises 17/6, Hanspal Industrial Complex, Mathura Road, Faridabad did not belong to the assessee company nor the assessee conducted its business from the said address and therefore, there was no search on the assessee firm and the assessment initiated and completed u/s. 153A was bad in law.

5. Learned Counsel for the Assessee referring to the decisions of the Hon'ble Supreme Court in the cases of NTPC Limited vs., CIT [1998] 229 ITR 383 (SC) and Jute Corporation of India Ltd., vs., CIT reported in 87 ITR 688 (SC) submitted that these are legal grounds and no new facts are required to be investigated and, therefore, the same should be admitted for adjudication.

6. After hearing both the sides and considering the fact that the additional grounds raised by the assessee are legal in nature and go to the root of the matter, therefore, the same are admitted for adjudication.

7. Learned Counsel for the Assessee at the outset submitted that no search was conducted at the premises of the assessee and the so-called seized document at Page No.18 was found from premises of 17/6, Hansapal Industrial Complex, Mathura Road, Faridabad which does not belong to the assessee. He submitted that the registered office and business premises of the assessee company is 149A, 1st Floor, Baba House, Kilokari, Opp. Maharani Bagh, New Delhi – 110 014. Since the assessee is a Private Limited Company and is a separate legal entity, therefore, in the absence of any search at the premises of the assessee, no action under section 153A could have been taken. Further, addition if any, could have been made by invoking the provisions of Section 153C of the I.T. Act, 1961.

7.1. Learned Counsel for the Assessee in his another plank of arguments drew the attention of the Bench to the assessment order and submitted that the addition of Rs.10 lakhs has been made on the basis of post-search enquiry i.e., from the perusal of the balance-sheet only. Therefore, in the absence of any incriminating material found during the

course of search, no addition could have been made in the hands of the assessee. For the above proposition, Learned Counsel for the Assessee relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 573 (Del.) and the decision of Hon'ble Supreme Court in the case of CIT vs., Singhad Technical Education Society reported in [2017] 397 ITR 344 (SC).

7.2. So far as the merits of the case is concerned, Learned Counsel for the Assessee submitted that the assessee has taken loan from SBN Construction on 28.04.2014 and full details were given before the A.O. as well as the Ld. CIT(A) and, therefore, without considering the same when assessee had given full details proving the ingredients of Section 68 of the I.T. Act, no addition should have been made.

8. The Ld. D.R. on the other hand heavily relied on the orders of the A.O. and the Ld. CIT(A).

9. We 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. We have also considered the various decisions cited before us. We find the A.O. in the instant case made an addition of Rs.10 lakhs on the basis of unsecured loans of Rs.10 lakhs appearing in the balance-sheet. We find the Ld. CIT(A) upheld the action of the A.O. the reasons of which are already reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that no search has taken place at the business premises or registered office of the assessee at 149A, 1st Floor, Baba House, Kilokari, Opp. Maharani Bagh, New Delhi – 110 014 and search has taken place at the premises at 17/6, Hansapal Industrial Complex. Mathura Road, Faridabad, from where the so-called seized documents Page 46 of Annexure-A-10 was found. Therefore, it is his submission that in the absence of any search taken place at the premises of the assessee, no proceeding under section 153A could have been made. Further it is also his submission that the original return was filed on 16.09.2015 and no notice under section 143(2) of the I.T. Act, 1961 was issued within the stipulated time

and, therefore, the assessment has attained finality and, therefore, in the absence of any incriminating material found during the course of search, no addition could have been made in the hands of the assessee.

9.1. We find force in the above arguments of the Learned Counsel for the Assessee. Admittedly, no search has taken place at the premises of the assessee i.e., at 149A, 1st Floor, Baba House, Kilokari, Opp. Maharani Bagh, New Delhi – 110 014. The seized documents Page-46 Annexure-A10 relating to the assessee-company were found from 17/6, Hansapal Industrial Complex. Mathura Road, Faridabad which belong to LV Rustore Applications Pvt. Ltd., R R Carwell Pvt. Ltd., and Elvi Bardahl India Pvt. Ltd. Therefore, assumption of jurisdiction under section 153A instead of 153C, in our opinion, vitiates the entire assessment proceedings. Further, the addition in the instant case has been made on the basis of the entries already appearing in the balance-sheet under the Head “Unsecured loans” of Rs.10 lakhs and the said addition is not made on the basis of any incriminating material found

during the course of search. We further find the period for issue of notice under section 143(2) of the I.T. Act, 1961 has expired and the assessment had attained finality. Therefore, by following the decision of the Hon'ble Supreme Court in the case of CIT vs., Singhad Technical Education Society (supra) and the decision of the Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra), the addition made by the A.O. and sustained by the Ld. CIT(A), in our opinion, is not in accordance with Law. We, therefore, allow the additional grounds raised by the assessee and quash the assessment proceedings initiated under section 153A of the I.T. Act, 1961 instead of provisions of Section 153C of the I.T. Act, 1961.

9.2. Since the assessee succeeds on these legal ground, the other grounds raised by the assessee have become academic in nature and, therefore, the same are not being adjudicated. Accordingly, appeal of the assessee is allowed.

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

Order pronounced in the open Court on 11.02.2022.

Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

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

Delhi, Dated 11th February, 2022

VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.