

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1165/Del/2017
Asstt. Year : 2011-12

Universal Facility Management (P) Ltd. 102, Antriksh Bhawan, 22, Kasturba Gandhi Marg, Connaught Place, New Delhi - 110 001 PAN AAACU8941K (Appellant)	Vs.	DCIT, Circle-18(1) New Delhi. (Respondent)
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Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	04.04.2022
Date of pronouncement	26.04.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 21.12.2016 of the Ld. Commissioner of Income Tax (Appeals)-9, New Delhi ("**CIT(A)**") pertaining to the assessment year 2011-12.

2. The assessee has taken following grounds :-

"1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-9, New Delhi {hereinafter referred to as CIT (A)} is bad in law.

2. That on facts and circumstances of the case and in law the Order passed by Ld. CIT(A) is illegal and bad in law as the same has been

passed without providing reasonable opportunity of being heard to the Appellant.

3. *That on facts and circumstances of the case and in law the Ld. CIT(A) was not justified in upholding the action of the AO in rejecting the books of accounts of the assessee under section 145(3) and computing income on estimated basis @ 20% of Rs.5,45,77,817/- which was worked out at Rs. 1,09,57,082/- (Rs.1,09,15,563/- + Rs.41,519/-) and further rejecting the payment of Rent of Rs.2,23,71,018/- by holding that there is no need for payment of rent in the business module of the assessee, without understanding the reasons for payment of rent and without appreciating the TDS returns and details already filed with the AO during the course of assessment proceedings.*

4. *That on the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in upholding the contention of the AO for assessing an amount of Rs.92,42,739/- under the head Income from other sources as deemed dividend u/s 2(22)(e) of the IT Act, 1961 received from M/s Universal Buildwell Pvt Ltd by the assessee company, when M/s Universal Buildwell Pvt Ltd is neither a shareholder of the assessee company nor the assessee company is holding shares of the said company and overlooking the explanation of the assessee that the transactions are genuine business transactions and are inclusive of reimbursement of expenses therefore not in the nature of Loans and advances.*

5. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in upholding the contention of the AO for not allowing the set off and carry forward of brought forward losses of Rs. 3,43,75,838/- from earlier years .”*

3. Notice of hearing was issued to the assessee on 04.02.2021 fixing the date of hearing on 11.03.2021. None attended on behalf of the assessee though DR was present. Again notice was sent on 09.08.2021 fixing the hearing on 28.10.2021. On this date neither the assessee was present nor the DR. Finally notice was issued on 22.02.2022 fixing the date of hearing on 04.04.2022. Notice has not been served upon the assessee. The postal authorities returned the notice with the remark 'left'. Since the assessee is not traceable, we proceed to decide the appeal ex-parte after hearing the Ld. DR who is present.

4. Ground 1 and 2 are general in nature.

5. Ground No. 3 relates to rejection of books of account under section 145(3) of the Income Tax Act, 1961 (**'Act'**) and computing income on estimated basis @ 20% of Rs. 5,45,77,817/- which was worked out at Rs. 1,09,57,082/- (Rs. 1,09,15,563 + Rs. 41,519/-) and further rejecting the payment of rent of Rs. 2,23,71,018/-. Briefly stated, the assessee is a company engaged in the business of providing business centre facilities and maintenance of immovable properties i.e. to the owners/tenants of building viz. Universal Trade Tower at Gurgaon. During assessment proceedings the Ld. Assessing Officer (**"AO"**) noted certain anomaly and defects in the accounts and proposed to reject the books of account under section 145(3) and compute the income as done in the preceding assessment year 2010-11. The assessee submitted explanation which was not acceptable to the Ld. AO who after rejecting the books of account under section 145(3) estimated income from business at Rs. 1,09,57,082/-. On appeal, the Ld. CIT(A) confirmed the impugned addition against which the assessee is in appeal before us.

5.1 None appeared on behalf of the assessee before us as stated earlier. Perusal of the appellate order of the Ld. CIT(A) reveals that he was also of the view that there were various defects in the books of account and no satisfactory explanation was given by the assessee. Certain details asked for by the Ld. AO were also not provided. The creditor's details were also not reconciled as per books of account. The Ld. CIT(A) concurred with the view of the Ld. AO that the books of account of the assessee were not correct and complete. He, therefore upheld the impugned addition. In the absence of any material brought on record by the assessee to rebut the contentions of the Ld. AO/ CIT(A), we decline to interfere.

5.2 As regards debit of Rs. 2,23,71,018/- being rent in P & L account, the Ld. AO, keeping in mind the nature of assessee's business came to the conclusion that there was no need for the assessee to pay any rent. He also observed that despite specific query, no details of TDS effected on the said payment were submitted except making a bald statement in the grounds of

appeal that the reasons for payment of rent, TDS returns and details already filed have not been appreciated. No evidence at all in support has been submitted either before the Ld. CIT(A) or before us. Therefore, no interference is called for. Ground No. 3 is rejected.

6. Ground No. 4 relates to addition of Rs. 92,42,739/- as deemed dividend under section 2(22)(e) of the Act. The Ld. AO has discussed this issue in para 4.2 of his order. During assessment proceedings, the Ld. AO sought clarification from the assessee on applicability of section 2(22)(e) in respect of loan of Rs. 92,42,739/- received by it from Universal Buildwell Pvt. Ltd. as the said company is under the same management and control with same shareholders and directors. In reply, the assessee submitted that the said amount is neither in the nature of loan nor advances within the meaning of provision of section 2(22)(e) of the Act. The amount paid are out of business exigencies and these are not covered under section 2(22)(e) of the Act. The Ld. AO did not accept the explanation of the assessee and made the impugned addition.

6.1 On appeal, the Ld. CIT(A) confirmed the addition with the following observations :-

“4.1 The appellant has received loan of Rs.9242739/- received by the assessee from the Universal Buildwell Limited. The said company is under same management and with the same shareholders and directors. The appellant clarified before the AO that as on 01.04.2010 there was a liability on the assessee of Rs.38092788/- whereas as on 31.03.2013 it was Rs.47335527/-. Thus there was increase in liability during the year of Rs.9242739/-. The appellant further submitted before the AO that out of such amount an amount of Rs.13,36,429/- was incurred by M/s Universal Buildwell Pvt. Ltd on behalf of assessee which amounts were reimbursable in nature and cannot be termed as loan or advances. For balance amount of Rs.7906310/- the appellant has submitted before the AO that this amount is also not in the nature of loans and advances. These amounts were paid by Universal Buildwell Pvt. Ltd. for incurring expenses since the assessee company is looking after the maintenance of Building Universal Trade tower which was constructed by universal Buildwell Pvt. Ltd. So, looking to the losses suffered by the assessee company and urgency of business this amount was paid to the assessee company. The argument of the appellant found not acceptable by the AO.

4.2 *Considering the above facts, I find that in the instant case the shareholders of the assessee company Sh. Raman Puri, Vikram Puri and Sh. Varun Puri who are also the shareholders of the Universal Buildwell Pvt. Ltd holding around 85% of shares of the said company. These persons are also the directors of both the companies. The appellant has not given any proper explanation regarding the amount of Rs.92,42,739/- and only some details was furnished of amounting to Rs. 12,36,429/-. For balance amount no explanation was given. Only general explanation given that it is for business need. During the course of appellate proceeding also the appellant has not given any explanation. Therefore, the AO's finding that the amount of Rs.92,42,739/- received during the year by the assessee company from another group company i.e. Universal Buildwell Pvt. Ltd with same shareholders and directors is treated as deemed dividend u/s 2(22)(e) and same was treated as income from other source is hereby confirmed. Hence the ground of appeal is dismissed.”*

6.2 Aggrieved, the assessee filed appeal before us. In the grounds it is stated that M/s. Universal Buildwell Pvt. Ltd. is neither a shareholder of the assessee company nor the assessee company is holding shares of the said company and the explanation of the assessee that the transactions are genuine business transactions and are inclusive of reimbursement of expenses has been overlooked. There is no substance in what the assessee is now stating before us. Before the Ld. AO/CIT(A) the assessee did not give any proper explanation and furnished details of Rs. 12,36,429/- only. For the balance amount no explanation was given except that the amount was given for business need. The findings of the Ld. AO/ CIT(A) remained unassailed before us. We therefore endorse their findings and reject this ground as well.

7. Ground No. 5 relates to denial of set off and carry forward of brought forward losses of Rs. 3,43,75,838/- from earlier years. The Ld. AO did not record any reasons therefor. Therefore, the Ld. CIT(A) in para 6 of the appellate order directed the AO to verify the facts from the records and determine the brought forward losses as per law. It is thus obvious that the Ld. CIT(A) has not upheld denial of set off and carry forward of brought forward losses from earlier years as stated in the ground taken before us. We, therefore reject this ground also.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 25th April, 2022.

sd/-
(G. S. PANNU)
PRESIDENT

Dated: 25/04/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	