

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2688/Del/2014
(Assessment Year : 2006-07)

M/s. MALL HOTEL Ltd., D-893, New Friends Colony, New Delhi PAN : AADCM3128R	Vs.	The Commissioner of Income Tax (Appeals), IX, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Anand Kumar Pandey, Adv.
Revenue by	Sh. Garima Sharma, Sr. DR

Date of hearing:	24.05.2022
Date of Pronouncement:	31 .05.2022

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has preferred this appeal against appellate order u/s 250(6) of the Income Tax Act, 1961 dated 18.03.2014 in appeal no. 167/2008-09 passed by Commissioner of Income Tax (Appeals)-IX, New Delhi (referred here in after as Ld First Appellate Authority or in Short the Ld FAA) in appeal pending before it against assessment order dated 26.12.2008 for the assessment year 2006-07 passed u/s 144 of the Income

Tax Act by ITO, Ward 6(2), New Delhi (hereinafter referred to as the Assessing Officer or Ld. AO)]

2. The facts in brief are that return of Nil income was filed by the assessee on 30.11.2006 and the case was selected for scrutiny. As there was no response from assessee summons u/s 131 of the Act was issued to the Principle Officer of the assessee on 05.12.2008 for his personal deposition and to furnish the copy of returns for the assessment year 2005-06 and 2006-07 , copy of bank statement for the period 01.04.2005 to 31.03.2006 and to produce complete books of accounts. However, no response was received accordingly notice u/s 142(1) along with questionnaire was issued but still as there was no response so the unsecured loan of Rs. 2,20,00,000/- reflected in the balance sheet was considered to be unexplained credits u/s 68 of the Act and assessed to income. In appeal, the Id. CIT(A) called for remand report from the Ld. AO who after conducting inquiries from the creditors Shri Jawahar Lal Jaiswal submitted report but the Id. First Appellate Authority being not satisfied with the explanation of source dismissed the appeal.

3. Now, before the Tribunal assessee has raised as many as seven grounds of appeal which have cumulative effect of questioning the impugned order of CIT(A) in not considering the remand report given by Ld. AO and the relevant evidence of the assessee explaining the source.

4. Heard and perused the record. On behalf of the assessee it was submitted that in the remand report itself the Id. AO had forwarded confirmed copy of bank account of Shri Jawahar Lal Jaiswal along with necessary information about his credentials and credibility. It was submitted that the law is now settled that source of source need not be proved by the

assessee. Based upon the document submitted in the paper book, Ld. Counsel submitted that the assessee was able to explain the credibility of creditor and Ld. CIT(A) error in observing that as Shri Jawahar Lal Jaiswal was not produced before AO during the assessment proceedings or remand report proceedings, there was no proper confirmation. Ld. Counsel for the assessee has relied following judgments in support of contention :-

1. ***Pradham Telecom India Pvt. Ltd. vs. DCIT 2018-TIOL-1983-HC-MUM-IT***
2. ***Seema Jain vs. ACIT [2018] 96 taxmann.com 307 (Delhi)***
3. ***PCIT vs. Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi)***
4. ***Toby Consultants (P.) Ltd. vs. CIT [2010] 324 ITR 338 (Delhi)***
5. ***Sanraj Engineering Pvt. Ltd. vs. CIT (ITA 79/2016) (Delhi)***
6. ***CIT vs. Precision Finance (P.) Ltd. [1995] 82 Taxman 31 (Calcutta)/ [1994] 208 ITR 465 (Calcutta)/[1994] 121 CTR 20 (Calcutta)***

4.1 On the other hand, Ld. DR submitted that the trail of transaction were duly examined by the ld. CIT(A) to hold that unaccounted money was infused in the assessee company. It was submitted that the assessee company was not doing any substantial business or having earnings to justify receiving an unsecured loan Rs. 2,20,00,000/-. It was submitted that when the creditor is some how related to other companies from which the money is transacted then the principle of source to source verification is not applicable.

5. Giving thoughtful consideration to the matter on record it can be observed from the impugned order of Ld FAA that remand report was called from the Ld. AO wherein the claim of assessee that he received Rs. 70 lakhs on 01.02.2006, Rs. 50 lakhs on 15.02.2006 and Rs. 50 lakhs on 28.02.2006 through bank channels from M/s. JHV Sugar Ltd. and Rs. 50 lakhs received

from M/s. Jagdamba Wines on 29.03.2006 is not disputed. But what transpires is that both Ld AO in his remand report and Ld. FAA in his findings have tried to find a trail of transactions of the money in the hands of creditor Sh. Jawahar Lal Jaiswal and taint the funds in the hands of Assessee, which appears to be unjustified in the facts and circumstances of the case.

5.1 As it can be observed from the matter on record that the Ld. Tax Authorities below have not disputed the financial standing and worthiness of Sh. Jawahar Lal Jaiswal, as a matter of fact, who as per the counsel for assessee is a former Member of Parliament. But questioning his transactions with other companies has found the money in the hands of Assessee to be unexplained. It appears that the Ld. Tax Authorities below have approached the case on a presumption and probabilities that unaccounted money to extent of Rs 50 lacs has been deposited in the account of M/s. Jagdamba Wines and traveled to the balance sheet of assessee through bank account of Sh. Jawahar Lal Jaiswal, without appreciating that the Bank account statement of M/s Jagdamba Wines shows regular transactions of credit and debit of huge cash. Which most likely was due to nature of liquor trade. Similarly in regard to Rs. 1.70 crores given by Sh. Jawahar Lal Jaiswal out of funds received from another company M/s. JHV Sugar Ltd. it has been observed by the Ld. CIT(A) that;

“The appellant also submitted a copy of the bank statement of M/s JHV Sugar Ltd. maintained in the same branch as creditor and the other company in UBI with account no. 303505030000101. This statement of account shows the payment made by cheque. However, as noted by AO, it is seen from the confirmation of account given by M/s JHV Sugar Ltd., that on 18.05.2005, Sh. Jawahar Lai Jaiswal given loan of Rs.1.75 crore

to M/s JHV Sugar Ltd. Along with opening balance of Rs.58.96 lakhs, M/s JHV Sugar Ltd. returned the loan to Jawahar Lai Jaiswal on 03.08.2005 giving an amount of Rs.2 crore. This amount of Rs.2 crore appears in the bank statement of Sh. Jawahar Lai Jaiswal for account no. 303502010800474 in UBI on 03.08.2005 which was opened on 01.08.2005 only. Thus, there is no record available to show that Sh. Jawahar Lai Jaiswal has given loan of Rs.1.75 crore on 18.02.2005. After receiving Rs.2 crore from M/s JHV Sugar Ltd., Sh. Jawahar Lal Jaiswal again advanced Rs.2.13 crore on 27.01.2006 from which the three cheques of Rs.70 lakhs, Rs.50 lakhs and Rs.50 lakhs was given to Sh. Jawahar Lai Jaiswal which was passed on to the appellant on the same day. Thus, the amount of Rs.1.75 crore remains unexplained in the hands of the creditor which might be the point of introduction of unaccounted income into the business of the appellant. “

6. Thus, it can be concluded that the Id. Tax Authorities have tried to strip bare transactions of the creditor, Sh. Jawahar Lal Jaiswal, but there being no conclusive finding on evidence that the assessee company may have received its own unaccounted money through these transactions of it's source, Sh. Jawahar Lal Jaiswal.

7. Having considered the citations relied by the Ld Counsel of Assessee it can be held that the settled proposition of law so far is that when identity of creditor is established then the assessee is not under obligation to establish the source of source of the creditor. It is for this reason that now an amendment has been brought in Section 68 of the Act and which is to take effect from 1st April, 2023 to apply in relation to the assessment year 2023-24 and subsequent assessment years, where by it is provided that the nature and source of any sum, whether in form of loan or borrowing, or any other

liability credited in the books of an assessee, shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.

7.1 In the case in hand even the source of source was explained or to say discovered by the Ld. AO during the remand proceedings but then by putting suspicion on the transactions of the source of source, the amounts in the hands of assessee have been considered to be unexplained credits u/s 68 of the Act.

8. Thus, the grounds raised are sustained. The appeal is allowed and the impugned order of Ld CIT(A) and the addition made u/s 68 of the Act are set aside.

Order pronounced in the open court on 31st May, 2022.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 31 .05.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI