

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 2552/Del/2015
(Assessment Year: 2010-11)

Income Tax Officer,
Ward-29(5),
New Delhi
(Appellant)

Vs. M/s. Fascination India,
C-150, Okhla Industrial
Area, Phase-I, New Delhi
PAN: AAAFF1478M
(Respondent)

Revenue by :

Shri M. K. Pandey, Ld. Sr. DR

Assessee by:

ShriGaurav Jain, Ld. Adv&
ShriSanket Gupta, CA

Date of Hearing

11/04/2022

Date of pronouncement

31/05/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The revenue has preferred the instant appeal against the order dated 23.04.2013 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-10, New Delhi (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act") for the Assessment Year 2010-11.

2. Brief facts relevant for adjudication of this appeal are that the Assessee had filed its return of income on dated 28.09.2010 by declaring loss of Rs. 1,61,500/- and claimed a sum of Rs. 11,67,475/- as refund. The said return of the Assessee was processed u/s 143(1) of the Act and resulted into passing of assessment order dated 30.03.2013 u/s 143(3) read with section 145(3) of the Act, whereby various additions have been made which includes the amount of Rs. 1,72,34,476/- on account of difference in confirmation statements or non-satisfactory confirmations received from the sundry creditors, Rs. 17 lakhs on account of disallowance u/s 40A(2)(b) of the Act qua payment made to the interested parties by not mentioning the payment in the tax audit report u/s 44AB of the Act, and Rs. 47,29,253/- on account of disallowance against the property which was not disclosed in the current asset in the Assessee's firm.

2.1 The Assessee being aggrieved, challenged all the additions including the aforementioned before the Ld. Commissioner, who vide impugned order deleted the said additions against which the revenue/ department has preferred the instant appeal by raising following grounds of appeal:-

“1. The Ld. CIT(A) erred on facts and circumstances of the case in deleting the addition amounting to Rs. 1,63,47,106/- made by the AO on account of disallowance of sundry creditors by ignoring the facts that the ass failed to discharge its burden of proof by not providing the PAN/ Bank account of the creditors and even two confirmation is on record with two different signature from same address of the creditors.

2. The Ld. CIT(A) erred on facts and circumstances of the case in deleting the addition amounting to Rs. 16,04,000/- made by the AO. u/s 40A(2)(b) by ignoring the facts that payments is made to interested parties without mentioning the same in the audit report u/s 44AB and provisions of Section 40A(2)(b) is clearly attracted in this case.

3. The Ld. CIT(A) erred on facts and circumstances of the case in deleting the addition amounting to Rs. 47,29,253/- made by the A.O. u/s 68 of the I.T. Act, 1961 by ignoring the facts that debitation of amount from partners capital account by the firm in A.Y. 2012-13 is an afterthought.”

3. We are deciding this appeal ground-wise. By way of ground No. 1 it has been claimed by the Revenue Department that the Ld. Commissioner while deleting this addition ignored the facts that the Assessee had failed to discharge its burden of proof by not providing the PAN/Bank statement of the creditors and even two confirmation is on record with two different signatures from same address of the creditors.

3.1 We observe that the AO made the addition on account of alleged difference in confirmations filed by the sundry creditors or non-satisfactory confirmations. The Ld. Commissioner sought the remand report of the AO qua 7 sundry creditors, in response to which the AO submitted the remand report dated 21.08.2014 wherein, it was submitted that out of 7 creditors, 3 creditors confirmed the statements/amounts and letters issued to the remaining four were received back from the postal authorities with the remark "left /no such person" hence reconciliation statement in respect of these creditors could not be verified.

3.2 Against the remand report, the Assessee by filling reply dated 17.09.2014 refuted the claim of the AO and submitted *that the Assessee contacted M/s. Jansevak Textiles Mills who stated that they have not received any letter from the AO. With regard to JMD Prints on contacted by the Assessee, the aforesaid party stated that they have shifted their office and their present office shifted to RZ-147, Tuglakabad Extn, New Delhi. JMD prints confirmed the amount. With regard to Collection India, the firm has stated that they have send confirmation copy of account to the AO, the copy of the same is enclosed.*

3.3 Against the reply of the Assessee, the AO vide its letter dated 15.10.2014 preferred to file rejoinder wherein, it has been stated that Assessee's claim with regard to confirmation in respect of M/s. Contec Air, M/s. Jansevak Textiles Mills, M/s. JMD Prints and M/s. Collection India have been verified and confirmations have been received.

3.4 Ld. Commissioner while taking into consideration the reply of the Assessee and the remand report of the AO dated 21.08.2014 wherein, it was submitted by the AO that M/s. Manvi Fab, M/s. Senthil Mills and M/s. Vee Kay & Company have confirmed the statement and vide remand report dated 15.10.2014 wherein, the AO submitted that as per confirmations filed by M/s. ContecAir, M/s. Jansevak Textile Mills, M/s. JMD Prints and M/s. Collection India, the submission of the Assessee is acceptable and the addition of Rs. 1,72,34,467/- made by the AO, is deleted.

3.5 We have given thoughtful consideration to the conclusion drawn by the Ld. Commissioner on the issue in hand and peculiar facts enumerated above by us and find that the AO by way of remand report dated 21.08.2014 and rejoinder dated 15.10.2014 has confirmed to have verified accounts of all 7 parties qua transactions with the Assessee by receiving the confirmations from the said creditors and the reconciliation statement given by the Assessee, therefore, considering the confirmations received from the parties, the Ld. Commissioner deleted the addition under challenge. Even otherwise we do not find any reason and/or material to controvert the finding of the Ld. Commissioner in deletion of the addition under challenge. Consequently, ground No. 1 is dismissed.

4. Coming to Ground No. 2 which pertains to the addition of Rs. 17 lakhs made by the AO u/s 40(a)(2)(b) of the Act, on account of payment made to the interested parties without mentioning the same in the audit report u/s 44AB of the Act. The addition was made by the AO on account of disallowances u/s 40(a)(b) of the Act and the Ld. Commissioner observed the said amount has been made in the nature of advance and not made towards expenses, hence, the provision of section 40A(2)(b) of the Act are not applicable.

4.1 In respect of amount of Rs. 9 lakhs payment made to Mr. ViratBhushan, it was held by the Ld. Commissioner that the Assessee's

firm should have deducted the amount to its capital account but the same is not covered u/s 40A(2)(b) of the Act. Ld. Commissioner accepted the claim of the Assessee to the effect that payment of Rs. 17 lakhs is not u/s 40A(2)(b) of the Act as the amount of Rs. 9 lakhs is on account of payment made to ShriViratBhushan which was not debited to the partners capital account and Rs. 8 lakhs in the name of Ms. Shalini is the old balance as on 01.04.2009. However, the Ld. Commissioner held that the Assessee has not charged interest on the amount of advance to Ms. Shalini on which the interest is calculated @12% i.e. 96,000/- which is being disallowed out of interest paid by the Assessee firm and the same is being added back in the taxable income for the year under consideration.

4.2 We have given thoughtful consideration to the facts and the determination made by the Ld. Commissioner and the Central Scrutiny report dated 17.04.2015 which was filed by the Revenue Department, may be inadvertently before the bench wherein with regard to the addition made in hand "no appeal is recommended", and are inclined not to interfere with the conclusion drawn by the Ld. Commissioner on the issue in hand. Therefore, ground No. 2 stands dismissed.

5. Coming to ground No. 3 which pertains to deletion of addition of Rs. 47,29,253/- made by the AO u/s 68 of the Act on account of deduction made from the creditors without disclosing in the current asset. The AO made the addition of Rs. 47,29,235/- u/s 68 of the act by observing that the said amount made as advance for property, was also deducted from the creditors but the same should have been separately disclosed under the current asset. Further, this advance account had been created and balance had been increased by small amounts year after year for which no explanation was given by the Assessee during the course of assessment proceedings. The AO by invoking provisions of section 68 of the Act disallowed the said amount and added back in the income of the Assessee for the year under consideration.

5.1 We observe that the Ld. Commissioner sought remand report from the AO who vide remand report dated 21.08.2014 submitted that with regard to advance of property C-169, Okhla Industrial Area, New Delhi , the Assessee has furnished balance sheet as on 31.03.2001 along with agreement to sale as additional evidence. This cannot be recorded as additional evidence since the same has already been on record in assessment folder, however it is observed that the property has been purchased by ShriVivekBhusan, and this property is not an asset of the firm. Hence, the advance for this property should not come on the balance sheet of the firm. Any adjustment with regard to this amount is wrong and not acceptable.

In rejoinder dated 15.10.2014, the AO also submitted that it is a mistake on the part of the Assessee that he did not debit the amount to the capital account of the partner ShriVivekBhusan. The owner of the property is ShriVivekBhuan in his individual capacity, hence, it cannot be shown as advance in the balance sheet of the firm. Whereas, the Assessee before the Ld. Commissioner reiterated its claim that the AO has accepted that it is a mere mistake on the part of the Assessee therefore he did not debit the amount to the capital account of ShriVivekBhushan, partner, who is owner of the property. In view of this fact, the said amount shown as advance against property has been debited to capital account of the partner during the FY 2011-12 relevant to Assessment Year 2012-13.

Considering all the peculiar facts and circumstances of the case we do not find any reason and/or material to controvert the findings of the Ld. Commissioner. Even in the Central Scrutiny report dated 17.04.2015 on the issue under consideration 'no appeal was recommended' therefore, in totality we do not find any infirmity in the order of the Ld. Commissioner qua issue in hand. Hence, ground No. 3 also stands dismissed.

6. In the result the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 31/05/2022.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 31/05/2022
A K Keot