

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

SHRI SANJAY GARG, JUDICIAL MEMBER

**ITA No.5349/Del/2014
Assessment Year : 2011-12**

M/s Unique Capital Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi-110005 Or C/o M/s V.P. Gupta & Co. Advocates & Solicitors, 501, Ansal Bahwan, 16, K.G. Marg, New Delhi-110001	vs	Dy. Commissioner of Income Tax, Central Circle-4, New Delhi
PAN-AAACU5693G		
APPELLANT		RESPONDENT

Appellant by	Sh. Anunav Kumar, Adv.
Respondent by	Sh. Sanjay Kumar, Sr. DR
Date of Hearing	22.06.2022
Date of Pronouncement	22.06.2022

ORDER

This present appeal has been preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) -XXXIII, New Delhi [hereinafter referred to as 'CIT(A)'] dated 23.07.2014, pertaining to AY 2011-12.

2. The assessee in this appeal has raised following grounds of appeal:-

"1. That the CIT(A) erred in upholding the addition of Rs.8,20,000/- made by the Assessing Officer on account of cash deposits in the bank account of the appellant company under section 68 of the Act observing that the appellant has not given the list of beneficiaries without appreciating that the admitted

position is that the appellant company was part of Tarun Goyal Group carrying on the business of providing accommodation entries and the cash had been received and deposited in the bank accounts as part of above business and, therefore, only the commission income thereupon could be considered as income.

2. That the CIT(A) also failed to understand and appreciate the directions of this Hon'ble Tribunal vide order dated 18.10.2013 in accordance with which a holistic view has to be taken considering the Group as a whole and only the commission income is to be assessed in respect of cash deposits at the rate of commission to be determined considering the precedence in this regard."

3. The sole issue involved in this appeal is relating to the addition made by the Assessing Officer (in short 'the AO') u/s 68 of the Act on account of cash deposits in the bank account of the assessee. The claim of the assessee has been that the assessee was only an entry provider and that the cash belonged to some other beneficiaries to whom the assessee had provided cheque/entry in lieu of the aforesaid cash and for that the assessee charged a meager commission @ Rs.2.5 per thousand. However, the Assessing Officer did not get satisfied by the above explanation of the assessee. The Assessing Officer categorically noted in para 4 of the order as under:-

"As the assessee company has not discharged its initial onus u/s 68 of the I T Act, the A R of the assessee was asked to explain the nature and source of deposits with the bank accounts. However, no cogent explanation of the source and nature thereof has been filed. Assessee had also failed to produce any books of accounts or any other details in support of his submissions. The assessee company could not even provide any details of the person /parties with whom it has transacted during the year. Thus the submissions offered by the assessee company with regard to the nature and source of deposits in my opinion are not tenable."

4. Since the assessee could not explain the nature and source of the aforesaid cash deposits in the bank account, therefore, the Assessing Officer added the impugned amount into the income of the assessee as income from unexplained sources.

5. Being aggrieved by the above order, the assessee preferred appeal before the Ld. CIT(A), however could not succeed.

6. The assessee, thus, has come in appeal before this Tribunal

7. I have heard the rival contention and gone through the record. The ld. Counsel for the assessee has reiterated his submission as were made before the lower authorities and submitted that the assessee was only an entry provider and had taken a meager commission for providing accommodation entry to the various beneficiaries whose unaccounted income was deposited into the account of the assessee for the purpose of getting cheque in lieu of that unaccounted money.

8. The assessee, in this case openly and boldly claims that he has done the illegal act of entry provider to defraud the ex-chequer of the Nation. Now the assessee wants to claim of benefit of his own wrong doings. However, for the purpose of determination of the assessee's income tax liability, the assessee was given ample opportunity by the Assessing Officer to disclose the source of the deposits i.e. the names of the concerned

beneficiaries to whom the money allegedly belonged. However, the assessee failed to disclose so before the Assessing Officer.

Even, I find that the Ld. CIT(A) has also categorically mentioned in the impugned appellate order that the assessee has not disclosed the source/names of the beneficiaries to whom the assessee allegedly provided the entry. The relevant part of the impugned order of the Ld. CIT(A) is reproduced hereunder:-

“In present case, only cash deposit in various bank accounts of the assessee has been added. As there is no claim of the assessee for circulation of cash, in my view cash peak in assessee’s hand is not applicable. As total cash deposited in the bank account is cash peak. The appellant/Ld/ AR has not disclosed the name of alleged beneficiary to whom such cash belongs. The Ld AR/appellant in present case has not made any written submission on such claim/calculation or layering of cash as per the direction of other cases decided by hon’able ITAT, which could have been examined at the appellate stage. In view of the above facts, it is established fact that the appellant does not want to disclose the source of the cash deposited in the bank accounts instead relies on meager percentage of such cash deposit declared as income in the hands of Sh. Tarun Goyal to explain such huge cash deposit. Unless the appellant gives complete list of beneficiary alongwith cash received for such accommodation entries, the cash deposited in the bank accounts would remain unexplained. Commission income is not the explanation of source of cash, but is income earned on such cash transaction.

Considering entire facts & circumstances of the case, I think section 68 applies for the fund deposited in applicants’ bank account. Accordingly, I confirm the additions made by Ld. Assessing officer. These grounds of appeal are dismissed.”

8. Now, before this Tribunal also, the Ld. Counsel for the assessee submits that the assessee may be granted opportunity to disclose the name

of the alleged beneficiaries to whom such cash belonged. I have asked the Ld. Counsel for the assessee in the open court to supply the list before this Tribunal so that the Tribunal may consider this request but the ld. Counsel for the assessee at this stage is not able to provide any such list. Neither the assessee has provided the source of cash deposits before the Assessing Officer nor before the First Appellate Authority nor he is ready with such source/name of the beneficiaries during the hearing before this Tribunal. The case involves to Assessment Year 2010-11. Now, almost more than eleven years have passed, I do not think that any more opportunity is required to be given in this case as it will not serve any useful purpose as even otherwise, the assessment of the alleged beneficiaries might have attained finality by this time. The assessee has miserably failed to prove his contention or to furnish any details of the source of the cash deposits in his account. Therefore, there is no merit in this appeal and the same is accordingly, hereby, dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22.06.2022.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Delhi;

Dated: 22/06/2022.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI