

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA.No.4795/Del./2018
Assessment Year 2015-2016

BMA Infotech Private Ltd., C-161, Sector-50, Noida. PIN – 201 301. PAN AACCB9712H	vs.	The Dy. CIT, Central Circle, 2 nd Floor, ARTO Complex, Sector-24, Noida – 201 301
(Appellant)		(Respondent)

For Assessee :	Shri K.C. Singhal, Advocate
For Revenue :	Shri Kanav Bali, Sr. D.R.

Date of Hearing :	04.08.2022
Date of Pronouncement :	24.08.2022

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1V, Kanpur, dated 15.05.2018, relating to the A.Y. 2015-2016.

2. Briefly stated facts of the case are that the assessee company was incorporated on 16.01.2007 and is registered with Registrar of Companies. The assessee

company is involved in Software publishing which includes production, consultancy and supply made (non-customized) software, operating systems software, business and other applications, software computer games, software for all platforms.

2.1. A search and seizure operation under section 132 of the Income tax Act. 1961 was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group Noida covering its business premises and residences of Director, their Family members and other business associates concern and other key persons. During the course of search operation at the residence of one Shri Abhay Maheshwari a laptop was found and seized. From the scanning of seized data, it was noticed that M/s. Golf Link Hospitality Pvt. Ltd. has obtained unsecured loan, share application money and share capital from various doubtful entities and the assessee company is one of them. Subsequently, notice under section 142(1) of the I.T. Act, 1961 was issued calling the assessee to file it's return of income and in response to the said notice, the assessee filed

it's return of income on 20.04.2015 declaring total income of Rs.51,710/-. Again the A.O. issued statutory notice under section 142(1) of the I.T. Act, 1961 along with questionnaire calling the assessee to file requisite details as called for. In response to the said notice, the Ld. Authorised Representative of the assessee appeared before the A.O. from time to time and filed the complete books of account, ledger accounts with supporting bills & vouchers of the expenses debited in the profit & loss account. The copy of bank statement, TDS certificates and other details i.e. ledger accounts and supporting bills/invoices which were examined and test checked by the A.O. The A.O. noted that huge amount has been collected by M/s Golf Link Hospitality Pvt. Ltd for the construction of Hotel Golf View, Noida in the garb of share capital and share application from doubtful and non genuine entities. It was further noted by the A.O. that Shri Yadav Singh has parked his unaccounted income through these entities in the construction of Hotel and his close relative Vidya Devi is one of the directors.. The assessee has given unsecured loan of

Rs.60,00,000/- to M/s Golf Link Hospitality Pvt. Ltd and Rs.10,00,000/- to Vidya Devi during the F.Y. 2010-11. During the year under consideration the A.O. noted from the bank statement of assessee that the assessee company has raised money of Rs.42 lakhs through unsecured loan from two entities viz., M/s. ANS Insurance [Rs.7 lakhs] and RMV Marketing P. Ltd., [Rs.35 lakhs]. Besides this Rs.10 lakhs from Bhagirathi Infotech Pvt. Ltd., against earlier dues. The assessee was requested to furnish the confirmation letter from the above entities along with the copy of ITR and bank statement showing the transaction. However, the assessee did not produce the copy of ledger account maintained by him. In absence of any details, creditworthiness as well as genuineness of the transaction could not be verified in the matter, the A.O. treated the sum of Rs.52 lakhs and unsecured loan and made addition under section 68 of the I.T. Act, 1961 to the total income of the assessee and thus, determined the total income of the assessee at Rs.52,51,710/- and completed the assessment under section 153C r.w.s. 143(3) of the I.T. Act, 1961.

2.2. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 15.05.2018 dismissed the appeal of the assessee.

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

1. *“That, on facts & law, CIT(A) was not justified in holding that the impugned assessment was not made u/s 153C but was completed under normal provisions of assessment u/s 143 and therefore, the ground raised by the appellant challenging the jurisdiction u/s 153C was incorrect.*
2. *That, as per law, the impugned assessment is without jurisdiction & void ab initio in as much as no notice u/s 153C was ever issued to the appellant.*
3. *That assumption of jurisdiction u/s 153C was illegal being contrary to the provisions of S. 153C and judicial opinions as no incriminating material was ever found in*

the course of search in the case of Abhay Maheshwari.

Thus, the impugned addition of Rs.52 Lakhs u/s 68 is bad in law.

4. *That even on merits, the addition of Rs.52 lakhs as unsecured loans u/s 68 is unwarranted on facts as well as in law since no loan was ever received by the appellant from the parties mentioned in the assessment order. On the contrary, the appellant had received back the amounts given to them in earlier years and therefore, section 68 was not applicable.*

The appellant craves to add, or amend the ground of appeals if required and necessary.

It is therefore prayed that the impugned orders of C.I.T (A) be quashed and/or necessary relief be allowed to the appellant which the Hon'ble Tribunal may deem fit.”

4. During the course of hearing, the Learned Counsel for the Assessee besides reiterating the submissions made before the authorities below submitted that the A.O. has made addition on adhoc basis without any

opportunity to submit relevant documents and facts of the case during assessment proceedings. He also submitted that during the course of assessment, the information and documents as sought by the A.O. were given or produced by the assessee, but, the A.O. was made by the A.O. arbitrarily which are based on the facts of the case. The Learned Counsel for the Assessee submitted that, therefore, the assessee filed an application before the Ld. CIT(A) under Rule 46A of I.T. Rules, 1962 and the Ld. CIT(A) considered the additional evidences, but, without properly analyzing the same, dismissed the appeal of assessee. The Learned Counsel for the Assessee vehemently pointed that the Ld. CIT(A) himself noted that the assessee has submitted confirmation, PAN, audited balance-sheet in the case of RMV Marketing P. Ltd., confirmation, PAN and bank statements in the case of M/s. ANS Insurance & Brokers Ltd., and confirmation in the case of Bhagirathi Infotech Pvt. Ltd., but, the Ld. CIT(A) has dismissed this substantial evidences without any cogent reasons and without calling the relevant parties for verification by invoking Section 131

or 133(6) of the I.T. Act, 1961. Learned Counsel for the Assessee submitted that the assessee has submitted all possible documents under his command to substantiate the creditworthiness of all the relevant parties and genuineness of the transaction, but, the authorities below have dismissed the same at the threshold, therefore, the and made by the A.O. and confirmed by the Ld. CIT(A) be kindly be deleted.

5. Replying to the above, the Ld. D.R. has strongly supported the orders of the authorities below and submitted that despite due opportunity the assessee could not submit complete documentary evidences in support of his explanation, therefore, the addition was rightly upheld by the Ld. CIT(A). The Ld. D.R. submitted that the orders of the authorities below be confirmed.

6. In its rejoinder to the above, the Learned Counsel for the Assessee drew the attention of the Bench towards page-8 of assessee's paper book and submitted that it is clearly discernible that the assessee has submitted all

documentary evidences under his command showing that the amount of Rs.35 lakhs was received from M/s. RMV Marketing P. Ltd., through banking channel during the relevant assessment year as this amount given to said party during the earlier A.Y. 2012-13. Learned Counsel for the Assessee further submitted that the amount of Rs.7 lakhs was also given to M/s. ANS Insurance Brokers Pvt. Ltd., during earlier assessment year which was received back through account payee cheques during the relevant A.Y. 2015-16. Therefore, these amounts cannot be added in the hands of assessee under section 68 of the I.T. Act, 1961. The Learned Counsel for the Assessee further submitted that Rs.10 lakhs was received through banking channel from Bhagirathi Infotech Pvt. Ltd., against earlier dues of the assessee. Therefore, Section 68 of the I.T. Act, 1961 cannot be invoked in this regard.

7. On careful consideration of the above rival submissions, first of all, we note that undisputedly all three impugned amounts were received by the assessee during relevant A.Y. 2015-16 through banking channel. Not

agreeing with the contention of the assessee that these amounts were given to respective parties during preceding assessment years and the assessee only received these amounts back from those parties during the present assessment year, the A.O. made the impugned addition and the Ld. CIT(A) without carefully examining the documentary evidences filed by the assessee confirmed the addition made by the A.O. We noticed from the documents available at pages-10 to 45 of the PB filed by the assessee along with copy of an application under Rule 46A of I.T. Rules, 1962 available at page Nos.1 to 9 of assessee's paper book, it is clearly discernible that all three impugned amounts pertaining to said three parties was due in the beginning of the financial period and the assessee received these amounts through banking channel during the financial period 2014-15 pertaining to A.Y. 2015-16 under appeal. Confirmation available at page-10 along with page-16 clearly show that there was a brought forward amount of Rs.8,34,100/- which was paid during the relevant financial period, therefore, the addition of Rs.7 lakhs cannot be made

in the hands of assessee. Similar was the position in the case of M/s. RMV Marketing Pvt. Ltd., and as per page-23 of the PB the assessee paid Rs.35 lakhs to M/s. RMV Marketing Pvt. Ltd., on 22.03.2012 and the received back the said sum in 03 installments of Rs.10 lakhs, Rs.13 lakhs and Rs.12 lakhs dated 21.03.2015, 23.03.2015 and 28.03.2015 respectively through banking channel. Likewise in the case of Bhagirathi Infotech Pvt. Ltd., the assessee advanced a sum of Rs.10 lakhs to the said firm on 29.07.2012 through banking channel and the received back the said sum of Rs.10 lakhs from Bhagirathi Infotech Pvt. Ltd., on 25.03.2015 through banking channel which is discernible from page-41 of the PB. In view of the above documentary evidences furnished by the assessee it is crystal clear that the assessee has proved the creditworthiness and genuineness of the transactions as the above three transactions carried out through banking channel and the assessee only received back it's amount from the above parties during the assessment year under consideration and in absence of any contrary material

brought on record by the Ld. D.R, the addition made by the A.O. and confirmed by the Ld. CIT(A) is deleted. We, therefore, allow the grounds of appeal of the assessee.

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

Order pronounced in the open court on 24.08.2022.

Sd/-

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

Delhi, Dated 24th August, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "A" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,