

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA No.1925/Hyd/2018		
Assessment Year: 2014-15		
Sri Vaishnavi Global Avenues and Infra solutions Private Limited Plot No.56, Cyber Meadows, Masjid Banda, Kondapur Hyderabad-500 084 PAN : AAPCS0694C	Vs.	ITO, Ward-3(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri Sashank Dundu, Advocate
Revenue by:		Shri Sunku Srinivas, CIT-DR
Date of hearing:		28.09.2022
Date of pronouncement:		10.10.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 11.04.2018 of Learned Commissioner of Income Tax (Appeals)-8, Hyderabad relating to AY 2014-15.

2. This is the second round of litigation before the Tribunal. This appeal was earlier dismissed by the Tribunal vide order dated 05.01.2022. Subsequently, the Tribunal vide M.A.No.116/Hyd/2022, order dated 05.08.2022 recalled its earlier order. Hence, this is a recalled matter.

3. Although a number of grounds have been raised by the assessee however, these all relate to the order of the Id.CIT(A) in confirming the addition of Rs.52,17,224/- made by the AO u/s. 68 of the I.T.Act.

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of executing civil works. It filed its return of income 27.11.2014 declaring total income of Rs.44,07,960/-. The case was selected for scrutiny under CASS and statutory notices u/s.143(2) & 142(1) were issued and served on the assessee in response to which the AR of the assessee appeared before the AO and produced books of account and other details as called for.

5. During the course of assessment proceedings, the AO noted that the assessee company has received unsecured loan from Shri Rajendra Prasad & Smt. N.Nirmala Devi amounting to Rs.52,17,224/-. It was submitted that they will file their respective return of income in 30 days. However, the assessee failed to produce any documentary evidence to substantiate their creditworthiness. Since, the assessee failed to produce any evidence to substantiate their creditworthiness, the AO made addition of Rs.52,17,224/- to the total income of the assessee.

6. Before the Id.CIT(A), the assessee filed copies of PAN and other details of the creditors. It was submitted that the unsecured loan creditors are directors of the company and they have not filed their return of income for the year under consideration since they are agriculturists and they do not have any source of income.

7. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and sustained addition made by the AO. While doing so, he noted that the two creditors, who are the directors of the assessee company, have not filed their return of income on the ground that they are agriculturists and they have no other income. However, no documentary evidence was produced before him to substantiate the extent of land holding,

crops grown, agricultural income derived etc. He, therefore doubted the creditworthiness of the unsecured creditors. He further noted that the directors Shri N. Rajendra Prasad has deposited cash during the period 01.04.2013 to 31.03.2014 which are as under:-

Sl.No.	Date	Amount(Rs.)
1	22.04.2013	9,00,000
2	02.09.1013	1,00,000
3	30.12.2013	8,00,000
4	01.02.2014	1,00,000
5	06.02.2014	4,00,000
6	22.02.2014	10,000
7	07.03.2014	31,000

8. Similarly, N. Nirmala Devi has deposited cash in her bank account during the period between 01.04.2013 to 31.03.2014 which are as under:-

Sl.No.	Date	Amount(Rs.)
1	03.04.2013	30,000
2	03.04.2013	20,000
3	03.06.2013	50,000
4	24.06.2013	40,000
5	27.08.2013	50,000
6	30.09.2013	50,000
7	02.12.2013	45,000
8	02.01.2014	50,000
9	04.02.2014	50,000
10	04.03.2014	50,000

9. Since the assessee could not produce any evidence to substantiate the source of such cash deposits and substantiate the creditworthiness of the unsecured loan creditors, the ld.CIT(A) upheld the action of the AO.

10. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

11. The ld. Counsel for the assessee at the outset filed an application under rule 29 of the ITAT Rules requesting for admission of the following additional evidences

1. *Affidavit of the director*
2. *Pattadar Passbook of Mrs. Nirmala Devi for survey numbers 12 of 1,2,3,4,5,6,7 & 8*
3. *Purchase Deed of agricultural land with survey no. 12/6 having 2.37 Acres of Non Paddy Field(pulses) vide document dt. 07.05.2007 by Mrs. Nirmala Devi*
4. *Purchase Deed of agricultural land with survey no. 95/1A, 101/1A, 101/1B having 4.16 Acres of Non Paddy Field(pulses) vide document dt. 07.01.2008 by Mrs. Nirmala Devi*
5. *Purchase Deed of agricultural land with survey no. 94/2 having 3 Acres of Non Paddy Field(pulses) vide document dt. 05.03.2007 by Mrs. Nirmala Devi*
6. *Purchase Deed of agricultural land with survey no. 134/18 having 2-07 Acres of Non Paddy Field(pulses) vide document dt. 13.02.2007 by Mrs. Ninnala Devi*
7. *Purchase Deed of agricultural land with survey no. 134/2 having 8 Acres of Non Paddy Field(pulses) vide document dt. 09.11.2006 by Mrs. Nirmala Devi*
8. *Purchase Deed of agricultural land with survey no. 101/2 having 5.14 Acres of Non Paddy Field(pulses) vide document dt. 29.05.2007 by Mrs. Nirmala Devi*
9. *Purchase Deed of agricultural land with survey no. 80/5 having 1.25 Acres of Non Paddy Field(pulses) vide document dt. 09.04.2007 by Mrs. Nirmala Devi*
10. *Purchase Deed of agricultural land with survey no. 15 having 3 Acres of Non Paddy Field(pulses) vide document dt. 02.02.2006 by Shri. N. Rajendra Prasad.*

12. Referring to the affidavit of the director, copy of which is placed at page 1-3 of the paper book, the ld. Counsel for the assessee explained the reason for non-submissions of these documents before the lower authorities. He submitted that since these additional evidences have a bearing on the outcome of the appeal, therefore in the interest of substantial justice these evidences should be admitted and the matter may be restored to the file of the AO for *de novo* assessment.

13. The ld.counsel for the assessee in his another plank of argument submitted that the two loan creditors had balances in their respective bank accounts at the beginning of the year, which

could not have been added u/s. 68 of the I.T.Act. So far as the various cash deposits are concerned, he submitted that the same are out of sale of agricultural produces during the year and past savings of the preceding years. He submitted that given an opportunity the assessee is in a position to substantiate the case to the satisfaction of the AO or the Id.CIT(A) as the case may be.

14. The Id. DR on the other hand strongly objected to the admission of the additional evidences filed by the assessee. Referring to various decisions including the decision of the jurisdictional High Court in the case of CIT vs Late Begum Noor Banu Alladin reported in 204 ITR 166 (AP) he submitted that the additional evidences should not be admitted for adjudication. So far as the argument of the Id. Counsel for the assessee that the matter should be restored to the file of the AO is concerned, the Id. DR submitted that since the assessee failed to produce cogent evidences either before the AO or Ld.CIT(A) or even before the Tribunal now, therefore, this matter need not be restored to the file of the AO and the appeal filed by the assessee should be dismissed.

15. We have considered the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.52,17,224/- u/s. 68 of the I.T.Act on the ground that assessee could not substantiate with evidence to his satisfaction regarding the creditworthiness of the two loan creditors. We find the Id.CIT(A) sustained the addition made by the AO on the ground that assessee could not substantiate before him the creditworthiness of the two directors who have extended such huge loan of Rs.52,17,224/- by producing the extent of land holding, crops grown, agricultural income derived etc. He further

noted that the director Shri N.Rajendra Prasad has deposited cash of Rs. 23,41,000/- in his bank account and Smt. N.Nirmala Devi has deposited cash of Rs.4,35,000/- during the period 01.04.2013 to 31.03.2014. It is the submission of the ld.counsel for the assessee that the two directors who have extended the unsecured loan to the assessee company amounting to Rs.52,17,224/- are agriculturists and they do not have any other income and the same is verifiable from the additional evidences filed before the Tribunal now, which has got a bearing on the issue. Further, it is also his submission that the assessee had certain bank balances at the beginning of the year and the same has also not been considered by the lower authorities.

16. We find some force in the above arguments of the ld. Counsel for the assessee. Although, the assessee has received unsecured loan of Rs.52,17,224/- from the two directors, however the order of the ld.CIT(A) is silent about the amount at the beginning of the year while analyzing the savings bank account of Shri N. Rajendra Prasad maintained with Andhra Bank and savings bank account of Smt.N.Nirmala Devi maintained with HDFC Bank. Further, the additional evidences though not filed before the lower authorities which are filed before the Tribunal now has got a bearing on the outcome of the appeal since the two directors, who are holding substantial land must be earning some income from such land. We therefore admit the additional evidences and restore the issue to the file of the AO for fresh adjudication of the issue. So far as the decision of the Jurisdictional High court in the case of Late Begum Noor Banu Alladin (supra) relied on by ld.Sr.DR is concerned, the same relates to power of the Tribunal to consider new ground of appeal and not related to admission of additional evidences. Therefore, the same in our opinion is not applicable to the facts of the present case. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to

restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case by filing documents evidencing the creditworthiness of the two directors. The AO shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th October, 2022.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 10th October, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Sri Vaishnavi Global Avenues and Infra solutions Private Limited Plot No.56, Cyber Meadows, Masjid Banda, Kondapur Hyderabad-500 084
2	ITO, Ward-3(3) Hyderabad
3	CIT(A)-8, Hyderabad
4	Prl.CIT-3, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order