

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 1853/MUM/2022
(Assessment Year 2013-14)

VEEKAY FARMS,
F/99, Opposite Marriot,
North Bombay Co-op Society,
Juhu,
Mumbai-400 049

Vs.

ACIT 25(1) OLD DY.CIT
17(1) Room No. KB 117,
Kautilya Bhavan,
Bandra Kurla Complex,
Mumbai-400 051

(Appellant)

(Respondent)

PAN No.AAAFV1775B

Assessee by : Shri. R N Vasani, B T Thakkar,
V H Sahani, ARs
Revenue by : Shri. Nishant Somaiya, DR

Date of hearing: 22-09-2022
Date of pronouncement: 28.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Assessee/ Appellant against Appellate Order passed by the National Faceless Appeal Centre [the learned CIT (A)] for A.Y. 2013-14 dated 28th June, 2022, raising following grounds of appeal:-

"(1) The Learned Comm of Income tax (Appeals), committed a gross error of law and facts in confirming the following addition while passing the appellate order.

a. Disallowances out of alleged bogus purchases Rs. 6,54,842/-.



b. Disallowance of Unsecured Loan u/s. 68 Rs. 14,80,000/.

c. Ad-hoc disallowance out of expenses Rs. 50,000/-

(2) He failed to appreciate the facts that no bogus purchases as alleged by him are made by the appellant firm. He made an addition on assumption and presumption without giving an opportunity of being heard.

(3) He failed to appreciate the facts that these suppliers were neither identified as hawala suppliers by sales tax authorities nor any specific findings were made that these purchases were not genuine.

(4) He erred in making an addition of Unsecured Loan Rs. 14,80,000/- u/s. 68.

(5) He failed to evaluate the submissions made with respect to unsecured loans viz. bank statement, confirmation & acknowledgement of income tax return inter alia other related evidence.

(6) He erred in making the ad-hoc disallowance out of Telephone Expenses, Motor Car Expenses, Miscellaneous Expenses, Delivery Vehicle Expenses of Rs 50,000/-.

(7) He failed to appreciate that all the above expenditure are wholly and exclusively for the purpose of business and are supported by vouchers and are audited. The appellant firm itself has made addition of Rs.35,620/-in computation of income for personal use of the Motor Car.”

02. The brief fact of the case shows that assessee is a partnership firm engaged in the business of Poultry Farm. It filed its return of income on 30th September 2013 declaring Nil income. The return of this income was picked up for scrutiny.



03. During the year, the learned Assessing Officer perused the Profit and Loss account and noted that assessee has made purchases of ₹1,19,76,278/- from five parties. The learned Assessing Officer issued notice under Section 133(6) of the Income-tax Act, 1961 (the Act) to 5 parties, in one case, Siddhi Vinayak Trading Company, notice under Section 133(6) returned back and in other cases no response was received. Therefore, the learned Assessing Officer issued show cause notice that why the above purchase should not be treated as bogus and addition made. Assessee was also asked to produce the Principal Officer of the purchase parties along with financials and transportation details. The Assessee did not produce anything. Therefore, the learned Assessing Officer held that as the parties are not available, the details are not produced, He was not satisfied with the correctness and completeness of the books of account. Therefore, he applied the profit ratio of 5.46% of the total purchase bogus purchase of ₹1,19,76,278/-, with respect to five parties and made an addition of ₹6,54,842/-.
04. It was found that assessee has obtained unsecured loan from Mr. Rohit Sawhney of ₹14,80,000/- and from Moiz Hasan Ali Tapia of ₹6 lacs. Assessee was asked to produce the details of the above loan. Assessee submitted part details. Not satisfied with that, the learned Assessing Officer issued show cause notice for making addition under Section 68 of the Act. As the assessee failed to produce the details with respect to the creditworthiness of the above parties,ld. AO accepted ₹6 lacs out of ₹14,80,000/- as explained in case of Mr. Rohit Sawhney and made an addition of ₹8,80,000/- as the cheques were issued by him to assessee from bank account of wife of Mr. Rohit Sawhney and ₹ 6 lacs of Moiz Hasan Ali Tapia was added for the reason that assessee did not produce copy of the ROI of lender.
05. It was also found that assessee has given interest free loan and advances of ₹79,64,570/- to two different parties. The assessee could not show the business exigency and therefore, the learned

Assessing Officer disallowed interest at the rate of 12% per annum amounting to ₹9,55,748/- under Section 36(1)(iii) of the Act.

06. Assessee has debited various expenditure in the profit and loss account amounting to ₹6,92,596/-, such as telephone, motor car and miscellaneous expenditure. As the assessee failed to produce relevant bills and large part of such expenses as well as log book for the motor cars, the learned Assessing Officer disallowed 15% of the above sum amounting to ₹1,03,889/- for want of details. Accordingly, the assessment order was passed under Section 143(3) of the Act on 23rd March, 2016, determining the total income of the assessee at ₹ Nil because of the carry forward of losses.
07. Aggrieved, assessee preferred the appeal before the learned CIT (A). The learned CIT (A) confirmed the addition to the extent of 5.46% of the bogus purchases, under Section 68 of the Act of ₹14,80,000/-. However, he deleted the disallowance of interest holding that both the advances are for the business purposes and restricted the disallowance out of expenditure of ₹50,000/-.
08. Aggrieved, assessee is in appeal before us. The assessee has submitted the written submission as well as the paper book containing 158 pages. The learned Authorised Representative submitted that addition deserves to be deleted completely.
09. The learned Departmental Representative supported the order of the learned CIT (A).
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. The first ground of appeal with respect to the addition of ₹ 6,54,842/- being profit on bogus purchases applying the ratio of 5.46%. We find that neither the purchases are bogus nor there is any evidence available with the learned Assessing Officer that the five parties from whom the purchases have been made are tainted. Out of the five parties, the 133(6) notices were not replied by four parties and was not received by one party. The learned Authorised Representative has



categorically stated that the finding of the learned Assessing Officer at page no.3 of the assessment order that assessee was asked to produce the Principal Officer of the purchase party which was not applied. In fact the paper book shows that the assessee has submitted in the appellate proceedings ledger accounts, confirmation, bills, challans, weightment slips and Permanent Account Number of such creditors. The learned CIT (A) did not mention these facts. Further, the learned Authorized Representative also stated that the assessee is dealing with these parties on year-to-year basis prior to this assessment year and subsequent to this assessment year wherein assessments have been passed under Section 143(3) of the Act and purchases from These parties have been accepted as genuine. In view of this, we do not find any reason to uphold the addition of ₹6,54,842/-. On this ground, the orders of the lower authorities are reversed and grounds no.1(a) and 2 and 3 of the appeal are allowed.

011. Coming to the addition of ₹8,80,000/- under Section 68 of the Act in case of Mr. Rohit Sawhney and ₹ 6 lacs in case of Moiz Hasan Ali Tapia. The learned Assessing Officer has accepted out of the loan taken of ₹ 14,80,000/- from Mr. Rohit Sawhney a sum of ₹6 lacs as properly explained but confirmed the addition of ₹8,80,000/- for the reason that same was accepted from his wife. We find that sum of ₹ 14,80,000/- from Mr. Rohit Sawhney was received from two different bank accounts. These are accounts with Bank of Baroda and IDBI Bank. IDBI bank is the joint account of Mr. Rohit Sawhney with his wife. For sum of ₹6 lacs, there is no dispute however, with respect to ₹8,80,000/-, the learned Assessing Officer confirmed the addition stating that the bank statements submitted by the assessee is wife of the assessee. We find that assessee has submitted the confirmation, the copy of the return of income as well as the bank account wherever ₹ 8,80,000/- are received. Such bank account is the joint account of Mr. Rohit Sawhney with his wife. The learned lower authorities therefore made an addition to that extent. We find that source of the funds are clearly established by the assessee in



that bank account. Assessee has clearly shown that in that bank account ₹ 2,50,000/- was received out of maturity policy of Insurance and ₹ 6 lacs is maturity of IDBI bank fixed deposits. Therefore, according to us, assessee has clearly established the identity, creditworthiness and genuineness of the transaction of the lender. Further, Assessee has paid an interest to Mr. Rohit Sawhney, which was also allowed by the Assessing Officer as deduction. Accordingly, the addition under Section 68 of the Act of ₹ 8,80,000/- deserves to be deleted and hence, reversing the orders of the lower authorities, same is deleted.

012. With respect to cash credit addition of ₹6 lacs from Moiz Hasan Ali Tapia. Assessee has submitted the confirmation and bank statement during the course of assessment proceedings. The return of income was produced during the course of appellate proceedings. Accordingly, assessee has discharged initial onus cast upon it under Section 68 of the Act. The only reason for which the learned Assessing Officer made the addition is non production of income tax return of the lender. Same was produced before the appellate authority. Despite this, the appellate authority confirmed the addition refusing to accept the return of income. We find that this is unjustified. Accordingly, the addition under Section 68 of the Act of ₹6 lacs is deleted. Accordingly, ground no.1 (b), 4 and 5 of the appeal are allowed.

013. With respect to adhoc disallowance of ₹50,000/- upheld by the learned CIT (A) out of the total disallowance of ₹1,03,889/- being 15% of the total expenditure of ₹6,92,596/- made by the Id. AO, we find that assessee has submitted month wise details of this expenditure before the learned CIT (A). There is no allegation that these expenditure are personal in nature. However, we find that as the assessee has failed to produce the details completely, accordingly, the lower authorities are not completely unjustified in disallowing the portion of this expenditure. However, we find that the ratio of disallowance is on higher side. Looking to the facts and circumstances of the case, we direct the learned Assessing Officer to



restrict the disallowance to ₹25,000/- only out of these expenses. However, it is also noted that assessee itself has made a disallowance of ₹35,620/- in its computation of total income of personal use of motor car etc. Therefore, no further disallowance is required to be made. Accordingly, ground no. 1(c), 6 and 7 of the appeal are allowed.

014. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28.10.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.10.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai