

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 1602/Ahd/2019
Assessment Year 2015-16

West India Autoequip Pvt. Ltd., Before Sanathal Overbridge, Sarkhej Bavla Highway, Sarkhej, Ahmedabad-382210 PAN: AAACW9211E (Appellant)	Vs	The ITO, Ward-4(1)(3), Ahmedabad-380015 (Respondent)
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Assessee by: Shri Tushar Hemani, A.R. &
Shri Parimalsinh B. Parmar, A.R.
Revenue by: Shri Atul Pandey, Sr. D.R.

Date of hearing : 01-11-2022
Date of pronouncement : 04-11-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-8, Ahmedabad in Appeal no. CIT(A)-8/10369/17-18 vide order dated 27/08/2019 passed for the assessment year 2015-16.

2. The assessee has taken the following grounds of appeal:-

<i>Grounds of appeal</i>	<i>Tax effect' relating to each ground of appeal</i>
1. <i>The learned CIT(A) has erred in not affording an opportunity of hearing to the appellant and in passing an ex parte order which is in violation of the Principles of Natural Justice.</i>	
2. <i>The learned CIT(A) has erred in law and on facts of the case in making an addition of Rs.90,62,934/- as unexplained cash credits u/s.68 of the Act.</i>	Rs.27,18,880.20/-
3. <i>The learned CTT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making a disallowance u/s. 40A(2) of the Act of interest of Rs.9,01,274/- as being excessive and unreasonable.</i>	Rs.2,70,382.20/-
4. <i>Alternatively and without prejudice, the learned CIT(A) has erred both in law and on the facts of the case in confirming addition u/s.40A(2) of the Act made by the AO without determining the fair market rate of interest.</i>	
5. <i>Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.</i>	

6.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.</i>	
7.	<i>The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.27 1 (l)(c) of the Act.</i>	
8.	<i>The appellant craves leave to add, amend, alter, edit, delete modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.</i>	
	<i>Total tax effect</i>	29,89,263/-

Ground No. 2 : Addition of Rs. 90,62,934/- as unexplained cash credits u/s. 68 of the Act

3. The brief facts of the case are that that during the impugned assessment year, the assessee received unsecured loan of Rs. 90,62,934/- from Timbor Home Ltd. The Assessing Officer after making necessary inquiries held that the assessee has failed to supply any documents/evidences to prove the genuineness of the transaction, established the identity of the depositor and prove the capacity of the depositor M/s. Timber Home Ltd. and has thus failed to discharge the onus put upon the assessee. The Assessing Officer held that since all three necessary parameters to prove the credit entries remain un-proved by the assessee, he held that the credits as appearing in the books of accounts of the assessee, in the form of unsecured loans amounting to Rs. 90,62,934/- is considered to be non-genuine and unexplained and the Assessing Officer added back the same to the total income of the assessee u/s. 68 of the Act.

4. In appeal, the Id. CIT(A) issued four notices of hearing to the assessee. However, Ld. CIT(A) held that since assessee has not availed the opportunity of being heard provided to the assessee, accordingly, he passed ex-parte order confirming the additions made by the Id. Assessing Officer with the following observations:-

“5.1 As appellant has not furnished any details to prove the identity and creditworthiness of the creditor and genuineness of the transaction AO added the sum of Rs.90,62,934/- u/s.68 of the Act treating the same as unexplained cash credits, in the course of appellate proceedings also appellant has not filed any details to prove these three ingredients. In the statement of facts appellant has submitted that the loans were received by the banking channels and due interest was paid. On facts merely because the loans were received through banking channels and interest was paid does not establish the identity and creditworthiness of the creditor and genuineness of the transactions.

5.2 Hon'ble higher Courts in catena of judgments have clearly held that with regard to unsecured loans and share capital by private limited companies, merely filing the confirmation letters, copies of bank statements and Income Tax returns of the lenders/ share holders is not sufficient discharge of onus cast on the recipient of loans/share capital for proving the identity and creditworthiness of the creditors and genuineness of the transaction. In a judgment with regard to loan transaction Hon'ble High Court of Delhi in the case of Pr. CIT-7 Vs.

5. The assessee is in appeal before us against the aforesaid additions confirmed by the Id. CIT(A). The Id. counsel for the assessee admitted that on the last date of hearing fixed for 27-08-2019, inadvertently and due to oversight, the AR of the assessee could not seek adjournment since he was occupied in gathering the details in relation to impugned additions. However, so far as the first two notices dated 29-09-2018 and 03-01-2019 are concerned, there is no record whatsoever that the assessee was in receipt of the above notices. Accordingly, there has been no non-compliance so far as the first two notices are concerned.

6. Further, the counsel for the assessee submitted that so far as the creditor M/s. Timbor Home Ltd., in respect of whom the additions were made by the Assessing Officer is concerned, the said company is very much traceable and has in fact gone into liquidation. The counsel for the assessee placed before us copies of letters from the office of the official liquidator intimating that by order dated 29-06-2015 passed by the Hon'ble High Court of Gujarat in Company Petition No. 293 of 2013, the above named company has been ordered to be wound up. Further, the counsel for the assessee also placed on record copy of orders passed by the Hon'ble High Court of Gujarat in relation to winding up petition of the creditor of the assessee M/s. Timber Home Ltd. Accordingly, the counsel for the assessee submitted that the said creditor in respect of whom additions have been made by the Id. Assessing Officer and also confirmed by Id. CIT(A) in the appellate order is both identifiable as well as traceable. The counsel for the assessee submitted that the assessee has a good case on merits and in the instant set of facts the additions should not be confirmed on merits. He submitted that if given an

opportunity of being heard, the assessee is desirous to place on record additional evidences before Id. CIT(A) to prove the genuineness of the transaction and creditworthiness of the creditor in respect of the aforesaid unsecured loan. In response, the Departmental Representative has also not objected to the matter being set aside to the file of Id. CIT(A), for being heard afresh on merits.

5.1 In view of the above in the interest of justice, we are setting aside the file to the Id. CIT(A) for hearing the case on merits after giving due opportunity of hearing to the assessee to place on record all additional documents/evidences.

5.2 Since we are setting aside Ground No. 1 of assessee's appeal to the file of Id. CIT(A) for hearing afresh on merits, we are not separately addressing other Grounds of Appeal, which may be taken up by the assessee at the time of hearing before Id. CIT(A).

6. In the result, the appeal of the assessee is allowed statistical purposes.

Order pronounced in the open court on 04-11-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 04/11/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद