

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.1145 & 1275/Del./2020
Assessment Year 2013-2014

The Income Tax Officer, Ward-4, Room No.3, Aayakar Bhawan, Opp. Mansarovar Park, Rohtak – 124 001. Haryana.	vs.	Shri Sushil Berwal, 114 SGC Flats, Golden Jubilee Apartments, Sector-11, Rohini, New Delhi – 110 085 PAN AIRPB9003F
(Appellant)		(Respondent)

For Revenue :	Shri Abhishek Kumar, Sr. D.R.
For Assessee :	Shri Naveen Kumar Gupta, Advocate.

Date of Hearing :	03.11.2022
Date of Pronouncement :	18.11.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

These two appeals filed by the Revenue are directed against the Order of the Ld. CIT(A), Rohtak, dated 06.02.2020 in Appeal No.172/2017-18 relating to the A.Y. 2013-14 (in quantum appeal) and Appeal No.173/2017-18

order dated 09.03.2020 (in penalty appeal). Since interlinked issues are involved in both the appeals, these appeals were heard together and are being disposed of by the consolidated order for the sake of brevity.

2. Briefly stated facts of the case are that the assessee is an individual and is stated to be engaged in the business of trading of petroleum products. The assessee electronically filed his return of income for the A.Y. 2013-14 on 30.09.2013 declaring total income of Rs.8,13,360/-. The case of the assessee was selected for scrutiny under 'CASS' and notice under section 143(2) and 142(1) were issued and served upon the assessee. The A.O. noted that despite service of various notices, there was no attendance on behalf of the assessee. The A.O, therefore, passed the ex-parte assessment order under section 144 of the I.T. Act, 1961 dated 14.03.2016 determining the total income of assessee at Rs.4,32,66,870/-. On the aforesaid additions made under section 144 of the I.T. Act, 1961, the A.O. levied the penalty u/s 271(1)(c) of the Act of Rs.1,30,98,911/- vide order dated 30.09.2016.

2.1. Aggrieved by the order of A.O, the assessee carried the matter in appeal before the Ld. CIT(A) and the Ld. CIT(A) after considering the submissions of the assessee, remand report of A.O. and assessee's reply to the remand report, granted substantial relief to the assessee. CIT(A) vide separate order also deleted the levy of penalty u/s 271(1)(c) of the Act.

3. Aggrieved by the order of Ld. CIT(A), the Revenue is now in appeal before the Tribunal. In quantum appeal has raised the following grounds [ITA.No.1145/Del./2020 – A.Y. 2013-14] :

1. *“The Ld. CIT(A) has erred in law & circumstances on facts in deleting the addition of Rs.2,10,50,000/- made on account of unsecured loans from 3 persons without verifying identity, genuineness of transactions and creditworthiness of the persons.*
2. *The Ld. CIT(A) has erred in law & circumstances on facts in deleting the addition of Rs.18,13,602/- was made by the AO on account of sources of investment made in plant & Machinery.*

3. *The Ld. CIT(A) has erred in law & circumstances on facts in deleting the addition of Rs.1,90,01,106/- was made by the AO on account of undisclosed deposits in the balance sheet without verifying the same from the concerned parties.*
4. *The Ld. CIT(A) has erred in law & circumstances on facts in deleting the addition of Rs.4,26,723/- was made by the AO on disallowance @30% on electricity bill, freight inward, power& Fuel and wages and salary expenses.*
5. *The Ld. CIT(A) has erred in law & circumstances on facts in deleting the addition of Rs.1,62,082/- on account interest on taker loan.”*

4. The Revenue in penalty appeal has raised the following ground [ITA.No.1275/Del./2020 – A.Y. 2013-14] :

“The Ld. CIT(A) has erred in law & circumstances on facts in deleting the penalty imposed amounting to Rs.1,30,98,911/- by the A.O. especially when the

Revenue is in appeal before the quantum appeal of the assessee.”

We first proceed with Revenue’s quantum appeal in ITA.No.1145/Del./2020 – A.Y. 2013-14

5. The Revenue has raised various grounds with respect to the additions that were deleted by the Ld. CIT(A).

6. Before us, Learned DR supported the order of AO. On the other hand Learned AR supported the order of CIT(A).

7. We have heard the rival submissions and perused the material on record. We find that CIT(A) after considering the material on record, including the remand report of AO and assessee’s response deleted the addition by observing as under:

6.3. In the remand report the AO has given his comments on merit also. As regards unsecured loans of Rs.2,10,50,000/- the bank account statements, copies of ITRs of the persons were examined and found correct by the AO. A perusal of the documentary evidence such as confirmed ledger copies of account of creditors,

transactions made through banking channel, copies of ITR confirm the unsecured loans shown by the assessee and is accepted.

As regards addition to fixed assets, the capital was withdrawn from bank account and expenditure was incurred which has been explained by way of bills/vouchers and the same was found correct by the AO. A perusal of documentary evidence as discussed in the assessee's submission and remand report of the AO is seen and the explanation given by the assessee is found acceptable.

As regards addition of Rs.1,90,01,106/- on account of sundry debtors of Rs.1,79,46,523/-, loans advance of Rs.1,44,340/-, cash in hand of Rs.3,14,245/-, bank balance of Rs.5,80,998/- and FDR of Rs.15,000/-, the same was found verifiable and as per the audit report by the AO in the remand proceedings. The confirmed copies of ledger a/c of debtors are that of trade debtors where receipts and sales have been duly recorded. Further, assessee has

given explanation of each entry such as prepaid insurance of Rs.24,340/-, sundry debtors of Rs.1.79 crores, cash in hand of Rs.3.14 lacs, bank balance of Rs.5.80 lacs. The finding of AO in the remand report on the basis of documentary evidence given during remand proceedings is found in order.

As regards expenses of Rs.14,22,422/- the AO has submitted that they are not fully verifiable and it is possible they are excessive and inadmissible and disallowance of Rs.4,26,723/- was made @ 30%. The assessee has replied that complete books of account and bills as per ledger account of electricity, power and fuel, wages and salary were furnished and no should be made. A perusal of the documentary evidence given by the assessee shows that except wages and salary for labour of Rs.1,44,000/-, bills have been submitted in respect of other expenses so adhoc disallowance is not justified here. AO has not pointed out any specific discrepancy or instance of non-production of voucher so addition made @ 30% of Rs.4,26,723/- is not justified.

However, as proper evidence has not been given regarding wages and salary of Rs.1,44,000/- and only copy of ledger a/c is given, disallowance of Rs.25,000/- in this head may be made. As regards interest on Tanker loan of Rs.1,62,082/-, it was found verifiable by the AO and in the remand report and the documentary evidence given in this regard such as ledger account of interest on tanker loan confirms this expenditure and is allowed.

6. *In the result, the appeal is partly allowed.”*

8. We find that the Ld. CIT(A) has passed a reasoned order. Before us, no fallacy in the findings of CIT(A) has been pointed by Revenue. We, therefore, find no infirmity in the order of the Ld. CIT(A). We, therefore, confirm the order of Ld. CIT(A). Accordingly, **the grounds of appeal of Revenue in quantum appeal are dismissed.**

9. **In the result, ITA.No.1145/Del./2020 of Revenue is dismissed.**

10. Since, we have dismissed the appeal of Revenue filed on quantum additions, the appeal filed by the Revenue on penalty, does not survive. Therefore, **the appeal of Revenue in ITA.No.1275/Del./2020 is dismissed.**

11. In the result, **ITA.No.1275/Del./2020 of the Revenue is dismissed.**

To sum-up, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 18.11.2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 18 November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.