

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.6137/Del./2019
(ASSESSMENT YEAR : 2011-12)**

Golden Century Foods Products P. Ltd., vs. ITO, Ward 10 (2),
CP – 64, Maurya Enclave, Pitampura, New Delhi.
New Delhi – 110 034.

(PAN : AADCG5937A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.11.2022
Date of Order : 17.11.2022

ORDER

This appeal by the assessee is directed against the order of the Id.

CIT (Appeals)-4, New Delhi for the assessment year 2011-12.

2. The grounds of appeal read as under :-

“1) That the order passed by the Ld. Assessing Officer is not only bad in law but also against the facts of the case.

2) That the notice was void ab initio as the Reasons to Believe does not belong to the assessee.

3) That the Ld. AO had gone ahead with the Assessment without replying on Objection raised and ignoring the Affidavit submitted.

4) That under the facts and circumstances of the case the Ld. A.O. has erred under the law by making assessment on the non-existent ground and improving upon the reasons recorded

u/s 148 of the Act. It is pertinent to note that where the reasons are factually incorrect, the notice and the assessment thereon need to be vitiated. [Sugar Chand v/s ITO 105 ITR 743 and Govinda V/s ITO 109 ITR 370]. In fact, that the figure of Rs.15,00,000/- as alleged to be main transaction in the report of Investigation wing has been found to be incorrect and no addition made on this ground, the order itself get vitiated.

5) That under the facts and circumstances of the case the Ld. A.O. has erred under the law while making addition amounting to Rs.26,95,000/- being unexplained credit in the books of account despite the fact that the same were duly confirmed and accepted by Ld AO. The assessee relies on the judgement of Ld. High Court of Delhi in case of Ranbaxy Laboratories Ltd V/s CIT [60 DTR 77 (2011)], wherein it has been held that where reasons for initiation of proceedings cease to exist/survive, no assessment can be framed u/s 147/148.

6) That under the facts & circumstances of the case the Ld. A.O. has erred under the law while making addition amounting to Rs. 53,900/- being unexplained expenditure which were not subject matter of Notice u/s 148 of the Act.

7) That any other grounds of appeal may be added/deleted or amended at the time of hearing. Therefore, it is prayed that addition of Rs. 27,48,900/- may please be deleted or any other order as deemed fit may please be passed.

8) That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the actions of Ld. Assessing Officer in computing the total income of the appellant at Rs.26,78,310/- u/s 147/143(2) of the Act.”

3. Brief facts of the case are that the Assessing Officer received information that the assessee had taken accommodation entries amounting to Rs.15,00,000/- from the companies run and controlled by Himanshu Verma. Accordingly, notice was issued. AO found that

during the year, the assessee company had not done any business activities but he noted that the principal business activity was to provide Cold Storage Services and assessee also filed the copy of the bank account nos.37773 and 53850 maintained with Punjab National Bank. Assessee had also given information of unsecured loans. An affidavit of the Director stating that the assessee company does not have any transaction with White Collar Management Pvt. Ltd. during FY 2010-11 was also furnished. AO noted that the report of the Investigation Wing contained the list of beneficiaries in which the name of the assessee company also appeared that it has received an amount of Rs.15,00,000/- from White Collar Management Pvt. Ltd. AO issued notice u/s 133 (6) of the Income-tax Act, 1961 (for short 'the Act') seeking information as to the transaction with the assessee company, however the notice received back with the remarks 'no such person'. During the course of assessment, Assessee has submitted the confirmation of unsecured loans from the following persons :-

Name	Amount
Dimple Goyal	3,50,000/-
Bharto Devi	66,000/-
Anil Kumar, Jitnendar Kumar	6,01,000/-
Vinita Goel	4,50,000/-
Suman Goel	4,00,000/-
Ritu Singhal	5,70,000/-
Ram Goel	2,58,000/-
Total	26,95,000/-

AO issued notice u/s 133 (6) of the Act to these parties. AO observed that examination of the bank account showed that there was no single entry of Rs.15,00,000/-. However, assessee has received entries of different amount from the different persons amounting to Rs.26,95,000/-. AO came to the opinion that these persons from whom assessee had received loans are intermediary of transfer of entries. For this hypothesis, he held that these persons' ITRs showed income between Rs.2 – 3 lakhs and persons earning such income cannot give loan ranging to Rs.2 – 5 lakhs. From these aspects, AO gathered that assessee is not only beneficiary of Rs.15,00,000/- but an amount of Rs.26,95,000/- has been received by the assessee through entry operators. Hence, he made the addition of Rs.26,95,000/-.

4. Before the Id. CIT (A), assessee raised various grounds including the ground that reasons to believe did not belong to the assessee and AO had not given reply to the objections raised and merits were also challenged. As regards assessee's plea that reasons do not belong to the assessee, Id. CIT (A) was of the opinion that the satisfaction note referred to the investigation wing where accommodation entries has been taken by M/s. Goyal Grain Merchants Pvt. Ltd. (PAN : AACCG5042R) during AY 2011-12 amounting to Rs.15,00,000/- from one of the Himanshu Group company i.e. White Collar Management Pvt. Ltd.. However, the name of

the assessee company was M/s. Golden Century Foods Products Pvt. Ltd. having PAN AADCG5937A and the loan was not taken from the said White Collar Management Pvt. Ltd.. Ld. CIT (A) held that though the assessee is correct that the AO has mentioned M/s. Goyal Grain Merchants Pvt. Ltd. at the first place as assessee's name, but when the AO made the specific reference of the name of the beneficiary entry, he did mention the correct name of the assessee. Ld. CIT (A) proceeded to uphold the legality of the reopening. He held that use of different name is a curable defect. Ld. CIT (A) did not address the assessee's objection that assessee's objections have not been replied or disposed off. He also rejected assessee's contention that no addition can be done if the additions on the reasons for reopening are not sustained. He further upheld the lack of creditworthiness of the parties which has been noted by the AO and confirmed the addition of Rs.26,95,000/-. He further upheld 2% commission paid (hypothetical sum) for obtaining the accommodation entry of Rs.26,95,000/- amounting to Rs.53,900/-.

5. Against this order, assessee is in appeal before the ITAT. I have heard ld. DR for the Revenue and perused the records. None appeared on behalf of the assessee. Adjournment request has been rejected as for a quite number of occasions assessee has been seeking adjournments.

6. Upon careful consideration, firstly I note that in the reasons recorded, the name of the assessee and person from whom the bogus accommodation entry was received was M/s. Goyal Grain Merchants Pvt. Ltd. having PAN : AACCG5042R and Rs.15,00,000/- was said to have been received from White Collar Management Pvt. Ltd.. While in the case of the assessee the name of the assessee is Golden Century Food Products Pvt. Ltd. and after examination of the bank statement, AO has accepted that there was no entry of Rs.15,00,000/-. However, other small loans were received by the assessee amounting to Rs.26,95,000/-. This has been presumed to be encompassing Rs.15,00,000/-. There is no basis whatsoever for this hypothesis. The name of the party and PAN number in the information received is totally different that of the assessee. Hence, by no stretch of imagination, it can be said that it is a curable defect. In my considered opinion, the defect is fatal. Furthermore, assessee's objections have not been disposed off. This is another flaw which is fatal and the assessment is liable to be quashed on that count. As regards the merits of addition of Rs.26,95,000/-, the only case of the Revenue is that these persons have earned small amount so they are not capable of giving loans of Rs.3 – 5 lakhs. I note that these persons have given confirmation and no adverse material is available with the Revenue. There is no presumption that the people having smaller income

cannot make small savings. Moreover, there is no linkage on record of these persons with White Collar Management Pvt. Ltd., the company allegedly providing bogus entries. Hence, on merits also, the addition is totally on hypothesis which is not sustainable in law.

7. In the result, this appeal filed by the assessee stands allowed.

Order pronounced in the open court on this 17th day of November, 2022.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 17th day of November, 2022/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-4, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.