

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. C. M. GARG, JUDICIAL MEMBER  
AND  
SH. N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.72/Del/2021  
Assessment Year: 2016-17

<b>DCIT Circle – 52 (1) New Delhi</b>	<b>Vs.</b>	<b>Avdesh Mishra 19, Rajdoot Marg, Chanakya Puri, New Delhi PAN No.AAIPM9379E</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	Sh. Kapil Goel, Advocate
<b>Respondent</b>	Sh. Kanv Bali, Sr. DR

Date of hearing:	08/12/2022
Date of Pronouncement:	08/12/2022

**ORDER**

**PER N.K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-23, New Delhi dated 28.02.2020 pertaining to A.Y.2016-17.

2. The grievance of the revenue read as under :-

1. *Whether the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer on account of unsecured loans of Rs. 2,91,00,849/- (Rs. 3,26,72,155/-) minus Rs. 35,71,306/-) income of the assessee under section 68 r.w.s 115BBE of the Income Tax Act, 1961.*

2. *Whether the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer on account of interest claimed under section 24 of the Income Tax Act, in house property is disallowed, which is unexplained expenditure of Rs. 35,71,306/- u/s 69C of the Income Tax Act, 1961.*

3. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in allowing assessee's appeal based on additional evidences by ignoring the facts that assessee was given ample opportunities to furnish requisite details/ documents but same were not produced during the assessment proceedings.*

4. *Whether the Ld. CIT(A) erred in deleting the additions made by the Assessing Officer by relying on the facts and circumstances of the other concerned cases which facts are different from present case.*

3. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee was claiming interest on housing loan. Assessee was asked to provide details and proper substantial proof in respect of the same. In its reply the assessee stated that unsecured loan for house property has been taken from Dayal Trust in which assessee is a trustee amounting to Rs.32672155/- and interest paid on the same. Assessee provided copy of ITR –V alongwith confirmation from the corresponding parties.

4. On perusal of the ITR the AO found that Dayal Trust has total income of Rs.736010 only. The AO found that assessee has paid interest of Rs.35,71,307/- on account of housing loan but this income is not shown by Dayal Trust in its return of income which casted a doubt on the genuineness of the loan and the interest payment made by the assessee. Further no bank statements were provided by the assessee to reflect these transactions. No information regarding the terms of repayment or

interest to be charged was provided even though the assessee was explicitly asked to provide the same. After referring to certain judicial decision the AO made the addition of Rs.2,91,00,849/- u/s. 68 of the Act and Rs.35,71,306/- u/s. 69C of the Act.

5. Assessee agitated the matter before the CIT(A) and once again submitted the balance sheet and income tax details of Dayal Trust and pointed out that the balance sheet of Dayal Trust show that its beneficiaries has capital of Rs. 13.25 crores as on 31.03.2016 and in addition the Trust has total income of Rs.87.99 lacs out of which Rs.78.75 lacs was distributed amongst beneficiaries, the trust had exempt income of Rs.187527/- and accordingly declared income of Rs.7,36,041/-.

5. The assessee further submitted that confirmation statement containing the details of loan payments related to builder-cheque numbers, dates, loan amount rate, bank details and amount of interest charged by trust since inception of loan upto 31.03.2016 alongwith certificate of interest on loan.

6. The CIT(A) sent all the documents to the AO calling for his remand report and on receiving no adverse inference in the remand report the CIT(A) was convinced with the genuineness of the transactions and creditworthiness of Dayal Trust and directed the AO to delete the impugned additions.

7. Aggrieved by this the revenue is in appeal before us.
8. The DR strongly supported the findings of the AO and read the operative part of the assessment order. The DR vehemently stated that the details furnished by the assessee has not been verified by the CIT(A) nor by the AO.
9. Per contra the Counsel for the assessee reiterated what has been stated before the lower authorities and vehemently stated that in the remand proceedings the AO has examined the details / documents and after examining/ verifying the same did not give any adverse comment on the evidences submitted by the assessee.
10. We have given a thoughtful consideration to the orders of the authorities below and have carefully consider the report of the AO dated 10.02.2020 where initially the AO objected for the admission of additional evidences and subject to his reservations on the admission of additional evidences commented on the submissions of the assessee as under :-
  1. *The returns of M/s Dayal Family Trust and beneficiaries for the preceding 6 years Le. Assessment Year 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17 have been submitted.*
  2. *It is noticed from the copies of ITR -V and computation for the Assessment Year 2016-17 that the interest income received from the assessee is reflected and formed the part of income of Dayal Trust. The total income of the trust is allocated amongst beneficiaries and*

*taxed in their respective hands and taxes are paid as applicable.*

3. *The additional evidences also contain copies of Assessment Orders of Dayal Trust for three Assessment Years i.e. A.Y. 2013-14, 2014-15 and 2015-16. In the Assessment Order for assessment completed u/s 143(3) of the Income Tax Act, for the A.Y. 2013-14 and 2014-15, the A.O. has bifurcated the total income as A) interest upto 12% per annum (i.e. as per the market rate) allocated and taxable in the hands of benefiteiari.es and B) the balance income is shown as interest earned by the trust and tax on oust levied accordingly. And for A.Y. 2015-16, the filed returns of the trust has been assessed and accepted as filed.*

4. *The additional evidences contain statement issued by builder M/s Emaar MGF Land Ltd. in respect of payments received by them towards property acquired by the assessee, containing the details of payments made through cheques during the period from 28.07.2006 to 28.06.2011. Entire loan payments are stated to have been made directly by M/s Dayal Trust to M/s Emaar MGF Land Ltd. Copies of bank statements of M/s Dayal Trust for all the years are also furnished, reflecting these payments.*

5. *Additional evidences also include the copy of hank statement of M/s Dayal Trust up to the period of Repayment of loan with interest and copy of bank statement of the Assessee from where the re-payment has been made along with interest, Also, the confirmation is provided now in respect of complete time period of loan since inception to repayment:*

6. *The additional documents submitted also include copy of Trust Deed creating the trust and copy of Trustee Appointment deed.*

*Keeping in view the above stated facts, the case may be decided according*

11. In the light of the above report of the AO it cannot be said that the documents / details furnished by the assessee was not verified. Considering the factual report of the AO (supra) we do not find any reason to interfere with the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

12. In the result, the appeal of the revenue is accordingly dismissed.

Order pronounced in the open court on 08.12.2022.

Sd/-  
**(C.M. GARG)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary\*

Date:- .12.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI