

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7847/Del/2018, A.Y. 2014-15

Tidal Securities Pvt. Ltd. M-1, Saket, New Delhi PAN : AA ACT2989E	Vs.	Income Tax Officer, Ward 25(3), New Delhi
---	-----	---

Assessee by	Sh. K. Sampath, Adv. & Sh. V. Rajkumar, Adv.
Revenue by	Ms. Sangeeta Yadav, Sr. DR

Date of hearing:	16.01.2023
Date of Pronouncement:	19.01.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Assessee against order dated 07.09.2018 in Appeal No. 584/16-17 assessment year 2014-15 passed by Commissioner of Income Tax (appeals)-9, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 29/12/2016 u/s 143(3) of the Income Tax Act, 1961 passed by the Income Tax Officer, Ward-25(3), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts in brief are that returned showing income of Rs. 11,72,112/- was filed by the assessee which was taken up for complete scrutiny. The

assessee company was incorporated on 01.08.1996 and during the period under consideration the company has not carried out any business activity. Ld. AO observed that the bank account statement of the assessee mentions receiving cash credits entries from M/s. Venus Insec Pvt. Ltd. of Rs. 50 lakhs and 20 lakhs on 15.04.2013. Ld. AO making inquiries u/s 131 r.w.s. 133(6) concluded that the transactions were suspicious as this company had changed hands and name as M/s. Novalty Enteroruses Pvt. Ltd. And it's address was not correct. Therefore Ld. AR of the assessee was asked to produce the Principal Officer/controlling person of M/s. Novalty Enteroruses Pvt. Ltd. but as assessee could not produce such person. Ld. AO observed that assessee has failed to discharge its burden and made the addition of Rs. 70,00,000/-.

2.1 Ld. CIT(A) also sustained it, however, it appears that there was a typographical mistake in para no. 5.1.8 of the order of Ld. CIT(A) where instead of Rs. 17,00,000/- amount of Rs. 1,58,00,000/- was confirmed as income of the assessee from undisclosed sources u/s 68 of the Act. The assessee has challenged the same before this Tribunal raising following grounds :-

1. *“That the Ld. CIT(A) has erred both in law & facts in confirming the addition of Rs. 70,00,000/- U/s 68 of the Income Tax Act, 1961. Unsecured Loan is received and paid back through Account Payee Cheque only. Confirmation of party along with Bank Statement, Copy of Account, ITR was placed on record. Further an additional evidence as Copy of Balance Sheet & Profit and Loss Account was placed on record. Unsecured Loan received infact was Rs. 50,00,000/- which AO had wrongly added as Rs. 70,00,000/- Confirmation of New Address of the Lender was also filed before AO is on record. The onus is fully discharged. The Addition of Rs. 70,00,000/- U/s 68 is illegal & unwarranted.* —

2. *That the Ld. CIT(A) has erred both in law & infact by confirming the wrong figure of Rs. 1,58,00,000/- instead Rs. 70,00,000/- added by AO.*

3. *That the Ld. CIT(A) has erred both in law & fact by stating that the documents submitted as evidence to prove genuineness of transaction, the identity and credit worthiness of the lender are themselves found to serve as smoke screen while there is a physical absence of such lenders is based upon surmises & supposition and is illegal & unwarranted.*
4. *That the assessment framed is against the law and facts of the case & it is prayed that the assessment are made in accordance with law.*
5. *That the appellant craves leave to add its alter or amend the aforesaid ground of appeal at the time of appeal.*
6. *That it is prayed that the disallowance of Rs.70,00,000/- made under U/s 68 may be deleted.”*

3. During the course of arguments, Ld. DR supported the findings of Id. Tax Authorities below submitting that even if assessee hand filed papers of transactions the same does not at validity to the paper companies.

3.1 While Ld. AR taking bench across the paper book stressed on the fact that Ld. AO had wrongly added the loan giving to M/s. Venus Insec Pvt. Ltd. which was squared up during the year itself through proper banking channels.

4. Appreciating the matter on record and the submissions it can be observed that at page no. 19-20 of the paper book, there is copy of bank account of M/s. Venus Insec Pvt. Ltd. with ING Bank where it shows that on 02.04.2013 there was RTGS by the assessee of Rs. 20,00,000/- which assessee claims was by way of unsecured loan. On 15.04.2013 there were two debited entries of Rs. 15,00,000/- and 20,00,000/-, showing RTGS towards the assessee company and on 13.12.2013 there was a credit entry of receiving RTGS of Rs. 15,00,000/- from the assessee company. At page no. 17 of the paper book there is confirmation of accounts from M/s. Venus Insec Pvt. Ltd. in favour of the assessee showing aforesaid transactions.

5. The assessment and the impugned order of Id. CIT(A) both mention of the fact that on behalf of the assessee certain basic documents in support of identity and genuineness of the transaction were filed. However, for the reason of failure of the assessee to produce concerned Principal Officer / controlling person of M/s. Novelty Enterprises Ltd. which is successor in interest of M/s Venus Insec Pvt. Ltd. the addition was made.

6. The findings of Ld. Tax Authorities below are not sustainable on both, facts and law as it is not a case of assessee receiving credit entries only but there were loan transactions which was squared up during the financial year itself. The same were not examined by Ld. Tax authorities below. Assessee had valid reasons for failure to produce relevant persons as Ld. AO himself observes that M/s. Venus Insec P. ltd. changed hands and name to M/s. Novelty Enterprises Ltd. When assessee had sufficiently produced the evidences with regard to fact of transfer of amounts, as loan transactions through banking channels, which were squared up during the year itself. Then as there is no allegation that assessee routed his own accounted money back, through other entities the arguments of Ld. DR that they were paper companies has no consequence. Suspicion alone cannot take place of proof and there was sufficient explanation for the purpose of Section 68 which Tax Authorities failed to take into consideration. The grounds raised are sustained. **The appeal of assessee is allowed.**

**Order pronounced in the open court on 19<sup>th</sup> January, 2023.**

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- .01.2023

\*Binita, SR.P.S\*

Copy forwarded to:

1. Appellant

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI