

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3105/Del/2019
[Assessment Year: 2010-11]**

Peers Applied Corporation Pvt. Ltd., A-16, 2 nd Floor, Gali No. 3, Hardevpuri, Sahadra, Delhi. PAN:AAECP5032C	<u>Vs</u>	ACIT Circle 19(2), New Delhi.
APPELLANT		RESPONDENT

Assessee represented by:	None
Department represented by:	Sh. S.L. Verma, Sr. DR
Date of hearing	18.01.2023
Date of pronouncement	30.01.2023

ORDER

PER N.K.CHOUDHRY, JM:

The Assessee has preferred the instant appeal against the order dated 11.01.2019 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-7, New Delhi, (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2010-11.

2. It appears from the record that earlier notices sent to the Assessee at the address mentioned in form no. 36, returned back by the postal department with the remark "no such person residing on this address". Meaning thereby, the Assessee is not available in the said address. Consequently, the notice for the date of hearing on 18.01.2023 was issued to the Assessee through e-mail. However, still the Assessee did not appear. Hence in the constrained circumstances, we are inclined to decide this appeal as ex parte.

3. In this case the Assessee by filing its return electronically on 8.10.2010, declared its income at Nil, which was processed on 29.08.2011 u/s 143(1) of the Act. Subsequently, based on the information received from Asstt. Director of Income-tax (Inv.)-2, Kanpur and further verification, the notice u/s 148 of the Act was issued to the Assessee on 29.3.2017. On the basis of the STR and verification of the return of the Assessee it was opined by the AO that there were sufficient reasons to believe that an income of Rs. 3,71,73,228.90 has escaped from assessment.

On being asked, the Assessee filed relevant documents and replies. After considering the reply and documents of the Assessee, the AO vide assessment order dated 30.12.2017 made the addition of Rs. 2,63,53,166/- u/s 68 of the Act on account of cash deposited which remained unexplained.

4. The Assessee being aggrieved challenged the order passed by the AO on the validity of the reassessment proceedings and issuance of notice u/s 148 of the Act as well as on merits. The learned Commissioner ultimately upheld the validity of the initiation of the proceedings u/s 147 of the Act by way of issue of notice u/s 148 of the Act, by concluding as under:

"4.4. In view of the above, prima facie there was material available with the AO in the form of information from the from ADIT(Inv.)-02, Kanpur that that huge cash deposits has been credited in the various banks that income had escaped assessment. In spite of number of opportunities afforded, the appellant has not substantiated its assertions raised in the grounds of appeal. Since the appellant has chosen not to attend proceedings before the undersigned or furnished any submission to substantiate the grounds taken, it is held that the AO had validly initiated proceedings by way of issue of notice u/s 148 of the Act. In view thereof, these grounds of appeal are dismissed."

5. Further, the learned Commissioner also sustained the addition made by the AO by concluding as under:

"5.1 The AO made addition of Rs.2,63,53,166/- u/s 68 of the Act on account of unexplained cash credit after due consideration of the replies filed by the appellant held that the appellant has not been able to prove the genuineness of the transactions and invoked provisions of section 68 of the Act and brought to tax Rs.2,63,53,166/- as unexplained cash credit in the hands of the appellant company. It is settled law that if any credit is found in the books of the accounts of the assessee, the primary onus lies on the assessee to prove the identity of the creditor, creditworthiness of the creditor and genuineness of the transaction. In the case under consideration, the appellant has failed before the AO during the assessment proceedings to prove that the credit entries were genuine. The AO has given detailed reasons for making the addition by treating the amount of Rs.2,63,53,166/- as unexplained cash credit u/s 68 of the I.T. Act, 1961.

5.2 In appellate proceedings in spite of repeated opportunities provided, as recorded in para 2 & 3, the appellant company has not substantiated the grounds of appeal taken. As the appellant has been provided due opportunities, which the appellant has chosen not to avail, the grounds of appeal taken are not substantiated. In view of the above, I do not find any reason to interfere with the order of the AO. Therefore, the addition of Rs.2,63,53,166/- made by the AO u/s 68 is confirmed and the grounds of appeal are rejected."

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. As the Assessee before the learned Commissioner as well, did not appear and therefore failed to substantiate its assertion raised in the grounds of appeal before the learned Commissioner. Consequently, the learned Commissioner affirmed the initiation of reassessment proceedings by issuing a notice u/s 148 of the Act.

We observe that the learned Commissioner not only considered the factual aspects of the case, while deciding the validity of the initiation of the reassessment proceedings, but also taken into consideration various judgments, as referred to in paras 4.2 & 4.3 and also the amended provisions of Section 147 of the Act, consequently, we are inclined not to interfere in the conclusion drawn by the learned Commissioner qua initiation of reassessment proceedings and issuance of notice u/s 148 of the Act.

7. Coming to the merit of the case it appears clearly from the orders passed by the authorities below that the Assessee has failed to prove its primary onus lies on it, to prove the identity of the creditor, creditworthiness of the creditor and genuineness of the transaction. Further, the Assessee also failed to substantiate its grounds of appeal qua merits of the case, before the learned Commissioner, therefore, the learned Commissioner in the constrained circumstances, affirmed the addition of Rs. 2,63,53,766/- made by the AO u/s 68 of the Act. Even we do not find any material or reason to controvert the findings of the Ld. Commissioner. Consequently, we are inclined to uphold the order impugned.

8. In the result, appeal filed by the Assessee stands dismissed.

Order pronounced in open court on 30.01.2023.

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI