

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.139/Asr/2019
Assessment Year: 2015-16**

M/s Neeventa Construction Pvt. Ltd. N-147, Basement Greater Kailash, Part-1, New Delhi. [PAN: AAECN2126P] (Appellant)	Vs.	Income Tax Officer, Ward-3(1), Ferozepur. (Respondent)
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Appellant by	Sh. Ashwani Kalia, CA.
Respondent by	Ms. Priyanka Singla, Sr. DR

Date of Hearing	22.12.2022
Date of Pronouncement	31.01.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda, [in brevity the 'CIT (A)'] bearing appeal No. 137-IT/17-18, date of order 03.12.2018, order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2015-16. The impugned order was emanated from the order of Id. Income Tax Officer, Ward-

3(2), Ferozpur, order passed u/s 143(3) of the Act date of order 22.11.2017. The assessee has raised the following grounds:

“1. That the learned Commissioner of Income Tax (Appeals) Bathinda has erred in law and on facts in confirming the addition made by the Assessing officer u/s 40A(3) of Income Tax Act, 1961 amounting to Rs. 1,59,390/- for payments made to labour Contractors for civil works.

2. That the learned Commissioner of Income Tax (Appeals) Bathinda has erred in law and on facts in confirming the addition made by the Assessing officer u/s 40a(ia) for payment of legal fees for contravention of Sec 194J.

3. That the learned Commissioner of Income Tax (Appeals) Bathinda has erred in law and on facts in concluding that the ground No. 1 and 2 were not pressed by the appellant.

4. That the learned Commissioner of Income Tax (Appeals) Bathinda has erred in law and on facts in confirming the addition made by the Assessing Officer of Rs. 20,00,000/-and Rs. 4,99,969/- on account of alleged Unexplained Investments made by the assessee.

5. That the learned Commissioner of Income Tax (Appeals) Bathinda has failed to appreciate that this sum of Rs. 20,00,000/- was an Unsecured loan taken from M/s H.S Agro in A/Y 2014-15 and was returned to them in the AJY 2015-16 and

sum of Rs. 4,99,969/- was an unsecured loan taken from Rajasthan Cattle Feed Trading Co.

6. That the learned Commissioner of Income Tax (Appeals) Bathinda has erred in law and on facts in concluding that these amounts were unexplained credit in the accounts of Harsh Awla and Sakshi Awla.

7. That the learned Commissioner of Income Tax (Appeals) Bathinda has failed to appreciate that there was only one such transaction and that too was through Banking Channels and was duly confirmed by the lenders and that the same were credited to wrong Account in advertently.”

2. During appeal proceeding, the Id. Counsel for the assessee has withdrawn ground nos. 1 and 2. The rest grounds are adjudicated accordingly.

3. Brief fact of the case is that the assessee is a private limited company, paid advance loan of Rs.20,00,000/- in preceding year i.e. for A.Y. 2014-15. The said amount was returned by the party M/s S.H. Agro for the impugned F.Y. 2014-15 related to A.Y. 2015-16. But in preceding years and the year of the appeal the amount was wrongly credited in the books of accounts of the assessee, in the name of the relative of one of the director Mrs. Sakshi Awla. As per the assessee, the mistake was committed by the accountant. The book of accounts of the assessee was duly audited u/s 44AB of the Act. As per the assessee, the auditor had not

considered the mistake of accountant of assessee during preparation of the audit report. In the impugned year, the mistake was rectified during the time of assessment and the relevant documents were submitted before the AO for substantiate the claim of assessee. But the ld. AO had rejected the claim of the assessee and added back Rs.20 lacs with the total income of the assessee. The addition amount of Rs.4,99,969/- has the same cause. In argument the ld. Counsel had explained the same mistake which was done by the accountant of assessee. The amount of Rs.5 lac was received from party M/s Rajasthan Cattle Feed Trading Co., during year of appeal. After deducting the bank charges the amount of Rs.4,99,969/- was credited in the assessee's book. In this issue the accountant of the assessee had committed same mistake and the amount was credited in the name of Mr. Harsh Awla, director of the assessee-company. Both the amounts are received during the impugned assessment year as the balances were carry forwarded from the preceding year. In audit report the auditor has mentioned the name of M/s Sakshi Awla and Mr. Harsh Awla in place of original party. The ld. AO had added back both the amount with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) had considered the documents and upheld the observation of the ld. AO. Being dissatisfied on order of the ld. CIT(A), the assessee filed an appeal before us.

4. The Id. counsel for the assessee has argued and filed a written submission which is kept in the record. The main argument of the Id. counsel for the assessee was that the mistake was made inadvertently; it was a minor clerical mistake and the rectification was completed during the time of assessment. The documents are produced by the Id. Counsel before the bench in favour of his argument which are as follow:-

SL NO	DOCUMENTS	APB PAGE NO
1	Copy of A/c of H.S. Agro for the year ending 31.3.2014	26
2	Copy of Bank Statement of appellant in ICICI Bank showing the receipt of RS.20 lakhs on 13.2.2014 from H.S. Agro	27
3	Copy of PNB Statement of H.S. Agro showing the payment of Rs.20 lakhs to appellant	28
4	Copy of A/c of H.S. Agro for the year ending 31.3.2015 showing repayment of Rs.20 lakhs by the appellant	29
5	Copy of ICICI Bank Statement showing repayment of Rs.20 lakhs to H.S. Agro	30
6	Copy of PNB Statement of H.S. Agro showing the receipt of RS.20 lakhs from appellant	31
7	Copy of ICICI Bank Statement showing the receipt of Rs.499969 from Rajasthan Cattle Feed Trading Co	32
8	Copy of PNB statement of Rajasthan Cattle Feed Trading Co showing payment of Rs.500000 to appellant company	33

9	Copy of A/c of Rajasthan Cattle Feed Trading Co in the books of appellant for the year ending 31.3.2015	34
10	Copy of A/c of Harsh Awla Director in the books of appellant for the year ending 31.3.2015	35
11	Copy of A/c of Sakshhi Awla in the books of appellant for the year ending 31.3.2014	36

5. The Id. Sr. DR vehemently argued and relied on the order of the lower authorities. The relevant para of the Id. AO is reproduced as below:-

“The reply filed by the assessee has been considered but I do not find any merit on the plea taken by the assessee that the payment of Rs. 20 lac received from M/s. H S Agro, has been shown as unsecured loans as on 31.03.2014, the name of M/s. H S Agro has by typing mistake shown, as Sakshi Awla. Since the accounts furnished by the assessee are final and have been duly audited by the auditor as required u/s 44AB of the Income Tax Act, 1961, therefore the question of typing error as contended by the A/R does not arise. Moreover the assessee has not shown the said amount of credit balance in respect of Sakshi Awla in the final accounts of one year, but the assessee has shown the said credit balance in the audited balance sheet of both the years i.e. A.Y. 2014-15 and 2015-16. Also, the assessee has not shown any credit or debit entry outstanding in respect of Ms, Sakshi Awla. Further the name of Ms. Sakshi Awla is not an imaginary one. Ms. Sakshi Awla is also an assessee and is related to one of the

directors of the assessee namely Sh. Harsh Awla , The contention of the assessee that this is a typing mistake which does not affect the profitability of the company and on the balance sheet figures cannot be accepted.. It is therefore apparent that the assessee has made the payment of Rs. 20,00,000/- to M/s H.S.Agro on account of some investment which has not been recorded by the assessee in the books of accounts. Hence the amount of Rs. 20,00,000/-paid by the assessee to M/s H.S.Agro is added to the income of the assessee as ‘ unexplained investment made by the assessee.’”

6. We heard the rival submission and perused the documents available in the record. The assessee has credited in the books of accounts in the name of Mrs. Sakshi Awla and Mr. Harsh Awla in place of M/s H. S. Agro and M/s Rajasthan Cattle Feed Trading Co. respectively. The mistake was come up from preceding year. The brought forwarded balance in the books of assessee in impugned A.Y. 2015-16 is also the erroneous as per the assessee. The assessee has relied on the audit report, u/s 44AB of the Act for both the years. But in assessment or in appeal, none of the revenue authorities has verified the contradictory fact of Audit Report & fact stated by assessee itself. Even the books of both the parties are not properly verified by cross examining the evidence of M/s H. S. Agro and M/s Rajasthan Cattle Feed Trading Co. The assessee already submitted the documents in support

of its claim. But the same documents are liable to be verified by revenue authorities by cross examining the books of accounts. In our considered view, we remand back the matter to the Id. AO for fresh verification and for adjudication *de novo*. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanations submitted by assessee in its defence shall be admitted by the Id. AO, and adjudicated on merits in accordance with law. We order accordingly.

7. In the result, the appeal of the assessee bearing **ITA No. 139/Asr/2019** is allowed for statistical purpose.

Order pronounced in the open court on 31.01.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order