

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1275/DEL/2012
[Assessment Year: 2007-08]**

Sumer Chand Verma, AE-106, Shalimar Bagh, New Delhi. PAN- AAEPV4139M	<u>Vs</u>	DCIT, Central Circle-23, New Delhi.
---	-----------	--

AND

**ITA No. 1276/DEL/2012
[Assessment Year: 2007-08]**

Sumer Chand Verma & Sons, AE-106, Shalimar Bagh, New Delhi. PAN- AAIHS3982D	<u>Vs</u>	DCIT, Central Circle-23, New Delhi.
--	-----------	--

APPELLANT	RESPONDENT
Assessee represented by	Shri Rakesh Gupta, Ld. Adv. & Shri Deepesh Garg, Ld Adv.
Department represented by	Shri B.M. Singh, Ld. Sr. DR
Date of hearing	31.01.2023
Date of pronouncement	07.02.2023

ORDER

PER N.K. CHOUDHRY, JM:

These appeals have been preferred by the Assessee-individual and the HUF respectively against the separate orders dated 12.01.2012 & 13.01.2012 impugned, passed by the Ld. Commissioner of Income tax (Appeals)-XXXIII, 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 2007-08. For the sake of brevity both these appeals were heard together and are being disposed of by this consolidated order.

2. First we will decide **ITA No. 1275/Del/2012 (A.Y. 2007-08)** as a lead case.

3. In the instant case the Assessee declared its income to the tune of Rs. 18,14,771/- by e-filing its return of income on 26.10.2007. Subsequently, a copy of ITR -V was also filed on 29.10.2007 by the Assessee, which was processed u/s 143(1) of the Act at the same income on 25.09.2008.

3.1 Later on, the case of the Assessee was selected for compulsory scrutiny and various statutory notices have been issued to the Assessee. In response to the notice dated 01.10.2009 u/s 142(1) and 143(2) of the Act, the Assessee attended the proceedings and filed part details and, therefore, the case was adjourned to 22.10.2009_for remaining details and to produce books of account along with bills and vouchers and

thereafter the assessment proceedings have been fixed on various occasions, on which dates the Assessee some time sought adjournments and some time filed some part replies/details. Therefore, it was observed by the AO that complete and pending details as well as books of account were not produced by the Assessee despite availing of number of opportunities. He left with no other alternative but to complete the assessment on merits on the basis of information and material available on record.

3.2 The AO finally analyzed the factual aspects of the case and in order to verify the genuineness of the unsecured loans as shown in the balance-sheet by the Assessee, also issued summons u/s 131 of the Act to the loan creditors at the postal addresses on record. However, the summons issued u/s 131 of the Act were returned back by the postal authorities with the following remarks:

<i>Name of the loan creditors & Address</i>	<i>Loan (In Rs.)</i>	<i>Interest (in Rs.)</i>	<i>Total amount outstanding as on (In Rs.)</i>	<i>Date of appearance</i>	Postal Remarks
<i>M/s Pitambra Securities Pvt. Ltd. 285/6, Near Gopal Mandir, Kishan Ganj, Delhi and 104/A, Single Storey, Ramesh Nagar, New Delhi-15</i>	<i>Rs. 50,00,000</i>	<i>Rs. 1,88,057</i>	<i>Rs. 51,88,057</i>	<i>25.11.2009</i>	No such person found
<i>M/s Hillridge Investment Ltd. 106, Palco House, T-10, Main Patel Road, Patel Nagar, New Delhi-8</i>	<i>Rs. 50,00,000</i>	<i>Rs. 1,96,726</i>	<i>Rs. 51,96,726</i>	<i>25.11.2009</i>	No such person found

3.3 The AO by observing “that summons u/s 131 dated

17.11.2009, issued for verification of the transactions entered into with M/s. Pitambra Securities Pvt. Ltd. and M/s. Hillridge Investment were returned back with the postal remarks that "no such parties at the given addresses" and the summons issued to M/s. Jai Maa Bhawani Overseas Pvt. Ltd. remained un-complied with by the concerned party and the total outstanding balance against the above party is shown at Rs. 3,64,414/- including interest of Rs. 14,414/-", confronted the Authorized Representative of the Assessee with the said facts specifically to the effect that the summons u/s 131 dated 17.11.2009, issued for verification of the transactions entered into with M/s. Pitambra Securities Pvt. Ltd. and M/s. Hillridge Investment were returned back with the postal remarks that "no such parties at the given addresses" and also asked to produce the above parties in person by 26.11.2009 alongwith their books of account. However, the Assessee failed to produce the above parties for verification of outstanding balances appearing against their names, therefore, the AO by holding that since no compliance was made by the Assessee, he has no option but to treat the outstanding balances aggregating to Rs. 1,07,49,197/- (Rs.51,88,057 + Rs.51,96,726 + Rs. 3,64,414) appearing against their names as unexplained cash credit u/s 68 of the Act.

3.4 The AO by considering "the fixation charges to the tune of Rs. 58,32,911/-, which were debited by the Assessee in its trading

account whereas as per the bank statement of Nova Scotia, furnished by the Assessee with his letter dated 12.10.2009, during the course of assessment proceedings, the same have been shown at Rs.1,31,651/-," show caused the Assessee to furnish the nature of fixation charge with detailed note on the same.

The Assessee in response claimed that the Assessee has entered into an agreement with the bank of Nova Scotia to purchase gold. However, on the date of agreement, the rate of gold was not fixed and the same was fixed on the future date. It is stated here that the bank have debited the difference between the price of gold on the date of agreement and the price of gold as on the date fixed for the price of gold. This was treated as fixation charges during the F. Y. 2006-07.

3.5 The Assessing Officer by considering the contention of the Assessee that since no evidence was filed alongwith books of account by the Assessee to substantiate his claim and to reconcile the difference as debited in the trading account as appeared in the bank statement of Nova Scotia, held that the reply of the Assessee found not tenable. The Assessing Officer also held that in the absence of books of Account the trading results shown by the Assessee are not subject to verification. It is clear from the above that the G.P. ratio for the year under consideration is quite low in comparison to the last years. The

Assessee has not furnished any explanation. Keeping in view the above, the fixation charges to the extent of Rs.57,01,260/- (Rs.58,32,911 - Rs.1,31,651) are disallowed and added back to the income of Assessee.

3.6 The Assessing officer also made other addition, which are not in dispute before us therefore we are not quoting the same.

4. The Assessee being aggrieved also challenged the said additions, before the learned Commissioner, who by impugned order sustained the addition of Rs. 1,07,49,197/- and Rs. 57,01,260/- on account of outstanding balances qua unsecured loan creditors and fixation charges.

5. The Assessee being aggrieved against the impugned order to the extent of sustaining the additions referred to above is in appeal before us.

6. Heard the parties and perused the material available on record. Ground no. 1(a) to (c) pertains to the confirmation of the addition of Rs. 1,07,49,197/- which was made by the AO mainly on the reasons that summons u/s 131 of the Act issued to the loan creditors on the addresses available on record were returned back from the postal authorities with the remarks "No such person found". Therefore, the Assessee was confronted with the said factual position and was asked to produce the above

mentioned parties for verification of outstanding balances appearing against their names. Some-how the Assessee made no compliance. The learned Commissioner on the similar footing affirmed the said additions. The Assessee before us demonstrated that though the Assessee has filed various details obtained from the creditors, however, the authorities below sidelined the same and made and affirmed the said addition, unreasonably and without taking into consideration the relevant material on record.

6.1 We observe that though in the assessment order in para no. 2, the AO has mentioned that the Assessee vide his letters dated 18.08.2009 and 16.11.2009 furnished the confirmation from the unsecured loan creditors along with their addresses, however, the AO still not taken into consideration the same, because the summons issued to the loan creditors u/s 131 of the Act have been returned back by the postal authorities and even after confrontation with the Assessee, the Assessee also failed to produce the above mentioned parties for verification of outstanding balances appearing against their names.

6.2 The Assessee before us demonstrated that the Assessee before the authorities below duly filed confirmations from the creditors, their account statements and various other documents in order to substantiate its claim. At this juncture we are not inclined to dwell into the merits of the case, as summons u/s 131

of the Act , issued to the loan creditors neither served nor the loan creditors at its own appeared before the authorities below and even the Assessee also failed to produce the said creditors before the authorities below. Hence, considering the peculiar facts and circumstances of the case, for the just decision of the case and for substantial justice, we are inclined to remand the issue in hand to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee and taking appropriate actions in accordance with the law for examination of the loan creditors.

We clarify, the primary onus would be on the Assessee to substantiate its claim and the Assessee would also cooperate with the assessment proceedings and file the relevant document(s) as would be needed by the assessing officer and shall produce the said loan creditors or provide the exact/correct details/address(s) of the loan creditors, in order to enable the AO to summon the said loan creditors.

6.3 In the result **Ground no. 1(a) to (c)** are allowed for statistical purposes.

7. Ground no. 1(d) relates to the confirmation of the addition of Rs. 57,01,260/- on account of fixation charges. It appears from the assessment order that the Assessee was asked to

furnish the nature of fixation charges with detailed note on the expenditure and the Assessee vide reply dated 28.11.2009 though submitted the note, however, failed to file any supporting evidence along with the books of account to substantiate its claim and to reconcile the differences as debited in the trading result and as appeared in the bank statement of Nova Scotia. Therefore, the contention of the Assessee was not found acceptable by the AO, who ultimately made the addition/disallowance to the tune of Rs. 57,01,260/- ((Rs.58,32,911 - Rs.1,31,651). The said disallowance was affirmed by the learned Commissioner on the same footing.

7.1 The Assessee before us also demonstrated to have submitted the copy of ledger account for fixation charges, account statement, ledger account of Nova Scotia etc. Considering the peculiar facts and circumstances, in our view the substantial justice would be met by remitting the issue under consideration as well, to the file of the AO for decision afresh. Suffice to say by affording reasonable opportunity of being heard to the Assessee. We clarify that primary onus would be on the Assessee to reconcile the differences as debited in the trading result and as appeared in the bank statement of Nova Scotia and to substantiate its claim.

7.2 In the result, ground no. 1(d) is also allowed for statistical

purposes.

8. In the result, **ITA No. 1275/DEL/2012** filed by the Assessee stands allowed for statistical purposes.

9. ITA no. 1276/Del/2012:

In this case also the Assessee was asked to furnish the confirmation qua unsecured loan creditors whose names appeared in form 3CD along with bank statements, ITRs for the year under consideration and complete postal address. Though the Assessee furnished confirmation from the unsecured loan creditors along with their addresses, however, in order to verify the genuineness of the unsecured loans as shown in the balance-sheet, the AO issued summons u/s 131 of the Act to all the loan creditors on the addresses available on record. Some-how the summons issued in the cases of M/s Sumax Medicare Limited and Star Global Resources pvt. Ltd. remained un-complied with by the concerned parties with regard to total outstanding balances to the tune of Rs. 15,55,078/- [Rs. 15,00,000/- (loan)+ Rs. 55,078/- (interest)]; and Rs. 10,42,966/- [Rs. 10,00,000/-(loan) + Rs. 42,966/- (interest)] respectively.

9.1 In addition to the above, the summon issued to M/s Hillridge Investment Ltd. was also received back with the postal remarks "no such company", against which amount of Rs. 67,11,707/- including interest of Rs. 2,11,707/- was shown as outstanding balance.

9.2 Therefore considering the said factual aspects, the Assessee was show caused and confronted with the said facts by the AO. The AO also confronted the Assessee with the fact that summons issued u/s 131 dated 17.11.2009 to M/s Hillridge Investment Ltd. for verification of outstanding balance appearing against their names also remained un-complied. As the Assessee failed to produce the said loan creditors and therefore the AO ultimately made the addition of Rs. 67,11,707/- by treating the same as outstanding balance appearing against the name of said company as unexplained cash credit u/s 68 of the Act.

9.3 The AO also made other additions which are not in controversy before us. Therefore, we are not quoting the same.

10. The Assessee also challenged the said addition of Rs. 67,11,707/- on account of M/s Hillridge Investment Ltd.. before

the learned Commissioner, who on the same footing/reasoning as given by the AO, affirmed the same.

11. The Assessee being aggrieved is in appeal before us.

12. We have given thoughtful consideration to the instant issue. In ITA no. 1275/Del/2012 as one of the creditors involved is M/s Hillridge Investment Ltd. and we have remitted the issue qua outstanding balances to the file of the AO, therefore, in view of the order passed in ITA no. 1275/Del/2012 we are inclined to remand the issue in hand as well, to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee and taking appropriate actions in accordance with the law for examination of the loan creditor i.e. M/s Hillridge Investment Ltd. .

We clarify, the primary onus would be on the Assessee to substantiate its claim and the Assessee would also cooperate with the assessment proceedings and file the relevant documents as would be needed by the assessing officer and shall produce the said loan creditor or provide the exact/correct details/address(s) of the loan creditor in order to enable the AO to summon the said loan creditor.

13. Consequently ITA no. 1276/Del/2012 is allowed for statistical purposes.

14. In the end result, ITA Nos. 1275/Del/2012 and 1276/Del/2012 are allowed for statistical purposes.

Order pronounced in open court on 7/2/2023.

**Sd/-
(ANIL CHATURVEDI)
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