

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 921/Del/2020 : Asstt. Year: 2016-17

Income Tax Officer, Ward-58(6), New Delhi-110002 (APPELLANT)	Vs.	Affy Foodtech LLP, N-101, Anupam Apartments, East Arjun Nagar, New Delhi-110032 (RESPONDENT)
PAN No. ABBFA1255H		

Assessee by : Sh. Niren Gupta, CA

Revenue by : Sh. Kanv Bali, Sr. DR

Date of Hearing: 09.02.2023

Date of Pronouncement: 20.02.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue against the order of the Id CIT(A)-30, New Delhi dated 12.12.2019.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Id. CIT(A) is bad in law and not in consonance with facts of the case.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.6,04,70,000/- u/s 68 of the I.T. Act.

3. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.1,39,84,900/- holding that there is no legal basis for such an ad-hoc disallowance."

3. The AO made addition of Rs. 6.04 crores owing to non-submission of details of investors. Before the Id. CIT(A), the assessee filed details and the source of capital contribution from M/s. Affy Parenterals.

4. The relevant part of the submission of the assessee before the Id. CIT(A) is as under:

"We are humbly submitted that we have duly and truly submitted with Ld. AO during the assessment proceeding u/s 143(3) as under:

The main ingredients of the section 68 of the Income Tax Act, 1961 are below:

i) Identity of the investors/customers/creditors/Partner

ii) Genuineness of the Transaction

iii) Creditworthiness of the investors/customers/creditors/Partner

We have discussed and submitted documents in large to satisfy the above three criteria

1) Identity of the Partner

This is to humbly submitted that Mr. Arvind Billa S/o Sh. P.L. Billa R/o N-101, Anupam apartments, East Arjun Nagar, Delhi-110032 (India) is the permanent resident of India, residing in India and law abiding person and having submitted following documents for his identity:-

a) Aadhar Card

b) Pan card

c) Passport

d) Election I card

e) DIN (Director Identification No.)

ii) Genuineness of the Transaction

This is to humbly submitted that as per show cause notice dated 08.12.2018, 18.12.2018 and earlier questioner during the assessment proceeding we have respectfully submitted as under:

a) *HDFC Bank Account Statement of Mr. Arvind Billa (Partner) from where funds have been transferred as capital introduced in partnership firm. Narration in bank statement also revealed that funds from personal account of Mr. Arvind Billa had been transferred to assessee firm M/s Affy Foodtech LLP. The same also confirmed and verified by Ld. AO and also mentioned in his show cause notice dated 18.12.2018 and also mentioned on page no. 02 of Assessment order.*

b) *Certified copy of capital account of Mr. Arvind Billa (Partner) maintaining with M/s Affy Foodtech LLP and also reflecting the same in the Audited balance sheet of assessee firm M/s Affy Foodtech LLP.*

c) *Bank statement of Assessee firm M/s Affy Foodtech LLP in which narration also revealed that amount received from Mr. Arvind Billa (Partner).*

iii) Creditworthiness of the Partner

This is to bring your kind attention that Arvind Billa (Partner) is also the partner in M/s Affy Parenterals. M/s Affy Parenterals, also filed their income tax return and assessed within the same ward. The fund which was introduced as capital by Mr. Arvind Billa (Partner) in the assessee firm M/s Affy Foodtech LLP, had originally received from his another partnership firm M/s Affy Parenterals, from where sufficient credit balance in his capital account.

Narration in HDFC bank statement of Mr. Arvind Billa (Partner) also revealed that funds actually received from M/s Affy Parenterals, and than transferred to assessee firm M/s Affy Foodtech LLP. The same also confirmed and verified by Ld. AO and also mentioned in his show cause notice dated 18.12.2018 and also on page no. -02 of the Assessment order. This is proving genuine source of funds and its creditworthiness.

We had also respectfully duly and truly submitted the following documents in supporting of the above to prove the creditworthiness of the partner as under:

a) *Duly certified capital Account with M/s Affy Parenterals, where Mr. Arvind Billa is Partner (80% of Profit sharing ratio in M/s Affy Parenterals) from where funds have been duly transferred to his personal HDFC bank account. Capital have duly introduced from his HDFC bank to the newly partnership firm say M/s Affy Foodtech LLP is proving genuine source of funds.*

b) *Mr. Arvind Billa is an individual capacity filed his return regularly within time and also the mentioned the details and requisite information in his income tax return about his partnership firm. Copy of the ITR and computation of income also reveals the same. (ITR-V and computation of income tax are enclosed)*

c) *Computation of Income for the AY 2016-17 of Mr. Arvind Billa, which also revealed the capital account of various partnership firm and also prove the capacity to introduced the capital in his partnership firm.*

d) *Balance sheet in profit & loss account of Mr. Arvind Billa of his proprietorship firm for the FY 2015-16 relevant to the AY 2016-17.*

e) *M/s Affy Parenterals is also filed their income tax return within time regularly with the respective jurisdictional authority. Copy of the ITR is also enclosed for your kind perusal and records.*

In this regards we humbly submitted that Mr. Arvind Billa is also Partner having 80% of profit sharing ratio in M/s Affy Parenterals. There is sufficient credit balance in his capital account with M/s Affy Parenterals. Amount has been received from M/s Affy Parenterals and transferred to his another partnership firm as capital in assessee firm M/s Affy Foodtech LLP. M/s Affy Parenterals have also regularly filed their income tax return since long about last 10 years and having good turnover in very good profit in their hands. The financial credentials of M/s Affy Parenterals of last two years are also revealed the creditworthiness of Mr. Arvind Billa (Partner) which are as under:

<i>Financial Year</i>	<i>Turnover (Rs.)</i>	<i>Profit</i>	<i>Closing Balance in capital account of Mr. Arvind Billa after transferring the funds</i>
2015-16	673302824.01	8897295.00	2,58,70,813.04
2014-15	694635933.18	38750937.00	6,49,02,976.76

We humbly submitted and explained that amount as cash credit in the books of account of the assessee firm during the year consideration, is as capital introduced by one of the partner Mr. Arvind Billa.

Identity, Genuineness and creditworthiness of the transactions and source of funds deployed as addition in capital account in assessee firm M/s Affy Foodtech LLP, are genuinely proved by the above details, documents and information provided to your goodself as well as also provided with Ld. AO. The Ld. AO not considered our reply evidence/information being furnished online electronically in 'E-Proceeding' facility through ITBA dated 20.12.2018.

There is no finding by the Ld. AO and also not discussed on the relevant documents submitted before him except quoting of the judgements of honorable courts and ITAT."

5. On going through the details filed, the Id. CIT(A) held as under:

"Genuineness and source of funds deployed as addition in capital in assessee firm by Mr. Arvind Billa as a partner in M/s Affy Foodtech LLP is supported, duly and truly proved by Bank statements, and copy of the Ledger account of M/s Affy Parenterals and M/s Affy Foodtech LLP which are duly submitted herewith. Moreover, each and every transaction have duly and truly been self revealed as narration mentioned in the personal HDFC bank statement that funds transferred by debited capital account of Mr. Arvind Billa from M/s Affy Parenterals and the same was transferred as capital in M/s Affy Foodtech LLP.

That has also been duly and truly been verified by your goodself in HDFC bank statement submitted in the name of Mr. Arvind Billa.

As far as source of funds deployed for addition in capital by Mr. Arvind Billa from M/s Affy Parenterals, as capacity of partner it is humbly submitted that it's a profit rich firm having its profit in last two years."

6. The Id. CIT(A) concluded that the source and the flow of funds in the hands of the partner/ capital contributor Shri Arvind Billa is clear and have been explained. Shri Arvind Billa had withdrawn the money from M/s AFFY Parenterals in which he was 80% partnership. The amount withdrawn from the partnership M/s AFFY Parenterals was duly received in the HDFC Bank account being the personal bank account of Shri Arvind Billa. It was from this bank account that the amount was received as capital contribution in M/S AFFY Food Tech LLP. From the details filed before the A.O., it was clear that the source / capacity/genuineness stand explained.

7. It is also fact on record that Shri Arvind Billa duly appeared before the A.O. in remand proceedings. As such, all requirements at the end of appellant stand fulfilled. The A.O. has also confirmed this fact in his report dated 13.11.2019. Hence, the addition as deleted by the Id. CIT(A) stands confirmed in the absence of any material contra brought before us. The appeal of the revenue on this ground is dismissed.

Ad-hoc Disallowance of Rs.1.39 crores:

8. During the assessment proceedings, the assessee was asked to file the month wise and person wise details of salaries and why the provision of ESIC and PF was not applicable. In reply to the same, assessee had submitted that the provision of ESIC and PF are not applicable to them. The month wise and Person wise details of Salaries were not submitted. Considering

the non-reply of the assessee that the provisions of ESIC are not applicable derived into a fact that the employee strength of the assessee firm is below 10 employees as per the AO. Since, the assessee firm had claimed Salary Expenses of Rs.1,86,46,534/- for which no details were filed, the AO disallowed 75% of the salary expenses claimed by the assessee.

9. It is noted from the A.O.'s report dated 13.11.2019 and from the assessee's submissions that the requisite details were duly provided to the A.O. at the time of assessment itself. Further, there is no basis for ad-hoc disallowance of 75% of wages. The A.O. has not pointed out in his assessment as to which 75% of wages were not incurred for purposes of business. The Id. CIT(A) deleted the addition based on the report of the AO dated 13.11.2019 wherein the AO submitted that the requisite details were duly provided. Hence, the addition made by the AO on the grounds that "no details were filed" cannot be upheld. The order of the Id. CIT(A) is affirmed on this ground.

10. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 20/02/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 20/02/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR