

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

**BEFORE,  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2325/Del/2019  
(ASSESSMENT YEAR 2012-13)**

M/s Willow Estates (P) Ltd. FF-08, Pearls Omaxe Netaji Subhash Place Pitampura, New Delhi- 110 034 PAN-AAACW 5607J	Vs.	Income Tax Officer Ward-27(3) New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Mr. Goutam Jain, Advocate
Respondent by	Mr. Shyam Manihar, Senior Departmental Representative ("Sr. DR", for short)

**ORDER**

**PER ANADEE NATH MISSHRA, AM:**

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-31, New Delhi ["Ld. CIT(A)", for short], dated 10/01/2019 for Assessment Year 2012-13. Grounds taken in this appeal are as under:

“1. That the learned Commissioner of Income Tax (Appeals)-31, New Delhi has erred both in law and on facts in upholding an addition of Rs.43,00,000/- representing advance raised by the appellant and held to be unexplained cash credits u/s 68 of the Act.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the assessee has duly discharged the burden by establishing identity creditworthiness and genuineness of the transaction and therefore, addition made and sustained is illegal, invalid and untenable.

1.2 That the finding that the source of the creditor was allegedly not explained could neither in law and nor on facts be made a basis much less a valid basis for sustaining an addition u/s 68 of the Act.

1.3. That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that non production of the creditors or mere alleged non availability could neither in law and nor on facts can be made a basis to invoke section 68 of the Act.

*It is therefore, prayed that, addition made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant company be allowed.”*

(B) In this case, assessment order dated 25/03/2015 was passed by the Assessing Officer (“AO”, for short) under section 143(3) of Income Tax Act wherein the assessee’s total income was determined at Rs.45,21,086/- (rounded off to Rs.45,21,090/-) as against the returned income of Rs.2,21,090/-. In the aforesaid assessment order, additions were made on account of amounts received from Mr. Bahl Singh (Rs.18,00,000/-); Mr. Maan Singh (Rs.10,00,000/-) and Mr. Devi Singh Rawat (Rs.15,00,000/-); totaling Rs.43,00,000/-. The assessee filed appeal against the

aforesaid additions totaling Rs.43,00,000/- in the office of the Ld. CIT(A). Vide impugned appellate order dated 10/01/2019, the Ld. CIT(A) dismissed the assessee's appeal and upheld the aforesaid additions totaling Rs.43,00,000/-. Aggrieved, the assessee has filed this present appeal in Income Tax Appellate Tribunal ("ITAT", for short). In the course of appellate proceedings in Income Tax Appellate Tribunal, the assessee filed two paper books containing the following particulars:

<b>Sr. No.</b>	<b>Particulars</b>
1.	Copy of audited financial statement for the financial year 2011-12 relevant to assessment year 2012-13
2.	Copy of agreement to sell dated 15.03.2012 showing the advance received from the Vendees
3.	<b>Copy of confirmation, PAN, Driving License &amp; Voter ID Card of the following Vendees:-</b> <b>i) Devi Singh Rawat</b> -Copy of confirmation of accounts -Copy of PAN Card AJQPR 4400G -Copy of Driving License Copy of jurisdiction details for AJQPR4400G <b>ii) Bahl Singh</b> -Copy of Confirmation of accounts -Copy of PAN Card BHCPS 5562H -Copy of Driving License -Copy of jurisdiction details for BHCPS5562H <b>iii) Man Singh S/o Moola Ram Singh</b> -Copy confirmation of accounts -Copy of Voter ID -Copy of PAN Card BHOPS 3764F -Copy of jurisdiction details for BHOPS 3764F
4.	Copy of bank statement of Bahl Singh

5.	Copy of bank statement of Maan Singh
6.	<b>Copy of following ledger accounts in the book of M/s Willow Estates Pvt. Ltd.</b> i)Devi Singh Rawat for the period 1.4.2011 to 14.6.2016 ii)Bahl Singh for the period 1.4.2011 to 14.6.2016 iii)Man Singh S/o Moola Ram Singh for the period 1.4.2011 to 14.7.2016
7.	Copy of three Conveyance Deeds executed by Mr. Devi Singh Rawat in favour of three Vendees in the Assessment Year 2013-14
8.	Details of inventory of properties held by the appellant as on 01.04.2011 & details of state made in assessment year 2013-14
9.	Copy of order of assessment u/s 143(3) of the Act for the assessment year 2013-14
10.	Copy of written submission
11.	Copy of remand report issued by Income Tax Officer, Ward-27(3) along with its enclosures i) Copy of reply filed assessee before Assessing Officer dated 28.06.2017 ii) Copy of statement recorded of Sh. Devi Singh
12.	Copy of rejoinder submission filed by assessee before CIT(A)-31
13.	Copy of ledger account of ING Vysya Bank-530011012180 in the books of appellant company for the period from 1.4.2011 to 31.3.2012
14.	Copy of bank statement of ING Vysya Bank of the appellant company
15.	Copy of sale deed of Rs.41,77,0000/- between appellant company and Shri Nihal Singh
16.	ITA No.2141/Kol/2014 M/s Saha Enterprises v. ITO
17.	ITA No.2284/Kol/2014 M/s Narendra Nath Paul v. ITO
18.	Tax Appeal No.195 of 2016 (Guj) PCIT v. D and H Enterprises
19.	ITA No.2266/D/2012, DCIT vs. Shokeen Properties (P) Ltd.
20.	163 Taxman 482 (Del) CIT v. Genesis Commet (P) Ltd.
21.	ITA 182/2022 PCIT v. Radius Industries

(B.1) On perusal of records, it is found that the Ld. CIT(A), before passing the aforesaid impugned appellate order dated 10/01/2019, had obtained a remand report from the Assessing Officer. Before sending the aforesaid remand report (dated

28/07/2017), the Assessing Officer had issued summons u/s 131 of Income Tax Act ("IT Act", for short) to the aforesaid three persons namely (i) Mr. Bahl Singh (ii) Mr. Devi Singh Rawat (iii) Mr. Maan Singh. Aforesaid Mr. Bahl Singh & Mr. Maan Singh did not appear before the Assessing Officer in response to the summons. At the time of hearing before us, the Ld. Counsel for the assessee submitted that the reason for none appearance is mentioned in the remand report dated 29/06/2017 of the Assessing Officer which was sent to the Ld. CIT(A). He drew our attention to the following portion of the aforesaid remand report dated 29/06/2017:

*"In respect of other two lenders Mr. Bahl Singh & Mr. Maan Singh, both lenders did not appear on 28/06/2017 for examination. The AR of the assessee filed his reply on 28/06/2017 and mentioned that Mr. Bahl Singh is in Jaipur in connection with family function and Mr. Man Singh is on official duty in CBI. However, AR of the assessee failed to produce the two lenders and also not furnished their IT details of both lenders.*

(B.2) The Ld. Counsel for the assessee further submitted that the Assessing Officer did not provide fresh opportunity to Mr. Bahl Singh and Mr. Maan Singh for appearing before the Assessing Officer. The Ld. Counsel for the assessee also submitted that the assessee is in a position to produce aforesaid Mr. Bahl Singh and Mr. Maan Singh before the Assessing Officer. The representatives of

both sides, the Ld. Authorized Representative for assessee as well as the Ld. Sr. DR for Revenue were in agreement at the time of hearing before us that the issue regarding amounts received from Mr. Bahl Singh and Mr. Maan Singh may be set aside and restored to the file of the Assessing Officer for a fresh decision in accordance with law after providing reasonable opportunity to the assessee. Both sides were also in agreement at the time of hearing before us that Mr. Bahl Singh & Mr. Maan Singh, if so required by the Assessing Officer, will be produced before the Assessing Officer by the assessee.

(B.2.1) In view of the foregoing, and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present appeal before us, we set aside the issue regarding amounts of Rs.18,00,000/- and Rs.10,00,000/- respectively received from Mr. Bahl Singh and Mr. Maan Singh; and restore the same to the file of the Assessing Officer with the direction to pass fresh order in accordance with law on these specific issues, after providing reasonable opportunities to the assessee. The Assessing Officer will be at liberty to require the

assessee to produce the aforesaid Mr. Bahl Singh and Mr. Maan Singh before the Assessing Officer.

(C) In respect of amount of Rs.15,00,000/- received by the assessee from Mr. Devi Singh Rawat, the Ld. Counsel for the assessee drew our attention to the statement recorded by the Assessing Officer on oath, on 28/06/2017. He contended that the aforesaid Mr. Devi Singh replied satisfactorily to all the questions of the Assessing Officer and provided necessary explanations. He took us through the statement and contended that the aforesaid Mr. Devi Singh Rawat was asked questions on the transactions with the assessee company, the broker, the sources of money for making the payment to the assessee company, etc. which were answered satisfactorily. The Ld. Counsel for the assessee also drew our attention to the "Agreement to Sell" between the assessee and the purchases of the property; and submitted that the assessee, under the "Agreement to Sell", was bound to execute sale deed in favour of the nominee of the buyers (including, inter alia, aforesaid Mr. Devi Singh Rawat). In particular, he drew our attention to paragraphs 5 of the "Agreement to Sell" which is reproduced as under:

*“ That the Vendees shall be at liberty to get the sale deed executed in its favour or in favour of its nominee. The Vendor shall have no objection in case the Vandee intends to further enter into an agreement with any other person/company etc.”*

(C.1) Therefore, the Ld. Counsel for the assessee submitted, no adverse view can be taken on the ground that the assessee did not transfer the property to aforesaid Mr. Devi Sing Rawat and instead transferred it in favour of the nominee of the purchasers (including, inter alia, aforesaid Mr. Devi Singh Rawat).

(C.2) The Ld. Sr. DR for Revenue relied on the order of the Ld. CIT(A). However, he did not controvert the aforesaid submissions and contentions of the Ld. Counsel for the assessee.

(C.2.1) We have heard both sides. We have perused the materials on record. It is not in dispute that the aforesaid Mr. Devi Singh Rawat appeared before the Assessing Officer in response to summons, and gave evidence on oath. It is also not in dispute that the aforesaid Mr. Devi Singh Rawat answered the questions regarding the transactions with the assessee company, the broker, and source of money amounting to Rs.15,00,000/- paid by him to the assessee company. It is further not in dispute that the

Assessing Officer has not brought any evidence or materials to controvert the answers given by aforesaid Mr. Devi Singh Rawat before the Assessing Officer, on oath. It is furthermore not in dispute that the Assessing Officer did not ask either the assessee or the aforesaid Mr. Devi Singh Rawat to furnish any further evidence or materials after recording the aforesaid statement on 28/06/2017 on oath. Moreover, it is also not in dispute that under the “Agreement to Sell”, the assessee was required to transfer the property in favour of the nominee of the purchasers (including aforesaid Mr. Devi Singh Rawat). In view of the foregoing, we are of the view that transaction amounting to Rs.15,00,000/- between Mr. Devi Singh Rawat and the assessee company regarding sale of property by the assessee is explained satisfactorily and Revenue has failed to make a case for the aforesaid addition of Rs.15,00,000/-. Revenue has also failed to bring any evidence or any materials on record to disprove the testimony of Mr. Devi Singh Rawat given before the Assessing Officer on oath. In view of the foregoing, we direct the Assessing Officer to delete the aforesaid addition of Rs.15,00,000/- in respect of transaction between assessee company and aforesaid Mr. Devi Singh Rawat.

(D) All grounds of appeal are treated as disposed off in accordance with aforesaid directions.

(E) In the result, this appeal is treated as partly allowed.

Order pronounced in Open Court on 21/03/2023

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 21/03/2023

*Pk*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI