

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: C: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.7870 & 7871/Del/2019
Assessment Year: 2010-11

M/s KBG Engineers, 201-2014, 2 nd Floor, SSG Majesty Mall Road No. 43, Guru Har Krishan Marg, North West Delhi 110034 PAN AAAPK 4417 H	vs.	The DCIT, Circle- 62(1), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Sandeep Sapra, Advocate
For Revenue :	Shri Anuj Garg, Sr. DR

Date of Hearing :	08.02.2023
Date of Pronouncement :	05.04.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

These appeals filed by the assessee are directed against the orders dated 30.07.2019 & 31.07.2019 of the Ld. CIT(A), New Delhi relating to Assessment Year 2010-11.

2. The learned counsel of the assessee submitted that the assessee does not want to press legal ground no. 1 hence the same

is dismissed as not pressed. Remaining effective ground no. 2 and 3 for adjudication read as follows:-

2. That the Ld. CIT(A) erred on facts and in law in confirmed the addition of rs. 14,65,968/- on account of unexplained expenditure u/s. 69C of I.T Act particularly when section 69C was not applicable.

3. That no adverse inference could be drawn against the assessee even if no compliance was made by the M/s Shiv Shakti Timber & Plywood Company in response to summons u/s. 131 of the I.T. Act.

3. Apropos ground no. 2 and 3, the learned counsel of the assessee submitted that the assessee has invoked wrong provision of section 69C of the Act for making addition in the hands of the assessee on account of payments of M/s Shiv Shakti Timber & Plywood Company which was made towards purchase of material from the said firm. The learned counsel submitted that the assessee consistently submitted before the authorities below that there was a running trade account between the assessee and M/s Shiv Shakti Timber & Plywood Company wherein opening balance of Rs. 25,15,968/- was brought forward as on 01.04.2009 as opening credit balance and assessee paid entire amount through five cheques as on 20.10.2009 the closing balance was zero. The

learned counsel submitted that the Assessing Officer has accepted payment of three cheques but disputed the payment of other two cheques dated 17.08.2009 and 4.10.2009 total amounting to Rs. 14,65,968/- without any basis therefore the addition may kindly be deleted. The learned counsel also submitted that during assessment proceedings the assessee along with reply dated 08.09.2017 submitted copy of account in the books of accounts of assessee of M/s Shiv Shakti Timber & Plywood Company for A.Y. 2009-10 and 2010-11 which clearly proves that it was a trading transaction between the assessee and said firm and assessee also submitted copies of the relevant bank statements to prove that the payments have been made through vide account payee cheques therefore the factum of genuineness of transaction and payment towards purchase of material to a existent entity cannot be doubted and no addition is called for in this regard. The learned counsel submitted that the addition made by the AO may kindly be deleted.

4. Replying to the above the learned Senior DR strongly supported the orders of the authorities below.

5. On careful consideration of the rival submissions first of all from the copy of the reply of assessee submitted before the AO available at pages 25 to 38 of assessee paper book clearly reveals that the assessee consistently explaining that the impugned amount is nothing but payment towards purchase of material and the same is a payment towards trade liability. From the copy of the documents available at pages 39 to 50 of assessee paper book clearly reveals that the assessee submitted copy of account with said firm in the books of assessee for A.Y. 2009-10 along with purchase bill which were also filed before the AO and CIT(A). From the copy of the ledger account of M/s Shiv Shakti Timber & Plywood Company available at page 61 of assessee paper book clearly reveals that there was a opening brought forward credit balance of Rs. 25,15,968/- which was paid by the assessee through five cheques and the balance as on 20.10.2009 was nil leaving the zero balance. It is pertinent to mention that the Assessing Officer did not dispute the payment of three cheques but disputed and doubted the payments of two cheques dated 17.08.2009 and 04.10.2009

amounting to Rs. 9,65,968/- and Rs. 5 lakhs respectively without any basis.

6. We are not in agreement with the conclusion drawn by the assessee that the funds transfer to M/s Shiv Shakti Timber & Plywood Company is an unexplained expenditure taxable u/s. 69C of the Act. Per contra, we clearly note that the payment of two cheques is nothing but payment of trade liabilities of assessee arose due to purchase of material from M/s Shiv Shakti Timber & Plywood Company and such payment to banking channel cannot be alleged as unexplained and doubtful. Therefore ground no. 2 and 3 of assessee is allowed and AO is directed to delete the addition.

7. In the result the appeal of the assessee is partly allowed.

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8. Since by the earlier part of this order we have deleted the entire addition made by the AO amounting to Rs. 14,65,968/- therefore the penalty levied by the Assessing Officer and uphold by the Ld. CIT(A) on the very sole issue cannot be held as sustainable. Keeping in view deletion of quantum addition we hold that the

penalty levied by the AO and uphold by the Ld. CIT(A) u/s. 271(1) (c) of the Act is not sustainable hence we direct the AO to delete the same.

9. In the result both the appeals of assessee are allowed.

Order pronounced in the open court on 05.04.2023.

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

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 05th April, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi