

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 3902/DEL/2017
Assessment Year: 2013-14**

Dy. Commissioner of Income-tax, Circle-2, Meerut.	<u>Vs</u>	M/s Paswara Papers Ltd., Paswara House, Baghpat Road, Meerut. PAN-AAACP9539Q
APPELLANT		RESPONDENT
Assessee represented by	Sh. Rajkumar Gupta, CA & Sh. Suraj Gupta, CA	
Department represented by	Sh. B.K. Singh, Sr. DR	
Date of hearing	05.04.2023	
Date of pronouncement	13.04.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The Revenue has come in appeal against the order dated 22.03.2017 passed by the Commissioner of Income Tax (Appeals), Meerut (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in appeal no. 294/2015-16 for the assessment year 2013-14, arising out of assessment order dated 30.03.2016

u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Assistant Commissioner of Income Tax, Circle-2, Meerut (hereinafter referred in short as “Ld. AO”).

2. The facts in brief are, the assessee is engaged in manufacturing and supplying of Kraft paper, Gray Board and Paper Board. Return of income was filed at an income of Rs. 29,22,250/-. The learned AO noticed that there was huge increase in loan/advances from related parties and raised a query from the assessee to furnish source and proof of old jewellery sold by the depositors, relatives or share-holders. Inquiry was also made to provide wealth-tax returns of these parties.

Based on the submissions, the learned AO made following conclusions:

- “(a) All the transactions were made in the month of March 2013.*
- (b) All parties sold their old jewellery on same period of time to a single jeweler and received payment through serial numbered cheques.*
- (c) In all these parties, assessee filed Capital Account and balance sheet for the year. When difference was found in capital increase and income earned during the year, then only show cause was issued. Assessee filed wrong facts in the beginning of the proceedings, latter on assessee filed that difference was long term capital gain.*
- (d) All the parties are share holder or family member of the share holders.*
- (e) No wealth tax return was filed by them which shows that jewellery was not disclosed by the assessee or was not old jewellery.*
- (f) Source and occasion of the jewellery purchase and received was not furnished.*

(g) *In two case, depositors namely Smt. Nitasha Singhal and Sh. Nishit Singhal have received gift amounting to Rs. 13,01,000/- and Rs. 54,10,000/- respectively however these alleged gifts has not been declared by the recipient in their return of income.*

(h) *It is noticed that during the course of assessment proceeding for the A.Y. 2012-13, the above depositor has submitted their statement of affair for year ended 31.03.2012 in which they have not disclosed any jewellery being hold by them.*

(i) *For not filing wealth-tax return and not showing their jewellery in the statement of affair for A.Y. 2012-13, cannot be coincident which prove that assessee introduced its own fund in the garb of unsecured loan from closely related parties.”*

3. Thus, the learned AO concluded that assessee had introduced his unaccounted money in the garb of loan from share holders and relatives of share holders and from whom the assessee can get confirmation or any other documents as per his convenience. Learned AO observed that all the depositors are closely connected with the assessee and to get the source of jewellery was not difficult for the assessee, if old jewellery was explained/disclosed. Accordingly, addition of Rs. 3,50,50,852/- was made.

4. In the appeal learned First Appellate Authority has deleted the addition to the extent of Rs. 3,48,00,852/- and sustained an amount of Rs. 2,50,000/- while allowing appeal partly.

5. The Revenue is in appeal raising following grounds:

“1. Whether in the facts and circumstances of the case, the Commissioner

of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs. 3,48,00,852/- out of the additions of Rs. 3,50,50,850/- made by the A.O. u/s 68 of the I.T. Act, 1961 on a/c of unexplained loan/advances, ignoring detailed discrepancies and shortcomings pointed out by the A.O. in the assessee's explanation as well as in respect of creditworthiness of the depositors and genuineness of the transactions on the basis of examination of documents and some of the depositors on oath before making these additions.

2. *Whether in the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs. 3,48,00,852/- out of the additions of Rs. 3,50,50,850/- made by the A.O. u/s 68 of the I.T. Act, 1961 on a/c of unexplained loan/advances, ignoring the fact that the assessee failed to discharge his onus to prove the loans/advances before A.O. during assessment proceedings.*

3. *That in the facts and circumstances of the case, the order of the Commissioner of Income Tax (Appeals) may be set aside and that of the A.O. be restored.*

4. *That the appellant craves leave to add, modify and or delete any ground(s) of appeal.”*

6. Heard and perused the record.

7. The learned Sr. DR submitted that the learned CIT(Appeals) has fallen in error in not considering the circumstantial evidences which have been duly weighed to reach a finding by learned AO. Relying upon the order of learned AO it was submitted that learned CIT(A) has fallen in error in not appreciating that the creditworthiness of the depositors with source remained unexplained.

8. Learned AR, however, submitted that all the relevant information were provided to the learned AO and also to the learned First Appellate Authority . It was submitted that learned AO has failed to respond to the evidences during the remand proceedings. It was specifically submitted that learned AO has fallen in making factual error by observing gift of Rs. 13,01,000/- of Smt. Nitasha Singhal while evidence was with regard to the amounts appearing from her books of account. Similarly, in regard to Nishit Singhal it was submitted that learned AO has fallen in error in generalizing the source to sale of jewellery alone. While in case of Nishit Singhal there was specific gifts supported with affidavit.

9. The Bench has given thoughtful consideration to the material on record and what transpires is that certainly as regard to sale of jewellery being a source of the nine lenders except Mrs. Nitasha Singhal, it comes up that the jewellery were sold to only one jeweler at Meerut. However, the evidence in regard to sale of jewellery is supported with the purchase invoices, details of cheques issued for sale consideration by the jeweler and copies of bank account of nine parties showing the credit of sale consideration of jewellery in their bank accounts. Apparently, during the assessment proceedings or during the remand proceedings the learned AO has not made any attempt to exercise his powers of inquiry from jeweler or from other available open sources to establish any suspicion. Learned AO has stressed on his belief that the assessee was under an obligation to explain the

source and occasion of jewellery purchased and received by these nine parties. The Bench is of considered opinion that learned CIT(Appeals) has taken a more prudent approach by observing that learned AO has not questioned the sale transactions. As such he has merely added the LTCG amount earned by respective parties on the jewellery sold. It is also coming up that these parties in fact had transactions earlier and they were old depositors of the assessee who had received further deposits during the previous year. Learned CIT(Appeals) has also made a valid observation that there was no legal mandate for them to furnish wealth-tax returns.

10. In regard to one of the depositors Nitasha Singhal it is established that learned AO has fallen in error in considering an amount of Rs. 13,01,000/- to be the source from a gift, while in fact the copy of capital account of Nitasha Singhal in the books of account as reproduced at page nos. 23 & 24 of the order of learned CIT(Appeals) establish that the credit in ledger account were on account of sale of jewellery, rent received, journal entry and amount received by cheques to the extent of Rs. 4,95,000/-. Learned CIT(Appeals) has taken into account cash deposit of Rs. 2,50,000/- in her bank account on 29.12.2012, which was given as a loan on the same date to the assessee and restricted the addition to Rs. 2,50,000/- instead of Rs. 13,01,000/-.

11. Similarly, in regard to Nishit Singhal, learned CIT(Appeals) has taken into consideration the fact that gift of Rs. 20,00,000/- were by way of gift received from maternal grandparents. The same were by way of gift cheques. He was also in receipt of the rent received from the assessee.

12. Thus, the Bench is of the considered opinion that for the purpose of Section 68 of the Act, the assessee had brought sufficient explanation of the source of deposits. Circumstances how so ever strong, the same can never take the place of proof, upon the discharge of the burden, with what so ever probabilities. The findings of learned CIT(Appeals) require no interference. The grounds raised by the Revenue have no substance. The appeal of Revenue is dismissed.

Order pronounced in open court on 13.04.2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI