

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.4451/Del/2016
Assessment Year: 2012-13

Binary Network Solutions Pvt. Ltd., Vs ITO,
105A/2, Saraswati House, Ward-5(1),
27, Nehru Place, New Delhi.
New Delhi.

PAN: AACCB4449F

(Applicant)

(Respondent)

Assessee by : Shri Saurabh Nanday, Advocate
Revenue by : Shri Kanav Bali, Sr. DR
Date of Hearing : 11.04.2023
Date of Pronouncement : 16.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.4451/Del/2016 for AY 2012-13 arises out of the order of the Commissioner of Income Tax (Appeals)-2, New Delhi, [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.219/15-16/CIT(A)-2 dated 17.06.2016 against the order of assessment passed u/s 143(3) of the Income-

tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.03.2015 by Income-tax Officer, Ward-5(1), New Delhi, (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

“1. That in view of the facts and circumstances of the case the order passed by the CIT (A) and the assessment order is illegal, bad in law and without jurisdiction.

2. The CIT (A) has erred in confirming the assessment order without giving the appellant a proper opportunity of hearing and therefore the same is against the principles of natural justice.

3. The CIT (A) has erred on the facts and law in confirming the addition of Rs.2,34,14,500/- pertaining to section 69A of the Income Tax Act 1961.

4. The CIT (A) has erred on the facts and law in not considering that the provisions of section 69A of the Income Tax Act 1961 are not attracted in case of the appellant.

5. The Appellant craves leaves to add, alter or modify the aforesaid ground and craves leaves to file additional grounds.

6. The aforesaid grounds are taken without prejudice to each other.”

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee was engaged in trading in computer parts, accessories, etc. The said business was discontinued w.e.f. 31.03.2010. During the year under consideration, no business was carried on by the assessee. The Id. AO observed that there was huge deposits in bank account of Bank of Baroda maintained by the assessee to the tune of Rs.2,34,14,500/- in the form of cash deposits. After the cash deposits were made, cheques were issued from this bank account to various parties. The Id. AO directed the assessee to give explanation for the source of cash deposits made in the bank account. The assessee submitted that both the directors of the company were handling the business seriously and that the company's affairs were looked after by the Manager who did not have the knowledge of accounts and, thus, committed the mistake of depositing cash into the bank account and drawing cheques thereon.

It was also submitted that the Manager of the company had forged the signatures of the directors of the assessee company and had provided accommodation entries to various parties who were unknown, for his own interest, without the knowledge of the directors. By the time the directors have come to know about this, the Manager had died in an accident. Accordingly, it was pleaded that the assessee company cannot be fastened with any tax liability because of the mistake committed by the Manager of the company. The lower authorities did not heed to these contentions of the assessee and held that the assessee is bound to give explanation for cash deposits made in the bank account and failure to do so would invite addition u/s 69A of the Act.

4. Before us, the assessee filed additional evidences in terms of Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 containing the following orders of the Income-tax Department:-

1. Copy of assessment order passed u/s. 153C r.w.s 143(3) of the Act dated 14.12.2018 for the AY 2012-13 in Applicant's own case;
2. Copy of Appellate Order passed by CIT(A)-29, New Delhi in the case of M/s Jay Enn Infotech Pvt. Ltd. on 17.06.2019 for the A.Y 2013-14, 2015-16, 2016-17 & 2017-18;
3. Copy of Appellate Order passed by CIT(A)-29, New Delhi in the case of Sh. Naresh Kumar Jain on 26.12.2018 for the A.Y 2010-11; and
4. Copy of Appellate Order passed by CIT(A)-29, New Delhi in the case of Sh. Anand Kumar Jain on 28.12.2018 for the A.Y 2010-11.

5. In the petition for admission of additional evidence, the assessee was trying to submit that similar addition on account of cash deposit was also made in the search assessment framed u/s 153 of the Act for AY 2012-13 on 14.12.2018 in the hands of the assessee. Further, the Id. AR submitted that from the bank account of the assessee, majority of the cheques were issued only

to M/s Jay Enn Infotech Pvt. Ltd. pursuant to cash deposits made therein. The additional evidences also include the appellate order framed in the hands of M/s Jay Enn Infotech Pvt. Ltd. With all these evidences, the Id. AR pleaded that let the entire issue be restored to the file of the Id. AO to be decided afresh in the light of these additional evidences which has come to light subsequent to the framing of assessment in the hands of the assessee.

6. *Per contra*, the Id. DR filed a letter dated 10.04.2023 before us objecting to the admission of additional evidences. However, the Id. DR admitted the fact that the entire deposits in the bank account amounting to Rs.2,34,45,760/- was added as income of the assessee in the search assessment framed u/s 153C of the Act.

7. Considering these facts, we find that there were certain deposits, both cheques as well as cash, in the bank account No.10590200000718 maintained by the assessee with Bank of Baroda. The total of such deposits works out to Rs.3,24,45,760/-. The bank statements are placed at pages 36 to 47 of the of the paper book filed before us. This deposit figure of Rs.2,34,45,760/- admittedly, includes cash deposit made by the assessee in the very same bank account amounting to Rs.2,34,14,500/- which is the subject matter of addition and dispute before us in the impugned appeal. Hence, we deem it fit and appropriate, as prayed by the Id. AR, to admit the additional evidences filed before us and restore the appeal to the file of the Id. AO for *denovo* adjudication *qua* the issue in dispute before us to be decided in the light of these additional evidences. The Id. AO is also directed to ensure that there is no double addition made in the hands of the assessee for the very same transactions in the interest of justice and fair play. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.05.2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16th May, 2023.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi