

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1548/Del/2022
निर्धारणवर्ष/Assessment Year:2018-19

DCIT Central Circle 29, New Delhi.	<u>बनाम</u> Vs.	Subhash Chand Gupta 43/1, Rajpur Road, Civil Lines, New Delhi. PAN No. AAAPG2554K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Ms. Maninder Kaur, Sr. DR
Assessee by	Shri P C Yadav, Adv.

सुनवाईकीतारीख/ Date of hearing:	12.04.2023
उद्घोषणाकीतारीख/Pronouncement on	25.05.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi dated 28.04.2022 for the AY 2018-19 in deleting the addition of Rs.2,12,14,164/- made u/s 68 of the Act.

2. Briefly stated that facts are that the assessee e-filed his return of income on 17.09.2018 declaring income of Rs.45,88,710/- for the assessment year under consideration. The assessment was completed u/s 143(3) on 19.04.2021 determining the income of the assessee at

Rs.2,58,02,871/-. In the course of assessment proceedings, the assessee was required to furnish the details of sales made by the assessee for the financial year relevant to the assessment year under consideration as the assessee has shown sales only for April to June 2017 only for three months. Assessee has submitted part-wise details in respect of 18 parties to whom the assessee made sales. The assessee was required to furnish confirmation of accounts, PAN numbers, addresses, ITR in respect of Bajrang Enterprises, Om International, Puja Traders, Tirupati trading, Vardhaman Traders. Since the assessee could not submit the PAN related with the above parties, AO could not issue notice u/s 131/133(6) of the Act. Therefore, the AO made addition u/s 68 in respect of the sales made to the above parties observing that the assessee has not explained the credits upto the satisfaction of the AO. On appeal the Ld.CIT(A) deleted the addition the Ld. DR submitted that the assessee has not proved the sales made to the five parties as stated by the AO in the assessment order i.e. Bajrang Enterprises, Om International, Puja Traders, Tirupati Trading and Vardhaman Traders and, therefore, the AO has rightly treated the sales made to these parties as unexplained income of the assessee.

3. On the other hand, the Ld. Counsel for the assessee further submits that the total sales made by the assessee during the assessment year under consideration are Rs.23,43,48,801/- as can be seen from the audited balance sheet which is placed at page 11 of the paper book. Ld.

Counsel submits that for affecting these sales assessee has made purchases of Rs.22,96,24,186/- and the AO has accepted the figures of purchases as correct and figures of sales has also correct. The AO accepted the profit declared by the assessee from the transactions of sales and purchases and he has not doubted the purchases made during the year. Ld. Counsel submits that when purchases and profit as computed by the assessee or accepted there are no reasons to doubt the sales made by the assessee. Ld. Counsel submits that the payments received from the five parties were received by a banking channel and in support of this the assessee filed bank statement which is also placed at paper book pages 43 to 48. Ld. Counsel further submits that as a matter of fact the AO accepted in the assessment order that after the introduction of GST from July 2017 the assessee did not carry out any business. Therefore, the Ld. Counsel submits that since the assessee has not carried out any business from the month of July 2017 assessee is not in contact with the parties to whom sales were made thereafter. Ld. Counsel submits that assessee pointed out that assessee has paid VAT on these sales which was 20% of the sales and has submitted the VAT returns and hence the action of the AO in disbelieving the sales made to these five parties is totally unjustified.

4. Heard rival submissions, perused the orders of the authorities below.

5. The only dispute in appeal is as to whether the sales made by the assessee to five parties as mentioned in the assessment order as well as CIT(Appeals) order can be assessed as income of the assessee u/s 68 of the Act. We observe that the Ld.CIT(A) had considered the issue elaborately with reference to the evidences furnished by the assessee and the averments of the AO and the assessment order and deleted the addition made u/s 68 observing as under: -

“9. Ground nos. 2 to 4: It has been noted that the Assessing Officer during the assessment proceedings has asked the appellant to submit the PAN, ITR and confirmed copy of accounts of all the party-wise sales made by the appellant to prove the genuineness of the transactions. The Assessing officer noted that the appellant failed to provide above mentioned details in respect of five parties accordingly, he had disallowed corresponding sale of Rs.1,12,14,164/- and treated the same as unaccounted income under section 68 of the Income Tax Act. The appellant during the assessment proceedings as well as during the appellate proceedings has submitted that the PAN of parties in respect of sales amounting to Rs. 2,12,14,164/- out of total sale of Rs. 28,12,16,947/- could not be provided by him, but it cannot be the ground for treating the sales bogus and adding the same under section 68 thereby taxing him twice firstly as a sales declared by the appellant secondly by adding the same sales under section 68 as cash credit.

9.1 The applicant had further stated that the sales made by him are genuine sales, the payments in respect of the sales had been received via banking channels and has been duly recorded in the books of the appellant. He has also stated that the appellant has paid VAT on the sales which was 20% of the sales and submitted VAT returns reconciling the same with the sales. The appellant has also submitted various case laws in his support stating that the sales cannot be treated as bogus unless the purchases or stocks shown by him are found to be un-explained. The Assessing Officer did not point out any mistake in the purchases or in the inventory or in the VAT return filed by the appellant

and therefore, the sale shown by him in the P&L account should not have been treated as bogus sales. I am of the opinion that the sales cannot be added under section 68 unless they are proved as bogus on the basis of some reliable evidence. The reliance is placed on the decision of Hon'ble Delhi High Court of Delhi in ITA 613/2010 in the matter of CIT v/s Kailash Jewellery House.

9.2 In this case, the Assessing Officer has added the sales only on the ground that the appellant has not kept PAN and addresses of these purchasers. It has been observed that, the appellant has also shown cash sales ^ without any party-wise details (or PAN details) amounting to Rs. 6, 64, 57,477/- which has not been suspected by the Assessing Officer. The appellant does not keep any PAN or address details of its cash sales. The Assessing Officer treated the cash sales as genuine and declared party-wise sales in which the payments were received via banking channel, with verifiable trails, as bogus sales. I find that the action is not sustainable and therefore the addition made by AO amounting to Rs.2,12,14,164/- is here by deleted and the assessee's appeal is allowed."

6. On careful consideration of the observations of the Ld.CIT(A), we do not see any infirmity in the order passed by the Ld.CIT(A) in holding that the sales cannot be added u/s 68 unless they are proved as bogus on the basis of some reliable evidences. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25.05.2023

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 25.05.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi