

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE, SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3390/Del/2018
(Assessment Year: 2014-15)**

DCIT, Circle-2, Dehradun	Vs	Sh. V.K. Agarwal & Co., B-117, 1 st Floor, Lajpat Nagar, Part-1, New Delhi
PAN -AAGFV5869A		
(Appellant)		(Respondent)

Appellant By	Sh. Himanshu Sharma, CA
Respondent by	Sh. A.S. Rana, Sr. DR
Date of Hearing	21.06.2023
Date of Pronouncement	23.06.2023

ORDER

This is an appeal against order dated 23.02.2018 passed by learned Commissioner of Income Tax (Appeals) [hereinafter referred to as the learned CIT(A)] Haldwani, pertaining to assessment year 2014-15.

2. The Revenue has raised the following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,21,42,095/- made by applying net profit rate rejecting the books of accounts, bills and*
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vouchers for verification before the AO during the course of assessment proceedings.

2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.34,00,000/- made on account of unsecured loan u/s 68 of the I.T. Act, 1961 as the assessee could not furnish/produce the confirmation of unsecured loan from M/s Tirupati Investment.*
3. *The order of the Ld. CIT(A) be set-a-side and the order of the AO be restored.*

3. We have heard the rival submissions and perused the materials available on record. The assessee is a partnership firm engaged in the business of civil contract. The return of income for the assessment year 2014-15 was filed on 30.11.2014 declaring total income of Rs.1,99,28,729/-. The learned Assessing Officer during the course or assessment proceedings directed the assessee to produce the books of accounts. Since the books of accounts were not produced by the assessee before the learned AO for examination, the learned AO proceeded to reject the book results and estimated the profit at the rate of 8% on turnover in terms of section 44AD of the Act. Accordingly, he made an addition of Rs.3,21,42,095/- in the assessment towards estimation of net profit in the assessment.

4. The learned AO also observed that the assessee has taken unsecured loan of 34 lakhs from Tirupati Investment, for which the assessee had not furnished PAN or address or confirmation from the lender. Accordingly, the learned AO concluded that since the assessee had not proved the three necessary ingredients of section 68 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), viz., identity of the creditors, creditworthiness of the creditors and genuineness of the transaction, he proceeded to treat the said loan as unexplained cash credit under section 68 of the Act in the assessment order.

5. Before the learned CIT(A), the assessee produced the books of accounts and all the documents pertaining to the loan creditors to prove the three necessary ingredients of section 68 of the Act. The learned CIT(A) called for a remand report from the learned AO. The learned AO in the remand report stated that the books of account were properly maintained by the assessee but, however, pointed out certain discrepancies on account of non-deduction of tax for certain expenses and non-allowability of certain expenses as deduction

under section 37(1) of the Act. The learned Assessing Officer furnished the remand report on 01.02.2018 before the learned CIT(A). The copy of the remand report was forwarded to the assessee for its rejoinder. The assessee submitted its rejoinder vide letter dated 20.02.2018 before the learned CIT(A). The learned CIT(A) based on the remand report made the disallowance of certain expenses for violation of provisions of section 40(a)(ia) of the Act in the sum of Rs.17,86,353/- ; certain capital loss wrongly claimed as deduction in the sum of Rs.3,73,592/- and disallowance of donation in the sum of Rs.21000/- in his appellate order.

6. With regard to unsecured loan of Rs.34 lakhs, the learned CIT(A) had forwarded the various documents submitted by the assessee to the learned AO for obtaining remand report. In the remand report submitted on 01.02.2018, learned AO stated that he had commissioned inquiry with DCIT/ACIT, Central Circle, Dhanbad, Jharkhand, to verify the confirmation of unsecured loan received from Tirupati Investment, Kolkata and reply is still awaited. Learned AO further stated that the assessee has furnished

the copy of ledger account which reflected the repayment of loan made to Tirupati Investment in subsequent years. The assessee in its rejoinder stated that the confirmation of loan was filed from the lender; loan has been repaid to the lender in subsequent years and in support of which ledger account has been placed on record before the learned AO and further it was pointed out that the assessee has taken unsecured loan from the same party in the previous years also and that the said account is a running account. It was also pointed out by the assessee that the loan has been received through the regular banking channels and three ingredients of section 68 of the Act had been fulfilled in respect of said loan.

7. We find that the learned CIT(A) for deleting the estimated addition of net profit had duly taken into account the remand report obtained from the learned AO, wherein, no adverse inferences were drawn about the manner in which books of account were maintained by the assessee. We further find that the other discrepancies noticed by the learned AO in the books of account

submitted before him in the remand proceedings were duly added by learned CIT(A) in his appellate order. Hence, we do not find any infirmity in the order of learned CIT(A) as the deletion of estimated addition on net profit was made based on the remand of the learned AO. In this regard, once an issue has been accepted by the learned AO in the remand report, the learned AO would be precluded from filing further appeal to the Tribunal as he could not have any grievance in the matter. This issue is settled by the decision of Hon'ble Madras High Court in the case of Smt. B. Jayalakshmi Vs. ACIT, reported in 258 taxman 318 (Mad.).

8. Similarly, with regard to the deletion of addition made on account of unsecured loan under section 68 of the Act, we find that the assessee had provided confirmation of loan from the creditor, ITR of creditor, evidence for receipt of loan through banking channel and evidence of repayment of loan through banking channels in subsequent years. All these additional evidences were duly admitted by learned CIT(A) and a remand report was called for from the learned AO. The learned AO sought to examine the veracity

of the evidences from DCIT, Central Circle, Dhanbad, Jharkhand. Since, no reply was received from Dhanbad Office, the learned AO did not make any adverse comments on the evidences filed by the assessee. Based on that, the learned CIT(A) also concluded that since all the documents were duly placed on record by the assessee and no adverse comments has been made by learned AO, there is no scope for making any addition under section 68 of the Act. This goes to prove that the assessee, on its part, has discharged its primary onus caused in terms of section 68 of the Act by proving the three necessary ingredients thereon. Hence, we do not find any infirmity in the order of learned CIT(A) in granting relief to the assessee in this regard. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced in Open Court on 23rd June, 2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/06/2023
RK/Sr.PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)