

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.4380/Del/2018  
Assessment Year: 2017-18

<b>ITO Ward- 16 (1) New Delhi</b>	<b>Vs</b>	<b>Mahadev Dairy Pvt. Ltd. C-16, 101 First Floor, Gurunanak Pura, Laxmi Nagar, Delhi -110092 PAN No.AAHCM1300K</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. M.K. Pandey, Sr DR
Respondent by	None

Date of hearing:	03/07/2023
Date of Pronouncement:	07/07/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-33, New Delhi dated 09.02.2018 pertaining to A.Y.2012-13.

2. The grievance of the revenue read as under :-

1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs.3,00,000/-, Rs.1,92,58,000/- and 23,59,600/- on account of introduction of Share Capital, Share Application money and unsecured loans respectively u/s 68 of the Income Tax Act, 1961 ( hereinafter referred as "the*

Act”) by ignoring the findings of the Assessing Officer(hereinafter referred as “the AO”) that during assessment proceedings the assessee failed to prove the three basic conditions ie identity, creditworthiness of investors and genuineness of transactions in this regard ?

2. Whether on the facts and circumstances of the case, the Ld. CIT (A) is legally justified in deleting the addition on account of unexplained cash credits for want of proper enquiry by the Assessing Officer (hereinafter referred as “the AO”) but without making enquiry or directing further enquiry u/s 250(4) of the Act as laid down by Hon’ble Delhi High Court in case of CIT vs Jansamparlc Advertising and Marketing (P) Limited (2015) 375 ITR 373?

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition u/s 68 of the Act by holding that creditworthiness of investors was proved by mere production of papers relating to identity of investors, copies of bank statement and use of banking channel by ignoring the ratio decidendi as laid down by Hon’ble Delhi High Court on the issue in the cases of CIT vs. N.R. portfolio (P) Ltd. (2014) 2 ITR-OL-68, CIT vs. Nipun Builders and Developers (P) Ltd. (2013) 350 ITR 407 and CIT vs. Navodaya castles Pvt Ltd (2014) 367 ITR 306 on application of section 68 of the Act?

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of interest expenses of Rs. 6,18,650/-u/s 36(1) (iii) of the Act by ignoring the fact that the assessee had failed to prove the direct nexus between business income and huge interest expenses so claimed even after providing sufficient opportunity to the assessee company?

5. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs.12,26,410/- on account of undisclosed investment in land by ignoring the findings of the AO in assessment order that the assessee had failed to substantiate the reason of difference between circle rate of the land in by ignoring the findings of the AO in assessment order that the assessee had failed to substantiate the reason of difference between circle rate of the land in question and price actually paid to the seller?”

3. The appeal was first listed for hearing on 09.08.2021 on which date none appeared on behalf of the assessee and the appeal was adjourned. Several notices were issued thereafter but on each occasion none represented the assessee. In spite of so many repetitive notices neither the assessee nor its authorized representative is attending the proceedings, therefore, we are left with no choice but to proceed exparte.

4. The DR was heard at length. Case records carefully perused.

5. Briefly stated the facts of the case are that the assessee during the year under consideration has received following credits

:-

- a. Share capital – 3,00,000
- b. Share application - 1,92,58,000/-
- c. Unsecured loan from Indl.- 23,69,500/-

6. The assessee was asked to submit the details of the afore mentioned credit entries, the details were provided as under :-

S. No.	Name	Share Capital	Share Application Money
1	Sh. Kuldeep Nagar	1,00,000/-	65,00,000/-
2.	Sh. Baljender Nagar	1,00,000/-	62,58,000/-
3.	Mrs. Kamlesh Singh	1,00,000/-	65,00,000/-

7. Notices u/s. 133(6) were issued to the above mentioned parties but no reply was received from them which was informed to the assessee.

8. The AO further observed that suddenly the replies were received from all the parties. In the case of Baljender Nagar it was informed that he has paid Rs.87,58,000/- to the assessee

and has received back Rs. 25 lacs. Though bank statement was furnished by the Baljender Nagar but the said bank statement was not in his name and further the bank statement shows that cheque was issued when cash was deposited in the bank account immediately before issuing the cheque. Similarly Mrs. Kamlesh Singh though replied that she has given Rs. 65 lacs but did not file evidences in respect of her creditworthiness.

9. Kuldeep Nagar also filed reply stating that he has given Rs. 65 lacs as share application money to the assessee. It was also pointed out that he has paid Rs. 16 lacs, 15 lacs, 34 lacs and 4.60 lacs on 29.04.2011 though from the copy of bank statement the AO found entry of Rs.461268/- only.

10. The AO observed that surprisingly none of the share holders acknowledge the payment of share capital of Rs. 1 lac each as claimed by the assessee.

11. The AO was of the firm belief that the initial onus is upon the assessee to explain the credit entries in its books of account u/s. 68 of the Act which it has grossly failed to discharge and proceeded by making the addition of Rs. 3,00,000/-+19258000/-+2359600/- u/s. 68 of the Act.

12. Proceeding further the AO found that the assessee has made certain advances out of borrowed funds and was of the opinion that the assessee has used borrowed funds in making interest

free advances and, therefore, disallowed proportionately interest and bank charges and made addition of Rs.689283/-.

13. Before the CIT(A) it was strongly contended that all the parties have confirmed the credit transactions and have filed necessary bank statements. It was explained that the share capital of Rs. 3 lacs was received from the promoter/ directors of the company whose identity and credit worthiness can be verified from the submission made during the assessment proceedings. The CIT(A) further observed that the confirmation letter, copy of bank statement and ITR were filed before the AO in the case of Mrs Kamlesh Singh and also in the case of Kuldeep Nagar and Baljender Nagar. Further referring to judicial decisions the CIT(A) concluded by observing that the money has been received from the promoters/ directors who are assessed to tax and have defined sources of income. The CIT(A) further observed that the transactions are recorded in the books of account and there are no indications of devious nature. The CIT(A) was of the opinion that the AO is at liberty to take any action against the lenders/ share holders/ share applicants in their respective return of income through their respective AO and went on to delete the impugned additions.

14. We have given a thoughtful consideration to the findings of the CIT(A). It appears that the CIT(A) has been carried away with the decision of the Hon'ble Supreme Court in the case of Lovely Exports Private Limited 216 CTR 195 without realizing the later

judgment of Hon'ble Delhi High Court in the case of NR Portfolio Private Limited 2 ITR –OL – 68 which was subsequently upheld by the Hon'ble supreme Court. Further we find that the assessee has simply filed documents but has not given any explanation to the adverse observations in respect of the bank statements. Even the CIT(A) has ignored the specific findings of the AO that cash were deposited immediately before issuing the cheque. Merely because the lenders / applicants are promoters / directors of the company would not discharge the assessee from initial onus of proving the credit entries in his books of account. Considering the facts of the case in totality we are of the considered view that the assessee has grossly failed in discharging the initial burden and the CIT(A) erred in accepting the submissions of the assessee without verifying the same. We, therefore, set aside the findings of the CIT(A) restore that of the AO. All the additions made u/s. 68 of the Act are confirmed ground No.1, 2 and 3 are allowed.

15. Coming to the next grievance which is in respect of the deletion of the addition of Rs.6,18,650/-. The AO has made the addition on the fact that the assessee has claimed interest on borrowed capital but has also given interest free loans and advances of Rs.6050710/- for which the AO observed that all the advances are on account of capital expenditure and the assessee has used its interest bearing funds for the purpose of creating capital assets, therefore, the interest expenditure is of capital nature and made the addition of Rs.618650/- disallowing the proportionate interest charged to P & L account.

16. When the matter was agitated before the CIT(A) the CIT(A) deleted the addition observing as under :-

*“11.3 I have given due consideration to the facts of the case. As per section 36(1)(iii) of the IT Act, the appellant is entitled to claim the deduction in respect of the amount of the interest paid on the capital borrowed for the purposes of the business or profession. The undisputed facts are that the capital was utilized for the purchase of raw material and plant & machinery. It cannot be said that the utilization of funds on the above was not related with the business of the assessee company. The only restriction for the allowance of the interest is that the asset for which the capital has been borrowed should be put to use. Interest paid for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed as deduction. The Assessing Officer has not disputed the fact that assets were put to use and interest was claimed after that period. Moreover, the appellant states that borrowed capital was also utilized for the purchase of raw material and advances given to the suppliers of the milk. Hence, no disallowance can be made by the Assessing Officer. Accordingly, addition is deleted and the ground taken by the appellant is allowed.”*

17. We have carefully considered the orders of the authorities below. On perusal of the orders we find that the assets were put to use prior to the claim of interest. It is also an undisputed fact that the borrowed capital were utilized for giving advances to the suppliers of the milk which cannot be on capital account. Considering the under lying facts we do not find any error or infirmity in the findings of the CIT(A). The ground No. 4 is accordingly dismissed.

18. The next grievance relates to the addition of Rs.1226410/- on account of undisclosed investment in land.

19. During the assessment proceedings the AO found that the assessee has purchased a land for a consideration of Rs.16356590/-. The circle rate fixed for this property was Rs.17583000/-. Since the circle rate was higher than the transactions rate the AO treated Rs.1226410/- as unexplained investment and made the impugned addition.

20. The assessee agitated the matter before the CIT(A) and contended that section 50C is not applicable.

21. It was strongly contended that section 50C is not applicable to the assessee as there is no sale of capital asset. Also section 43CA is also not applicable as it was introduced for builder company by finance Act 2013 w.e.f. 01.04.2014.

22. The CIT(A) was convinced that the relevant provisions applied by the AO are not applicable on the facts of the case and no other evidences have been brought on record to show that the assessee has paid consideration over and above the registered value the additions were accordingly deleted.

23. We have given a thoughtful consideration to the findings of the CIT(A). On a careful consideration we do not find any error or infirmity in the findings of the CIT(A) this ground is dismissed.

24. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 07.07.2023.

Sd/-  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

Dated: .07.2023

\*Neha\*

Copy forwarded to:

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

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi