

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.5365/Del./2017
(ASSESSMENT YEAR : 2013-14)**

V.B. Proteins (India) P. Ltd.,
C/o Shri Vinod Kumar Goel,
282, Boundry Road, Civil Lines,
Meerut (Uttar Pradesh).

vs. ITO, Ward 2 (4),
New Delhi.

(PAN : AAECV0990P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Ms. Kajal Singh, Sr. DR

Date of Hearing : 21.06.2023
Date of Order : 14.07.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals), Meerut dated 31.07.2017 pertaining to Assessment Year
2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. In the facts and circumstances of the case the Ld. A.O. has erred in law in making addition of Rs. 34 lacs towards Share Application Money in the name of one of the promoter directors Mohd. Irfan alongwith evidences filed by the assessee before A.O. as well as CIT(A), Meerut, which ought to be deleted.

2. In the facts and circumstances of the case the Ld. A.O. has erred in law in applying provisions of section 145(3) of the Income Tax Act 1961 ignoring the fact that the accounts were duly audited by the auditor.

3. In the facts and circumstances of the case the Ld. A.O. has erred in law in applying section 44AD of the Income Tax Act 1961 and applying net profit rate of 8% particularly when in the case of the company gross turn over exceeding 60 lacs, the section 44AD of the Income Tax Act 1961 could not be applied and CIT(A) has not justified.”

3. Apropos issue of addition of Rs.34,00,000/- towards share application money : On this issue, the AO noted that an amount of Rs.34,00,000/- claimed to have been received by the assessee from Mohd. Irfan, Director of the assessee company. But the assessee company had failed to produce him for examination. Even summons were returned unserved from the given address. Hence, AO held that assessee had failed to prove identity, creditworthiness and genuineness of the transaction, therefore, the addition was made by the AO on the entire amount.

4. Before the ld. CIT (A), assessee filed the copy of income-tax return showing returned income of Rs.2,83,200/- only and audited balance sheet of Mohd. Irfan was filed. Bank details were also filed by the assessee. Ld. CIT (A) did not find cogency in the submissions of the assessee and upheld the AO's action by observing as under :-

“From the perusal of the documents filed by the Assessee, it is seen that Mohd. Irfan who had given Rs. 34,00,0001- as share

application money had filed income tax return for the A. Yr. 2012-13 of Rs. 2,83,2001- only. From the perusal of his balance sheet, it is revealed that assessee is not having sufficient funds to give such huge advance and for the sake of clarity balance sheet as on 31.03.2012 as filed by assessee is given as under:-

Capital	51,16,120/-	Fixed Assets	41,00,000/-
Current Liabilities	73,780/-	Investments	9,28,342/-
		Cash and Bank Balances	1,03,928/-
		Sundry Debtors	57,630/-
Total	51,89,900/-	Total	51,89,900/-

From the perusal of the bank statement it is also noticed that on 21.9.2012 an amount of Rs.4,00,000/- was debited in the name of V.B. Proteins Ltd. i.e. assessee company. On very same date i.e. 21.09.2012 a sum of Rs. 1,30,0001- was deposited in cash. On 25.9.2012 a sum of Rs. 30.00,000/- is debited in the name of V.B. Proteins Ltd. i.e. assessee company. On very same date i.e. 25.9.2012 source of credit is amount received from Zaffar Yaseen Frozen Food. No confirmations of advance of money, share application form, status of share allotment is filed by assessee. The AO had sent Summons to Mohd. Irfan but the same were returned back for want of correct address. The AO asked the Counsel to produce the Mohd. Irfan Director but the same was not done. Even lender who was the director of the company is also not produced in appeal proceedings. No offer for examination of Mohd. Irfan was given during the Appellate proceedings as well.

Further, the all above documents which are being referred in Appeal were not filed during the assessment proceedings and filed in appeal proceedings for the first time without filing the application under Rule 46A of the Income Tax Rules.

In the above facts and circumstances, assessee is failed to prove the identity, creditworthiness and genuineness of the transaction of Rs.34,00,000/- taken from Mohd. Irfan under the garb of share application money, hence, addition made by assessing officer is hereby confirmed.”

5. Against the above order, assessee is in appeal before us. None appeared on behalf of the assessee on several occasions despite issuance of notices. Hence, we proceeded to adjudicate the issue by hearing Id. DR for the Revenue and perusing the records.

6. We note that assessee has claimed to have received Rs.34,00,000/- towards share application money from one of the Directors. The said person was not produced before the authorities below. Furthermore, as noted by the Id. CIT (A), additional documents were filed for the first time without accompanying proper application under Rule 46A of the Income Tax Rules, 1962. Hence, Id. CIT (A) rightly rejected the same. In our considered opinion, the authorities below have passed reasonable order which does not require any interference on our part. Hence, we upheld the order of the Id. CIT (A) on this issue.

7. Apropos issue of estimated addition of Rs.2,25,78,236/- @ 8% of gross receipts : AO in this case has rejected the books of account of the assessee and estimated the addition of Rs.2,25,78,236/- @ 8% of the gross receipts. AO's findings were mainly on the following basis :-

“(i) Assessee company had purchased material totaling to Rs.16,12,96,524/- from 10 persons/ firms and purchased from an individual/ firm is more than Rs. 1 Crore , but assessee company failed to provide the complete address and PAN of the concerned persons/ firms.

(ii) Assessee company had failed to produce original bills of above firms/ persons. The all above firms have made sales of

more than Rs. 1 Crore to assessee so they are liable for audit under section 44AB of the Act.”

8. Against the above order, assessee filed appeal before the Id. CIT(A). Ld. CIT (A) elaborately considered the assessment order & submissions and confirmed the order of the AO by concluding as under :-

“When assessee itself has shown the sale / purchase in its books and it has got its Books of Account audited from a Chartered Accountants, then now taking a stand that it was doing sale & purchase on commission basis cannot be accepted.

3. Assessee itself made the payment of Rs.16,12,96,524/- against the purchase of trading material and on inquiry it was found that payments were made in violation of provision of section 40A(3) of the Act and A.O. has not invoked the provision of Section 40A(3) of the Act.

4. Assessee has failed to produce books of accounts, and all bills, vouchers or any other material to prove its contention during the appeal proceedings and no specific offer for examination of books or for remand through filing new evidence in this regard was given during the Appeal proceedings.

5. The Assessment orders of other assessee's which are being relied upon, are on different facts and not applicable at all on the facts of the assessee's case.

From the facts and discussion, it is apparent, that assessee has failed to produce all the bills, vouchers, Party ledger accounts, confirmations etc. to prove the purchases genuine. It is pertinent to note that in the Audit report the Auditor has side tracked the issue of violation of 40A(3) of the Act by making the following observation:

"though the payments in excess of Rs20,000/- was made by cheque/draft. However, it is not possible for us to verify whether the payments in excess of Rs.20,000/-made otherwise than by a crossed cheque or bank draft, since the necessary evidence was not in possession of the assessee."

A query was raised during the Appeal proceeding but no plausible explanation of violation of section 40A(3) of the Act is also given by assessee. However no separate addition on this ground has been made by the AO.

But mere filing of assessment orders of other individual assessee's cannot absolve the liability of assessee to prove the transactions as genuine. Thus, this is a case where books of accounts have been rejected by the' AO, and he has not made any separate section for 40A(3) of the Act which could be much more than addition made by not rejecting the Books of Account. However, in the given facts of the case, I have no reason to interfere in the action taken by assessing officer regarding rejecting the books of accounts and applying net profit @ 8% of the total sales of Rs. 28,22,27,956/- which comes to Rs2,25,78,236 which after taking into account remuneration and declared income comes to Rs2, 17, 15,676/-. The same is hereby sustained. If at a later stage books of assessee is found accepted then disallowance of Section 40A(3) of the Act shall be made.”

9. Against the above order, assessee is in appeal before us. We have heard ld. DR for the Revenue and perused the records.
10. We find that on the facts and circumstances of the case, Revenue authorities have passed a reasonable order which does not need any interference on our part. Hence, we uphold the same.
11. In the result, assessee's appeal stands dismissed.

Order pronounced in the open court on this 14TH day of July, 2023.

**SD/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 14TH day of July, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.