

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Shri M. Balaganesh, Accountant Member**

ITA No. 5591/Del/2010
(Assessment Year: 2007-08)

KMG International Ltd, 375, Main Road, Gazipur, New Delhi (Appellant) PAN: AACCK0590Q	Vs.	ACIT, Circle-5(1), New Delhi (Respondent)
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Assessee by :	Shri Vinod Kr. Bindal, CA
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	16/05/2023
Date of pronouncement	21/07/2023

ORDER

PER C. M. GARG, J. M.:

1. This an appeal has been filed by the assessee against the order of the Id CIT(A)-VIII, New Delhi dated 26.10.2010 for AY 2007-08.

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

"1. The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 31,55,000/- u/s 68 for the amounts received as loans from Mrs. Vinita Surana Rs. 4,00,000/-, Mrs. Dhani Devi Surana Rs. 6,00,000/-, Mr. Radhey Shyam Khemka Rs. 1,60,000/-, Shree Lal Vijay Kumar Bagla HUF Rs. 2,75,000/- M/s Bagla & Co. Rs. 1,90,000/-, Mr. Rajesh Kumar Khemka Rs. 1,00,000/-, M/s Bagla Store Rs. 7,00,000/-, Mr. Harish Surana Rs. 2,40,000/- and Ms. Monika Surana Rs. 4,90,000/-ignoring the evidences placed on record to discharge the onus on the appellant. Hence the said addition must be deleted.

2. The learned CIT(A) erred in law and on facts that in directing the assessing officer to disallow interest on above mentioned loans without issuing the statutory show cause of enhancement of income to the appellant. Thus the said directions given must be reversed.

3. The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 6,17,091/- on account of payment of commission paid ignoring the evidences placed on record. Hence the said addition must be deleted.

4. *The learned CIT(A) erred in law and on facts in confirming the addition of Rs. 15,00,000/- u/s 68 for the amount received from M/s Rishi Promoters (P) Ltd. as advance against property ignoring the evidences placed on record. Hence the said addition must be deleted.*

5. *The learned CIT(A) erred in law and on facts in confirming the disallowance u/s 14A of the Act of Rs. 20,645/- on account of indirect establishment and administrative expenses ignoring the evidences placed on record. Hence the said addition must be deleted."*

Ground Nos. 1 and 2 of assessee

3. Apropos ground Nos. 1 and 2, the Id Authorised Representative (Id AR) submitted that the Id CIT(A) erred in law and on facts in confirming the disallowance of Rs. 31,55,000/- u/s 68 for the amounts received as loans from Mrs. Vinita Surana Rs. 4,00,000/-, Mrs. Dhani Devi Surana Rs. 6,00,000/-, Mr. Radhey Shyam Khemka Rs. 1,60,000/-, Shree Lal Vijay Kumar Bagla HUF Rs. 2,75,000- M/s Bagla & Co. Rs. 1,90,000/-, Mr. Rajesh Kumar Khemka Rs. 1,00,000/-, M/s Bagla Store Rs. 7,00,000/-, Mr. Harish Surana Rs. 2,40,000/- and Ms. Monika Surana Rs. 4,90,000/- ignoring the evidences placed on record to discharge the onus on the appellant. Hence the said addition must be deleted. He further submitted that the Id CIT(A) has also erred in law and on facts that in directing the assessing officer to disallow interest on above mentioned loans without issuing the statutory show cause of enhancement of income to the appellant. Thus the said directions given must be reversed.

4. The Id AR submitted that the loans received by the assessee through cheques on 19.06.2006 and 20.06.2006 were repaid through cheques on 19.09.2006 along with interest after deducting TDS @10.2 % therefore, no addition has called for in this regard on accounts of loans from 9 entities. The Id AR further drawing our attention towards relevant part of first appellate order and submitted that the Id CIT(A) has enhanced the addition without giving any notice to the assessee and directed the AO to disallow the interest on the loans without

issuing any show cause notice of enhancement, therefore, said direction of the Id CIT(A) deserve to be reversed and set aside.

5. Replying to the above the Id Sr. DR strongly supported the orders of the authorities below and submitted that the assessee failed to substantiate the identity and creditworthiness of creditors and genuineness of the transaction, therefore, the AO was right in making addition in the hands of the assessee. The Id Sr. DR submitted that the Id CIT(A) uphold the addition of Rs. 31,55,000/- deleting the addition of remaining amount of Rs. 6 lakhs pertaining to Shri Tarun Jain and M/s. Shivani Jain , therefore, the first appellate authority has proceeded to adjudicate the issue with judicious mind. He further submitted that since the creditworthiness of the creditors was not proved beyond doubt therefore, the Id CIT(A) was also correct in enhancing the addition made by the AO to disallow the interest paid by the assessee on the impugned unsecured loan amount.

6. On careful consideration of the above submissions and on perusal of the paper book filed by the assessee spread over 86 pages, first of all, we note that the impugned transactions were undertaken during FY 2006-07 pertaining to AY 2007-08 and the assessee received loan of Rs. 31,55,000/- from 9 creditors through cheques on 19.06.2006 and 20.06.2006 and these amounts were repaid during the same financial period through cheques on 19.09.2006. We also note that the assessee has paid interest of loan after deducting TDS @10.2% and it is not the case of the AO that these creditors have not shown interest income in their respective return of income. From the documentary evidence available at page 26 to 86 we note that the assessee has submitted all possible documentary evidences under his command pertaining to all 9 creditors by submitting copy of ledger account for relevant financial period, copies of bank statement/ passbook from income tax return and Form 16A pertaining to all 9

lenders. From the assessment order, we note that the AO dismissed explanation of assessee on account of non-furnishing of documentary evidences and details. Further, from relevant part of the first appellate order we note that the Id CIT(A) in para 5.5 recorded his findings and all pages 8 and 9 noted that considering the peculiar facts and circumstances of the present case the appellant company did not disclose even the primary fact of obtaining loans from the third parties. The document placed before the AO do not inspire confidence with reference to the creditworthiness of the 9 creditors. The Id CIT(A) deleted the addition pertaining to 2 creditors amounting to Rs. 6 lakhs confirming the remaining part of addition pertaining to 9 creditors of Rs. 31,55,000/- and also directed the AO to disallow the interest paid on the loan and credits claimed in the name of three creditors/ persons.

7. The Id AR placed vehemently reliance on the judgment of Hon'ble High Court of Bombay in the case of PCIT Vs. Skylark Build reported as 2018-TIOL-2323-HC-MUM-IT and submitted when the sums and credits borrowed by the assessee has been repaid along with interest after deducting TDS during the same financial period then the invocation of section 68 of the Act is not valid and addition made there under cannot be held to be sustainable. In the present case, undisputedly the assessee obtained unsecured loan from 9 entities and submitted details of PAN and copies of ITR, copies of ledger accounts and documentary evidence showing repayment of loans along with interest after deducting TDS as per IT Rules then the allegations of authorities below doubting the creditworthiness and genuineness of the transaction cannot be held as unproved particularly when there is deliberations by the Id CIT(A) in his order regarding documentary evidences submitted before him as well as before AO. These factual position have not been controverted by the Id Sr. DR in any manner. Therefore, in our humble understanding the assessee properly discharges its onus cast upon him by way of documentary evidences

establishing the identity and creditworthiness of the creditors and genuineness of the transaction rooted through banking channel. As the factual position also gets strong support from the fact that the authorities below have not disputed or controverted the very relative fact that the assessee has repaid entire loan amount along with interest payable thereon during the relevant financial period securing by the loan account and at the end of the year there was no credit or unsecured loan was issued in the books of account of the assessee. After submission of documentary evidence and details of 9 loan creditors there is deliberation on the documentary evidences submitted by the assessee by the Id CIT(A) and thus, the Tax Authorities below did not discharge onus shifted on him by disapproving unsecured loan creditors. Therefore, the addition made by the AO and sustained by the Id CIT(A) is not justified and sustainable. Therefore, the AO is directed to delete the entire addition. Since, in the earlier part of this order we have allowed the claim of assessee pertaining to unsecured loan creditors therefore, directions by the Id CIT(A) to the AO to disallow the interest amount paid to three persons/ creditors also loses its lags on the platform of tax jurisprudence and thus said directions are also set aside. Accordingly, Ground Nos. 1 and 2 of the assessee are allowed.

8. The Id AR submitted that the assessee does not want to press ground No. 3, hence, same is dismissed as not pressed.

Ground No. 4 of assessee

9. Apropos ground No. 4 the Id AR submitted that the Id CIT(A) erred in law and on facts in confirming the addition of Rs. 15,00,000/- u/s 68 for the amount received from M/s Rishi Promoters (P) Ltd. as advance against property ignoring the evidences placed on record. Hence the said addition must be deleted. He further submitted that authorities below have made confirmation of addition without any

basis ignoring the fact that the assessee has submitted photo copy of ledger account of Rishi Promoters in books of the assessee for the year ended on 31.03.2007 showing receipt of advance against the period along with confirmation and also copy of account of such entities in the books of account of the assessee for the year on 31.03.2008 showing return of advance taken from the said entity but the Id AR submitted that the assessee also filed copies of balancesheet, profit and loss account and schedule of fixed assets as on 31.03.2008 of Rishi Promoters along with photo copy of PAN therefore, factum of receipt of advance during the relevant financial period and its return to the said entity during the next financial year is clearly established therefore, addition made by the AO may kindly be deleted.

10. Replying to the above, the Id SR. DR drawing our attention towards relevant part of the assessment as well as first appellate order submitted that the despite the several opportunities the assessee filed only a copy of account in assessee's books which shows only receipt of amount on 01.03.2007 and in absence of other details and confirmation of said amount of Rs. 15 lakhs remain unexplained, therefore, rightly added to the income of the assessee. Further drawing our attention towards para 9.5 of first appellate order the Sr. DR submitted even during the course of appellate proceedings the appellant company only filed schedule of fixed assets as appearing in its balance sheet but noting had been elaborated about the circumstances leading to cancellation of agreement to sale with Rishi Promoters Pvt. Ltd and it was also not clear as to whether anything was paid to compensate the party whose interest was adversely affected with cancellation of proposed transactions of sale of property therefore, the Id CIT(A) was right in upholding the addition.

11. On careful consideration of the above submission, first of all we note that AO treated the impugned advance as unexplained in absence

of details and confirmation. The assessee filed additional evidence under Rule 46A before the Id CIT(A) which has been noted by the Id first appellate authority in para 9.5. The Id CIT(A) in the said para categorically noted that the details of documentary evidence filed by the assessee by noting that the assessee received Rs. 15 lakhs against the proposed sale of property situated G-17, Jangpura Extension, New Delhi. Thereafter, the Id CIT(A) noted that noting has brought on record explaining the circumstances in which the proposed sale of agreement was cancelled. The Id CIT(A) noted that no copy of IT return or balance sheet has been filed indicating/ reversing advance of Rs. 15 lakhs to the appellant company. He also noted that nothings has been elaborated about the circumstances leading to cancellation of agreement to sale with said entity and it is also not known as to whether anything was paid to compensate the party whose interest was adversely affected with cancellation of proposed transaction of sale of property.

12. Be that as it may, we further note that page 13 of assessee's paper book schedule forming part of balance sheet aforesaid as on 31.03.2007 of Rishi Promoters Pvt. Ltd shows that said entity has shown advance of Rs. 6,14,25,000/- against various transactions of purchase of property and details of said advance amount includes assessee company at Sl No. 7 showing advance of Rs. 15 lakhs which the assessee has received back on cancellation of sale agreement with the said entity. So far as, cause of cancellation agreement to sale of property and other compensation etc to be given by one party to other is concerned. Firstly, these facts are not clear from the material available on record and secondly, these fact have no bearing on the glaring factual position that the assessee received advance and repaid back to the said entity due to cancellation of agreement. In such a situation, no addition can be made and sustained in the hands of the assessee by invoking deeming provision of section 68 of the Act and

by alleging and considering the same as unexplained in the hands of the assessee. Accordingly, AO is directed to delete the impugned addition and thus, ground No. 4 of assessee is allowed.

13. The Id AR also submitted that the assessee does not want to press ground No. 5, hence, ground No. 5 of assessee is dismissed as not pressed.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 21/07/2023.

-Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated:21/07/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi