

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2869/Del/2019, A.Y. 2014-15

Income Tax Officer, Ward-1(3), Gurgaon	Vs.	Sh. Balwan singh H.No. 38, Village Dhunela, Tehsil Sohna, Gurgaon Haryana-122103 PAN : BEPPS4043M
Appellant		Respondent

Assessee by	Sh. Kapil Goel, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	31.07.2023
Date of Pronouncement:	07.08.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Revenue against the order dated 21.01.2019 of CIT(A)-1, Gurgaon (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 486/16-17, A.Y. 2014-15 arising out of an appeal before it against the order dated 23.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-1(3), Gurgaon (hereinafter referred as the Ld. AO).

2. The facts in brief are that the Ld. AO had questioned the unsecured loans amounting to Rs. 4,56,50,000/- and finding the evidence given by assessee to

the insufficient made the addition which has been deleted by Id. CIT(A). The Revenue is in appeal raising following grounds ;

“1. Ld. CIT(A) has erred in deleting the addition of Rs. 4,56,50,000/- made by the Assessing Officer on account of unsecured loan taken by the assessee and Ld.CIT(A) has passed the order by not appreciating the remand report submitted by the Assessing Officer.

(2) That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing of appeal.”

3. Heard and perused the record.

4. Primarily the Ld. DR submitted that the evidence led by the assessee during the appellate proceedings has been relied without giving due consideration to the remand report. It was further submitted that even the evidence provided was insufficient to establish with the parties had their own sufficient funds and were genuine in the transaction. Ld. DR heavily relied the judgment of Hon'ble Supreme Court of India in the case of ***CIT vs. Biju Patnaik 1986 AIR 1428*** to submit that the assessee have always been under a burden to establish the source of source and the concept is not new. Though, reiterated by way of an amendment brought by the Finance Act, 2022.

4.1 On the other hand Ld. AR relied the order of Ld. CIT(A) and submitted that all the relevant evidences were before the Ld. CIT(A) and when the transaction were through banking channel and there was no cash entries in the accounts of the investors there was no reason to disbelieve the unsecured creditors. It was submitted that in the remand report Ld. AO had not disputed the facts of identity and credibility of the investors. Ld. AR submitted that the explanatory notes to the amendments brought in Section 68 makes it clear that the amendment brought to establish the source of source is effective from 01.04.2023.

5. Giving thoughtful consideration to the matter on record it comes from the order of Id. CIT(A) that the additional evidence with regard to the identity and genuineness of the transaction were forwarded to Ld. AO whose report has been reproduced by Ld. CIT(A) in its order. It also comes up that Ld. CIT(A) discusses the remand report particularly in context to each lender individually and pointing out that how Id. AO had failed to appreciate the evidence in the right context.

6. After giving thoughtful consideration to the findings of Ld. CIT(A) it comes up that Ld. CIT(A) had appreciated following facts individually for the four suspected parties;

a) Mangal Sain Mittal; The issue was of unsecured loan of Rs 10 lacs. Ld. CIT(A) relied confirmation of lender, copy of ITR; copy of bank account of lender, explanation regarding source of loan of Rs 10 lacs) factum of confirmation of loan in statement recorded u/s 131 at remand stage. It was specifically of observed that in the accounts of lender there were no cash deposits.

b) Mukesh Kumar; The issue was of unsecured loan of Rs 230,00,000. Ld. CIT(A) relied lender's confirmation, bank account; ITR of lender; source explanation and factum of loan confirmation by lender in statement recorded u/s 131 at remand stage.

c) Yashpal; The issue was of unsecured loan of Rs 105,00,000 Ld. CIT(A) relied lender's confirmation, bank account and explanation regarding source of lender in statement recorded u/s 131 recorded at remand stage.

d) Vijay Dhunela; The issue was of unsecured loan of Rs. 1,11,00,000 CIT(A) relied lender's confirmation, bank account of lender, source explanation by way of capital receipts from sale of properties.

7. The bench is of considered view that reliance of Ld. DR of the judgment of Hon'ble Supreme Court of India in *CIT vs. Biju Patnaik* (supra) is not

sustainable as that was a case where the Trust which has given money to the assessee was found to be non-existing trust and very identity of the trust was found to be doubtful. Further, in that case the cash amounts were received by the said trust and individuals who have given the money to the trust were also not identifiable and traceable therefore, taking a wholesome view Hon'ble Supreme Court had observed that the source of source was doubtful.

7.1 However, in the case in hand the material evidence produced by the assessee has been duly examined by Ld. CIT(A) and there is no dispute with regard to identity of the parties, the amounts were paid by them through banking channels. They themselves did not receive any amount cash in the immediate vicinity of the transactions.

7.2 The 2022 amendment in Section 68 of the Act takes effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years. The amendment is the illustration of application of 'Mischief Rule' in interpretation of statutes. Memorandum explaining the amendment makes it crystal clear that amendment is proposed to remove doubts created by certain judicial rulings about the onus of proof of source of source. The principle may have been there in certain judgments in favor of Revenue, but now once this amendment has specifically made applicable the principles with effect from AY 2023-24, the Bench cannot apply retrospectively.

8. Further if this evidence was insufficient to the satisfaction of Id. AO then the burden was on Ld. AO to have at least brought on record some evidence during the remand proceedings to show that the parties transacting with assessee were not genuine. The burden when discharged by the assessee by substantial evidence the onus shifted on Ld. AO to discredit the same with some evidence, direct or circumstantial, and not just bald assertions on his own belief and

dissatisfaction. The grounds raised have no substance. **Consequently, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 07th August, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-07th .08.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI