

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' : NEW DELHI)
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 628/Del/2023
(Assessment Year : 2015-16)**

Shalini Gupta Habsburger Str 7, Duesseldorf 4057, Germany 999999 PAN : BNRPG7735F	Vs.	ACIT, Circle Int. Tax 1(3)(1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rajnish Aggarwal, CA
Revenue by	Sh. Vizay B. Vasanta, CIT-DR

Date of hearing:	08.08.2023
Date of Pronouncement:	23 rd .08.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by assessee against the final assessment order dated 23.01.2023 for assessment year 2015-16 passed by ACIT, Circle Int. Tax, 1(3)(1), New Delhi u/s 147 r.w.s. 144C(3) of the Income Tax Act, 1961 in pursuant to the directions of Dispute Resolution Panel-2, New Delhi.

2. The brief facts of the case are that the assessee is a Non-Resident Indian settled in Germany since her marriage in 1994. Assessee claims that prior to assessment year 2016-17 the assessee was not having any taxable income in India

and therefore, was not liable to file her income tax return u/s 139 of the Income Tax Act. As for the present assessment year 2015-16 also her income in India comprised of interest income amounting to Rs. 968/- only which was much below the minimum income liable to tax in India therefore, she claims that she was not liable to file any Income Tax Return in India.

2.1 The background of the issue is that the assessee purchased a property bearing no. A-103, Sector 15 Gurgaon Haryana-122200 from Unitech Ltd. for a total sale consideration of Rs. 6,58,96,000/- out of which a sum of Rs. 5,46,71,539/- was invested in the present FY. Out of the total payment of Rs. 5,46,71,539/- made during the year to Unitech Ltd., the Assessing Officer has added a sum of Rs. 74,12,618/- as unexplained investment u/s 69 of the Income Tax Act alleging that in the confirmation from Mr. Munish Bhatia the date mentioned is 15th of May 2014 while as per M/s Unitech Ltd, the money credited in the ledger account of assessee was on 12th of May 2014.

2.2 Ld. AR has submitted that the Ld. Assessing Officer has made the addition due to alleged difference in dates of confirmation of loan filed by Mr. Munish Bhatia ignoring the plea of the assessee that actually the loan was given by M/s ACE Engineering Infratech India Pvt Ltd, the shareholders of which are close family friends of Shalini Gupta and Mr. Munish Bhatia. Copy of customer ledger of M/s. Unitech Limited, at page no. 6 of the paper book, is relied that the same reflects the RTGS amount of Rs.74,12,618/- and copy of appellant account in the books of account of M/s. Ace Engineering Infratech (India) Pvt. Ltd. at page no 7 of the paper book, is relied to submit that the same shows the corresponding transaction on the same date. Ld. AR has also submitted that the bank account of M/s. Ace Engineering Infratech (India) Pvt. Ltd. maintained with J & K Bank, Jammu clearly shows the RTGS of Rs.74,12,618/- was made to M/s. Unitech

Limited on 12.05.2014 vide transaction no. JKAH14132025 vide cheque no. 56737. (Please refer page no. 5 of the paper book)

2.3 It is further submitted by referring to page no. 4 & 5 of the paper book, that there is a mistake of date of 15th instead of 12th on the confirmation of loan of Mr. Munish Bhatia but the transaction number of RTGS as mentioned in the confirmation is same i.e. JKAH14132025 as mentioned in the bank statement of M/s. Ace Engineering Infratech (India) Pvt. Ltd. Further, even the cheque number of the aforesaid RTGS transaction is same 56737. (page no. 5 & 7 of the paper book).

3. Ld. DRP has taken into consideration the remand report wherein the statement of M/s. Ace Engineering Infratech (India) Pvt. Ltd. was alleged to be without evidence and ld. DRP observed in para 4.1.4 as follows :-

“4.1.4 The Panel has carefully considered the rival averments as above. The Panel takes a note of AO’s observation made in the remand report as discussed at para 4.1.3.1 above that the assessee has been given enough opportunity of being heard and has not been prevented by sufficient cause to produce the evidence during the assessment proceeding. However, so far the assessing officer’s view appears to be correct as the assessee did not properly file in requisite details. Considering the assessee’s submission, the AO is directed to consider and verify the assessee’s contention in light of submissions made as above before the Panel by passing a speaking and reasoned order within the ambit of law and facts of the case. The Panel hastens to clarify that the AO shall not conduct any fresh inquiry in this regard; the verification shall be made on the basis of documents/ submissions available on the records. The assessee’s objections made at ground no. 1 to 4, in this regard are hereby, disposed off accordingly.”

4. Assessee has come in appeal raised following grounds;

“1. The Ld. Assessing Officer has erred in law and on facts in passing an assessment order u/s 147 r.w.s 144C(3) of the Income-tax Act, 1961 (Act) at an income of Rs 74,13,586/- after making an addition of Rs.74,12,618/- u/s 69 of the Income Tax Act, in pursuance to the directions issued by Dispute Resolution Panel-2 (Hon'ble DRP), New Delhi, denying the principles of natural justice, which is arbitrary, unjustified, illegal, invalid and void-ab-initio.

2. The notice stated to be issued u/s 148 on 31-03-2021 pertaining to Assessment Year 2015-2016 is not as per the procedure laid down by well-established principles of law denying natural justice to the assessee.

3. The Ld. Assessing Officer while issuing/serving notice dated 31.03.2021 u/s 148 of the Income Tax Act has not complied with the procedure laid down under Chapter XIV of the Act making the reassessment proceedings illegal, invalid, & void-ab-initio.

4. Without prejudice to the above the Ld. Assessing Officer has erred in law and on facts in adding a sum of Rs.74,12,618/- u/s 69 of the Income Tax Act alleging that the sources of loan of Rs.74,12,618/- out of the total loan amount of Rs.1,84,12,618/- received by assessee from Ace Engineering Infratech (I) Pvt Ltd to invest in her house property at A-103, Sector 15, Gurgaon, Haryana-122000 purchased from M/S Unitech Ltd, remains unexplained, which is arbitrary, unjustified, illegal, invalid and bad-in-law.

5. The Ld. Assessing Officer grossly erred in law and on facts in adding a sum of Rs.74,12,618/- as unexplained investment u/s 69 of the Act by mismatching of dates in customer ledger account of assessee in the books of M/S Unitech Ltd and the confirmation of Mr. Manish Bhatia who is not in any way connected with this transaction as the loan is given by M/s Ace Engineering Pvt Ltd which is arbitrary, unjustified, invalid and bad-in-law.

6. That the Ld. Assessing Officer grossly erred in law and on facts in adding a sum of Rs.74,12,618/- as unexplained investment u/s 69 of the Income Tax Act holding that the date of payment as per customer ledger of M/S Unitech Ltd is 12.05.2014 while the

date of transaction as per confirmation letter of Mr. Munish Bhatia is 15.05.2014 which has no relevance, ignoring the fact that all the transactions between the parties are through proper banking channel including the payment of Rs.74,12,618/- duly verifiable from the banking records irrespective of the difference in dates as alleged by the Assessing Officer which is arbitrary, unjustified, invalid and void-ab-initio.

7. The Ld. Assessing Officer erred in law and on facts in ignoring the directions issued by the Hon'ble DRP by treating the 3rd transaction of loan of Rs. 74,12,618/given on 12-04-2014 by M/S Ace Engineering Infratech (I) Pvt Ltd treating it as unexplained investment u/s 69 of the Act, while accepting the other two transactions of loan (i) Rs. 60,00,000/- and (ii) Rs. 50,00,000/- entered one day before on 11-04-2014 which is arbitrary, unjustified, illegal, and bad in law.

8. The Ld. Assessing Officer erred in law and on facts in initiating penalty proceedings u/s 271(1)(C) & 271 F of the Income Tax Act.

9. That the above grounds of appeal are without prejudice to one another.

10. That the appellant prays for the liberty to raise, such further grounds of appeal arising from the facts of the case, as may enable the appellant to seek justice and to assist Your Honours in upholding the majesty of law.”

5. Apparently the addition is made by Ld. Assessing Officer due to alleged difference in date(s) which assessee claims was inadvertent 'typographical' mistake. Ld. AO has fallen in error to say that same is 'ex post facto explanation' when something comes from assessee by way of explanation of an error of fact and not an excuse of conduct, it cannot be left out of consideration on ground of 'ex post facto explanation'.

6. Further, before the Bench, Ld. AR sufficiently established that the loan transaction of Rs.74,12,618/- by RTGS is the same as per loan confirmation,

copy of Ms. Shalini Gupta's account in the books as well as copy of bank statement of M/s. Ace Engineering Infratech (India) Pvt. Ltd., vis a vis customer ledger account of Ms. Shalini Gupta in the books M/s. Unitech Limited.

7. Appreciating aforesaid it can be concluded that Ld. Tax Authorities have fallen in error in not appreciating the fact in correct perspective and while assessee has give sufficient information about the identity and the financial credibility of source. The error in mentioning the date would have stood explained if assessee was put to caution and asked to explain the same. Thus, there was no justification in the aforesaid circumstances to draw an adverse inference for the addition u/s 69 of the Act. The ground raised are allowed. Consequently, **the appeal of assessee is allowed.** The impugned addition is deleted.

Order pronounced in the open court on 23rd August, 2023.

**Sd/-
(G.S.PANNU)
PRESIDENT**

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

Date:-23rd .08.2023

Binita, SR.P.S

Copy forwarded to:

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

AR, ITAT
New Delhi