

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1179/Del./2017
(ASSESSMENT YEAR : 2010-11)**

M/s. Godwin Hospitality Pvt. Ltd.,
38, 1st Floor, Chetan Medical Complex,
Chippi Tank,
Meerut.

vs. ACIT,
Central Circle,
Meerut.

(PAN : AADCG3456A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Waseem Arshad, CIT DR

Date of Hearing : 11.10.2023

Date of Order : 13.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)-IV, Kanpur dated 28.12.2016 pertaining to assessment
year 2010-11.

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

“1. That the Id. CIT (A) has erred in law as well as on the facts of the case by confirming the following additions as made by the Id. AO while completing the assessment of the appellant :-

Addition u/s 69 of the Income Tax Act, 1961, towards
alleged unaccounted cash payment to MIs Karma
Decor (Contractor)

Rs.8,20,000/-

Addition u/s 68 holding the amount of share application money received by the appellant, as unexplained money/cash credits	<u>Rs.27,06,000/-</u>
Total	Rs.35.26.000/-

Various findings made and conclusions drawn by the authorities below for making and confirming above additions are unwarranted and are devoid of supporting material on record and the submissions of the appellant have not been considered in right perspective thereof.

2. That without prejudice to above, the authorities below have erred in law as well as on the facts of the case by making and confirming the addition of Rs.35,26,000/- as above ignoring the fact that the appellant was under erection during the year under reference and it is a fallacy to assume that the appellant had earned income so as to be assessed and confirmed in its hands either u/s 68 or 69 of the Income Tax Act, 1961.”

3. Apropos issue of addition of Rs.8,20,000/- : AO has made this addition on the basis of nothings in Annexure LP-11 found during search.

The detailed findings of the AO are as under :-

“ As per this seized document on 15.10.2010, the assessee has paid a part payment of goods purchased from M/s Karma Decor in cash amounting to Rs. 13,20,000/-. The bill was made only for a portion of actual goods received and was paid by cheque. The balance was settled in cash outside the books of accounts. A show cause was given as to why not source of this cash of Rs/13,20,000/- be treated as unexplained and added to your income i.e. Rs.8,20,000/- for A.Y. 2010-11 and Rs.5,00,000/- for A.Y. 2011-12.

In reply, the assessee has filed that the statement of M/s Karma Decor is filed herewith which tallies with the statement. As per which total transaction with the party are through cheques or RTGS. The reply of the assessee has no merit. As per the above document seized, during the search, it is clear that both the parties are involved in unaccounted transactions. By doing the same, both the parties are evading taxes. Since the transaction was out of the books, it is obvious that the above transaction will not be a part of the books. As the document seized during the search shows the transactions which are not

accounted in the books. Assessee can not discharge the onus merely stating that the transaction with the party are through account payee cheque. Since, this document has been seized from the premise of the assessee, the onus is on the assessee to explain the document. It is clear that the assessee has utterly failed to discharge his onus. The reply is not supported with documentary evidence and the same is being disallowed u/s 69. Thus, an addition of Rs.8,20,000/- on account of unexplained investment.”

4. Upon assessee's appeal, Id. CIT (A) confirmed this addition.
5. Against this order, assessee is in appeal before us. None appeared on behalf of the assessee. We have heard Id. DR for the Revenue and perused the records.
6. Upon careful consideration, we find that the source of payment for goods purchased from Karma Décor remained unsubstantiated. The assessee has failed to give any cogent explanation. Thus, we find that the authorities below have taken a correct view in the matter which does not need any interference on our part. Hence, we uphold the order of the authorities below.
7. Apropos issue of share application money : On this issue, addition was made on account of share application money received for which proper details were not provided before the AO. AO noted that in this case, the identity, creditworthiness and genuineness of the transaction has not been proved. Hence, he made the addition.

8. Upon assessee's appeal, ld. CIT (A) elaborately considered the issue. He has asked for the remand report from the AO which was submitted. Assessee has also filed the rejoinder to the remand report and the ld. CIT (A) has also considered the same. Ld. CIT (A)'s order may gainfully be referred as under :-

“ I have carefully gone through the assessment order, written submission filed, remand report of A.O. and comment of the appellant on remand report. From the assessment order it is clear that the appellant was required to furnish evidence to prove genuineness, creditworthiness and identity of the persons from whom share application money was received. It is further noticed that the AO has given ample opportunity to the appellant. As per assessment order, the appellant has not furnished any documentary evidence In respect of identity, creditworthiness & genuineness of the persons from whom share application money is received. Full details as required by section 68 as well as by AO, like PAN, copy of bank account & ITRs were not furnished by the appellant. This fact was also confirmed in the remand report of the AO dated 07.10.2016.

The appellant could not show as to why his application u/r 46A for furnishing additional evidence should be admitted in this appeal proceeding. After perusal of the remand report and reply of the appellant, it is clear that appellant is unable to substantiate its claim made in application u/r 46A. The conditions given u/r 46A of the Act are therefore not satisfied. Therefore, the application along with evidence given u/r 46A cannot be admitted and is liable to be rejected on this ground only.

Further, without prejudice to above, with regard merit of the case, it is seen from the remand report to AO that AO has made sufficient efforts to obtain the details with regard to share application money but the share applicants could not submit the proof which could establish the identity the creditworthiness and genuineness of the investors. The AO has categorically reported so in his remand report. Thus the genuineness, identity

& creditworthiness of lenders also could not be established on merit also. The various case laws relied upon by the Ld. AR of the appellant are on their own footings and are not applicable to the facts of the present case. Therefore, I do not find merit in the claim of appellant in this ground and in his subsequent contention/submission and verbal arguments. In view of the above, this ground is rejected and the addition made by AO of Rs.27,06,300/- is hereby confirmed.”

5. Against this order, assessee is in appeal before us. None appeared on behalf of the assessee. We have heard ld. DR for the Revenue and perused the records.

6. Upon careful consideration, we find that it has been clearly established that details as required by section 68 of the Act have not been furnished. The ld. CIT (A) has also rightly noted that additional evidence cannot be accepted as assessee has been given adequate opportunity by AO. Thus, we find that the ld. CIT (A) and AO have passed a reasonable order which does not need any interference on our part. Hence, we uphold the same.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 13th day of October, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

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

**Dated the 13th day of October, 2023
TS**

Copy forwarded to:

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

AR, ITAT
NEW DELHI.