

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2712/Del/2022
(Assessment Year: 2018-19)

DCIT,
Circle-61(1),
New Delhi

(Appellant)

PAN:AAXPG2141H

Vs. Ashwani Garg,
Shop No. 112, 1st Floor, Crescent
Square, DC Chowk, Sector-9,
Rohini, Delhi
(Respondent)

Assessee by : Ms. Mansi Jain, CA
Revenue by: Shri Kanv Bali, Sr. DR

Date of Hearing 17/08/2023
Date of pronouncement 10/10/2023

ORDER

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

1. This appeal has been filed by the revenue against the order of the Id CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 23.08.2022 for AY 2018-19.

2. The Revenue has raised the following grounds of appeal:-

"1. Whether the Ld. CIT(A) has erred in deleting the addition made by AO amounting to Rs 13.50,000/- on account of sundry creditor merely accepting the contention of the assessee without conducting independent enquiry.

2. Whether the Ld. CIT(A) has erred in deleting the addition made by AO amounting to Rs.) 7.23,982/- on account of interest expense paid to the parties i.e. sundry creditors treated as unexplained.

3. Whether the Ld. CIT(A) has erred in deleting the addition made by AO amounting to Rs. 1,26,91,590/- on account of rejecting the books of account and estimating the GP at 8% of the turnover against 5.34% declared by the assessee."

3. Apropos ground No. 1 the Id Sr. DR submitted that the Id CIT(A) has erred in deleting the addition made by AO amounting to Rs

13,50,000/- on account of sundry creditor merely accepting the contention of the assessee without conducting independent enquiry. The Id Sr. DR submitted that since the Id CIT(A) has granted relief to the assessee without any justified reason and basis therefore, Id first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above the Id assessee's representative (AR) supporting the first appellate order and submitted that the Id CIT(A) has conducted detailed enquiry before granting relief to the assessee and thereafter, rightly held that the persons from whom new loans were taken from three existing creditors having substantial opening advance to the assessee therefore, in view of their PAN and tax returns and copies of bank statements no addition can be made in the hands of the assessee.

5. On careful consideration of the above submission from assessment order and first appellate order noted that after considering the detailed explanation and submissions of assessee as well as documentary evidence in support thereto the Id CIT(A) granted relief to the assessee with the following observations and findings:-

"5.3 I have carefully considered the matter. The persons from whom new loans were taken were existing creditors having substantial opening advance to assessee. From evidences on record, they were PAN card holders and existing tax assessees. So, their identities are not in doubt. The only issue to be seen is their creditworthiness. From a perusal of assessment order, it is seen that all the parties furnished account confirmation, PAN Card, acknowledgement of I.T.R. and copies of bank statements to the Assessing Officer. The Assessing Officer doubted the creditworthiness of creditors mainly on the reasoning that certain sums of money got deposited in their accounts few days before advancing of loan to assessee. The Assessing Officer also stated that incomes disclosed by creditors were too less for advancing of loan to assessee. However, on examination of documents filed and contention of written submission, it is seen that assessee had presented credible evidences regarding the source of loan. In the case of Amit Garg (HUF), the balance in bank accounts was supplemented by current year's income of Rs.2,88,700/-.

Hence, before advancement of loan, the creditor was having sufficient balance in its account. Similar is the situation in the case of Surendra Kr. Garg (HUF). In the cases of Indravati Devi, Nisha Agarwal, Ruby

Goel and Santosh Goel, the increases in loan were mainly on account of interest on old loans paid by assessee and the same interest being re-invested with assessee. The Assessing Officer had mentioned the facts of those parties receiving payments from A.K. Builder and money being sent again to the account of assessee. The reinvestment of interest received by creditors goes to show that the creditworthiness of creditors is not in doubt. It is not the case of the Assessing Officer that the old balances standing in the names of creditors were money belonging to assessee. Considering the facts available, I find no reason to sustain the order of the Assessing Officer.”

6. Keeping in view the rival submissions of both sides and stands taken by the AO and conclusion drawn by the Id CIT(A), we are of the considered view that on examination of the documents filed and contention of the written submission the Id CIT(A) rightly observed that the assessee had presented credible evidence regarding the source of loan by filing copies of PAN, ITR, bank statement and ledger of creditors, therefore, the identity and creditworthiness could not be alleged as doubtful. Regarding Amit Gaur (HUF) there was bank balance and current year's income similar in the case of creditors Surender Kr. Garg (HUF) there was sufficient balance in his account. Likewise, in the case of Smt Indravati Devi, Nisha Agarwal, Ruby Goel and Santosh Goel the loans were advance mainly on account of interest on old loans paid by the assessee and the same interest was re-invested with the assessee for earning interest income. Therefore, factual finding recorded by the Id CIT(A) do not require any interference as the reinvestment of interest received by creditors goes to show that the creditworthiness of the creditors is not in doubt and same cannot be doubted without any adverse positive material. The Id CIT(A) rightly noted that it is not the case of AO that the old balances standing in the names of the creditors were money belonging to the assessee. Therefore, we are unable to see any valid reason to interfere with the findings recorded by the Id CIT(A) hence, we upheld the same. Accordingly, ground No. 1 of revenue is dismissed.

7. Apropos ground No. 2 the Id Sr. DR submitted that the Ld. CIT(A) has erred in deleting the addition made by AO amounting to Rs. 7,23,982/- on account of interest expenses paid to the parties i.e. sundry creditors treated as unexplained.

8. Replying to the above the Id AR supported the first appellate order and submitted that from the relevant part of the first appellate order we note that the Id CIT(A) has granted relief to the assessee by observing that the AO has no facts in record to show that opening loans from creditors were bogus therefore, the addition on account of new loan has also been deleted. Consequently, the disallowance of interest payment cannot be sustained. We are unable to see any valid reason to interfere with the conclusion drawn by the Id CIT(A) in deleting the interest payment of Rs. 7,23,982/- to the creditors. Accordingly, ground No. 2 of the revenue being devoid of merit is dismissed.

9. Apropos ground No. 3 the Id DR submitted that the Ld. CIT(A) has erred in deleting the addition made by AO amounting to Rs. 1,26,91,590/- on account of rejecting the books of account and estimating the GP at 8% of the turnover against 5.34% declared by the assessee. The Id Sr. DR drawing our attention towards relevant part of assessment order submitted in para 6 the AO has given categorical finding disputing the GP rate shown by the assessee at 5.34% loss same was less in comparison to immediately preceding Assessment Years 2017-18 and 2016-17 wherein, the GP rate was 6.49% and 10.54% respectively. The Id Sr. DR therefore, submitted that the relief granted by the Id CIT(A) is not sustainable therefore, the order of the Id AO may kindly be restored.

10. The Id AR supporting the first appellate order submitted that the AO was not correct in rejecting the books of account on the reasoning that GP rate and NP rate have gone down compared to earlier two assessment years. The Id AR further submitted that during the FY 2015-16 and 2016-17 the contracts were awarded and due to escalation of

material cost and GP and NP rates were reduced in the present AY 2018-19. The Id AR submitted that since low rate of GP and NP rate cannot be the basis of starting investigation and making addition in the hands of the assessee therefore, the Id CIT(A) rightly deleted the baseless addition.

11. On careful consideration of the above submission first of all, we find it appropriate to reproduce the relevant part of first appellate order at para 6.3 of the first appellate order:-

"6.3 I have considered the matter. The Assessing Officer had rejected the books of account on the reasoning that GP rate and NP rate have gone down compared to two earlier years. Assessing Officer also pointed out that expenses under electricity, job work and Bank charges have increased. On careful perusal of facts and arguments placed before me, I am of the view that the action of the Assessing Officer is totally unsustainable. In the submission given before the Assessing Officer, assessee had given plausible explanation for the fall in profit margin. It had been explained to the Assessing Officer that contracts were awarded in financial year 2015-16 / 2016-17 and due to passage of time, material cost had escalated. The assessee also had pointed out that VAT rate at time of tender was 6%. But GST rate w.e.f. 01.07.2017 increased to 12%. If the Assessing Officer had doubted the profit margin, he should have carried out some inquiries. Rates of N.P and G.P. as compared to earlier years cannot be sole reason to reject the books of accounts in absence of other facts showing short disclosure of receipt or bogus claim of expenses.

In the assessment order, the Assessing Officer mentioned major expenses like electricity, job work and bank charges have increased. In this regard, it may be stated that if the Assessing Officer have suspicion regarding over-billing of those expenses, he should have made some basic inquiry before resorting to drastic step of rejecting assessee's books and going ahead with estimation of income. Unless the Assessing Officer had facts showing incorrect disclosure of receipts or bogus claim of expenses or inconsistencies in accounts maintained, it is not proper to reject the books of accounts. Low rate of GP or NP can be basis of starting investigation. But per se, it cannot be the foundation for making addition. The rejection of books of accounts is without basis. Consequential estimation of income cannot be sustained."

12. In view of the foregoing discussion and rival submissions of both the sides, basis taken by the AO and conclusion recorded by the Id CIT(A) in the first appellate order which has reproduced herein above, we note that the AO mentioned major expenses like electricity, job work

and bank charges have increased. The Id CIT(A) further noted that if there was doubt in his mind of AO regarding such expenses then he should have make some basic enquiry before resorting to drastic step of rejecting the books of account. The Id CIT(A) further observed that unless the AO on facts showing incorrect disclosure of receipts and bogus claim of expenses or inconsistencies in accounts maintained by the assessee then rejection of books of account cannot be held sustainable and valid. With these observations the Id CIT(A) deleted the addition made by the AO on account of GP rate.

13. In our considered opinion the AO rejected the books of account of assessee without having any valid basis and the conclusion drawn by the AO so set aside by the Id CIT(A) on the strength well accepted principles of tax jurisprudence pertaining to the rejection of books of account. Thus, we are unable to see any valid reason to interfere with the finding arrived by the Id CIT(A) and hence we uphold the same. Accordingly, ground No. 3 of revenue is also dismissed.

14. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on 16/10/2023.

-Sd/-
(B. R. R. Kumar)
ACCOUNTANT MEMBER

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

Dated: 16/10/2023
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi