

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: F: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 4128/Del/2014
Assessment Year: 2008-09

The ACIT, Central Circle-23, New Delhi	vs.	M/s. Vikas Chain Co. Pvt. Ltd., 2608/3, 1 st Floor, Bank Street, Beedonpura Karol Bagh, New Delhi PAN AACCV 3351 N
(Appellant)		(Respondent)

ITA No. 4129/Del/2014
Assessment Year: 2008-09

The ACIT, Central Circle-23, New Delhi	vs.	M/s. Vikas Diamond Co. Pvt. Ltd., 2608/3, 1 st Floor, Bank Street, Beedonpura Karol Bagh, New Delhi PAN AACCV 0491 N
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta Shri Somil Agarwal, Adv.
Revenue For :	Shri Vivek Vardhan, Sr.DR

Date of Hearing :	12.09.2023
Date of Pronouncement :	13.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

The captioned appeals have been filed by the Revenue against the orders of Ld. CIT-XXXIII, New Delhi both dated 24.02.2014 for AY 2008-09. Since Id. Representatives of both the sides submitted that regarding ground no. 1 to 3 of Revenue the facts are similar and identical therefore both the appeals are being adjudicated by this consolidated order for the sake of brevity and convenience.

2. The Id. Senior DR requested to allow the revenue to take up ITA No. 4129/Del/2014 as lead case to argue the matters. Grounds of Revenue in the said appeal are as follows:-

1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 3.12 Crore, made by the AO on account of unexplained share capital.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in not considering the facts that balance sheet of assessee and share applicants are self served papers meant for match of transaction: lease deed is on plain paper neither in stamp paper nor registered and partition deed showing 10% share of Sumer Chand Verma in property of 500 Sq. Yd. Hardly matches with building security of Rs. 3.0 crores.

On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition Rs. 1,66,98,679/- made by AO on account of low GP rate, by rejecting books of account of assessee and ignoring the facts that there were discrepancies of opening and closing stock of jewellery in balance sheet and stock statement.

4. On the facts and in the circumstances of the case, the CIT(A) has erred in directing the AO to verify and delete the disallowance of Rs. 4,41,961/- made by AO on account of interest, if no interest is paid or payable to the two parties, i.e. M/s. Yash Impex and M/sw. Sajilee Diamond.

Ground no. 1 & 2 of Revenue

3. The Id. Senior DR supporting the action of the Assessing Officer submitted that On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 3.12 Crore, made by the AO on account of unexplained share capital. He further submitted that the facts and in the circumstances of the case, the CIT(A) has erred in not considering the facts that balance sheet of assessee and share applicants are self served papers meant for match of transaction: lease deed is on plain paper neither in stamp paper nor registered and partition deed showing 10% share of Sumer Chand Verma in property of 500 Sq. Yd. Hardly matches with building security of Rs. 3.0 crores. The Id. Senior DR vehemently pointed out that from the relevant para 3.2.5 of first appellate order it is clear that the Id. CIT(A) in the first part of conclusion he has directed the Assessing Officer to call original papers of property owned by Shri Sumer Chand Verma and rental agreement and to verify whether share capital and building advance shown in the balance sheet of appellant company tallies with the balance sheet of Shri Verma and if the same is tallied then the Assessing Officer is directed to delete

the addition. He further submitted that in the similar manner the Id. CIT(A) has further directed to verify from records the balance sheet of Smt Rekha Verma and Shri Varun Verma as to whether these impugned investments are shown in the asset side and if allege share application money is found reflected therein then he was directed to delete the addition. The Id. Senior DR submitted that the Id. CIT(A) has no power under the provisions of Act to remit the matter to the file of Assessing Officer and before receiving conclusion or verification report of the Assessing Officer he was not correct and justified in directing the Assessing Officer to delete the addition after verification. The Id. Senior DR submitted that the assessee was required to discharge onus as per requirement sec 68 of the Act to establish identity, creditworthiness of investors and genuineness of transaction which is missing in the first appellate order. Therefore, the conclusion drawn by Id. CIT(A) is not only contrary to the provisions of the Act but also perverse and hence the same kindly be set aside by restoring that of the Assessing Officer.

4. Replying to the above the Id. counsel submitted that the Id. CIT(A) after considering facts and circumstances of the case has rightly directed the Assessing Officer to delete the addition after verification of balance sheet/financial statement of investors Shri Sumer Chand Verma, Smt Rekha Verma and Shri Varun Verma and documentary evidence pertaining to the ownership of Shri Sumer Chand Verma and rental agreement therefore no interference is called for in the first appellate order. The Id. counsel thus submitted that grounds of revenue may kindly be dismissed.

5. On careful consideration of above submissions we note that the Assessing Officer made addition u/s. 68 of the Act with following observations and findings:-

2. During the year under consideration, the assessee company has increased the share capital from Rs. 99,80,000/- to Rs. 1,99,80,000/- (including share application to the tune of Rs.12,00,000/-). Hence there is an increase in the share capital to the tune of Rs. 1,00,00,000. Further in the Reserve and Surplus A/c, the assessee has shown share premium to the tune of Rs. 2,00,00,000/-. The assessee vide this office letter dated 20.01.2010 and 09.11.2010 was required to give information in prescribed proforma to establish the identity, creditworthiness and genuineness of these share allottees/ share applicants along with copy of their confirmed accounts, copy of share application, PAN, IR and Bank statement. Since the assessee has failed to prove the genuineness and creditworthiness of the above share allottees/ share applicants, the assessee vide order sheet entry dated 24.12.2010 was given final opportunity to show case as to why the

above share capital and capital application Rs.1,00,00,000/- and Rs.2,00,00,000/- respectively be not added to their income.

In compliance thereto, the assessee vide its reply dated 03.12.2010 has submitted only copy of details of share holder and applicant. The assessee did not furnish the copy of their confirmed accounts, copy of share application, PAN, IR and Bank statement of share applicants. Since the assessee has failed to prove the genuineness and creditworthiness of the above share allottees/ share applicants, an addition of Rs.3,00,00,000/- is being made to the income of the assessee u/s 68 of the Income Tax Act.

(Rs. 3,00,00,000)

The assessee vide letter dated 09.11.2010 was asked to justify the sharp decline in G.P. Rate from 6.9% in preceding year to 3.61% in the year consideration. The assessee vide its letter date 03.12.2010 has submitted that that gross profit is down by 3.68% because of high Input cost of gold rate and labour and manpower. However, the company over net profit ration is maintained. In order to verify the same, the assessee vide order sheet entry dated 24.12.2010 was asked to furnish the detail complete of opening stock (item wise) Purchase (item wise), sale (item wise) closing stock (item wise) and stock register. The case was fixed in the afternoon of 24.12.2010. However till the date, the assessee did not file the requisite details. Hence the books results of the assessee are hereby rejected and the G.P. rate of 6.90% as assessed u/s 143(3) for the A.Y. 2007-08 is adopted as against the G.P. rate of 3.61%, in view of the fact that the rate of gold has increased substantially in comparison to the last year i.e. A.Y. 2007-08. The working of gross profit ratio is given as under:

Gross profit rate at 6.90% % on the total turnover of	
Rs.32,00,43,058	Rs. 3,00,00,000
Gross profit declared by the assessee	Rs. 1,15,62,309
	Rs. 1,05,20,662
	=====
Hence an addition of Rs. 1,05,20,662/- is made to the income of the assessee on account of low G.P. Rate and defects in the books of accounts which have been rejected u/s 145A of the Income Tax Act 1961.	
	(Addition of Rs. 1,05,20,662)
With these remarks the total taxable income of the assessee company is computed as under:	
Income as returned by the assessee	Rs.. 35,00,420/-
Add:	
On account of unexplained share capital u/s 68 of the I.T. Act	Rs. 3,00,00,000
On account low G.P. rate	Rs. 1,05,20,662
	Rs. 4,40,21,082
	=====

Assessed at Rs. 4,40,21,082/-. Charges interest u/s 234A/234B of the I.T. Act. Tax calculation as per I.T.N.S. 150 enclosed. Issue necessary forms along with a copy of this order to the assessee. I am also satisfied that the assessee concealed the true particular of its income, therefore, penalty proceedings u/s 271(1)(c) are being initiated separately. Issue penalty notice u/s 271 (1) (c).

6. Further from first appellate order we note that the Id CIT(A) granted relief to the assessee with following observations and findings:-

3.2.5 Decision:-

I have considered the assessment order, written submission. During the year following share capital was issued.

Ld. AR has explained that increase in share capital are two types:-

Where no money is received by the share capital and share reserve account was credited merely by book entries in the name of Sh. Varun Verma and Smt. Rekha Verma. In respect of other share holder, namely, from item no. 3 to 9, the amount of share capital was not received during the year but during the earlier F.Y. Share capital raised in the name of Sh. Varun Verma and Smt. Rekha Verma amounting to Rs. 40 lacs and Rs. 50 lacs @ Rs. 10 per share respectively with share premium amounting to Rs. 80 lacs and Rs. 100 lacs respectively Rs. 20 per share, total amounting to Rs. 2,70,00,000/-. Ld. AR argued that these Ld. AR argued that in both in case section 68 cannot be invoked for making addition.

I will deal both the situation separately as under:-

1. Share capital raised in the name of Sh. Varun Verma and Smt. Rekha Verma During the impugned assessment year Sh. Varun Verma and Smt. Rekha Verma was issued 4 lacs and 5 lacs shares respectively at face value of Rs. 10 and share premium a Rs. 20 per share. Therefore, on account of share allotment Sh. Varun Verma and Smt. Rekha Verma, total amount is credited for Rs. 1,20,00,000 and Rs. 1,50,00,000 lacs respectively total amounting to Rs. 2,70,00,000/-.

Ld. AR has explained that no money was received from these two persons for the allotment of these shares with both the individual, the appellant company entered into contract for leasing of premises owned by these individual by receiving building security.

These building advance is shown as an asset in the hands of the appellant company under the head 'Loan and advance recoverable'. In the hands of these two individuals, share investment is shown as asset and building advance from appellant company is shown liability to . In the case of Smt. Rekha Devi and Sh. Varun Verma, such building security is shown as liability where as investment in shares in appellant company is shown as an asset. The balance sheet of the appellant company, Smt. Rekha Devi and Sh. Varun Verma for A. Y. 2008-09 was received during the appellant proceedings and forwarded to the Ld. Assessing officer for remand.

Ld. Assessing Officer has examined these evidences and raised various points that the appellant has not furnished confirmed copy of account of Rekha Devi and Varun Verma

purchase and sale deed in respect of the property in respect of which advance was received, copy of lease agreement etc, copy of Board's resolution approving issue of shares to Sh. Varun Verma and Smt. Rekha Devi. In the case of Sh. Varun Verma, Ld AO has commented that, the said building deposit is not appearing in the balance sheet for A. Y. 2008-09.

I have considered the arguments of Ld. AR and findings of the Ld. Assessing officer in remand report. The main arguments of Ld. AR is that no money has been received by the appellant for issuing the shares, it is merely book entries and the liability side is the share capital and the asset side is the building deposit payable to these two persons. In the hands of these two individual, building deposit payable to these two individual, building deposit is shown as liability and share investment is shown as liability and share investment is shown as asset in respective balance sheet. Ld. Assessing Officer's remark that the appellant has not submitted the ownership paper of the property or lease agreement etc. will not affect the paper transaction of share capital as argued by the Ld. AR. Once it is held that these share capital transaction is only entries without receipt of any money and these entries are reflected in the balance sheet of the appellant company and balance sheet of these two shareholders, the creditworthiness of these two shareholders are proved.

Considering the entire facts and circumstances of the case, I am of the view that if the appellant company has raised share capital in the name of these two individuals, in lieu of building advance for rent for the property owned by these individuals and such share capital and building advance are reflected in the balance sheet of the appellant company and individuals, the transaction cannot be held in genuine and creditworthiness of such transaction cannot be questioned.

Accordingly, I direct the Ld. Assessing Officer to call original ownership paper of properties owned by these two individuals and rental agreement and verify whether the share capital and building advance shown in the balance sheet of the appellant company tallies with the balance sheet of these individuals namely Sh. Varun Verma and Smt.

Rekha Devi and In case, these share capital and building advance tallies with the balance sheet of the appellant company and these individual filed for impugned assessment year alongwith the return of income, the Ld. Assessing Officer is directed to delete the addition.

2. Share capital raised in the name of 7 person at Sr. No 3 to 9 namely:-

The Ld. Assessing Officer in her remand report has stated that during the assessment proceedings, the appellant has submitted confirmations from Sh. Jayant Kumar, Ravi Kumar, Deepti Gupta and Mahesh Gupta which states that they had given loan on the interest at the rate of 6% per annum in F.Y. 2005-06 and requested these unsecured loan be converted into share application money. The Ld. Assessing Officer has reported in the remand report that these names are not in the list of unsecured lender in the balance sheet of the appellant company. In respect of other persons, namely, Murti Devi, Devender Kumar and Mahinder Pal, Ld. Assessing Officer has commented that the appellant has not proved genuine of transaction, identity of creditors and creditworthiness of the creditors.

In response to these objections, Ld. AR argued that all these creditors to whom shares have been allotted, were appearing in share applicant and these credit entries were grouped as share application money. These share application money were received in earlier assessment years and appearing in the opening balance for A. Y. 2008-09 i.e on 1.4.2007 (for F.Y. 2007-08). He further argued that once it is proved that no money is received during the year for allotment of shares, addition cannot be made u/s 68 during the impugned assessment year. Ld. Assessing Officer's claim that some creditors have stated that they have paid money as loan will not change the fact that these money were received in earlier assessment year. I agree with the arguments of Ld. AR that if share allotment is made out of opening balance then addition u/s 68 cannot be made during the impugned A. Y. 2008-09.

Considering the entire facts and circumstances of the case, I direct the assessing officer to verify whether the consideration for share allotted in the name of above names were from opening balance (credit balance) in the name of these persons as on 1.4.2007 in share application accounts and then delete the addition made u/s 68. Accordingly this ground of appeal is partly allowed.

7. On careful consideration of above noted rival submissions, findings of the Assessing Officer making addition u/s. 68 of the Act and observations of the Id. CIT(A) in directing the Assessing Officer to delete the addition first of all we note that the Assessing Officer has made addition by alleging that the assessee did not file any documentary evidence in order to discharge onus as per requirement of sec 68 of the Act and no explanation has been offered by the assessee regarding other part of share application money amounting to Rs. 12 lakh. From the first appellate order we note that the Id. CIT(A) has put cart before the horse as he directed the Assessing Officer to verify the documentary evidence pertaining to owenship of Shri Sumer Chand Verma and rental agreement and to verify the assessment records of Smt. Rekha Verma and Shri Varun Verma as to whether investments are shown in their balance sheet and simultaneously also directed the Assessing Officer to delete the addition after verification.

8. In view of above findings of Id. CIT(A), first of all we note that the onus was on the assessee to prove identity and creditworthiness of investors and genuineness of transaction of receipt of share application money from the investors as per requirement of section 68 of the Act but before the Assessing Officer the assessee did not file relevant and required documentary evidence which resulted into addition u/s. 68 of the Act. The Id. CIT(A) deleted the addition without complying with the procedure

envisaged in Rule 46A of the I.T Rules 1962 and ignoring the mandate of sec 68 of the Act. It is not sufficient to verify the documentary evidence pertaining to ownership of property and rental agreement but genuineness of transaction has to be seen along with creditworthiness of investors Shri Sumer Chand Verma, Smt. Rekha Verma & Shri Varun Verma. Therefore the Id. CIT(A) was required to call a remand report from the Assessing Officer regarding explanation and additional documentary evidence submitting before him which was not before the Assessing Officer and thereafter taking on record rejoinder of assessee he was empowers and eligible to draw a conclusion as per factual position emerged therefrom. Therefore we have no hesitation to hold that the findings of Id. CIT(A) are not only perverse but against the mandate of law particularly Rule 46A of the I.T Rules 1962 and thus the same are set aside. The issue is restored to the file of Id. CIT(A) for afresh adjudication of issue of share capital and premium found credited in the books of accounts of assessee for AY 2008-09 as per mandate of law and directions given above. Accordingly, ground no 1 & 2 of Revenue are allowed for statistical purposes.

Ground no. 3 of Revenue

9. Apropos ground no. 3 the Id. Senior DR submitted that the Assessing Officer found that the stock statement of assessee was not reflecting true and correct picture. Hence the books of accounts and results were rejected u/s. 143(3) of the Act and the Assessing Officer adopted GP rate of 8.82% turnover against GP rate of 3.9% shown by the assessee. The Id. Senior DR drawing our attention towards relevant part of assessment order noted that the assessee in support its explanation did not submit any documentary evidence to strengthen its contention hence the same was not found to be acceptable and to the satisfaction of the Assessing Officer. He further submitted that the Id. CIT(A) in the similar manner deleted the additions by directing the Assessing Officer by observing that the appellant has transferred raw material to M/s Soni Jewellers for manufacturing and received manufactured Jewellery in return and job charges were given. The Id. Senior DR vehemently pointed out that this explanation was not made before the Assessing Officer and documentary evidences were also not

placed on record during assessment proceedings therefore the Id. CIT(A) wrongly noted that said position was explained to the Assessing Officer and with these observations the Id. CIT(A) rejected basis taken by the Assessing Officer for rejection of books result and also deleted the addition made by the Assessing Officer on account of GP estimation.

10. Replying to the above the Id. counsel supported the first appellate order and submitted that there was no valid reason to reject the books of accounts of assessee and therefore the Id. CIT(A) rightly granted relief to the assessee.

11. On careful consideration of above submissions we note that from the assessment order it is clear that despite being asked by the Assessing Officer the assessee could not submit satisfactory documentary evidence and explanation to strengthen its contentions justifying the discrepancy between annexure H to the balance sheet and stock statement/inventory, opening and closing stock and despite the Assessing Officer asked the assessee to explain and reconcile the difference but the assessee did not file any documentary evidence substantiating and reconciling the difference. Therefore the Assessing Officer rejected the books results of assessee u/s. 145(3) of the Act. In view of above the Id. CIT(A) in the second part of para 3.1 has considered documentary evidence and explanation containing new facts and relevant documentary evidence of assessee which was not confronted to the Assessing Officer and the Id. CIT(A) admitted and considered documentary evidence and explanation of assessee in violation of Rule 46A of the I.T Rules 1962. Therefore conclusion drawn by the Id. CIT(A) cannot be held as sustainable and valid and thus we set aside the same. Issue is restored to the file of Id. CIT(A) for afresh adjudication after allowing due opportunity of hearing to the assessee as well as to the Assessing Officer to submit his comments on the documentary evidence and explanation of assessee. Accordingly, ground no. 3 of Revenue is also allowed for statistical purposes.

Ground no. 4 of Revenue in ITA No. 4129/Del/2014 A.Y. 2008-09

12. The Id. Senior DR supporting the action of the Assessing Officer submitted that the Assessing Officer made addition by observing that the interest debited in the P&L account was treated to be given to M/s. Yes Impex and Sajlee Diamonds is disallowed as the outstanding balances shown has already been added in the hands of assessee u/s. 68 of the Act and the Id. CIT(A) deleted the addition merely by observing that the AR has given the details of interest payable to other two different party other than said two alleged creditors but there is no names to whom interest was paid therefore this issue has also been decided by the Id. CIT(A) in perverse manner and without any valid reason therefore the findings of the Id. CIT(A) may kindly be set aside by restoring that of the Assessing Officer.

13. The Id. Counsel submitted that from the documentary evidence it was clear that the assessee did not pay any interest to alleged parties and the assessee clarified the factual position before Ld. CIT(A) and after considering the same he granted relief to the assessee. Therefore, no interference is called for in the first appellate order on this issue.

14. On careful consideration of above submissions we are of the view that the Id. CIT(A) has not allowed the Assessing Officer to make comments on the explanation and documentary evidence filed by the assessee during the first appellate proceedings based on which the Id. First Appellate Authority granted relief to the assessee. The findings of Id. CIT(A) are not sustainable as the same has been recorded in violation of Rule 46A of the Rules. Therefore, in our considered opinion the Assessing Officer should be allowed to put his comments on the explanation and additional documentary evidence filed before the Id. CIT(A) and hence the ground no. 4 of Revenue for AY 2008-09 is also allowed for statistical purposes.

ITA No. 4128/Del/2014 for AY 2008-09 of Revnue in Vikas Chain Pvt. Ltd.

Ground no. 1 to 3

15. Since, except quantum of additions/disallowance, facts and circumstances pertaining to of grounds no. 1 to 3 in ITA No. 4128/Del/2014 for AY 2008-09 are

identical to the factual matrix in ITA No. 4129/Del/2014 therefore, our conclusion on grounds no. 1 to 3, in the case of Vikas Diamond (supra), would apply *mutatis mutandis* to ITA No. 4128/Del/2014 for AY 2008-09. Accordingly, grounds no. 1 to 3 of the Revenue in the later appeal ITA No. 4128/Del/2014 are also allowed for statistical purposes.

16. In the result, both the appeals of Revenue are allowed for statistical purposes.

Order pronounced in the open court on 13.10.2023.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 13th October, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi