

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1594/Del/2021
Assessment Year: 2012-13**

DCIT, Central Circle-28, New Delhi. (Appellant)	Versus	PAM Jewellers Pvt. Ltd., Shop No. 202, 2548, Gali No. 6 & 7, Beadon Pura, Karol Bagh, New Delhi. PAN: AAFCP7691A (Respondent)
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Assessee by	:	Sh. Nirbhay Mehta, Advocate & Sh. Anup Mehta, C.A.
Revenue by	:	Ms. Sapna Bhatia, CIT-DR
Date of hearing	:	03.10.2023
Date of pronouncement:		31.10.2023

ORDER

This is an appeal by the Revenue against order dated 11.08.2021 of learned Commissioner of Income-tax (Appeals)-29, Delhi for the assessment year 2012-13.

2. Grounds raised by the Revenue are as under :

"1. That on the facts and in the circumstances of the case, the Ld.' CIT (A) has erred and on facts in deleting the addition of Rs. 6,70,00,000/- made u/s 68 of the I.T. Act by the AO ignoring the fact

that assessee has failed to produce any concrete and additional/fresh evidences in support of its version.

2. That on the facts and in the circumstances of the case, Ld. CIT (A) has relied on the decision of Hon'ble ITAT in the case of M/s SRM Securities Pvt. Ltd. is not accepted by the department and the same is pending before the Hon'ble High Court of Delhi for adjudication.

3. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

4. That the grounds of appeal are without prejudice to each other.

5. That the appellant craves leave to add, amend, alter or forgo any ground (s) of appeal either before or at the time of hearing of the appeal.”

3. As could be seen from the grounds raised, the dispute is confined to deletion of addition made under section 68 of the Income-tax Act, 1961.

4. Briefly, the facts are, the assessee is a resident corporate entity. In the assessment under dispute, the assessee filed its return of income on 29.09.2012 declaring income of Rs.2,60,430/-. A search and seizure operation was carried out in case of SRM group of companies on 15.10.2013. Consequent upon the search and seizure operation, assessee's case was selected for scrutiny. In course of assessment proceeding, the Assessing Officer observed that during the search operation and post search enquiries in case of SRM group, it was found that huge unaccounted money of the group have been introduced in the books of accounts of many companies of the group

in the form of share capital with high premium during the financial year 2011-12 through large number of Delhi and Kolkata based companies. He found that in financial year 2011-12, the assessee has received share capital with huge premium aggregating to Rs.6.70 crores from seven different companies. He, therefore, called upon the assessee to explain the identity and creditworthiness of the investors as well as the genuineness of the investments.

5. In response to the queries raised, the assessee filed certain details and documents relating to the investors, such as, copy of share application money, copy of Income-tax returns of the investors, copy of PAN cards of the investors, copies of audited balance sheets of the investors, copies of bank statements in case of some investors etc. After perusing the details furnished by the assessee, the Assessing Officer observed that the assessee did not furnish the details in requisite proforma. Further, he observed that considering the meagre income of the investors, their creditworthiness is doubtful. He, therefore, called upon the assessee to produce the directors of the investing companies. He also issued notices under section 133(6) of the Act to investor companies seeking certain informations. As

observed by the Assessing Officer, some of the notices issued under section 133(6) were not served and returned back. Some notices, though, were served, but no compliance was made. In some cases, compliance was made. Thus, the Assessing Officer, ultimately, concluded that the materials brought on record do not establish the creditworthiness of the investors nor the genuineness of the transactions. Therefore, he proceeded to complete the assessment by treating the entire investment of Rs.6.7 crores as unexplained cash credits under section 68 of the Act and added back to the income of the assessee.

6. The assessee contested the aforesaid addition before the first appellate authority, inter alia, on the ground that while framing the assessment, the Assessing Officer has not complied with the rules of natural justice. It was submitted by the assessee that neither the result of enquiry conducted through notices issued under section 133(6) of the Act were confronted to the assessee nor the adverse materials brought on record, such as, statements recorded from the directors of investing companies and other parties were confronted to the

assessee. Learned Commissioner (Appeals), however, did not find merit in the submissions of the assessee and confirmed the addition.

7. Being aggrieved, the assessee went in further appeal before the Tribunal. Accepting assessee's claim that rules of natural justice were not complied with, the Tribunal restored the issue back to the Assessing Officer for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. While completing the assessment in pursuance to the directions of the Tribunal, the Assessing Officer again repeated the addition.

8. Against the assessment order so passed, the assessee preferred appeal before learned first appellate authority. After considering the submissions of the assessee and verifying the materials on record, learned Commissioner (Appeals) having found that the Assessing Officer has completed the assessment without following the directions of the Tribunal, in the sense, that neither the adverse materials were confronted to the assessee nor the result of enquiry was provided, held that the addition made is unsustainable. So far as the merits of the issue is concerned, learned Commissioner (Appeals) having found that in case of a sister concern, M/s. SRM

Securities Pvt. Ltd., the Tribunal has deleted similar addition, followed the decision therein and deleted the addition.

9. Before us, learned Departmental Representative submitted that in the original assessment proceedings, the assessee had failed to furnish credible evidence to prove the creditworthiness of the investors and genuineness of the transactions. She submitted, after conducting thorough enquiry, the Assessing Officer has concluded that the investments by way of share capital and share premium credited to the books of accounts of the assessee are in the nature of cash credits and accordingly made addition. She submitted, though original assessment order was set aside by the Tribunal, however, in the fresh assessment proceeding, despite the Assessing Officer calling upon the assessee to furnish supporting evidence to prove creditworthiness of the creditors and genuineness of the transactions, the assessee failed to furnish any fresh evidence except whatever was furnished in course of original assessment proceeding. Thus, she submitted, the assessee having failed to establish creditworthiness of the creditors and genuineness of the transaction, the Assessing Officer was justified in making addition under section 68 of the Act.

She submitted, learned first appellate authority has deleted the addition merely on the ground that the Assessing Officer did not carry out any fresh enquiry/investigation and did not confront the adverse materials brought on record at the time of original assessment proceeding. She submitted, the initial burden to prove the amounts credited in the books of account is wholly on the assessee. She submitted, the assessee has failed to discharge such initial burden both in course of original assessment proceedings as well as in assessment proceeding in pursuance to the directions of the Tribunal. She submitted, if the first appellate authority was of the view that the Assessing Officer has failed to make proper enquiry, he was under an obligation to conduct necessary enquiries to get to a logical end. Thus, she submitted, the first appellate authority having failed to exercise his powers in conducting enquiries, the order deserves to be set aside and the issue has to be restored back to the Assessing Officer for making fresh assessment. In support of such contention, learned Departmental Representative relied upon the decision of the Hon'ble jurisdictional High Court in case of CIT vs. M/s. Jan Sampark Advertising and Marketing (P) Ltd. (ITA No. 525/2014) judgment dated 11.03.2015.

10. In reply, learned counsel for the assessee submitted, since, in the original assessment proceedings, the Assessing Officer had grossly violated the principles of natural justice by not confronting the adverse material and information brought on record to the assessee, the Tribunal had restored the issue back to him with specific direction to confront the adverse materials to the assessee and decide the issue afresh after providing adequate opportunity. He submitted, in the fresh assessment proceedings, in pursuance to the directions of the Tribunal, the Assessing Officer has done nothing much except reiterating the observations made in the original assessment order. He submitted, not only in course of original assessment proceedings, but in course of fresh assessment proceeding as well, the assessee has discharged the initial burden cast upon it by furnishing credible documentary evidence to prove the three ingredients, such as, identity and creditworthiness of the creditors and genuineness of the transactions. Whereas, the Assessing Officer in spite of having in his possession the documentary evidences furnished by the assessee, has not conducted any further enquiry to get to the logical end. He submitted, in course of proceeding before the first appellate authority in the second round, the Assessing Officer was again given an

opportunity to make enquiry based on evidences available on record and submit a report. He submitted, in spite of the opportunity given, the Assessing Officer failed to conduct any enquiry. Thus, he submitted, in the given circumstances, learned first appellate authority was justified in deleting the addition. More so, when he found that in case of another group company, M/s. SRM Securities Pvt. Ltd., on identical set of facts and circumstances, the addition made under section 68 was deleted by the Tribunal. Thus, he submitted, the order passed by the first appellate authority should be confirmed.

11. We have considered rival submissions and perused materials on record. We have also applied our mind to the judicial precedent cited before us. Undisputedly, based on information/material received in course of a search and seizure operation conducted in case of SRM Group of companies, it was found that SRM group through various group entities was introducing unaccounted money to its books of account through various entities based in Delhi and Kolkata. In respect of investments received by the assessee towards share capital and share premium, the Assessing Officer initiated assessment proceedings in case of the assessee and has called upon the

assessee to prove the genuineness of such investment. The assessee on its part has furnished various documentary evidences to establish identity and creditworthiness of the investors and genuineness of the transactions.

12. As discussed earlier, the assessee has furnished copies of share applications, PAN cards, Income-tax returns, audited balance sheets, bank statements of the investors. However, based on certain adverse material collected through search and seizure operation and post search enquiry, the Assessing Officer has rejected the evidences furnished by the assessee and treated the investments as unexplained cash credits under section 68 of the Act. When the matter went upto the Tribunal, the assessee pleaded that neither adverse materials such as statements recorded from the directors of the investor companies and other entities as well as the information collected through notices under section 133(6) of the Act were confronted to the assessee nor proper opportunity was given to rebut the contents of adverse materials. Considering the aforesaid factual position, which remained uncontroverted, the Tribunal restored the issue back to the Assessing Officer for fresh adjudication after

complying with the requirement of Rules of Natural Justice. However, on a reading of the fresh assessment order passed in pursuance to the directions of the Tribunal, it is evident that the Assessing Officer has not complied with the directions of the Tribunal in letter and spirit. Pertinently, though in the body of assessment order, the Assessing Officer has reproduced the specific directions of the Tribunal and has also stated that the Tribunal has remanded the issue back to the file of Assessing Officer on the ground that the assessment order does not mention whether outcome of the notices under section 133(6) was ever confronted to the assessee or the copies of statements were supplied nor was the assessment record produced before the Bench, however, he did not comply with the specific directions.

13. It is also relevant to observe, in paragraph No. 6 of the assessment order, the Assessing Officer himself has noted that in course of fresh assessment proceedings, the assessee had again requested for copies of statements/enquiries and adverse materials. However, the Assessing Officer has brushed aside such request of the assessee by merely stating that such argument of the assessee is not relevant, as the main reason for addition was assessee's failure to

satisfactorily prove the identity and creditworthiness of the alleged share holders and the genuineness of the transactions. He also declined to share the information of any enquiry conducted through notices issued under section 133(6) of the Act with the assessee. This act on the part of the Assessing Officer, in our view, is in clear violation of the directions of the Tribunal.

14. It is to be noted that while considering assessee's appeal arising out of the original assessment proceedings, the Tribunal in ITA No. 6191/Del/2017 has passed order on 22.01.2018 restoring the issue to the Assessing Officer. The reason being, before the Tribunal, the assessee specifically pleaded that the assessment order was passed without allowing adequate opportunity and without confronting the adverse materials collected behind the back of the assessee. It was also pleaded that the result of discrete enquiry conducted by the Assessing Officer was never confronted to the assessee. The Tribunal has also noted the fact that though the Bench wanted to verify the relevant facts by examining the assessment record, however, learned Departmental Representative expressed his inability to produce the

assessment record, which compelled the Bench to restore the issue back to the Assessing Officer with specific directions.

15. It is also relevant to observe that it is not a case where in the second round, learned first appellate authority has not conducted any enquiry. On the contrary, learned first appellate authority had again called upon the Assessing Officer to verify the evidences furnished by the assessee and furnish a remand report. However, on a perusal of the remand report dated 21.02.2020 furnished by the Assessing Officer, a copy of which is placed in the paper book, it is observed, instead of doing any fresh enquiry, the Assessing Officer has called upon the assessee to furnish further information. Thus, in our view, the Assessing Officer has acted in a totally irresponsible manner in complying with the directions of the Tribunal. Therefore, in our view, case law cited by learned Departmental Representative will not fit into the facts of the present appeal, hence, would be of no help to the Revenue.

16. As regards the submission of learned Departmental Representative that the issue may be restored back to the Assessing Officer for conducting proper enquiry, we are unable to accept such

submission. While deciding assessee's appeal arising out of original assessment order, the Tribunal has clearly expressed its helplessness in deciding the issue on merits considering the fact that the Revenue expressed its inability to furnish the assessment records for enabling the Tribunal to examine the facts as a final fact finding authority. Thus, when the Revenue has failed to furnish even the assessment records, in our view, no fruitful result will come out in restoring back the issue and giving a third inning to the Assessing Officer. Thus, given the factual position emerging on record, in our view, the decision of learned Commissioner (Appeals) in deleting the addition cannot be interfered with. Accordingly, we uphold the order of learned first appellate authority by dismissing the grounds raised.

17. In the result, appeal is dismissed.

Order pronounced in the open court on 31/10/2023.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 31.10.2023

*aks/-