

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.5053/Del/2017
Assessment Year: 2009-10

Progressive Tools & Components Pvt. Ltd., RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi	Vs.	DCIT, Circle-2, Ghaziabad
PAN :AAECP1173G		
(Appellant)		(Respondent)

Assessee by	Dr. Rakesh Gupta, Advocate Sh. Deepesh Garg, Advocate
Department by	Sh. S.L. Anuragi, Sr. DR

Date of hearing	14.11.2023
Date of pronouncement	29.11.2023

ORDER

PER SAKTIJIT DEY, V.P.

This is an appeal by the assessee against order dated 31.05.2017 of learned Commissioner of Income Tax (Appeals), Ghaziabad, for the assessment year 2009-10.

2. Grounds no. 1 and 2 are on a legal issue concerning validity of assumption of jurisdiction under section 147 of the Income-tax Act, 1961 (in short 'the Act'). Whereas, grounds no. 3 and 4 are on merits of the addition made under section 68 of the Act. Grounds no. 5 is in respect of non-adjudication of a ground by learned first appellate authority. Whereas, ground no. 6 is a general ground.

3. At the outset, we propose to deal with grounds no. 3 and 4, which are on merits. Briefly the facts relating to this issue are, the assessee is a resident corporate entity stated to be engaged in manufacturing of auto parts and components. For the assessment year under dispute, the assessee filed its return of income on 30.09.2009, declaring income of Rs. 66,41,450/-. Assessment in case of the assessee was originally completed vide order dated 25.03.2013 determining the total income at Rs.93,71,655/-. Subsequently, the assessment so completed, was reopened under section 147 of the Act. The basis of reopening of assessment is the alleged unsecured loan of Rs.35 lakhs supposed to have been received from M/s. HES Energy Systems Pvt. Ltd. According to the Assessing Officer, such unsecured loan is in the nature of accommodation entry. In course of assessment proceedings, the

Assessing Officer called upon the assessee to explain the genuineness of such loan transaction by furnishing confirmed copy of account, copy of Income Tax Return, and copy of bank passbook etc. to establish the identity and genuineness of transactions. In response, the assessee furnished its reply stating that there is no such loan transaction between the assessee and M/s. HES Energy Systems Pvt. Ltd. However, disbelieving assessee's claim, the Assessing Officer proceeded to treat the amount of Rs. 35 lakhs as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Though, the assessee contested the aforesaid addition before learned first appellate authority, however, the addition was sustained.

4. Before us, learned counsel appearing for the assessee submitted that the addition has been made by the Assessing Officer under a factual misconception that the assessee has received the amount in dispute as unsecured loan. He submitted, in fact, the assessee had advanced loan of Rs.50 lakhs to M/s. HES Energy Systems Pvt. Ltd., which was returned back by the said entity in two tranches of Rs. 15 lakhs and 35 lakhs. He submitted, while the Assessing Officer has not touched the

amount of Rs.15 lakhs, he has added back the amount of Rs.35 lakhs. He submitted, even the interest income received by the assessee on such loan, has been offered to tax and accepted by the Assessing Officer. Thus, he submitted, the addition made deserves to be deleted.

5. Strongly relying upon the observations of the departmental authorities, learned Departmental Representative submitted, the assessee has failed to prove through supporting evidences that the amount of Rs.35 lakhs was towards repayment of loan. He further submitted that the assessee, even failed to establish that it has actually received any interest of such loan from M/s. HES Energy Systems Pvt. Ltd. Thus, he submitted, the addition made should be sustained.

6. We have considered rival submissions and perused the materials on record. From the ledger/account copy of M/s. HES Energy Systems Pvt. Ltd. in books of account of assessee, it is noticed that the assessee had advanced an amount of Rs.50 lakhs to the said entity through cheque on 23.06.2008. The said amount was repaid to the assessee in two tranches of Rs. 15 lakhs and 35 lakhs on 26.03.2009 and 30.03.2009 respectively. Even the repayments to the assessee were through banking

channel. Though, learned first appellate authority has alleged that interest received on such advance has not suffered TDS and no documentary evidences have been furnished to establish the fact that the interest income was received, however, the materials on record are to the contrary. From the evidences furnished in the paper-book, it is observed that the assessee has received interest of Rs. 5,32,767/- on the advances of Rs. 50 lakhs and after deduction TDS amounting to Rs.1,20,725/-, the assessee has offered the net interest amount of Rs.4,12,042/-.

7. The aforesaid facts have been clearly brought to the notice of the first appellate authority vide letter dated 25th May, 2017. Pertinently, though, the Assessing Officer has accepted the amount of Rs. 15 lakhs received by the assessee from the very same entity, strangely enough, he has treated the balance amount of Rs.35 lakhs as unexplained cash credit. This, in our view is unsustainable. Since, the source of credit in the books of the assessee is well explained; we are of the view that the addition made is unsustainable. Accordingly, we delete the addition of Rs.35 lakhs. Grounds no. 3 and 4 are allowed.

8. The other grounds, having become academic, do not require adjudication.

9. In the result, the appeal is partly allowed, as indicated above.

Order pronounced in the open court on 29th November, 2023

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 29th November, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi