

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

**BEFORE SHRI G.S.PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3646/Del/2019  
Assessment Year : 2013-14

ACIT,  
Circle-54(1),  
New Delhi

Vs. Rajeev Verma  
2/5, Gupta Market,  
Lajpat Nagar-IV,  
New Delhi-110024  
PAN : AABPV0413B

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : Sh. K Sampath, Adv.  
& Sh. V. Rajakuamr, Adv.  
Revenue by : Shri Vivek Vardhan, Sr. DR

Date of hearing : 16.10.2023  
Date of Pronouncement : 14.12.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Revenue against the order dated 16.01.2019 of CIT(A)-35, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 30.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by ACIT, Circle 54(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the assessee is an individual carrying on business as Proprietor under the name of Techmark Engineers and Consultants of trading of scientific instruments and equipment and laboratory instruments relating to measuring energy, energy flow and pollution measuring. The assessee filed return of income on 30.09.2013 declaring an income of Rs.84,81,390/-. The case was selected for scrutiny under CASS. The AO questioned the receipt of unsecured loan of Rs.1,50,00,000/- from M/s Raikot Finance & Investments Pvt. Ltd. and after examining the identity, creditworthiness and genuineness of source of this unsecured loan, concluded that the same was merely an accommodation entry and made the addition which has been deleted by the Id.CIT(A) with the following relevant findings:-

*“ Ground Nos.1,2,3,4 & 5*

*4.2.3.1 The assessment in this case was completed u/s 143(3) vide order dated 30.3.2016 on an income of Rs.3,40,44,250.00 as against the returned income of Rs.84,81,390.00. The appellant has Proprietorship business under the name of Techmark Engineers and Consultants of trading of scientific instruments and equipment and laboratory instruments relating to measuring energy, energy flow and pollution measuring. During the instant year, the appellant has received an Unsecured Loan of Rs. 1,50,00,000/- from M/s. Raikot Finance & Investment Pvt. Ltd. [PAN : AAECR6250L, 42/1, B Ganguly Street, Kolkata-700012]*

*The AO obtained a report from the Inspector who stated that neither the director nor the company was found at the given address i.e. 42/1, B BGanguly Street, Kolkata-700012. The AO issued notices u/s. 133(6) to the address provided by the appellant for M/s. Raikot Finance & Investment Pvt. Ltd. and there was no reply against the same. Therefore, the AO made addition of unsecured loan of Rs. 1,50,00,000/- credited in the books of account of the appellant u/s. 68.*

4.2.3.2. *The AR of the appellant has submitted that the appellant has been carrying on this business for the last over 15 years. The AR has stated that the appellant had obtained an loan of Rs.1,50,00,000/-; in addition to an existing loan from M/s Raikot Finance & Investment Pvt. Ltd. during the previous year. The AR has also submitted that the appellant had also obtained loan from the same party in the previous assessment year and the balance as on 1.4.2012 was Rs.75,15,534/- was Rs.75,15,534/- Copies of account for the A.Y. 2012-13 to 2016-17 have been filed during appellate proceedings and kept on record. The AR has submitted that the loan has since been fully repaid in the A.Y. 2016-17. The AR has argued that the assessment of the appellant for A.Y. 2012-13 was also completed u/s 143(3) and after consideration of the documents filed, the genuineness of loan was accepted and deduction for interest payment was allowed. During the proceedings for A.Y. 2013-14 (instant year) the appellant has submitted the following documents to prove the identity and genuineness of the loan taken; Confirmation of the loan from the party; Copy of the Income Tax Return of the party; Copy of the Axis Bank of the party from where these loans were paid; Copy of the Balance Sheet of the assessee along with Audit Report in support of the credit worthiness of the party showing sufficient funds, profitability, total revenue etc.*

*The AR has submitted that the appellant has in the normal course of business taken a further loan of Rs. 1,50,00,000.00 from M/s Raikot Finance & Investments Pvt. Ltd. The company is registered with RBI as Non Financial Business Company. As a NBFC Company M/s Raikot Finance & Investments Pvt. Ltd. is in the business of investments and giving loans. This loan is a normal business transaction and the appellant had taken a similar loan in the previous year relevant to A.Y. 2012-13 also. This loan was accepted by the then officer during the assessment proceedings u/s 143(3) on the basis of similar documents submitted. The AR has stated that during the course of the assessment proceedings, the appellant had filed all documents necessary to prove the genuineness of loan such as; Copy of Confirmation of loan; Copy of Income Tax Return; Copy of bank accounts; Copy of Balance sheet; Copy of NBFC Registration. The AR has stated that the loan received in the A.Y. 2012-13, based on the above documents was accepted as genuine but in the instant year was not accepted by the AO.*

*The AR has also filed copy of account of M/s Raikot Finance & Investments P. Ltd. for the period 1.4.2012 to 5.5.2015 in support that the said loan was accepted in the A.Y. 2012-13 and that the loan had been repaid much before the assessment was completed. The repayment had been made during the period over the year, in installments and the last of such payment was made on 5.5.2015. The AR has argued that the repayment of such loan confirms the genuineness of the loans.*

*The AR has submitted that the party's new address after change was also given to the AO during the assessment proceedings; A copy of the Certificate of Registration of the party with the Reserve Bank of India as Non-Banking Finance Co. (NBFC) dated 18.1.2012. The AR has argued that the A.O. has made the addition of fresh loan raised during the previous year, however, the interest on this loan has been allowed as deduction from the income and the AR has referred to the copy of TDS Certificate issued which has been filed during appellate proceedings and kept on record. The AR has relied upon the following judgments: The Honble Delhi Tribunal in the case of Atul Kumar Khandelwal vs. Dy. Commissioner of Income Tax in appeal No.874/DEL/2016 dated 19 Oct. 2016; The Honble Delhi High Court in the case of Commissioner of Income Tax vs Shiv Dhooti Pearls & Investment Ltd. in TTA No. 429/2003 vide order dated 21.12.2015; The Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Vrindavan Farms P. Ltd. in TTA No. 71, 72, 84/2015.*

*4.2.3.3. The facts of the case, submissions filed by the appellant and the assessment order on this issue has been examined. The fact is that there was no response to the notice issued u/s 133(6); however, in the instant case it is seen that the appellant had obtained an loan of Rs. 1,50,00,000/-; in addition to an existing loan from M/s Raikot Finance & Investment Pvt. Ltd. during the previous year. The appellant had also obtained loan from the same party in the previous assessment year and the balance as on 1.4.2012 was Rs.75,15,534/-. It is seen that the loan has since been fully repaid in the A.Y. 2016-17. Further, it is also observed that the assessment of the appellant for A.Y. 2012-13 was completed u/s 143(3) and after consideration of the documents filed, the genuineness of loan was accepted and deduction for interest payment was allowed. It is also noted that the A.O. has made the addition of fresh loan raised during the previous year, however, the interest on this loan has been allowed as deduction from the income. In view of these facts, the addition of Rs.1,50,00,000/- is deleted. In*

*view of the above discussion, appeal on Ground no.1, 2, 3, 4 & 5 are allowed.”*

3. Further, the AO questioned the payment of commission of Rs.99 lakhs to 23 persons for whom the AO alleged that the assessee has selected few families and commission payments have been made to these families without any basis and that the commissions are not established to be made within the ambit of section 37(1) of the Act. Relevant para 3.9 of the order of AO is reproduced hereinbelow:-

*“3.9 As per all the details filed by the assessee regarding commission paid, the following conclusions were drawn:*

- 1. The assessee in a planned manner has selected few families for paying commission wherein all the members of the family have not actually rendered any services to the assessee.*
- 2. There were no contracts/ MoUs/agreements signed.*
- 3. The assessee is dealing in scientific and laboratory equipment, which requires specialized knowledge and expertise. The assessee failed to establish the expertise of the commission agents.*
- 4. The assessee was asked to justify why payments were made to members of a select families. The assessee could only provide a general explanation for commission payments but failed to justify the payments made by him.*
- 5. The assessee has taken recourse with the explanation that the payments have been made through banking channels and TDS has been deducted on the same.*
- 6. The assessee has mentioned certain purchase orders against the names of the commission agents. However, there is no evidence of them providing any services as there is no agreement with the commission agent.*

7. *There is no invoice/ receipt/ acknowledgement of commission paid.”*

4. The Id. CIT(A) has deleted this addition with the following relevant findings in para 4.2.3.4 and 4.2.3.5:-

*“4.2.3.4. In the assessment order the AO has observed that the appellant debited an amount of Rs. 99,00,000/- under the head commission paid in the Pr & Loss A/c which includes commission paid to 23 parties.*

*In the assessment order, the AO has observed that the appellant has selected few families for paying commission wherein all the members of the family have not actually rendered any services to the appellant as there were no contracts/MoUs/agreements signed. The AO has noted that the appellant is dealing in scientific and laboratory equipment, which requires specialised knowledge and expertise and the appellant has failed to establish the expertise of the commission agents.*

*The AR of the appellant has argued that the payments have been made through banking channels and TDS has been deducted on the same and has mentioned certain purchase orders against the names of the commission agents. The AR has submitted that the appellant has paid commission of Rs.99,00,000.00 to various parties to promote the appellant's product, obtain orders and keep follow-up with various parties for the recovery of the dues etc. The AR has submitted that the appellant has furnished enough documents and evidences to support the payment of the commission and also services rendered and has also deducted TDS on such payments, which establishes the identity of the papers. The AR has further stated that this is the practice in the business of the appellant and similar commission has been allowed in the earlier as well as subsequent assessments years u/s 143(3).*

*With respect to the commission paid, the AR has submitted the statement of the persons whom commission have been paid along with their conformation, ITR, details of the cheque paid, the amount of TDS, their PAN No. and their addresses. The AR has submitted that from the statements, it is clear that the commission has been paid for the service rendered as per details submitted vide submission dated September 15th 2017 and meet all compliances of law. The AR has*

also given a list of persons to whom commission have been paid who are taxable in the 20-30% tax bracket. The AR has argued that as the appellant is also taxable in 30% bracket and therefore, there is no loss of revenue to the government in any circumstances. The list is as under:

Name	Amount Taxable	Income
Sandeep Khanna HUF	6,00,000.00	6,14,540.00
Pardeep Khanna	6,00,000.00	8,07,025.00
Neera Khanna	6,00,000.00	7,61,022.00
Vartika Agarwal	6,00,000.00	6,58,371.00
Shivali Jain	6,00,000.00	5,53,958.00
Sushma Agarwal	4,00,000.00	7,37,927.00
Rahul Maini HUF	4,50,000.00	5,13,273.00
Vijay Kumar Maini	4,00,000.00	11,22,591.00
Sheela Maini	3,50,000.00	10,11,747.00
Sonali Maini	2,50,000.00	11,22,710.00
Ajit Kumar HUF	5,00,000.00	9,13,353.00
Sharda Goel	3,00,000.00	7,90,521.00
Seema Bhasin	4,00,000.00	7,10,614.00
Saloni Agarwal	6,00,000.00	6,02,119.00
Rahul Maini	2,50,000.00	11,85,372.00
	<u>69,00,000.00</u>	

4.2.3.5. The submissions filed by the appellant has been considered. It is seen from the details filed during appellate proceedings that with respect to Rs. 69,00,000/-, the recipients are falling in taxable income category. The balance amount of Rs.30,00,000/- (Rs.99,00,000- Rs.69,00,000) is confirmed. In view of the above discussions, appeal on the Ground Nos.6, 7 & 8 are partly allowed.”

5. The Revenue is in appeal raising the following grounds:-

“1. On the facts and circumstances of the case, the CIT (A) has erred in deleting the addition of Rs.1,50,00,000 made by the AO, on the basis of unexplained Unsecured Loans taken by the assessee from M/s Raikot Finance & Investment Pvt. Ltd., whose genuineness was not proved by the assessee.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.1,50,00,000 made by the AO, on the basis of unexplained Unsecured Loans taken by the assessee from

*M/s Raikot Finance & Investment Pvt. Ltd., which was not found at the address provided by the assessee himself.*

*3. On the facts and circumstances of the case, the CIT (A) has erred in partly deleting the addition of Rs.99,00,000 made by the AO on account of disallowance of Commission expenses despite the fact that assessee could not establish that the commission paid was commensurate with the services provided or that the commission agents were competent to provide the services that they had allegedly provided.”*

**6. Heard and perused the record.** As with regard to ground no 1 and 2, the Id. DR has submitted that the AO had conducted extensive inquiries with regard to the identity and genuineness of the transaction of unsecured loan and found them doubtful. It was submitted that there was specific evidence with regard to the addresses of the alleged lenders to be false and the Id.CIT(A) has made an error in concluding the transaction to be genuine. The Id. DR submitted that the Id. AO had considered the preponderance of probability which was sufficient to establish that the transaction of unsecured loan was doubtful. It was submitted that the Id. CIT(A) has considered the previous and subsequent year transactions of loan repayment. However, the Id.CIT(A) ignored that each year is independent year for assessment purposes.

6.1 The Id. AR has, however, supported the findings of the Id.CIT(A) submitting that there is no error in the findings. He specifically relied on the running statement of account made available at pages 14 of the paper book to claim continuity of transaction in past and settlement of loan in next year. It was submitted that the transactions were from a non-banking financial company (NBFC) and without any evidence to the contrary merely on suspicion the transactions from non-banking finance company cannot be

disputed. It was submitted that the ld.CIT(A) has primarily considered the evidences filed as the assessee had discharged the onus.

7. In regard to ground No.3, it was submitted by the ld. DR that the ld.CIT(A) has erred in giving a finding beyond the case made out by the ld. AO while Ld. AR relied the findings of Ld. CIT(A)

8. After taking in consideration the submissions and matter on record the findings are as follows;

**8.1 Grounds No.1 and 2:** In regard to these two grounds, as we consider the account statement for the period 1<sup>st</sup> April, 2011 to 31.03.2016 of M/s Raikot Finance & Investment Pvt. Ltd. in the books of account of the assessee available at pages 14 and 15 of the paper book, it comes up that on 21.03.2012 and 27.03.2012, the assessee received Rs.55 lakhs and Rs.20 lakhs respectively on which interest after TDS stood paid on 31.03.2012 and this closing balance of Rs.75,15,534/- was taken as opening balance for for present FY on 01.04.2012 and, thereafter, in the present year, the assessee received further Rs.80 lakhs and Rs.70 lakhs on 08.02.2013. On the same interest was paid after TDS and there was a closing balance of Rs.2,33,84,261/- on 31.03.2013. Further, on 01.09.2013, the assessee made a repayment of Rs.8,84,261/- and Rs.20 lakhs on 25.03.2014 and, during the financial year, interest was paid after deducting TDS. This whole loan stood repaid and the loan account settled in FY 2015-16.

8.2 The ld.CIT(A) has duly taken this aspect of repayment of loan while examining the genuineness of transaction of unsecured loan. The contention of the ld. DR that every year is independent year of assessment is not

relevant in present fact and circumstances but the continuity of loan account is matter of prime concern and could not have been ignored. Rather, we are of the view that when the assessee establishes loan transactions with repayment of interest after TDS running over a few years, then, the presumption is that there was normal business transaction with NBFC. Merely on the basis of lack of fixed assets or other business activity of the lender, the transactions of unsecured loan extended by NBFC to the assessee cannot be doubted. The application of layering of entries and alleging the loan entry to be an accommodation entry require more evidences than just suspicion on the basis of financials of the lender NBFC. The Id.CIT(A) has relied copies of confirmation of loan, copy of income-tax return of the lender, copy of bank accounts, copy of balance sheets, copy of NBFC registration to conclude about the genuineness of the transaction. It appears that the Id. AO has placed more reliance on the report from DDIT (Inv.), Kolkata rather than making an effort to inquire on his own from the AO of the lender about identity of the lender. We are of the considered view that lack of service of the notice alone cannot be made basis to dispute the identity of an entity like NBFC which has to make a lot of statutory compliances to maintain the NBFC registration. Thus, the findings of the Id.CIT(A) on grounds No.1 and 2 require no interference.

9. **Ground No.3;** It comes up that the Id.CIT(A) has primarily benefitted the assessee to the extent of Rs.69 lakhs on the basis that these recipients were falling in taxable income category. The assessee has not challenged the confirmation of Rs.30 lakhs. Appreciating the facts in this regard it comes up that the AO did not dispute the fact that the assessee company had procured certain purchase orders and that all the payments for the purchase

and for the commission were made by banking channel. The assessee is an individual carrying on the business as a proprietor and therefore in his wisdom if he considers any group of persons individually or in the form of family helping him procuring business then assessee's wisdom to pay the commissions for the same cannot be questioned without evidence to show a bogus payment. There is no examination of the issue by the AO from the point of view that the purchase orders were false or inflated in any form so as to question the payment of commissions as bogus expenditure. The justification for payment of commission has to be examined in the light of the fact that what was the worth of purchase orders and if the commission payments in any way led to artificial lowering of the profitability in that transaction. So without examining this aspect any payment of commission to procure the purchase orders could not have been doubted. The Id. CIT(A) has been rational to examine the fact that the payments were made by banking channel after TDS and has allowed the expenses to the extent of those beneficiaries who were falling in the taxable income category. Thus, there is no error in the findings of the Id.CIT(A) requiring interference. The ground raised has no substance.

**10. In the result, the appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 14<sup>th</sup> December, 2023.**

**Sd/-**

**Sd/-**

**(G.S.PANNU)  
VICE PRESIDENT**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Date:- 14.12.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI