

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

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.1189/Del/2020, A.Y.2016-17)

M/s. Polixel Security Systems Pvt. Ltd. D-7, Dhawan Deep Apartments, 6, Jantar Mantar Road, New Delhi-110001 PAN : AAFCP3376A	Vs.	Asstt, Commissioner of Income Tax, Circle-20(1), Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Anuj Jain, CA
Respondent by	Sh. V.K.Debey, Sr. DR

Date of Hearing	15/01/2024
Date of Pronouncement	17/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-7, New Delhi ["Ld. CIT", for short], dated 31/01/2020 for the Assessment Year 2016-17.

2. The Grounds of the assessee are as under :-

"1. That the order passed by the Ld. CIT (A) u/s 250(6) was incorrect, bad in law and have been passed without considering the submissions of the appellant.

2. That the order passed by the AO u/s 143(3) of the Act is incorrect, bad in law and have been passed without properly and judicially considering the submission of the appellant. The additions/disallowances made are illegal, unjust and unlawful and Ld. CIT (A) erred in upholding the same without considering one of the grounds raised and submission made by the assessee.

3. That the AO has erred in law and on the facts in making an addition on account of loan of Rs. 50,00,000/- u/s 68 of the Act. The assessment order passed is bad in law and Ld. CIT (A) erred in upholding the same.

4. That the AO has erred in law and on facts & circumstances of the case in making an addition of Rs.5,93,927/- when some of these trade payables were paid off in subsequent years and some of which are still unpaid, the assessee is fully committed to pay the amounts. These balances are duly standing in the books of account as payables. The Ld. CIT (A) erred in upholding the addition made by the AO.

5. That the AO has erred on facts and circumstances and also in law in making addition of Rs.1,00,284 to the Book Profit holding that the interest paid on TDS was addable in the computation of Book Profit and Ld. CIT (A) erred in upholding the same.

6. That in view of facts and circumstances of the case and in law, the AO has erred in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961 and Ld. CIT(A) erred in upholding the same.

7. That the additions/disallowances made are based on mere surmises and conjectures and the same cannot be justified by any material on record.

8. The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.”

3. Brief facts of the case are that, the assessee filed return of income declaring income at Rs. 2,05,58,685/- which was selected for complete scrutiny under CASS an assessment order came to be passed of the Income Tax Act, 1961 ('Act' for short) u/s 143(3) by making disallowance u/s 41 of the Act of Rs. 5,93,927/-, addition of Rs. 50,00,000/- u/s 68 of the Act and addition of Rs. 1,00,284/- to book profit holding that interest paid on TDS was addable in the computation of book profit. Aggrieved by the assessment order dated 28/12/2018, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 30/01/2020, dismissed the Appeal filed by the assessee. As against the order of the Ld. CIT(A) dated 30/01/2020, the assessee preferred the present Appeal on the grounds mentioned above.

4. Ground N. 1 & 2 being general in nature which requires no adjudication.

5. In Ground No. 3, the assessee challenged the addition made on account of unsecured loan of Rs. 50,00,000/- u/s 68 of the Act. The Ld. Counsel for the assessee submitted that though the assessee has specifically raised the ground vide Ground No. 2 before the CIT(A), the same has not been

adjudicated, therefore sought for remanding the matter to the file of the CIT(A) for fresh consideration.

6. Per contra, the Ld. Departmental Representative relied on the order of the Lower Authorities and sought for dismissal of Ground No. 3.

7. We have heard both the parties and perused the material available on record.

8. The assessee has challenged the addition of Rs. 50,00,000/- made by the A.O. before the CIT(A) in Ground No. 2 raised before the CIT(A). In Form No. 35 the assessee mentioned the Ground No. 2 as under:-

'Section 68-addition of Loan as income- that the A.O. erred in on facts and circumstances and also in law in making addition'.

The above said ground No.2 of the Assessee before the CIT(A) was not specific and the assessee has not even mentioned the amount of the addition made by the A.O. But the Ld. CIT(A) has also not adjudicated the said ground, the CIT(A) has not given any finding or conclusion in the order impugned in respect of the addition made on account of unsecured loan u/s 68 of the Act. Thus, we remand the issue of addition of Rs. 50,00,000/- made on account of unsecured loan u/s 68 of the Act to the file of the Ld. CIT(A) and the assessee is directed to file suitable revised ground in respect of the said addition and the CIT(A) is directed to decide the same in accordance with law.

9. Ground No. 4 is regarding disallowance of Rs. 5,93,927/- made u/s 41 of the Act. The Ld. Counsel submitted that the said amount is unpaid trade payables and the assessee is fully committed to pay the same, thus, the assessee sought for allowing the Ground No. 4.

10. Per contra, the Ld. Departmental Representative relied on the finding of the CIT(A).

11. We have heard both the parties and perused the material available on record. It is not in dispute that the assessee has not paid total sum of Rs.5,93,927/- which are being trade payables and is committed to pay the same. If the said trade payables shown as outstanding in the balance sheet the same cannot be said that there is a cessation or remission of trade liability/s 41A of the Act. Singing of the balance sheet itself is construed as acknowledgement of debt. Thus, the issue involved in Ground No. 4 is remanded to the file of the CIT(A) to verify the balance sheet and decide the issue afresh and the assessee is also directed to produce the proof of payment of the above amount if the same is paid. Accordingly, the Ground No. 4 of the Assessee is partly allowed for statistical purpose.

12. The Ld. Counsel for the assessee submitted that the Ground No. 5 is not pressed and sought for dismissal of Ground No. 5. Recording the submission of the Ld. Assessee's Representative, the Ground No. 5 of the assessee is dismissed as not pressed.

13. In the result, the Appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 17th January, 2024

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 17/01/2024
Binita/R.N, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI