

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

ITA Nos.1927/Del/2016 & 5802/Del/2016

[Assessment Years : 2012-13 & 2014-15]

M/s. Gayatri Sewa Sansthan, 155, G.T.Road, Panchwati, Ghaziabad. PAN-AAATG1960H	vs	DCIT, Circle-1, Ghaziabad.
APPELLANT		RESPONDENT

ITA No.3957/Del/2018 & 3958/Del/2018

[Assessment Years : 2012-13 & 2014-15]

M/s. Gayatri Sewa Sansthan, 155, G.T.Road, Panchwati, Ghaziabad. PAN-AAATG1960H	vs	DCIT, Circle-1, Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Rohit Jain, Adv. & Shri Tavish, Adv.	
Respondent by	Shri Amit Katoch, Sr.DR	
Date of Hearing	12.03.2024	
Date of Pronouncement	22.03.2024	

ORDER

PER KUL BHARAT, JM :

This bunch of four appeals, two appeals filed in quantum proceedings pertaining to Assessment Years 2012-13 & 2014-15, against order dated 10.02.2016 & 30.08.2016 respectively and other two appeals filed in the penalty proceedings pertaining to Assessment years 2012-13 & 2014-15, both against order dated 30.03.2018. Since identical grounds have been raised, all four appeals were taken up together for hearing and are being disposed off by way of this consolidated order for the sake of brevity.

ITA No.1927/Del/2016 [Assessment Year : 2012-13]

2. First, we take up assessee's quantum appeal in **ITA No. 1927/Del/2016** pertaining to Assessment Year 2012-13. The assessee has raised following grounds of appeal:-

1. *"That the CIT(A) erred on facts and in law in confirming the addition of Rs.7,00,000 made by the assessing officer, being unsecured loan received from M/s. Baldev Promoters Pvt Ltd.,as alleged unexplained cash credit under section 68 of the Income Tax Act, 1961 ("the Act").*
- 1.1 *That the CIT(A) erred on facts and in law in holding that the appellant was not able to establish identity and creditworthiness of the creditor and genuineness of the transaction, in total disregard of the contemporaneous evidences filed by the appellant.*
2. *That the CIT(A) erred on facts and in law in confirming the addition of Rs. 16,49,417/- made by the assessing officer, being interest paid on unsecured loan from M/s Baldev Promoters Pvt. Ltd.*
3. *That the CIT(A) erred on facts and in law in not deciding the issue in respect of charges tax at Maximum Marginal Rate.*
4. *That the CIT(A) erred in confirming levy of interest under sections 234B and 234C of the Act.*

The appellant craves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing."

3. Facts giving rise to the present appeal are that the assessee is a society, filed its return of income 27.09.2012, declaring income of INR 9,60,849/-. Thereafter, the case was selected for scrutiny assessment and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 ("the Act") vide order dated 20.02.2015. The Assessing Officer while framing the assessment, made

addition u/s 68 of the Act in respect of unsecured loans and interest from M/s. Baldev Promoters Pvt.Ltd. and assessed the income at INR 2,19,38,499/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal. Thereby, he confirmed the addition of INR 23,49,417/- and deleted the addition of INR 1,87,74,960/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that the impugned addition is related to the unsecured loans received from M/s. Baldev Promoters Pvt. Ltd. and interest thereon. He contended that the identical issue came before the Tribunal in assessee's own case in earlier years and the Hon'ble Tribunal was pleased to decide the issue in favour of the assessee. He drew our attention to the decision of the Tribunal in assessee's own case for Assessment year 2010-11. The AO had in that year also made addition in respect of the advances received from M/s. Baldev Promoters Pvt. Ltd. and after considering the submissions of the assessee, the Tribunal was pleased to restore the issue back to the file of AO. He took us through the order of the Tribunal passed in ITA No.4332/Del/2015 in assessee's own case.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that the facts are identical as were in AY 2010-11 wherein the Tribunal was pleased to restore the issue by observing as under:-

19. *“It is the settled proposition of law that for accepting any cash credit as genuine, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. In the instant case, no doubt, the assessee has filed some papers/documents before the AO. However, the assessee company failed to produce the directors of M/s Baldev Promoters Pvt. Ltd., and Shri Raju Khan. The source of Shri Raju Khan to extend such huge amount was also not substantiated. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and credit worthiness of the loan creditors and the genuineness of the transaction. The assessee is hereby directed to produce the Managing Director/Director of M/s Baldev Promoters Pvt. Ltd. and Shri Raju Khan before the AO for his examination. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.”*

8.1. The Revenue has not brought any contrary material to support his contention. We therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal, set aside the impugned order and restore the matter to the file of AO who would frame assessment afresh after giving sufficient

opportunity of being heard to the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

ITA No.5802/Del/2016 [Assessment Year : 2014-15]

10. Now, we take assessee's appeal in quantum proceedings in ITA No.5802/Del/2016 for the Assessment Year 2014-15 wherein the assessee has raised following grounds of appeal:-

1. *“That the CIT(A) erred on facts and in law in holding that the appellant was not able to establish the fact that the interest payment has been wholly and exclusively for the purpose of assessee's business, in total disregard of the evidences filed by the appellant.*
2. *That the CIT(A) erred on facts and in law in confirming the addition of Rs.16,50,000/- made by the assessing officer, being interest paid on unsecured loan from M/s. Baldev Promoters Pvt.Ltd.*
3. *That the CIT(A) erred on facts and in law in not deciding the issue in respect of charges tax at Maximum marginal Rate.*
4. *That the CIT(A) erred in confirming levy of interest under section 234B of the Act.*

The appellant carves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing.”

11. We have heard Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical to the **ITA No.1927/Del/2016 [AY 2012-13]**. Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal. Therefore, for the same reasoning, we hereby set aside the

impugned order and restore the matter to the file of AO who would pass assessment order afresh after giving sufficient opportunity of being heard to the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.3957/Del/2018 [Assessment Year : 2012-13]

13. Now we take up assessee's penalty appeal in **ITA No. 3957/Del/2018** pertaining to Assessment Year 2012-13. The assessee has raised following ground of appeal:-

1. *"That on the facts as well as in Law the Ld. CIT(Appeal), Muzafar Nagar was not justified in confirming the penalty of Rs.7,25,970/- u/s 271(1)(c) of the Income tax Act, 1961."*

14. Apropos to the ground of appeal, Ld. Counsel for the assessee submitted that under the identical facts, the Tribunal was pleased to set aside the impugned order to AO in ITA No.3956/Del/2019 pertaining to Assessment Year 2010-11 vide order dated 04.08.2020 by observing as under:-

4. *"We have heard rival contentions. We find that in this case assessment u/s 143(3) was completed determining total income at Rs. 1,24,84,900/- against the returned income of Rs. 9,84,900/-. Thereby the Assessing Officer had made addition of Rs. 90,00,000/- and Rs. 25,00,000/- u/s 68 of the Act. Penalty proceedings were also initiated which culminated into the levy of the impugned penalty. However, in quantum appeal being ITA no. 4332/Del/2015 the Tribunal vide order dated 18.08.2020 had set aside the addition and restored the matter to the file of the Assessing Officer to make assessment afresh. The Assessing Officer yet again vide order dated*

30.03.2022 sustained the additions and initiated penalty proceedings u/s 271(1)(c) separately. Therefore, under these undisputed facts, in our considered view the penalty imposed in the original proceedings would not survive at present, hence the same is hereby set aside. Before parting, we clarify that we have not expressed any view on the merit of initiation of penalty proceedings by the Assessing Officer in remand proceedings. The Assessing Officer would be at liberty to deal with the same in accordance with law. After adjudication of issues in quantum on merits, it will be discretion of the Assessing Officer to consider initiation of penalty proceedings on issues involved afresh, in accordance with law.”

15. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

16. We have heard Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical to the **ITA No.3956/Del/2019 [AY 2010-11]**. Therefore, for the same reasoning, we hereby set aside the impugned order to the AO for decision afresh. The AO would be at liberty to deal with the same in accordance with law. Ground raised by the assessee is accordingly, allowed for statistical purposes.

17. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.3958/Del/2018 [Assessment Year : 2014-15]

17. Now, we take assessee's appeal in penalty proceedings wherein the assessee has raised following ground of appeal:-

1. *“That on the facts as well as in Law the Ld. CIT(Appeal), Muzafar Nagar was not justified in confirming the penalty of Rs.5,09,850/- u/s 271(1)(c) of the Income Tax Act, 1961.”*

18. We have heard Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical to the **ITA No.3957/Del/2018 [AY 2012-13]**. Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal. Therefore, for the same reasoning, we hereby set aside the impugned order to the AO for decision afresh. The AO would be at liberty to deal with the same in accordance with law. Ground raised by the assessee is accordingly, allowed for statistical purposes.

19. In the result, the appeal of the assessee is allowed for statistical purposes.

20. In the final result, appeals filed by the assessee in quantum proceedings in **ITA Nos. 1927/Del/2016 & 5802/Del/2016 [Assessment Year 2012-13 & 2014-15]** are allowed for statistical purposes and appeals filed by the assessee in penalty proceedings in **ITA Nos. 3957/Del/2018 & 3958/Del/2018 [Assessment Years 2012-13 & 2014-15]** are also allowed for statistical purposes.

Order pronounced in the open Court on 22nd March, 2024.

Sd/-
(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI