

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2815/Del/2015

[Assessment Year : 2010-11]

DCIT, Circle-19(2), New Delhi	vs	M/s. Patel Woods Products Ltd., RZ-B-2/115, First Floor, Palam, South West Delhi, Delhi-110045. PAN-AABCP2054K
APPELLANT		RESPONDENT
Appellant by		Shri Vivek Vardhan, Sr.DR
Respondent by		None
Date of Hearing		01.04.2024
Date of Pronouncement		10.04.2024

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A)-7, Delhi dated 18.02.2015 for the assessment year 2010-11.

2. The Revenue has raised following grounds of appeal:-

1. *"On the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.9,24,88,696/-without appreciating the fact that the assessee had not been able to discharge the initial onus and had failed to establish the identity, genuineness and creditworthiness of the loan creditors.*
2. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.9,24,88,696/- ignoring the ratio of the judgment in the case of CIT vs Nova Promoters and Finance Ltd ITA No.1018/2011 dated 22-11-2013(Delhi High Court) and the recent judgment of CIT vs Neelkanth Ispat Udyog Pvt Ltd (Delhi High Court) ITA No 427/2012 applied to this case as the facts are similar.*

3. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition on account of interest of Rs.30,15,139/- by treating the unsecured loans as genuine explained without appreciating the fact that the assessee had failed to establish the genuineness of unsecured loans.*
4. *The appellant craves to be allowed to add any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the record that despite various opportunities, notices sent at the address provided in the records, have been returned back unserved by the Postal Department with comment “Left”. Therefore, the appeal of the Revenue is taken up for hearing in the absence of the assessee and is being decided on the basis of material available on record.

4. Facts giving rise to the present appeal are that the assessee filed its return of income on 15.10.2010, declaring loss of INR 4,27,64,769/-. The case of the assessee was selected for scrutiny assessment and the assessment was framed vide order dated 30.03.2013 u/s 143(3) of the Income Tax Act, 1961 (“the Act”). Thereby, the Assessing Officer (“AO”) made addition of INR 9,24,88,696/- on account of unexplained cash credits u/s 68 of the Act. Further, he disallowed interest expenses of INR 30,15,139/- and assessed the income of the assessee at NIL after giving set off of brought forward loss for the Assessment Year 2009-10.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, allowed the appeal of the assessee

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

7. Apropos to the grounds of appeal, Ld. Sr. DR for the Revenue supported the findings of Ld.CIT(A) and submitted that Ld.CIT(A) deleted the impugned addition without giving opportunity to the Assessing Authority for rebutting the same. He submitted that Ld.CIT(A) without seeking Remand Report from the AO, deleted the addition. He submitted that under the facts and circumstances of the present case where the assessee failed to prove creditworthiness, the AO ought to have been given opportunity before reversing his finding.

8. We have heard Ld. Sr. DR for the Revenue and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

5.8. *“The appellant had received an amount of Rs.9,24,88,696/- in its accounts clearly a credit entry. The appellant had produced the persons giving the loans. Thus, the identity of the person giving the credit was proved.*

5.9. *The appellant stated that the creditworthiness of the creditors was proved. Bank accounts were produced to show the financial strength of the creditors return incomes was filed and that the creditors had sufficient balance to give the loans.*

5.10. *The genuineness of the transaction has been proved by the appellant. The appellant has not been able to show that the money was actually received by the appellant from the said creditors and came from the corpus of the said creditors. Proof has been given to show that money was received through banking channels. Copies of bank accounts were also furnished.*

5.11. *In view thereof, I find that the identity of the persons was established as was the creditworthiness and genuineness of the transactions. The AO may however intimate the AOs of all the creditors to examine the*

source of funds in their books. The AO of the appellant may take necessary action if any adverse finding is given.

5.12. *The addition of Rs.9,24,88,696/- is deleted. The ground of appeal is ruled in favour of the appellant.*

6. *Ground No. 2 is in respect of addition of Rs.30,15,139/- on account of interest paid on these loans. Since the loans have been considered as explained therefore the amount of interest paid too is considered as incurred for the purpose of business. The addition of Rs.30,15,139/- is thus deleted. The ground of appeal is ruled in favour of the appellant.”*

9. Undisputedly, the Ld.CIT(A) accepted the explanation of the assessee without seeking Remand Report from the Assessing Authority and giving him opportunity for rebutting the claim of the assessee. Therefore, considering the facts available on record and for the sake of fair play and to sub-serve the principle of natural justice, we set aside the impugned order and restore the grounds to the file of Ld.CI(TA) to decide it afresh after giving due opportunity to the parties. Grounds raised by the Revenue are accordingly, allowed for statistical purposes.

10. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 10th April, 2024.

Sd/-
(M.BALAGANESH)
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