

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 4857/Del/2018
(Assessment Year: 2013-14)**

DCIT,
Circle-20(1),
New Delhi

Vs. M/s. Provestment
Securities Pvt. Ltd,
305. Rattan Jyoti
Building, 18,
Rajendra Place, New
Delhi
(Respondent)

(Appellant)

PAN:AAACP8116H

| | |
|-----------------------|------------------------------|
| Assessee by : | None |
| Revenue by: | Shri Dharambir Singh, CIT DR |
| Date of Hearing | 10/04/2024 |
| Date of pronouncement | 09/07/2024 |

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.4857Del/2018 for AY 2013-14, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-38, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 75/2017-18 dated 11.05.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2016 by the Assessing Officer, ITO, Ward-20(2), New Delhi (hereinafter referred to as 'Id. AO').

2. None appeared on behalf of the assessee despite issuance of notice. In fact on earlier occasion, considering the conduct of the assessee in not attending to the proceedings, cost of Rs 2000/- was awarded to Prime Minister Relief Fund. Despite that, no

representation was made by the assessee when the case was called today. Hence we proceed to dispose of this appeal on hearing the Id. DR and based on materials available on record.

3. The revenue has raised the following grounds of appeal before us:-

"1. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,50,00,000/- on account transactions made with Sh. Rakesh Gupta as transactions were not found genuine.

2. The Ld. CIT(A) has erred in law and on facts in not providing any opportunity to the Assessing Officer to examine the documents provided by the assessee in relation to the transactions made with Sh. Rakesh Gupta which were not provided during the assessment proceedings.

3. The Ld. CIT(A) has erred in law and on facts by not noting the fact that the alleged property sale-purchase was not even registered and Sh. Rakesh Gupta is not having funds to purchase a property worth Rs. 2,00,00,000/- which can be ascertained from the ITR filed by Sh. Rakesh Gupta and that sale deed was not provided for the above transaction.

4. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the additions of Rs. 18,52,00,000/- u/s 68 of the IT Act, in respect of unsecured loans received from various parties which were not found genuine during assessment proceedings and remand proceedings.

5. The Ld. CIT(A) has erred in law and on facts in not appreciating that notice u/s 133(6) returned back unserved in several cases during assessment proceedings and during remand report proceedings questioning the identity of the parties.

6. The Ld. CIT(A) has erred in law and on facts by not appreciating that creditworthiness of the parties remained unexplained as the parties were not having funds to extend such huge unsecured loans to the assessee. The same were also discussed in the remand report at length which was duly furnished before the Ld. CIT(A) during appellate proceedings.

7. The Ld. CIT(A) erred in law and on facts by not appreciating the fact that for AY 2014-

15, addition u/s 68 of the Act made on account of unsecured loans received from common parties was sustained by the Ld. CIT(A) and thereby failed to follow the principle of consistency in the case.

8. 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."

4. We have heard the Id. DR and perused the materials available on record. The assessee company is an investment company and promoter of JCT Ltd. It had filed its return of income for the Asst Year 2013-14 on 30.9.2013 declaring total loss of Rs 64,048/-. The Id AO noticed that assessee in the computation of income had added back the interest and other expenditure debited in the profit and loss account. During the year under consideration, the assessee was in receipt of unsecured loans from various parties listed in pages 1 and 2 of the assessment order. Some of those loans were even repaid during the year itself. Some of the loans did carry interest and interest was also paid by the assessee. The Id. AO sought to examine the veracity of these loan creditors by issuing notices u/s 133(6) of the Act on 8.2.2016 by speed post, which were duly served on some of the parties and notices were returned back unserved in some of the cases. Wherever notices were served, only few parties responded to the queries of the Id. AO. The Id AO had tabulated the behavior of the loan creditors qua the notice u/s 133(6) of the Act as under:-

"(5) The assessee has shown cash credit of Rs. 15,00,000/- but the amount received from Rakesh Gupta as per his confirmation is Rs.2,50,00,000/-, out of which Rs.2,00,00,000/- is shown towards sale of land. The capital gains arising to the assessee cannot be correctly computed as data relating to cost of acquisition of the portion of land transferred by the assessee has not been submitted on the ground that as per its information no sales has taken place. In absence of any details from the side of the assessee the entire amount received from Rakesh Gupta including sales shown at Rs.2,00,00,000/- is added to the income of the assessee Thus the addition on this account is Rs.2,50,00,000/-.

Hence the addition is computed as under:-

| S.No. | Name | Received | Amount liable to S. 68 | Basis |
|-------|---------------------------------|-------------|------------------------|--|
| 1. | Aggarwal Trading Company | 2,50,00,000 | 2,50,00,000 | Notice received back |
| 2. | Anish Enterprises | 10000000 | 10000000 | No reply received |
| 3. | Anupam Industries | 2500000 | 2500000 | No reply received |
| 4. | Bharat Jatropa Garden Estates | 15000000 | 0 | |
| 5. | Chaitnaya Yarns Partners | 1000000 | 1000000 | No reply received |
| 6. | Chandigarh Chemicals | 12500000 | 12500000 | No reply received |
| 7. | Chi rag Marketing Pvt. Ltd. | 16000000 | 85,00,000 | Since Rs. 75 lacs is confirmed by the creditor remaining 85 lac is added |
| 8. | Dev Rj Aggarwal | 2500000 | 2500000 | No reply received |
| 9. | Gagan Fiber Ltd. | 5000000 | 5000000 | No reply received |
| 10. | K.S. Trading Co. | 2500000 | 2500000 | Notice received back |
| 11. | Kaka Ram Babu Ram Agarwal | 10000000 | 10000000 | No reply received |
| 12. | Kasturi Merchants Pvt. Ltd. | 47500000 | 47500000 | No reply received |
| 13. | Kindle Infraheights | 5000000 | 5000000 | No reply received |
| 14. | Mittal Sales Corporation | 14200000 | 14200000 | |
| 15. | N.K. Yarns | 1500000 | 1500000 | Notice received unserved |
| 16. | Nikku Ram & co. | 20000000 | 20000000 | |
| 17. | Pushkar Capital India Pvt. Ltd. | 20000000 | 0 | |
| 18. | Rakesh Gupta | 1500000 | 1500000 | Account not tallied. |
| 19. | Sameer Jindal & co. | 2500000 | 0 | |
| 20. | Shree Guru Trading | 2500000 | 2500000 | No reply received |
| 21. | Shree Ji Enterprises | 5000000 | 0 | |
| 22. | Super Tax | 1500000 | 1500000 | Notice received back |
| 23. | Vinod Cotton Textiles Ltd. | 10000000 | 10000000 | |
| 24. | Vitrag Chemicals And Plastics | 2000000 | 2000000 | Notice received back |
| | Total | 185200000 | | |

Addition on account of transaction with Rakesh Gupta as stated above:
Rs.2,50,00,00/- Addition under section 68 of Act as discussed above:
Rs. 18,52,00,000/-

Total addition as discussed above Rs. 21,02,00,000/-"

5. The Id. CIT(A) deleted the addition of Rs 2.50 crores in respect of loan received from Shri Rakesh Gupta by observing as under:-

"4.2 I have carefully considered the assessment order, the submissions of appellant and the facts on record. In this case, appellant entered into an agreement to sell land owned by him at village Chhattarpur, New Delhi to Sh. Rakesh Gupta. Appellant received a sum of Rs. 2.5 crores from Sh. Rakesh Gupta during FY 2012-13 i.e. AY 2013-14. Out of the sum of Rs. 2.5 crores, an amount of Rs. 15 lakhs was entered under the head 'Deposits from Public' and the balance amount of Rs. 2.35 crores was entered under the head 'Current Liabilities'. The appellant had entered an 'Agreement to Sell' dated January, 18th 2013 according to which it agreed to sell the said land for a sum of Rs. 8 crores, as per which Rs. 2 crores was to be paid to the appellant in various installments upto March 31, 2013 and the balance of Rs. 6 crores was to be paid on or before March 31, 2014. The transfer of title in the said land took place by documents dated April 11, 2013 and December 10, 2013. According to both the documents certain portions of the said land were transferred and the resultant capital gains disclosed in the return of income filed for AY 2014-15. Shri Rakesh Gupta confirmed payment of a sum of Rs. 2.50 crores to the appellant and a confirmation to this effect was submitted before the assessing officer during the assessment proceedings. In the assessment order the assessing officer has recorded that assessee has shown cash credit of Rs. 15 lakhs under the head 'Deposits from Public' but as per the confirmation letter, the amount received from Sh. Rakesh Gupta is Rs. 2.5 crores out of which Rs. 2 crores is shown towards sale of land.

During appeal proceedings copy of acknowledgment of Income Tax Return for AY 2014- 15 as well as the copy of the computation of income was submitted as evidence regarding capital gains on the said land. Considering the above discussion, assessing officer is directed to delete addition on account of the transaction with Sh. Rakesh Gupta of Rs. 2.5 crores. Hence, this ground of appeal is allowed. However, in view of the fact that appellant has shown cash credit of Rs. 15 lakhs under the head 'Deposits from Public' from Sh. Rakesh Gupta, which is in contravention of section 269SS, the Addl. CIT/JCIT is directed to initiate penalty proceedings u/s 271D."

6. We find that the Id. CIT(A) had merely granted relief to the assessee based on statement made by the assessee before him and evidences submitted before him. No remand report was even called for by the Id. CIT(A) from the Id. AO in this regard. Hence we deem it fit and appropriate to restore this issue to the file of Id. CIT(A) for denovo adjudication in accordance with law.

7. With regard to the other addition made u/s 68 of the Act in the sum of Rs 18.52 crores, the assessee filed additional evidences before the Id. CIT(A). The Id. CIT(A) called for the remand report from the

Id. AO, which was filed. Later a rejoinder to the remand report was also filed by the assessee before the Id. CIT(A). The Id. CIT(A) by placing reliance on the documents submitted by the assessee granted relief to the assessee. The Id. DR stated that even in the remand proceedings, the Id. AO sought to examine the veracity of the creditors by issuing notices u/s 133(6) of the Act, in response thereto only part replies were received from the creditors. Based on the part replies filed by the creditors, the Id. AO had doubted the creditworthiness of the lenders and genuineness of transactions. We find that the Id. CIT(A) had not rebutted this statement of the Id. AO in his appellate order. It is the duty of the Id. AO to state for each and every party as to how the three ingredients of section 68 of the Act were met by the assessee. Since this factual finding is absent, we deem it fit and appropriate to restore this issue to the file of Id. CIT(A) for denovo adjudication in accordance with law.

8. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 09/07/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09/07/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi