

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.39/Del/2019

निर्धारणवर्ष/Assessment Year: 2015-16

GAYATRI SEWA SANSTHAN H.No.181, Shankar Vihar-1 st , Near Surya Public School, G.T. Road, Lal Kuan, Ghaziabad, Uttar Pradesh. PAN No. AAATG1960H	बनाम Vs.	DCIT Room No.201, 2 nd Floor, CGO Complex, Hapur Chungi, Ghaziabad, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Rohit Jain, Adv. Ms. Deepashree Rao, Adv. & Shri Tapish Verma, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	11.06.2024
उद्घोषणाकीतारीख/Pronouncement on	08.08.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals), Ghaziabad dated 31.10.2018 for the AY 2015-16.

The assessee raised the following grounds in its appeal: -

- a) *“That the CIT(A) erred on facts and in law in confirming the addition of Rs.6,92,500/- made by the Assessing Officer, being interest paid on unsecured loan from M/s Baldev Promoters Pvt. Ltd.*

b) That the CIT(A) erred on facts and in law in not deciding the issue in respect of charges tax at Maximum Marginal Rate.”

2. At the outset, the Ld. Counsel for the assessee submits that identical issue came up for adjudication by the Tribunal in earlier assessment year i.e. 2010-11 in ITA No.4332/Del/2015 and the Tribunal by order dated 18/08/2020 restored the issue in appeal to the file of the Assessing Officer to decide after providing opportunity of being heard to the assessee.

3. Ld. Counsel submits that following this order the Tribunal for the assessment years 2012-13 and 2014-15 in ITA Nos. 1927/Del/2016 and 5802/Del/2016 order dated 22/03/2024 restored the matter to the file of the AO. Ld. Counsel therefore submits that the issue in appeal before us for the AY 2015-16 may also be restored to the Assessing Officer.

4. Ld. DR has no objection.

5. Heard rival submissions, perused the orders of the Tribunal in assessee's own case for the earlier years. The Tribunal while adjudicating the identical issue for the AY 2010-11 in ITA No.4332/Del/2015 by order dated 18/08/2020 restored the issue to the file of the Assessing Officer observing as under: -

“18. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has accepted a loan of Rs.90 lakhs from one M/s Baldev Promoters Pvt. Ltd., and Rs.25 lakhs from Shri Raju Khan during the year under consideration. We find, the AO invoking the provisions of section 68 made addition of Rs.1.15 crores being loan obtained from the above two persons. So far as the loan obtained from M/s Baldev Promoters Pvt. Ltd., is concerned, it is the case of the AO that the photograph of Shri Gulab Chand Verma, the Managing Director of the company, as appearing in the bank statement is different from the photograph appearing in the voter I. Card. Further Shri Gulab Chand Verma was never produced nor his credit worthiness for becoming a director in the said company was established. The company does not have sufficient income to advance such huge loan and further, there are frequent transfer of money in the bank account of Baldev Promoters Pvt. Ltd. The assessee also failed to produce the director of M/s Baldev Promoters Pvt. Ltd., to establish the credit worthiness of the said company and genuineness of the transaction since the company was not found at the given address. It was also his allegation that the company has not paid any interest on the loan obtained from M/s Baldev Promoters Pvt. Ltd. Similarly, in the case of Raju Khan, it was his allegation that the assessee failed to establish the identity and credit worthiness of Shri Raju Khan, and his PAN No. and complete bank statement were not filed. Further, Mr. Raju Khan, was not found at the given address. We find, the Id. CIT(A) sustained the addition made by the AO in both the cases. It is the submission of the Id. Counsel that it has filed contemporaneous documents to prove the identity and credit worthiness of the loan creditors and genuineness of the transaction and, therefore, the same should have been accepted and no addition should have been made. It is also his submission that in the case of Shri Raju Khan, certain additional evidences were filed before the CIT(A) and the CIT(A) without accepting those vital documents

which are crucial for deciding the issue sustained the addition.

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.”

6. Following this order the Tribunal for the assessment years 2012-13 and 2014-15 by order dated 22/03/2024 restored identical issue to the file of the Assessing Officer observing as under: -

“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.”*

7. Facts being identical following the orders of the Tribunal in assessee’s own case for the earlier years the issue in appeal is restored to the file of the Assessing Officer to decide afresh keeping

in view the observations of the Tribunal for the earlier assessment years as stated above after providing adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on 08/08/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 08.08.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi