

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.2786/Del/2019
(ASSESSMENT YEAR 2012-13)**

M/s Godwin Tourism Pvt. Ltd. 38, 1 st Floor, Chetan Medical Complex Chippi Tank, Meerut PAN:AADCG2967N (Appellant)	Vs.	Dy.CIT Central Circle Meerut (Respondent)
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Assessee by	Sh. Sandeep Sapra, Adv.
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	29/05/2024
Date of Pronouncement	21/08/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur ["Ld. CIT(A)", for short], dated 31/01/2019 for Asst. Year 2017-18. The has raised the following grounds of appeal:-

"1. That the authorities below have erred in law as well as on the facts of the case by completing and upholding the assessment of the appellant under section 143(3) of the Income Tax Act, 1961 at a total income of Rs.5,07,77,239/- as against the 'Nil returned Income and the various findings made and conclusions drawn are based on incorrect appreciation of facts on record only on the basis of assumptions & hypothecations and the submissions of the appellant have not been considered in right

perspective thereof and the order under appeal is a cryptic and non-speaking order.

2. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the adhoc disallowance 20% of the following expenses by treating the same as unverifiable, ignoring the fact on record that none of the expenses was claimed as an expenditure while filing the return of income at 'Nil' Income:-

<i>(1) Electricity Expenses</i>	<i>Rs.18,33,786/-</i>
<i>(ii) Printing & Stationary</i>	<i>Rs. 1,51,452/-</i>
<i>(iii) Upfront fee</i>	<i>Rs.1,66,545/-</i>

*Rs. 1,66,545/-
Rs.21,51,783/- *20% =Rs.4,30,357/-.*

3. That the Id. CIT(A) has erred in law as well as on the facts of the case by upholding the action of the Id. A.O. to make addition of Rs.4,89,49,059/-, being the unsecured loan of Rs.4,88,49,059/- from M/s Godwin Construction Pvt. Ltd. and Rs. 1,00,000/- from 6 (six) persons, holding the same as unexplained cash credits u/s 68 of the Act and the observations made and conclusions drawn are based on incomplete appreciation of facts on records and the submissions of the appellant have not been considered in right perspective thereof.

4. That the authorities below have erred in law as well as on the facts of the case by making and confirming the addition of Rs.5,97,833/- u/s 43B of the Act, allegedly for want of payment proof, ignoring the facts on record that none of the said sums was part of trading receipts or was claimed as expenditure in the profit & loss account.

5. That the Id. CIT(A) has erred in law as well as on the facts of the case by upholding the action of the id. A.O. for making addition of Rs.8,00,000/- u/s 68 of the Act allegedly holding the amount of cash deposits in bank account as unexplained cash credit and the submissions of the appellant have not been considered in the right perspective thereof.

6. That the authorities below have erred in law by treating the bank account of the appellant as its books of account for making section 68 addition of Rs.8,00,000/- as above, ignoring the various judicial pronouncements on the issue.

7. That the authorities below have erred in law by making and confirming the various additions/disallowances under appeal, ignoring appellant's submissions to the effect that the appellant being in construction stage, not

carrying on any business whatsoever, cannot be assumed to have earned any income during the year under appeal and the various judicial pronouncements on the issue including that of the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court, have been completely ignored.

8. That the order under appeal is a non-speaking cryptic order having been passed without considering the submissions of the appellant in right perspective thereof and the various observations made and conclusions drawn are based on immaterial considerations and are unlawful and therefore the order under appeal deserves to be set aside and the additions under appeal deserves to be deleted.

9. The appellant respectfully craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing appeal, to enable your good-self to decide the appeal in accordance with law.”

- 2.** We shall deal with issues ground wise.
- 3.** With regard to ground No.2, the relevant facts of the issue are, during assessment proceedings, the Assessing Officer observed that assessee has claimed expenses under various head to the extent of Rs.28,11,689/- in its profit and loss account. The assessee was asked to produce the supporting evidence/details/books of account vide show cause dated 04/03/2015. Since, no bill/vouchers and books of accounts were submitted before AO for verification, the Assessing Officer proceeded to disallow 20% of the expenditure claimed by the assessee. (i.e. Rs.21,51,783/- x 20% = 4,30,357/-).
- 4.** Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) sustained the same.
- 5.** Aggrieved the assessee is in appeal before us and at the time of hearing, the Ld. AR brought to our notice page 23 of the Paper

Book which is the return of income filed by the assessee for assessment year 2012-13. He submitted that no doubt assessee has declared net loss of Rs.2,20,96,385/- in its profit and loss account. However, not claimed any expenditure under Income Tax Act and also submitted that assessee has not carry forward the above said loss, therefore, making *ad hoc* disallowances is not proper.

6. On the other hand, the Ld. DR relied on the orders of the lower authorities.

7. Considered the rival submissions and material placed on record, we observed that the Assessing Officer has disallowed 20% of the expenses claimed by the assessee due to the fact that assessee has not filed any supporting documents. On careful consideration of the information submitted before us, we observed that assessee has claimed expenditure of employee benefit expenses, other expenses and fiancé costs in its profit and loss account, however, while filing return of income assessee has not claimed any expenditure nor shown to have carry forward the loss, therefore, the assessee has not claimed any expenditure during the year hence, making *adhoc* disallowance is not proper. Accordingly, ground No.2 raised by the assessee is allowed.

8. With regard to ground No.3, during assessment proceeding, the assessee was asked to furnish copy of confirmation of the persons from whom assessee has received unsecured loans along with their ITRs. The assessee failed to submit any details,

accordingly, AO issued show cause noticed u/s 144 of the Act. In response, the AR of the assessee submitted that assessee has received Rs.7,72,890/- from Goodwin Public School and Rs.4,89,49,059/- from Godwin Construction (P) Ltd. The Assessing Officer observed that as per the Balance Sheet of Godwin Construction Pvt. Ltd., it is not clear whether the above said amount was given to the assessee or not as the above said company i.e., Godwin Construction Pvt. Ltd. has not submitted any details of above said amount in their books of account. Further, observed that as per tax audit report, it was shown as loan received from friends and relatives not from Godwin Construction Pvt. Ltd. He observed that loans were received from friends and relatives and now it is shown as received from Godwin Pvt. Ltd. Accordingly, he disallowed the above said amount of Rs.4,89,49,059/- u/s 68 of the Act.

9. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and submitted as under:-

"That the appellant had taken loan from sister concern namely M/s Godwin construction private limited of Rs.4,88.49,059/- and loan of Rs.1,00,000/- from directors and their family members namely Smt. Gursharan Kaur of Rs. 16,000/-, Smt. Harsharan Kaur of Rs. 18,700/-, M/s Jitendra Singh Bajwa HUF of Rs. 18,400/-, M/s Bhupendra Singh Bajwa HUF of Rs. 16,500/-, Shri Jitendra Singh Bajwa of Rs. 13,000/- and Shri Gyanender Kumar of Rs. 17,400/- During assessment proceedings, the details as well as confirmations & return filing proofs along with PAN numbers of all the depositors were filed. Photocopies of the same are placed at pago no.14 to 27 in the paper book. The Id. A.O. has made addition only on the ground that the loan of sister concern was classified as loans from friends & relatives in Tax audit report of the appellant and now the same is being shown as loan from sister concern. He further made a finding that M/s Godwin Construction Private Limited

has not submitted details of debtors being shown in his books of account. The addition so made by the Id. A.O. is totally unlawful & unjust because the classification of a loan under loans and advances from friends & relatives instead of loan from sister concern would not make the loan as unexplained.

It is further submitted that the confirmation was duly filed before the Id. A.O. during assessment proceedings along with letter dated 25.03.2015 and return filing proofs was also placed in the paper book as explained above.

It is further submitted that the total amount of loan of Rs.4,88,49,059/- was paid to the appellant by the said sister concern only through banking channel and there was no cash transactions in the said account and therefore the complete information with reference to the said loan was available on record. Non submission of details of debtors by the sister concern in its assessment proceedings cannot lead to disbelieve the receipt of loan from sister concern by the appellant. The details of loans & advances of Rs.39,47,17,475.84 as appearing in sister concern's balance sheet and copy of balance sheet of the said concern are placed at page nos.28 to 54 in the paper book for your kind reference. From the details so placed on record, it is apparent that M/s Godwin Construction Pvt. Ltd. had a debit balance of Rs.4,88,49,059/- in the name of the appellant. On the totality of facts, where the A.O. has neither doubted the identity nor the creditworthiness of the lender, the addition u/s 68 of the loan from him is totally unlawful & illegal and therefore the same kindly be deleted. For the remaining loans of Rs.1,00,000/- from six (6) person as above, the appellant had filed confirmations and return filing proofs of all the lenders showing their respective PAN and therefore the addition of the loan with requiring any further explanation is illegal and therefore be deleted."

10. After considering the above submissions, the Ld. CIT(A) remanded the matter to the Assessing Officer. After considering the remand report and submissions of the assessee on remand report he dismissed the grounds raised by the assessee with the following observations:

"7.8 In view of the above mentioned facts of the case, undersigned is of the view that, genuineness of the transaction of loan is not substantiated by the appellant company, as no credit is forwarded by creditor to the appellant company. It is also seen that, the bank statements of the creditors other than M/s. Godwin Construction Private Limited are not

submitted by the appellant company. Various case laws relied upon by appellant are on their own footing and distinguishable on facts of the present case. Further, creditor has not forwarded his income as unsecured loan to the appellant company, thus, credit capacity of the of the GSPL is not beyond doubt. Therefore, it is concluded that, the credit capacity of the creditor and the genuineness of the transaction is not established by the appellant company. Therefore, addition of Rs. 4,89,49,059/- made by AO is hereby confirmed and ground of appeal of the appellant is dismissed.”

11. Aggrieved with the above order, assessee is in appeal before us.

12. At the time of hearing, the Ld. AR brought to our notice relevant findings of the lower authorities and submitted that Assessing Officer has not doubted the genuineness of the transaction and he brought to our notice page 7 of the Paper Book wherein assessee has responded to the remand proceedings and further he brought to our notice page 44 to 61 and page 62 to 66 wherein ledger copies of the assessee in the books of account of Godwin Construction Pvt. Ltd and in assessee's books, in both ledger's, the transactions were reflected. Further, he brought to our notice page 67 of the PB which is confirmation of balances received from Godwin Construction Pvt. Ltd. He brought to our notice page 94 of the PB where the breakup of the loan credits were given in the books of Godwin Construction Private Limited, the amounts outstanding declared by the assessee are clearly shown. Further he submitted that the assessment order passed in the case of Godwin Construction Pvt. Ltd. which is placed at page 96 of the PB where there was no discussion on the present issue and he submitted that the same Assessing Officer has completed the assessment in the

case of Godwin Construction Pvt. Ltd. He brought to our notice first appellate order and ITAT orders in the case of Godwin Construction Pvt. Ltd., to demonstrate that there was no discussion on this point, therefore, he submitted that the addition made u/s 68 is not proper and deserves to be deleted.

13. On the other hand, the Ld. AR relied on the orders of the lower authorities.

14. Considered the rival submissions and material placed on record, we observed that assessee has received unsecured loan from its sister concern Godwin Construction Pvt. Ltd. Based on the facts on record, the assessee has demonstrated that the assessee has received above said unsecured loan from its sister concern Godwin Construction Pvt. Ltd. and merely because the assessee has not submitted relevant information during assessment proceedings, the Assessing Officer proceeded to make the disallowance. Even in the remand proceedings, and the amount sustained by the Ld. CIT(A) with the observation that the bank statements of the creditors **other than Godwin Construction Pvt. Ltd. was not submitted by the assessee company.** After careful consideration, we fail to understand that Ld. CIT(A) has sustained the addition with the observation that assessee has not submitted bank statement of the creditors other than Godwin Construction Pvt. Ltd. while making the findings whereas that assessee has already submitted the confirmation and bank statements before the lower authorities,

non submissions of the bank statements of other creditors has no role to play to adjudicate the issue in hand i.e. relating to unsecured loan, from Godwin Construction when the assessee has submitted all the relevant data of this transaction before Lower Authorities, therefore, we are inclined to allow the grounds raised by the assessee. With regard to ground No.4, assessee has not pressed the same, therefore, the same is dismissed.

15. With regard to ground No.5 & 6 the relevant facts are, the Assessing Officer observed that assessee has made cash deposits in his bank account maintained with Allahabad Bank amounting to Rs.8,00,000/-. He observed that assessee has failed to prove the source of these cash deposits, therefore, the same are disallowed and added back to the income of the assessee.

16. Aggrieved, the assessee preferred an appeal before Ld. CIT(A) and submitted that the bank books are not books of accounts and Assessing Officer has not raised any doubts about the availability of cash Rs.8,00,000/-. After considering the submissions of the assessee, the Ld. CIT(A) dismissed the grounds raised by the assessee with the following observations:-

“9.3 The undersigned has carefully gone through the assessment order, written submission as well as verbal arguments of Ld. A.R.. It is seen that, AO has observed that the cash deposits of Rs. 5,00,000/- on 07.01.2012 and Rs. 3,00,000/- on 08.11.2011 was made by the appellant company. Its bank accounts no. 5000805736 Allahabad bank 55 Meerut Cant. During the assessment proceeding, no details were submitted by the appellant company, hence, the same were added back to the appellant company. During the appeal proceedings, Id. A.R. of the appellant has submitted

that, the addition made should be deleted because, firstly, bank books are not books of accounts and secondly, Id. A.O. has not raised any doubts above the availability of cash of Rs. 8,00,000/- in his remand reports. Hence, it was contended that, addition made by AO should be. deleted.

9.4 The undersigned has carefully gone through the assessment order, written submission as well as verbal arguments of the Id. A.R. of the appellant. It is settled preposition of law that, the onus is on the appellant company to prove the sources of each cash deposit in its bank accounts with cogent evidences: which has not been done by the appellant company in the present facts of the case. No comments has been made by the AO in remand reports cannot with any stretch of imagination justify the cash deposits in the Bank by the appellant company. Further, contention of the Id. A.R. of the appellant that, bank books are not books of accounts, cannot be accepted, as it is against settled preposition of law. Therefore, considering the non-discharge of initial onus of substantiating the cash deposits with cogent evidence, undersigned finds it difficult to interfere with the addition made by AO and the same is hereby confirmed and ground of appeal is dismissed.”

17. At the time of hearing, the Ld. AR brought to our notice page 138 of the PB are the cash book maintained by the assessee for the year under consideration and he brought to our notice page 155 to submit that assessee had made a cash deposit of Rs.3,00,000/- and it had enough cash in hand to make the above deposit and on 07/01/2012, the assessee has made a cash deposit of Rs.5,00,000/- and even on the date assessee had outstanding cash balance of Rs.7,97,730/-. With the submission, he prayed that addition made by the Assessing Officer is not proper to make such deposits and he brought to our notice specifically to date 13/12/2011 wherein assessee has withdrawn Rs.2,00,000/- from the Allahabad Bank and he also submitted that Chart to indicate that deposited by the assessee are out of share application money and cash withdrawn by the assessee from the bank. For the sake of clarity, it is produced below:-

Date	Particulars		Vouch. No.	Debit	Credit
06.04.2011	Ashok Kumar	Share application	1	80000	
22.04.2011	Babar Kazmi	-do-	2	75000	
29.04.2011	Dev Nagar	-do-	4	70000	
06.05.2011	Mahendra Jeet Kaur	-do-	7	65000	
13.05.2011	Gurdev Singh	-do-	8	55000	
25.05.2011	Harendra Pal Singh	-do-	10	70000	
01.06.2011	Islamuddin	-do-	11	50000	
25.06.2011	Narendra Pal Singh	-do-	14	65000	
30.06.2011	Rajnish	-do-	16	70000	
11.07.2011	Ranbir Singh	-do-	18	85000	
25.07.2011	Smt. Rajkumari	-do-	20	60000	
02.08.2011	Surjeet Singh	-do-	21	70000	
14.08.2011	Tarseen Singh	-do-	22	80000	
25.08.2011	Satnarain Singh	-do-	23	75000	
01.09.2011	Harjinder Singh	-do-	25	60000	
14.09.2011	Kulwant Kaur	-do-	27	70000	
08.11.2011	Allahabad Bank	Cash deposit			300000
30.12.2011	Allahabad Bank	Cash Withdrawn		200000	
07.01.2012	Allahabad Bank	Cash deposit			500000
				1300000	800000

18. On the other hand, the Ld. DR relied on the orders of the lower authorities.

19. Considered the rival submissions and material placed on record, we observed that the assessee has submitted cash book in the Paper Book wherein assessee has received share application money on various dates and received the same by way of cash on verification of the cash book submitted before us. We observed that on various dates, the assessee has maintained sufficient cash which are out of share application money and some bank

withdrawals and it is substantiated that sufficient source of cash available with the assessee to make the bank deposit of Rs. 8 lacs. After considering the facts on record, we observed that assessee has sufficient cash in hands to make above said dash deposit. Accordingly, additions made by the Assessing Officer is deleted.

20. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 21st August, 2024.

Sd/-

Sd/-

(MS. MADHUMITA ROY)
JUDICIAL MEMBER

(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated: 21/08/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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