

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.497/M/2024
Assessment Year: 2017-18**

M/s. Lexicon Finance Limited, 909, Dalamal Tower, Free Press Journal Road, Nariman Point, Mumbai-400021 PAN: AAACL0914H (Appellant)	Vs.	DCIT 2.2.1 Room No. 545, 5 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020. (Respondent)
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Present for:

Assessee by : Shri Nishit Gandhi, Advocate
Revenue by : Shri Manoj Kumar Sinha, SR. DR

Date of Hearing : 24. 07.2024
Date of Pronouncement : 20. 08.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 13.12.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. Relevant facts for adjudication of the instant appeal are as under:

That the Assessee had declared its total income of Rs.1,16,53,120/- by filing its return income on 31.10.2017, which was selected for complete scrutiny and consequently a notice dated 05.09.2018 u/s 143(3) of the Act was issued to the Assessee, in response to which, the Assessee vide submission dated 21.12.2018

submitted that it had filed a revised return on 11.06.2018 declaring the total income of Rs.1,18,85,530/- and accepting the discrepancies raised by the Department.

3. Subsequently, various statutory notices were issued to the Assessee which remained uncompiled with and therefore vide notice dated 19.11.2019 the Assessee was asked to explain as to why the assessment should not be concluded u/s 144 of the Act. Still the Assessee failed to respond to this notice as well and therefore considering the fact that the assessment proceedings are going to be barred by limitation on 31.12.2019, the Assessing Officer (AO) was constrained to pass the assessment order dated 30.11.2019 u/s 144 of the Act, whereby made two additions; **first** the amount of Rs.31,31,201/- as unexplained cash credits u/s 68 of the Act on account of long term and short term loans of Rs.14,91,482/- and Rs.16,39,719/- respectively on the reason that the Assessee has failed to furnish the details of lenders such as identity, genuineness and creditworthiness; **second** the addition of Rs.1,23,17,539/- @ 20% of the other expenses claimed in the profit & loss account of the Assessee to Rs.6,15,87,696/- on account of failure to furnish the details of any such expenses.

4. The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner. The Ld. Commissioner though deleted the addition of Rs.14,91,482/- by observing and holding the same as long term loan qua motor car from the HDFC Bank and realizing the fact that in the note No.4 of the balance sheet the details are available, however, affirmed the addition of Rs.16,39,719/- u/s 68 of the Act mainly on the ground *“that though the Assessee has submitted the income tax return, the confirmation letter, 26AS statement showing the TDS deducted on the interest payment made etc. and the fact that short term borrowing has been taken from its subsidiary company Lexicon Infotech Ltd., however, these details were not submitted in the assessment*

proceedings and therefore amounts to additional evidence and there is a procedure for the same to be admitted under rule 46A of the Income Tax Rules, 1962 (in short 'the Rules'). The Assessee has not filed any application for consideration of evidence unlike the issue of motor car loan where the details were available from the notes to the balance sheet, the details of the short-term borrowing was not available before the AO and accordingly he is constrained to confirm the addition of Rs.16,39,719/- u/s 68 of the Act".

5. The Assessee before us by placing a decision of the Hon'ble co-ordinate Bench of the Tribunal at Delhi in the case of Mr. Mayur Bhatra vs. ACIT in ITA No.7586/Del/2019 decided on 28.11.2022 has claimed that filing of separate application for admission of additional evidence is not a mandatory condition for admission of additional evidence and therefore the Ld. Commissioner ought to have considered the additional evidence filed by the Assessee.

6. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

7. We have given thoughtful considerations to the peculiar facts and circumstances qua addition of Rs.16,39,719/- made u/s 68 of the Act. The documents referred to above by the Ld. Commissioner prima-facie appears to be relevant and important for adjudication of the issue in hand, therefore the same is required to be considered. Thus, in order to end the controversy and for the just and proper decision of the case and for substantial justice, we are of the considered opinion that **it would be appropriate to remand this issue to the file of the AO for decision afresh, with liberty to the Assessee to substantiate the claim/reason for not filling the same earlier. Consequently, the issue is remanded to the file of the AO accordingly.**

8. Coming to the second addition of Rs.1,23,17,539/- being 20% of the total expenses of Rs.6,15,89,676/- we observe that the AO has made the addition in hand on adhoc basis. The Ld. Commissioner

reduced the said addition to 10%, however, considered the contention of the Assessee that total expenses are actually Rs.4,96,77,481/- but not Rs.6,15,87,696/-, and consequently directed the AO to verify this fact then apply a disallowance of 10% of the verified expenses after taking into account the expenses added back in the computation of income.

8.1 We have given thoughtful considerations to the decision of the Ld. Commissioner on the issue in hand. The Ld. Commissioner directed the AO to apply a disallowance of 10% on the verified expenses after taking into account the expenses added back in the computation. **In our considered view, it would be appropriate to direct the AO to verify the expenses and in case of finding any discrepancy, then only he has to apply the disallowance @ 10% accordingly but not otherwise. Hence, this issue is also remanded to the file of the AO for decision afresh in view of our direction.**

9. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.08.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.