

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.379/Del/2024
Assessment Year: 2012-13

ITA No.387/Del/2024
Assessment Year : 2016-17

DCIT,
Meerut.

Vs Solitaire Food Private Ltd.,
108, 1st Floor,
No.53, Hasanpur Village,
Patparganj,
New Delhi – 110 092.

PAN: AALCS5930M

(Appellant)

(Respondent)

Assessee by : Shri Rohit Agarwal, CA
Revenue by : Shri Dharm Veer Singh, CIT-DR
Date of Hearing : 22.07.2024
Date of Pronouncement : 27.08.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Revenue against the orders dated 14.11.2023 and 08.11.2023 of the Commissioner of Income Tax (Appeals)-III, Noida (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of the appeal before it against the order passed u/s

143(3)/153A of the Income Tax Act, 1961 (hereinafter referred as ‘the Act’), by the ld. Assessing Officer.

2. At the time of hearing, it transpired that the two appeals are connected. The ld. DR had mentioned that except for some facts, substantially, the issues involved in the two years are similar. Thus, for convenience, we take up the facts and grounds for AY 2012-13 for determination first.

2.1 The assessee is a private limited company engaged in the trading of dairy products. A search and seizure operation u/s 132 of the Act took place at the assessee and other group entities/persons on 05.02.2017. Accordingly, notice u/s 153A of the Act was issued to which the assessee had filed the response that the original return be considered.

2.2 In AY 2012-13, an addition of Rs.3,78,60,000/- was made by the AO holding that the share money received by the assessee from the following five persons was unexplained in terms of section 68 of the Act:-

Name of share Applicant	Amount Received DY (Rs.)
Sh. Sandeep Kumar Prop. M/s Harry Agro Industries	2,57,35,000/-
Sh. Rajeev Kaltegiya	16,25,000/-
Sh. Luv Ojha Prop. M/s NGN Traders	30,00,000/-
Sh. Naresh Kumar	45,00,000/-
Sh. Shakti Chhabra Prop. M/s Shakti Agro Center	30,00,000/-
Total	3,78,60,000/-

3. In AY 2016-17 the addition of Rs. 3,02,87,821/- was made holding that the unsecured loan taken by the assessee from lender M/s Puja Quench Distributor Pvt. Ltd. was unexplained u/s 68 of the Act.

4. Aggrieved by the above, the assessee filed an appeal before the Ld. CIT(A)-IV, Kanpur, which was later on transferred to Ld. CIT(A)-3, Noida. Assessee claims that during the course of the first appeal proceedings, the assessee submitted confirmation, ITR's and Bank statements of all the share applicants in explanation of the share application money received during the relevant year and also explained source of the money in the hands of the share applicants.

5. On the basis of the said documents, after calling the remand report from the Ld. A.O, the Ld. CIT(A) vide impugned orders decided the appeal in the favor of the respondent and deleted the addition as made by the Ld. A.O. Aggrieved by the same the department i.e. the appellant has filed this appeal raising following grounds in AY. 2012-13:-

“1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 3,78,60,000/- made by the Assessing Officer u/s 68 of the income Tax Act on account of unexplained share application money, without appreciating the facts brought on record during the course of assessment proceedings.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that creditworthiness of the share applicants amounting to Rs. 3,78,60,000/- has not been established properly for want of ITR, complete bank accounts and other details during the course of assessment proceedings.

3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in pronouncing its decision only based upon the judgement in favor of the appellant by not considering the decision of hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif v. CIT wherein it has been held that "if an assessee fails to prove satisfactorily the source and nature of certain amount received during the accounting year, the AO is entitled to draw the inference that the receipts are of an assessable nature." Further in the case of Som Nath Maini v. CIT, the Hon'ble Punjab & Haryana High Court has also held that "the burden of proving that income is subject to tax is on the Revenue but on the Facts, to show that the transaction is genuine the burden is primarily on the assessee.*

4. *That the appellant craves leave to add modify amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

6. Ld. DR has submitted that AO has quite reasonably examined the issue and in remand report had left the issue open to the satisfaction of CIT(A). Thus, CIT(A) should have examined the issue with his own enquiry too.

7. Ld. AR countered the aforesaid by relying the written submissions dated 15.02.2023 as filed by the assessee before the Ld. CIT(A), during the course of the first appeal proceedings and referred to copies of confirmations, ITR filing proofs and bank statements of all the 5 share applicants, in explanation of the identity, creditworthiness and genuineness of the transactions under consideration. Copies of the said documents are placed at page nos. 11 to 40 of the paper book.

8. Considering the material before us and the submissions we find that the Id. A.O. in the remand proceedings could not find any error or inconsistency in

the documents filed by the respondent. Copy of the remand report is before us at Page No. 41 to 43 of the paper book. The Ld. A.O. even in remand proceedings did not make any investigation of its own. No letters u/s 133(6) or summons u/s 131 of the Act, were issued to any of the share applicants. This proves that the addition was made only on the basis of his whims and surmises instead of any evidence on record.

9. In regard to AY it is further pertinent to mention that the lender M/s Puja Quench Distributor Pvt. Ltd. was assessed by the same AO being part of the same group and the relevant information must have been available with the AO. Nothing adverse in the assessment of this lender is held as coming up from copy of assessment order placed at page no. 22-23 of the PB.

10. Thus, we are not inclined to allow the grounds. Consequently, both the appeals are dismissed.

Order pronounced in the open court on 27.08.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 27th August, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi