

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 8765/DEL/2019 [A.Y. 2016-17]

The Dy. CI.T.
Circle -13(1)
New Delhi

Vs.

M/s J.D. Exim Pvt Ltd
52A, Okhla Industrial Estate
Phase - III, Tekhchand
South East Delhi

PAN - AAACJ 3224 A

(Applicant)

(Respondent)

Assessee By : Shri Salil Kapoor, Adv
Shri Utkarsh Kumar Gupta, Adv
Shri Tarun Chanana, Adv

Department By : Shri Dayainder Singh Sidhu, CIT-DR

Date of Hearing : 26.11.2024
Date of Pronouncement : 28.11.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
LD. CIT(A) -5, New Delhi dated 26.08.2019 pertaining to A.Y. 2016-17.

2. The solitary grievance raised by the Revenue relates to the deletion of the addition of Rs. 10 crores made by the Assessing Officer u/s 68 of the Income-tax Act, 1961 [the Act, for short] by ignoring the fact that the assessee has used the colorable device to bring back his unaccounted money and to avoid paying tax.

3. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacturing of paper bags and HDPE bags. The assessee filed its return of income electronically on 17.10.2016 declaring loss of Rs. 4,99,88,428/-. Return was selected for limited e-scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

5. Brief facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that during the year under consideration, the assessee company has declared long term capital loss on sale of shares of Rs. 9,28,82,160/-, short term

capital loss on sale of building of Rs. 40,34,787/- and short term capital loss on sale of other assets of Rs. 25,36,509/-. The assessee has declared long term capital gain of Rs. 6,89,24357/- on sale of land. Therefore, the assessee has set off capital gain to the tune of Rs. 6,89,24,357/- to finally show the total Loss at Rs. 4,99,88,428/-.

6. The facts culled out from the records are that the assessee had sold one property at Okhla to M/s Dhampur Sugar Mills Ltd during the F.Y. 2006-07 for a consideration of Rs. 12 crores pursuant to an agreement dated 17.07.2006. The amount was received through cheques amounting to Rs. 10 crores in F.Y. 2006-07 and balance of Rs. 2 crores was receivable subject to getting the said property converted from leasehold to free hold as per the agreement.

7. The assessee could not get the property converted from lease hold to freehold and hence the purchaser did not pay the balance amount of Rs. 2 crores as per the agreement and considered the same as charges payable for conversion. The assessee, in the year under consideration, came to know that the title of the property was transferred in the name of M/s Dhampur Sugar Mills. The assessee,

accordingly, made adjustments in the books of account and resultant long term capital gain was declared at Rs. 6,89,24,357/-.

8. The Assessing Officer found during enquiry that the said amount of Rs 10 crore has been paid in the F.Y. 2006-07. However, doubting the genuineness of the transaction, the Assessing Officer, not being satisfied with the explanation tendered by the assessee, treated the same as unexplained and invoking the provisions of section 68 of the Act, made the impugned addition.

9. Aggrieved, the assessee went in appeal before the Id. CIT(A) who deleted the addition made by the Assessing Officer holding the Assessing Officer in error.

10. Aggrieved, the Revenue is in appeal before us.

11. The Id. DR relied upon the order of the Assessing Officer.

12. Per contra, the Id counsel of the assessee vehemently submitted that since the amount has been undisputedly received in F.Y. 2006-07, addition u/s 68 of the Act cannot be made for the year under consideration.

13. We have heard the rival submissions and have perused the relevant material on record. The Assessment Year under consideration is Assessment Year 2016-17. The fact the impugned amount of Rs. 10 crores was received by the assessee in F.Y. 2006-07 from sale of its property from M/s Dhampur Sugar Mills Ltd which is reflected in its audited balance sheet as an advance and the asset is also shown in the balance sheet, is not in dispute. It is also not in dispute that the amount has been received through banking channel and accepted by the Assessing Officer. The purchaser has duly confirmed to have paid the said amount in the F.Y. 2006-07 for the said property. The identity and credit worthiness of the purchaser has not been doubted.

14. In this factual matrix, we are required to adjudicate whether the provisions of section 68 of the Act can be invoked in AY 2016-17 on a sum credited in assessee's books in AY 2007-08. We find that section 68 provides that where any sum is found credited in the books of the assessee, maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered is not to the satisfaction of the Assessing Officer, the said amount can be charged to income of that previous year. It is trite law

that for applying the provisions of section 68, the funds are required to be found credited in the books for the year under consideration. In the instant case, the funds were received and credited by the assessee in its books of account in A.Y 2007-08. The Assessing Officer has held the amount received in AY 2007-08 as taxable income u/s 68 in A.Y 2016-17. We, therefore, hold that the ld. CIT(A) was fully justified in coming to the conclusion that the invocation of provisions of section 68 of the Act by the Assessing Officer, is not in accordance with law.

16. In view of our above discussion and arguments before us, we find no reason to interfere with the order of the CIT(A).

17. In the result, the appeal of the Revenue in ITA No. 8765/DEL/2019 is dismissed.

The order is pronounced in the open court on 28.11.2024.

Sd/-

[MAHAVIR SINGH]
VICE PRESIDENT

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated:28th NOVEMBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	