

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 530/Ind/2023
(AY: 2018-19)

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| Assistant Commissioner of Income-tax, 4(1), Indore. | बनाम/ Vs. | Agrawal Pules and Polishers Industries, 41, Navlakha, Indore. (PAN: AAFFA4599R) |
| (Revenue/Appellant) | | (Assessee/Respondent) |

Cross-Objection No.11/Ind/2024
Arising out of I.T.A. No. 530/Ind/2023
(AY: 2018-19)

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| Agrawal Pules and Polishers Industries, 41, Navlakha, Indore. (PAN: AAFFA4599R) | बनाम/ Vs. | Assistant Commissioner of Income-tax, 4(1), Indore. |
| (Assessee/Cross-Objector) | | (Revenue/Respondent) |

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| Assessee by | Shri Ankur Agrawal, CA and Shri G.B. Agrawal |
| Revenue by | Shri Ram Kumar Yadav, CIT DR |

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| Date of Hearing | 09.12.2024 |
| Date of Pronouncement | 12.12.2024 |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 27.10.2023 passed by Commissioner of Income-tax (Appeal)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 14.02.2023 passed by Assessment Unit of Income-tax Department ["AO"] u/s 147 read with section 144B of the

Income-tax Act, 1961 [“the Act”] for assessment-year [“AY”] 2018-19, the revenue has filed captioned appeal and the assessee has filed captioned cross-objection.

2. The background facts leading to present matters are such that the assessee-firm did not file return of income for AY 2018-19. Based on information received from Insight Portal qua the high amount of cash deposited by assessee in a bank a/c, the AO issued notice dated 29.03.2022 u/s 148 to undertake proceeding u/s 147. The notices u/s 143(2)/142(1) were subsequently issued calling certain information. In response, the assessee made submissions. Ultimately, the AO completed assessment vide order u/s 147 after making an addition of Rs. 1,32,44,409/- in respect of unsecured loans. Aggrieved, the assessee carried matter in first-appeal before CIT(A). In first-appeal, the assessee challenged the merits of the addition and also raised certain additional legal grounds. The CIT(A) deleted addition on merit but, however, did not adjudicate additional legal grounds raised by assessee. Now, the revenue and assessee both have come in these appeals by way of appeal and cross-objection respectively. We first take up revenue’s appeal and thereafter assessee’s cross-objection.

Revenue’s appeal:

3. The revenue has raised following grounds:

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified to ignore the merits of the case and the fact that section 69 was correctly applied in this case.*

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ITA No. 530/Ind/2023 and C.O. No. 11/Ind/2024 - A.Y. 2018-19**

2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by AO as unexplained investment u/s 69 of Rs. 1,32,44,409/-.*

4. The sole grievance of revenue is such that the CIT(A) was not justified in deleting the addition of Rs. 1,32,44,409/- made by AO.

5. At first, we extract the order passed by AO making impugned addition:

“10. With regard to unsecured loan of Rs. 1,36,51,883/-, the assessee in its reply dated 24.01.2023 has stated that there was an opening balance of unsecured loan as on 01.04.2017 was Rs. 1,32,44,409/- and during the year the assessee firm has taken fresh loan of Rs. 25,50,000/- and the closing balance of unsecured loan as at the end of the year as on 31.03.2018 was Rs. 1,36,51,883/-. In this regard, the assessee has furnished a chart of details of unsecured loan for the F.Y. 2017-18 along with details of documents in respect of fresh loan of Rs. 25,50,000/-. The same have been verified with the contention of the assessee. With regard to the claim of opening balance of unsecured loan of Rs. 1,32,44,409/- as on 01.04.2017, it is seen that the assessee firm has not filed any return of income for any of the assessment years. Only in response to the notice u/s 148 for the assessment year 2018-19, the assessee has filed a return of income. Further, on perusal of the assessment order for the assessment year 2017-18 passed u/s 144 r.w.s. 147 of the Income-tax Act, 1961 on 24.03.2022, it is seen that the assessee has not filed any return of income and accordingly assessment has been completed u/s 144 r.w.s. 147 of the Income-tax Act, 1961. The assessee has not filed any return of income for any of the earlier years and also the assessee has not got its accounts audited also for earlier years. Therefore, in absence of any return of income and audit report, the claim of opening balance of unsecured loan of Rs. 1,32,44,409/- cannot be accepted and hence rejected. Since the assessee has failed to substantiate the claim of opening balance of unsecured loan of Rs. 1,32,44,409/-, the said amount of Rs. 1,32,44,409/- is being treated as Unexplained investment u/s 69 of the Income-tax Act, 1961, r.w.s. 115BBE and added to the total income of the assessee. Penalty proceedings u/s 271AAC of the Income-tax Act, 1961, is initiated for addition u/s 69 of the Income-tax Act, 1961.”

6. Now, we extract the order passed by CIT(A) reversing the action of AO and deleting addition as under:

"4.4.3 Considering the above facts of the case, I am of the considered view that once it is accepted by the AO that unsecured loan of Rs. 1,32,44,409/- is the opening balance as on 01.04.2017, the same cannot be brought to tax in the current assessment year. Even in a case the AO establish that these opening balances of unsecured loans are not genuine, the same can be brought to tax only in the year of receipt of such loans and in no case these loans can be brought to tax in the current assessment year. In the assessment order itself, the AO has mentioned that in the earlier assessment year i.e. A.Y. 2017-18 assessment was completed u/s 144 r.w.s. 147 of the Income-tax Act, 1961, on 24.03.2022 wherein apparently the AO has not made addition on account of unsecured loans. In any case, the opening balance of unsecured loans cannot be brought to tax in the current assessment year. The addition made by the AO is not justified and directed to be deleted."

7. Ld. DR for revenue/appellant submitted that the CIT(A) has summarily noted that the AO has accepted opening balances of unsecured loans amounting to Rs. 1,32,44,409/- and thereafter concluded that the opening balances cannot be added as income in current year. He submitted that the AO has not accepted opening balances of unsecured loans, instead the AO has rejected the assessee's claim of opening balances for the reason simpliciter that the assessee did not file return of any of the earlier assessment years and there is no audited accounts for earlier year. Ld. DR submitted that in such a situation, the CIT(A)'s adjudication cannot be said to be proper. Ld. DR requested that the only course in such a situation would be to remand this matter to the CIT(A) or AO for a deeper examination of the claim of assessee.

8. Per contra, Ld. AR for assessee submitted that the assessee filed sufficient evidences to AO in the form of A/c Confirmations, Bank statement and a Statement of loans giving lenderwise details of opening balances,

loans taken during the year, closing balances, etc. He submitted that all entries of loans taken by assessee as reflected in A/c Confirmations are verifiable from the Bank statement of assessee. Therefore, there cannot be any doubt with regard to assessee's claim of opening balances. When the Bench countered Ld. AR about non-filing of returns of income by assessee in earlier years as taken into account by the AO, Ld. AR replied that the assessee suffered heavy losses in earlier years and therefore did not file returns.

9. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. On perusal and after careful consideration, we find that the assessee made a contention before AO that out of unsecured loans taken by it, there was an opening balance of Rs. 1,32,44,409/- taken in earlier years from different lenders. The AO, however, rejected this contention of assessee by assigning reason simpliciter that the assessee has not filed any return for earlier years and also not got accounts audited for earlier years and therefore in absence of return of income and accounts, the claim of opening balance cannot be accepted. The CIT(A) has, however, noted in Para 4.4.3 of his order re-produced above that the AO has accepted opening balance of unsecured loans at Rs. 1,32,44,409/- as on 01.04.2017. Ld. DR for revenue is very right in contending that this conclusion made by Ld. CIT(A) is not correct because the AO has out rightly rejected assessee's very contention of opening

balance in absence of returns of earlier years, without making any factual examination from the documents filed by assessee. Although we agree to the legal principle accepted by Ld. CIT(A) that the opening balances cannot be treated as income in current year but what needs to be examined or verified is the factual verification of assessee' claim of opening balances with reference to the documents filed by assessee. Admittedly, it is a fact that the assessee is in the habit of not filing returns of income to Income-tax Department. Although Ld. AR for assessee, in reply to the questioning done by the Bench as to the non-filing of returns of earlier years by assessee, submitted that the returns were not filed because the assessee was suffering heavy losses but this reasoning, in our view, is not legal because the assessee is a partnership firm and by virtue of amendment made through Finance Act, 2005 effective from AY 2006-07, a partnership firm is compulsorily required to file return irrespective of income or loss. Considering entire conspectus of case, we agree with Ld. DR's request that it would be most appropriate to restore this case back to the file of Ld. CIT(A) for adjudication afresh after necessary factual verification of claim of opening balance made by assessee. While doing so, the CIT(A) shall give necessary opportunities to the assessee as well as the AO and shall also consider the remand report as may be filed by AO. With these directions, this appeal of revenue is allowed for statistical purpose.

Assessee's Cross-Objection:

10. The assessee has raised following grounds:

1. *That under the facts and circumstances of the case, departmental appeal is bad in law as well as on facts and is liable to be dismissed.*
2. *That under the facts and circumstances of the case, Ld. CIT(A) erred in not considering the legal additional grounds of appeal which goes to the root of the case along with request for admission of additional legal grounds of appeal filed before him which is also arbitrary, unjust and bad in law.*
3. *Without prejudice to the above, under the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the re-assessment order on the additional legal ground of appeal, since the time allowed in notice u/s 148A of I. T. Act, 1961 is less than 7 days.*
4. *Without prejudice to the above, under the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the re-assessment order on the additional legal ground of appeal, as regards reopening and re-assessment since the case was reopened on the ground of cash deposits in bank a/c and no addition on the said issue was made.*
5. *Without prejudice to the above, under the facts and circumstances of the case, Ld. CIT(A) ought to have decided the additional legal ground of appeal, as regards non-applicability of section 115BBE of the I.T. Act, 1961."*

11. Ld. AR for assessee submitted that the grounds, identical to Ground No. 3 to 5, are legal in nature and they were also raised before CIT(A) by way of additional grounds through letter dated 23.09.2023 but the CIT(A) has not taken cognizance of same. Therefore, these legal grounds require an adjudication. Since we have already restored the revenue's appeal to CIT(A), we direct the CIT(A) to consider the additional legal grounds raised by assessee before him and adjudicate appropriately. Accordingly, the cross-objection of assessee is also allowed for statistical purpose.

12. Resultantly, both of these matters are allowed for statistical purposes.

Order pronounced in open court on 12.12.2024

Sd/-
(VIJAY PAL RAO)
VICE PRESIDENT

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 12.12.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore