

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No. 2849/Del/2015

AY: 2010-11

Dy.CIT, Rohtak Circle
Rohtak

vs. KLA Foods (India) Ltd.
21/3, Ground Floor
Geeta Mandir Marg
Near Rajinder Nagar
New Delhi

PAN: AACCK 8299 G

Cross Objection No.336/Del/15

(In ITA 2849/Del/15)

A.Y. 2010-11

KLA Foods (India) Ltd.
New Delhi

vs. Dy.CIT, Rohtak Circle
Rohtak

(Appellant)

(Respondent)

Appellant by : None.

Respondent by : Sh. Gautam Jain, FCA &
Sh.Piyush Kumar K, Adv.

ORDER

The appeal is filed by the Revenue directed against the order of the Ld. Commissioner of Income Tax (Appeals), Rohtak dated 9.3.2015 pertaining to the Assessment Year (A.Y.) 2010-11 on the following grounds.

"1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law and in facts in deleting the addition amounting to Rs.35,00,000/- made by the A.O. following the information received from the DDIT (Inv.,) Unit VI(2),

Delhi on the issue that the company had introduced share application money from the accommodation entry providers.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law and in facts in deleting the above said addition merely relying on the submission filed by the assessee that all transactions were made through banking channel and all documents were produced by the assessee related to share transactions. Thus, CIT(A) has failed to appreciate the findings of the AO and Investigation Wing.

3. The applicant craves leave to add, amend, alter, modify, delete and or change any of the grounds on or before the date of hearing.”

1.1. The assessee has filed Cross Objection on the following grounds.

“1. The initiation of proceedings u/s 147 of the Act and framing of assessment u/s 147/143(3) of the Act without satisfying the statutory provision contained in the Act were without jurisdiction and therefore be quashed as such.

2. That since there was no tangible and, relevant material on record to allege, assume or even have a prima facie opinion that any income of the appellant has escaped assessment the initiation of proceedings u/s 147 of the Act was not in accordance with law.

3. That notice u/s 148 of the Act even without satisfying the statutory mandate provided in s.151 of the Act was not a valid notice and hence, untenable.

It is therefore, prayed that it be held that notice issued u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act were without jurisdiction and therefore, be quashed and Cross Objection of the appellant be allowed.”

2. No person is present in the Court on behalf of the Revenue. The Revenue has filed an application for adjournment of all the cases which are on board today on the ground that “Sr.D.R. is not available”. I am informed that, for the entire week, the department would be seeking adjournments in

all the cases posted before this SMC Bench on the same ground. Under the circumstances, as the Bench cannot be allowed to collapse, I reject some of these applications filed by the Revenue for adjournments and dispose of the case ex parte qua the Revenue on merits.

3. Heard the Ld.Counsel for the assessee.

4. The Ld.CIT(A) has at para 4 of the order held as follows.

“4. I have examined the submissions made by the assessee and the facts on record. The addition of Rs.35,00,000/- has been made on the issue of investment made by seven companies. The AO has made the addition on the ground that the assessee has not been able to explain the investment as “deep and concrete enquirieis in this regard ahve been made by the DIT (Inv.)-II, New Delhi on the basis of which proceedings u/s 148 were started in the case.” The AO has just stated that the transactions are ‘apparently not genuine.’”

The appellant had submitted copies of assessment orders of the afore mentioned companies which were assessed u/s 153C/153A of the Income Tax Act, 1961. Nothing adverse was found during assessment. In the absence of any evidence to the contrary in the case of companies who made the investment, the addition of Rs.35 lakhs was uncalled for. I, therefore, delete the same. The addition of Rs.51,04,609/- on account of loss is also deleted. This ground of appeal is allowed.”

5. I find no infirmity in this finding of the First Appellate Authority. The Assessing Officer has made the addition in question on the premise that, this amount of Rs.35 lakhs was taken to accommodate book entries in the shape of share capital and whereas the actual fact is that these amounts were loans taken by the assessee company.

6. Hence the Revenue’s appeal is dismissed.

7. The Cross Objection is on the issue of reopening. As I have dismissed the Revenue's appeal, adjudication of the Cross Objection would be an academic exercise.

8. In the result the C.O. is dismissed.

9. In the result Revenue's appeal as well as assessee's C.O. are dismissed.

Order pronounced in the Open Court on 10th August, 2016.

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 10th August, 2016

- *Manga*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR