

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 4182/Del/2015 : Asstt. Year : 2006-07

H S Management Institute Pvt. Ltd. 19/33, First Floor, Old Rajender Nagar, New Dehi-110060 (APPELLANT)	Vs	Income Tax Officer, Ward-11(1), New Delhi (RESPONDENT)
PAN No. AABCH8247A		

**Assessee by : Sh. Vipin Jain, CA
Revenue by : Sh. P. D. Taneja, Sr. DR**

Date of Hearing : 13.10.2015	Date of Pronouncement : 04.11.2015
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 02.06.2015 of Id. CIT(A)-15, New Delhi.

2. The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs. 14,11,000/- made by the AO u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the assessee filed the return of income declaring Nil income on 17.03.2007 which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act on 22.12.2008 by

making addition of Rs. 14,11,000/-. Against the said assessment order the assessee preferred first appeal before the Id. CIT(A)-15, New Delhi who vide order dated 24.11.2011 confirmed the addition since the assessee had not filed any details/evidences to prove the genuineness and creditworthiness of the creditors. Being aggrieved the assessee preferred an appeal to the ITAT, New Delhi in ITA No. 233/Del/2012 wherein vide order dated 15.03.2012, the matter was restored to the AO for providing reasonable opportunity to the assessee to substantiate its claim. On the direction of the ITAT the AO proceeded to frame the assessment and vide order dated 28.03.2013 and made the addition of Rs. 14,11,000/- again by observing as under:

“During the course of assessment proceedings, vide note sheet entry dated 26.02.2013, the assessee company was asked to file the confirmation of cash credit of Rs. 14,11,000/- & documentary proof/evidence of repayments made to Sh. Sameer Kumar, ex-director of the company. The assessee company was also asked to produce Sh. Sameer Kumar for personal deposition. The assessee company during the course of hearing on 01.03.2013 showed its inability in producing Sh. Sameer Kumar previous director of the company. Having regard to above, summons u/s 131 dated 07.03.2013 and 13.03.2013 were issued to Sh. Sameer Kumar for furnishing confirmation regarding receipt of Rs. 14,11,000/- from assessee company alongwith copy of bank statement for F.Y. 2005-06 and copy of ITR for assessment year 2006-07. Sh. Sameer Kumar, previous director of the assessee company, neither appeared for personal deposition nor filed any requisite details. The assessee company has failed to utilize the opportunity and also failed to establish the credit

worthiness of the cash creditor and genuineness of the transaction. The assessee company failed to produce Sh. Sameer Kumar, previous director of the company.

In view of above, it is observed that the assessee company has failed to substantiate its claim for cash credit of Rs. 14,11,000/-. Therefore, entire amount of Rs. 14,11,000/- is added back to the total income of the assessee as income from undisclosed sources u/s 68 of the IT Act, 1961.

With these remarks, income of the assessee is computed as under:

<u>Returned Income</u>	<i>Rs. Nil</i>
<u>Add:</u>	
<i>Income from undisclosed sources (as disclosed above)</i>	<i>Rs. 14,11,000/-</i>
<i>Total taxable income</i>	<i>Rs. 14,11,000/-</i>

4. Being aggrieved the assessee preferred an appeal to the Id. CIT(A) and furnished the written submission which has been incorporated in para 6.1 of the impugned order for the cost of repetition, the same is not reproduced herein. The Id. CIT(A) asked the remand report of the AO on the additional evidences furnished by the assessee and the AO vide letter dated 25.05.2015 furnished the remand report as under:

“Please refer to your office letter F. No. CIT(A)-XV/Remand Report/2014-15/875 dated 31.10.2014 on the above mentioned subject.

In connection to above, it is submitted that in the additional evidences filed by the assessee, the assessee himself in point

no. 10 of additional evidence admitted that books of account were not maintained and the balance sheet prepared as on 31.03.2006 is suffering from several errors and discrepancies. The relevant portion of point no. 10 of additional evidence is reproduced as under:

“...investment in the industrial plot was shown on the asset side, and amounts paid by the promoter directors were shown on the credit side of the balance sheet. The assessee company has not maintained any account books. None of the entries relating to payment by the promoters towards the plot were recorded in any account books. The bank account of the assessee company and the ledger folio charges of Rs. 100 were not reflected in the balance sheet prepared. The estimated balance sheet prepared as on 31.03.2006 suffered from several errors and discrepancies.”

After going through the facts of the case it is clear that assessee failed to discharge his onus to prove the genuineness of cash credit of Rs. 14,11,000/- during the course of original assessment and reassessment.

In view of the above the additional evidences submitted before your goodself may not please be accepted.”

5. The assessee also furnished rejoinder to the remand report which has been incorporated in para 6.3 of the impugned order and is reproduced verbatim as under:

“6.3. A copy of AO's remand report was provided to the appellant for furnishing rejoinder. The appellant in his rejoinder submitted as under:

"The appellant company has directed us to further submit/file as under:

1. Copy of the written submissions filed by the appellant company before The AO ward 12(4) New Delhi in remand proceedings. The AO took these submissions on record. No notice for any hearing was issued. No attendance of the counsel of the appellant company was recorded. No reference of these submissions made by the appellant company are referred to in the remand report submitted by The AO.

2. The AO has not negated/rebutted the facts placed on record submissions made by the appellant company. The appellant company in its written submissions before the AO and The CIT(A) has stated that the AO ought to summon Sh. Sameer (promoter Director), the Bank Managers of Bank of Baroda Noida branch, Indian Overseas Bank Noida branch and Bank of Punjab New Delhi branch, where Sameer had accounts and from where he had made payments for the plot. The bank managers should have been summoned with the bank records of the bank accounts of Sameer. The AO also ought to verify the records of The Noida Authorities. The AO did not summon the bank managers and did not verify the records of The Noida Authorities.

3. Sameer Kumar opened the bank account in the name of H S MANAGEMENT INSTITUTE PVT. LTD." (appellant company) on 04.10.2005 (prior to incorporation of the assessee company), with THE INDIAN MERCANTILE CO-OPERATIVE BANK LTD.", with an initial cash deposit of Rs 2,000. There is no mention of this bank account in the Balance Sheet of the appellant company prepared in any of the years. Post change in the management and the ownership of the appellant company, Sameer retained and continued to operate the said bank account Rs. 8,44,100 repaid to Sameer by

Joginder Gandhi was deposited in this account. Thereafter Sameer withdrew the funds from this account and made payments as he desired. This bank account was in fact the bank account of Sameer opened benami in the name of the appellant company, and was possible as Sameer was in total control and was whole and sale incharge of the affairs of the appellant company. The appellant company therefore never had any bank account of its own AND that no financial transactions of the appellant company were routed through any bank account of the appellant company.

4. Even though the plot at Noida was acquired and lease deed registered in the name of the appellant company, all payments for the plot were directly made to the NOIDA Authorities by the directors from their personal resources. No payment was routed through any bank account of the appellant company.

5. The appellant company had no income. It did not carry out any Trading, Manufacturing or business Activities, maintained no office, paid no rent, employed no person, paid no salary, and incurred no establishment expenses in the form of conveyance expenses, utilities, printing, stationery, postage etc.

6. Sachin (Inspector), confirmed verbally in the remand proceedings that under directions of the AO he had visited the residence of Sameer (promoter director) and made interrogation. However Sameer failed to file any creditable evidence. There is no mention in the remand report of any visit made by the Inspector to Sameer, any report submitted by him. A copy of any such report is not also provided/confronted to the assessee, nor attached with the remand report to the CIT(A)-XV, New Delhi.

7. *The appellant company did not maintain any books of accounts. The appellant company filed a copy of audited balance sheet of the company duly audited by M/s D V Mehandru & Associates, Chartered Accountants, which carried a note that reads as under:*

"As the company failed to start its business activities so directors decided not to charge any amount spent during the year to Profit and Loss Account. So Profit and Loss Account during the year is NIL. "

8. *There was thus no Profit and Loss Account of the appellant company for the period ended 31.3.2006. Bank balance and ledger folio charges Rs 100 debited by the bank were not recorded. The "Balance Sheet" of the appellant company as on 31.3.2006 was prepared on estimate. It suffered from errors and discrepancies. The present counsel of the appellant company has tried to arrive at the various figures in the balance sheet as under:*

(i) Investment in the Institutional plot is shown on the Asset side of the balance Sheet at Rs 27,58,400. Breakup of the amount of Rs 27,58,400 is as per details in para 3.03 above, summarized as under:

<i>(a) Sameer (promoter Director)</i>	<i>Rs. 14,93,400</i>
<i>(b) Deewan & Sons</i>	<i>Rs. <u>12,65,000</u></i>
	<i>Rs. <u>27,58,400</u></i>

(ii) Cash in hand shown at Rs 5,100 in the balance sheet appears to have been arrived at as under:

Amounts received in cash from the two promoter directors of the appellant company towards share capital *Rs. 1,00,000*

<i>Less spent on incorporation of the company</i>	<i>Rs. 12,500</i>
<i>Less adjusted by Sameer against credit balance in his loan a/c 82,400</i>	<i>Rs. 94,900</i>
<i>Balance amount shown in the Balance Sheet</i>	<i>Rs. 5,100</i>

(iii) Details of share capital Rs 1,00,000 on the liability side is as under:

<i>Sh Sameer (received in cash)</i>	<i>Rs. 50,000</i>
<i>Sh Hosiyar Singh (received in cash)</i>	<i>Rs. 50,000</i>

(iv) Details of unsecured loans Rs. 26,76,000 on the liability side is as under:

<i>Deewan & Sons</i>	<i>Rs. 12,65,000</i>
<i>Sameer</i>	<i>Rs. 14,11,000</i>

Balance Rs 14,11,000 in the loan account of Sameer is arrived as under:

<i>Balance as per para 3.03 above</i>	<i>Rs. 14,93,400</i>
<i>Less cash adjusted out of share capital amount received</i>	<i>(-) 82,400</i>
<i>Balance</i>	<i>Rs. 14,11,000</i>

9. The incoming directors paid Rs 14,11,000 to Sameer as under:

Rs.5,66,900 Sh. Joginder Gandhi paid this amount out of withdrawals made from M/s Deewan & Sons, Lakri fazalpur, Mini Bypass, Delhi Road, Moradabad- 244001, partnership firm, in which Sh. Joginder Gandhi is a partner. The repayment was made vide chq no. 102287 dated 29.03.2008 from current account no.624874 with ABN Amro Bank. Deewan & Sons is assessed under PAN AABFD8214G.

Rs.8,44,100 Sh. Joginder Gandhi transferred Rs 6,00,000 from Deewan & Sons (partnership firm) to his personal bank account, and then transferred Rs 8,44,100 vide cheque No. 552591 dated 12.04.2006 drawn on savings account no. 624467 with ABN Amro Bank. Joginder Gandhi is assessed under PAN AFUPG4215L.

Rs 8,44,100 were transferred to the bank account of H S Management Pvt. Ltd. with THE INDIAN MERCANTILE CO OPERATIVE BANK LTD., which account was opened and operated by Sameer. Post changes in management and ownership of the company, Sameer continued to operate this bank account in the name of the company.

10. Copies of audited accounts of the assessee company for the three years ended 31.3.2006; 31.3.2007; and 31.3.2008 are filed.

11. The AO ought to have lifted the corporate veil of the appellant company to verify the true nature of the transactions and the actual persons who have made the investments, and ascertain their source of funds.

12. NOTE WITH EVIDENCE ON CHANGE IN THE MANAGEMENT:

-Sh Somnath Gandhi, s/o Sh Deewan Chand Gandhi, R/o 6 Panch Sheel Colony, Civil Lines, Moradabad, UP,

-Sh Joginder Gandhi, son of Sh Somnath Gandhi, R/o Kothiwal Nagar, Moradabad, AND

-Sh Surender Gandhi, s/o Somnath Gandhi, R/o 600 CH Civil Lines, Moradabad,

were first appointed as Directors of the assessee company w.e.f 25.05.2006. Relevant documents to that effect as downloaded from The ROC site are filed.

Thereafter Sh Sameer Kumar and Sh Hoshiyar Singh (promoter directors) resigned from the office as directors of the company w.e.f 10.06.2006.

The share holding of the appellant company also changed hands. Sh Sameer AND Sh. Hosiyaar singh transferred their entire shareholding in the appellant company to the above three incoming directors as under:

*Sh. Somnath Gandhi 3,400 shares
Sh. Surinder Gandhi 3,300 shares
Sh. Joginder Gandhi 3,300 shares*

This change in the management and ownership of the company effected transfer of ownership and possession of the plot at Noida.

The new management of the appellant company opened a bank account in the name of the appellant company with ABN Amro Bank, New Delhi on 16.02.2009, which was operated by them. During the intervening period further payments to NOIDA Authorities against the plot were made by the incoming Directors from their personal resources, and corresponding accounting entries were accordingly made.

13. The assessee company relies upon various case laws referred to in its written submissions and the attached judgments."

6. The Id. CIT(A) after considering the submissions of the assessee confirmed the addition made by the AO by observing that the assessee since beginning had not disclosed full and true facts regarding the source of payments made by it to Noida authorities for purchase of the plot. He further observed that the assessee had submitted balance sheet as on 31.03.2006 wherein unsecured loans from friends and relatives amounting to Rs. 26,76,000/- had been shown as per following details:

<i>1. Somnath Gandhi and Surender Gandhi:</i>	<i>Rs. 14,48,000/-</i>
<i>2. Atul Jain:</i>	<i>Rs. 6,00,000/-</i>
<i>3. Sameer Kumar:</i>	<i>Rs. 6,28,000/-</i>
<i>Total:</i>	<i>Rs. 26,76,000/-</i>

7. The Id. CIT(A) observed that the assessee during the argument tried to negate the correctness of such balance sheet on the ground that neither the bank account having the balance of Rs. 1,900/- was shown in the balance sheet nor the figure of unsecured loan was truly and correctly reflected. He further observed that the investment of Rs. 27,58,400/- was shown by the assessee as under:

<i>1. Mr. Sameer Kumar (Promoter Director):</i>	<i>Rs. 14,93,400/-</i>
<i>2. Diwan & Sons:</i>	<i>Rs. 12,65,000/-</i>
<i>Total:</i>	<i>Rs. 27,58,400/-</i>

8. The Id. CIT(A) observed that the assessee did not produce Mr. Sameer Kumar and even if any attempt was made by the AO to get any confirmation from Sh. Sameer Kumar, in that effort he could not succeed but it does not absolve the assessee from its onus to produce Sh.

Sameer Kumar and discharge its burden in proving the cash credits. The Id. CIT(A) accordingly confirmed the addition made by the AO.

9. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the evidences furnished by the assessee before the Id. CIT(A) were not appreciated in right prospective either by the Id. CIT(A) or by the AO in his remand report. It was further submitted that the AO accepted Rs. 1,00,000/- out of Rs. 14,11,000/- paid by Sh. Sameer Kumar for the plot at Greater Noida but disbelieved the remaining amount. Therefore, if any action was required to be carried out u/s 68 of the Act that was needed to be carried out against Sh. Sameer Kumar and not against the assessee company. It was further stated that the AO in his remand report had not made any adverse comments against the submission of the assessee. Therefore, the addition made by the AO and confirmed by the Id. CIT(A) was not justified.

10. In his rival submissions the Id. DR strongly supported the impugned order and reiterated the observations made in the said order by the Id. CIT(A).

11. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the directions given by the ITAT vide order dated 15.03.2012 were not complied with properly, in the said order the direction was given to the

AO to decide the issue *denovo*. In the instant case, it is not clear as to whether any action was taken by the AO when the summons issued u/s 131 of the Act to Sh. Sameer Kumar (previous director of the assessee company) were not complied with. In the present case, the assessee vide its rejoinder to the remand report tried to explain the payment of Rs. 14,11,000/- by Sh. Sameer Kumar, same has not been appreciated in right prospective and even no comments has been made by the Id. CIT(A) on this explanation that incoming director of the assessee company paid Rs. 14,11,000/- to Sh. Sameer Kumar in the manner explained in para 9 of the rejoinder to the remand report. I, therefore, considering the totality of the facts deem it appropriate to remand this issue back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 04/11/2015)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 04/11/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR