

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6552/Del/2015
Assessment Year: 2007-08

ACIT, Circle 10(1),
New Delhi

(APPELLANT)

vs. M/s Global Optical Pvt. Ltd.,
153, Vasant Enclave,
New Delhi – 110 057

**(PAN: AABCG0280E)
(RESPONDENT)**

Department by : Shri FR Meena, Sr. DR
Assessee by : Shri Salil Kapoor, Adv. & Ms. Ananya
Kapoor, Adv.

**Date of Hearing : 23-08-2016
Date of Order : 02-09-2016**

ORDER

PER H.S. SIDHU, J.M.

The Department has filed the Appeal against the impugned order dated 28.9.2015 of Ld. CIT(A)-4, New Delhi pertaining to assessment year 2007-08. The grounds raised in the revenue's appeal reads as under:-

- 1. On the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting an addition of Rs. 10,00,000/- made by the AO u/s. 68 of the Act disregarding AO's finding that the parties are entry operators.*
- 2. On the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting and addition of Rs.*

13,89,056/- made by the AO on account of interest on ICD disregarding the fact that the assessee failed to file any proof to support its contention that the loan was borrowed for business purposes.

3. Further, on the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting an addition of Rs. 32,94,678/- on account of static creditor ignoring the fact that it failed to submit any supporting details in this regard.

4. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

2. The brief facts of the case are that the assessee had filed return of income declaring a total loss of Rs. 44,13,948/- on 29.10.2007. The return was processed u/s. 143(1) on 20.9.2008. The case was selected for scrutiny and notice u/s. 143(2) was sent on 15.9.2008. Again notice u/s. 143(2) alongwith questionnaire under section 142(1) was sent on 16.4.2009/ 23.7.2009. In response to the same, assessee AR attended the proceedings from time to time and submitted requisite details which were verified and placed on record. The assessee company is engaged in business of manufacturing of Optical Lenses. During the course of hearing AR has produced books of account which have been test checked. Thereafter, the AO has completed the assessment at Rs.

14,69,790/- by making the various additions vide his order passed u/s. 143(3) of the I.T. Act, 1961.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 28.9.2015 has deleted the additions in dispute and allowed the appeal of the assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. Sr. DR has relied upon the order of the AO and reiterated contentions raised in the grounds of appeal filed by the Revenue.

6. On the other hand, Ld. Counsel of the Assessee has relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference on my part, hence, the same may be upheld and accordingly, the appeal of the Revenue may be dismissed.

7. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). I find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the issue vide para no. 4, 4.2, 6 & 7 at pages 19 to 20 of the impugned order. The said relevant paras are reproduced as under:-

4. *Regarding the addition on account of unexplained share application money, it is seen that there were 3 parties from whom the assessee has*

received share application money being Rs. 5 lacs each. But before the Assessing Officer, assessee had furnished confirmation of only M/s Maneesha Finlease Ltd. With respect to the other two parties i.e. Hilridge Investment Ltd. and Sunny Cost & Forge Ltd., the assessee did not furnish confirmation and PAN etc. of these parties despite a number of opportunities allowed by the Assessing Officer. These details were filed during the appellate proceedings under Rle 46A and remand report was sought from the Assessing Officer.

- 4.2 In the remand report the Assessing Officer did not examine these documents and asked the appellant to produce the Principal Officers of these applicants. On this the assessee told the Assessing Officer that they may be called directly, but he never issued any summon u/s. 131. The Assessing Officer should have examined the documents and after that if needed should have summoned the share applicants. Appellant cannot force any one to appear before his AO. I believe the assessee has discharged his responsibility in giving the details. In view of this, I hereby delete*

the addition of Rs. 10 lacs as unexplained cash credit.

5.....

6. The third disallowance is with respect to interest of Rs. 13,89,056/- on the ICD. As per the AO, the assessee was asked to explain that why this interest should not be disallowed. The assessee though submitted the details of ICD, but did not give any explanation as to why it should not be disallowed, as per the AO. But even if it is so, the conclusion is wrong that the assessee has nothing to say in this regard when he has debited it in the profit and loss account. After all the interest on ICD is an allowable expense of the business and the AO asking such a question that why it should not be disallowed, appears to be out of the way. It is for the AO to prove that any expenditure in profit and loss account has to be bogus if he is disallowing the same. This addition is also deleted.

7. The next addition is on account of static creditor of Rs. 32,94,678/-, M/s Shar Opticals, USA has been outstanding of since many years in books of accounts of the assessee. I have gone through the arguments taken by the AO and explanation submitted by the assessee and in view of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Hotline Electronics Ltd.

(2012), I hereby delete the addition also. With this all the grounds of appeal taken by the appellant are covered.”

7.1 After going through the findings of the Ld.CIT(A), as aforesaid, I find that with regard to addition of Rs. 10 lacs is concerned, from the records, it reveals that on account of unexplained share application money there were 3 parties from whom the assessee has received share application money being Rs. 5 lacs each and before the Assessing Officer, assessee had furnished confirmation of only M/s Maneesha Finlease Ltd. With respect to the other two parties i.e. Hilridge Investment Ltd. and Sunny Cost & Forge Ltd., the assessee did not furnish confirmation and PAN etc. of these parties despite a number of opportunities allowed by the Assessing Officer. These details were filed during the appellate proceedings under Rule 46A and remand report was sought from the Assessing Officer. In the remand report the Assessing Officer did not examine these documents and asked the assessee to produce the Principal Officers of these applicants. On this the assessee told the Assessing Officer that they may be called directly, but he never issued any summon u/s. 131. I am of the view that Ld. CIT(A) has rightly observed that the Assessing Officer should have examined the documents and after that if needed should have summoned the share applicants and on this account the Assessee cannot force any one to appear before the AO. Therefore, the assessee has discharged his responsibility in giving

the details. In view of this, Ld. CIT(A) has rightly deleted the addition of Rs. 10 lacs as unexplained cash credit which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 raised by the Revenue.

7.2 With regard to disallowance towards interest of Rs. 13,89,056/- on the ICD is concerned, I find that the AO asked the assessee to explain that why this interest should not be disallowed. The assessee submitted the details of ICD, but did not give any explanation and AO observed that as to why it should not be disallowed. But even if it is so, the conclusion is wrong that the assessee has nothing to say in this regard when he has debited it in the profit and loss account. After all the interest on ICD is an allowable expense of the business and the AO asking such a question that why it should not be disallowed, appears to be out of the way. I further find force in the finding of the Ld. CIT(A) that it is for the AO to prove that any expenditure in profit and loss account has to be bogus if he is disallowing the same. Hence, he rightly deleted the addition in dispute, which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground No. 2 raised by the Revenue.

7.3 Apropos ground no. 3 relating to addition on account of static creditor of Rs. 32,94,678/-, I find that M/s Shar Opticals, USA has been outstanding of since many years in books of accounts of the

assessee. I further find Ld. CIT(A) by respectfully follow the decision of the Hon'ble Delhi High Court in the case of CIT vs. Hotline Electronics Ltd. has deleted the addition. Hence, there is no question to interfere in the finding of the Ld. CIT(A), therefore, I uphold the same and reject the ground no. 3 raised by the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 02/09/2016.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 02/09/2016

SR BHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

ASSISTANT REGISTRAR
