

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
And

SHRI NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER

ITA.No.519/Del./2019

Assessment Year : 2015-16

M/s. MGS Securities P. Ltd. D-136, Okhla Industrial Area-1, New Delhi 110020 PAN : AAFCM0977J	vs.	The DCIT, Circle -16(3) Delhi – 110 002
(Appellant)		(Respondent)
For Assessee :	-None-	
For Revenue :	Sh. Jeetender Chand, Sr.DR	
Date of Hearing :	15.12.2022	
Date of Pronouncement :	17.01.2023	

ORDER

PER ANIL CHATURVEDI, A.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-6, New Delhi, dated 27.11.2018, relating to the A.Y. 2015-16.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is a company stated to be engaged in the business of buying and selling of shares, securities and other financial products/instruments. Assessee electronically filed its return of income for A.Y. 2015-16 on

25.09.2015 declaring total income of Rs.97,93,290/-. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 12.12.2017 and the total income was determined at Rs. 1,34,45,830/- .

2.2. Aggrieved by the order of the A.O. the assessee carried the matter before the Ld. CIT(A). Who vide order dated 27.11.2018 in Appeal No.CIT(A), Delhi-6/10385/2017-18 dismissed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal and has raised the following grounds :

1. On the facts and in circumstances of the case the impugned order passed by the respondent and upheld by Ld. CIT(A) is illegal without jurisdiction, perverse, violative of natural justice, without fair and objective application of mind to the facts of the case and the law applicable and without being guided by the binding decisions of courts and tribunals and hence liable to be set aside and quashed and declared non est in law.

2. That having regard to the facts and in circumstances of the case, Ld. A.O. is not justified in invoking jurisdiction without obtaining permission of the concerned authority to enquire unconnected issue to that of the one based on which Limited Scrutiny under CASS was initiated and therefore, assessment made is void ab initio and bad in law apart from being beyond the jurisdiction of the Ld. A.O. and Ld. CIT(A) has erred in not holding so, has vitiated the appellate order.

3. That having regard to the facts and circumstances of the case, authorities below have erred in making and upholding the additions totally unconnected and alien to the issue based on which Limited Scrutiny under CASS was initiated. In absence of addition on account of the issue based on which assessment was opened, other additions made are not sustainable and therefore, liable to be deleted.

4. The impugned order had been passed by obtaining behind the back of appellant without a show cause notice specifically proposing to make the addition nor

any effective opportunity of hearing was provided to the assessee and hence, the impugned order passed in violation of natural justice must have been quashed by Ld. CIT(A) and failing to do so has vitiated the order of appeal.

5. The authorities below have erred in not following the binding decisions of Apex Court and High Courts and Tribunals relied upon by the appellant and assessment order cannot, therefore, be sustained both on facts and in law.

6. On the facts and in the circumstances of the case, Ld. CIT(A) has grossly erred in upholding illegal disallowance of Rs. 36,52,540/-made by A.O. on account of interest expenditure incurred and legitimately claimed by the assessee us 36 of the Income Tax Act. The additions made are being illegal and arbitrary hence, liable to be deleted.

7. On the facts and in the circumstances of the case, respondent has grossly erred in making disallowance of interest expenditure based on last year's facts and

figures and without appreciating the facts and figures of the year under consideration. The erroneous order must have been quashed by Ld. CIT(A) and failure in doing so vitiated the appellate order.

8. The respondent is also wrong in raising illegal demands of tax, interest and penalties mechanically and perversely and Ld. CIT(A) is wrong in upholding the same. Therefore, all the demands as well as penalty notice is liable to be quashed.

4. The case file reveals that the appeal was listed for hearing for the first time on 6th Jan 2022 but the same was adjourned. Since January 2022, the appeal was listed for hearing on various occasions but on all those dates neither there was any appearance by the assessee or his Counsel or any adjournment application was filed though the notices were issued through RPAD. Preferring an appeal does not mean mere formally filing it but also taking all the steps to effectively pursue the appeal. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. In such

circumstances, we, therefore, have no option but to dispose of the appeal after considering the material available on record and after hearing the Ld. D.R.

5. Before us, learned DR submitted that though the assessee has raised various grounds but the sole grievance of the assessee is the disallowance of Rs. 36,52,540/-.

6. During the course of assessment proceedings, AO noticed that assessee has paid huge interest on loans and advances taken and has claimed Rs. 38,76,143/- as interest expenditure. AO called for the details of the interest expenses and asked the assessee to furnish the details of loans and advances that were taken and the party wise details of interest charged and the purpose of which the loans were taken. AO noted that the assessee had failed to justify the commercial expediency of the loan given to the various parties on interest free basis. AO after analysis of the financial statements noted that the total funds available with the assessee was to the extent of Rs. 3.93 crores whereas assessee has given loans and advance of Rs. 11.61 crores which included interest free advance and loans which

was a clear case diversion of funds for non business purposes of the assessee. AO also noted that assessee has failed to explain business purpose for giving interest free advances. AO therefore held that interest expense to the extent of Rs. 36,52,540/- to be not for the purpose of business and accordingly disallowed the same.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A), assessee apart from challenging the quantum addition also contended that the assessment framed by the AO to be *ab intio* and bad in law. CIT(A) after considering the submissions of the assessee on the merits of the addition at para 4.3.1 of his order concluded that the interest bearing funds were diverted for non business purposes and assessee had not brought any material on record to show that the lending was on the account of commercial expediency. He accordingly upheld the addition. On the validity of the assessment framed by A.O., for the reasons noted in para 4.2.2 of the order, he upheld the assessment framed by AO.

8. Aggrieved by the order of CIT(A), assessee is now before us.

9. Before us learned DR supported the order of lower authorities.

10. We have heard the Ld. D.R. and perused the material on record. Before us there is no appearance from the side of the assessee. When an appeal is filed before the Tribunal by the assessee himself against the order of lower authorities it is expected that assessee may put forth some documentary evidences in support of his contention to decide the appeal as it is the duty of the assessee to lead evidence in support of its claim and for adjudicating authority to decide upon the sustainability of the claim on the basis of the evidence led by the parties before it. Before us there has been no appearance from the side of the assessee on the various dates though the notices were issued through RPAD. Before us no material has been placed by the assessee to controvert the findings of the lower authorities nor has assessee pointed to any fallacy in

the findings of lower authorities. In view of the aforesaid and in the absence of any contrary material brought on record to rebut the findings of lower authority, we find no reason to interfere with the order of Ld. CIT(A) thus **the grounds of the assessee are dismissed.**

11. **In the result, appeal of the assessee is dismissed.**

Order pronounced in the open court on 17.01.2023.

Sd/-
[N.K. CHOUDHARY]
JUDICIAL MEMBER

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 17th Jan, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "E" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.