

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.88/Del/2020
Assessment Year: 2016-17

DCIT,
Circle-20(1),
New Delhi.

Vs Pragyawan Technologies Private
Limited,
Flat No.02, 2nd Floor,
Plot No.70A/31,
Guru Nanakpura,
Laxmi Nagar,
Delhi – 110 092.

PAN: AAGCP1209D

(Appellant)

(Respondent)

Assessee by : Shri Vijay Singla, CA
Revenue by : Shri Mandeep Pawar, Sr. DR
Date of Hearing : 23.09.2024
Date of Pronouncement : 10.10.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 22.10.2019 of the Commissioner of Income Tax (Appeals)-7, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 10193/188/CIT(A)-7/Del/2018-19 arising out of the appeal before it against the order dated 25.12.2018 passed u/s 143(3) of the Income Tax Act,

1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 20(1), Delhi (hereinafter referred to as the Ld. AO).

2. The assessee had filed the return of income which was selected for scrutiny for the purpose of examining unsecured loans from persons who have not filed their returns of income. The assessee is engaged in the business of wholesale trading in raw leather, modems and routers in addition to consultancy service to telecom companies. During the assessment proceedings, the AO examined the financials and found that the assessee had taken a loan of Rs.2 crores from the following three parties:-

Sl.No.	Name	Loan Amount Received
1.	M/s Manak Estates and Finance Pvt. Ltd.	1,00,00,000/-
2.	M/s Yamini Agencies Pvt. Ltd.	50,00,000/-
3.	M/s Funidea Housing Pvt. Ltd.	50,00,000/-

3. The assessee was asked to furnish the details of these parties to establish the genuineness and notice u/s 133(6) of the Act was also issued by the AO. The notice on one party remained unserved and there was non-compliance by the other two parties. To verify the existence of these entities, commission u/s 131(1)(d) of the Act was issued to DIT(Inv.), Kolkata, which was replied by the DDIT, Unit-4(2), Kolkata, submitting that these entities do not exist in reality and are mere paper companies or shell companies operated and controlled by

Shri Vikas Kumar Aggarwal, a well-known Kolkata based entry operator. The AO also observed that:

“3.4 It is important to mention here again that identity of any of the companies which have extended huge loans has not been proven by the assessee to be genuine despite multiple opportunities being given to the assessee by issuing Notice u/s 142(1) through ITBA portal. Further from the above-mentioned discussions, the creditworthiness of all the companies remains doubtful. It is important to mention here again that M/s Funidea Housing Pvt. Ltd. and M/s Manak Estates and Finance Pvt. Ltd. have extended huge loans to the assessee without any considerable income of their own.”

3.1 Thus, the information with regard to the identity and credit worthiness of the parties provided by the assessee was found to be not sufficient and accordingly, making an addition of Rs.2 crores the AO concluded that:

“3.8 Thus, it can be concluded that these companies who have provided huge unsecured loans to the assessee are merely paper entities and all these transactions are undertaken to introduce assessee’s undisclosed income into his books of accounts in the form of loans and avoid payment of taxes. However, mere submission of papers by the assessee does not make the transactions genuine. More so without the identity of persons, the genuineness of transaction and their creditworthiness cannot be possibly proved.”

4. However, the CIT(A) have deleted the addition for which the Revenue is in appeal raising the following grounds:-

“(i) “Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2 crores made by the AO u/s 68 of the Income Tax Act, 1961 on account of unsecured loans claimed to have been received by the assessee from M/s Manak Estates & Finance Pvt. Ltd., Yamini Agencies Pvt. Ltd. and Funidea Housing Pvt. Ltd, by placing reliance on only the papers and documents submitted on their behalf, and ignoring the findings of enquiry made by the investigation wing, Kolkata proving that these were just paper companies without having any existence at their given addresses?”

(ii) “Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding that the identity and creditworthiness of the creditors as well as the genuineness of the loan transactions were established, and in directing that the AOs of the creditor companies may be intimated to examine the source of funds in their books, without appreciating the report of the Investigation Wing, Kolkata which stated that these were shell companies reflected in the database of entry operators, further evidenced by the fact that these companies did not exist at the given addresses?”

(iii) The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

5. Heard and perused the record.

5.1 The ld. DR, supporting the orders of the ld. AO, has submitted that the CIT(A) has fallen in error in relying the documents filed by the assessee without appreciating that the lenders were paper companies and existed only on paper and, therefore, all the paper work was complete. The ld. DR submitted that the physical existence of the lender companies was not established and even the directors could not be produced. It was submitted that the CIT(A) has failed to take into consideration the financials of the lenders which show that they had borrowed money during the year and lent the same to the assessee.

6. On the other hand, the ld. AR has relied all the evidences which were filed before the tax authorities especially the additional evidences filed before the CIT(A) and, further, the ld. AR relied the remand report received from the AO to contend that the AO was unable to rebut the documentary evidences filed by the assessee.

7. Giving thoughtful consideration to the matter on record and the submissions, at the outset, we find that the grounds which the Revenue has raised are primarily indicating that the Investigation Wing, Kolkata inquiry report is considered to be a vital piece of evidence which, though relied by the AO, is alleged to not have been considered by the CIT(A). At the same time, the assessment order is silent as to what was the substantial content of this report and before us that report has not been filed and relied to establish as to what particular facts coming out of a duly conducted inquiry and relying certain set of evidence the Investigation Wing, Kolkata had given that report.

8. Then, the remand report as filed before us on behalf of the assessee does not indicate that the Assessing Officer had relied any part of the Investigation Wing, Kolkata report to rebut the evidences of the assessee. Thus, for the fact that the CIT(A) order has been impugned for failure to rely the Investigation Wing, Kolkata report is not established by the Revenue.

9. Even otherwise, we find from the remand report that the AO alleges failure of the assessee to discharge the onus of proving the identity, credit worthiness of the parties on the basis of his remand report and not by rebuttal in the form of any evidence. At the same time, the CIT(A) has taken into consideration the set of evidences ordinarily produced by the borrowers like the confirmation of the lenders, bank accounts showing their financial strength and that all the transactions were by banking mode. We find that out of three

lenders M/s Funidea Housing Pvt. Ltd. is not an NBFC while M/s Yamini Agencies Pvt. Ltd. and M/s Manak Estate & Finance Pvt. Ltd. are NBFCs. During hearing before us, the evidences which were filed before the CIT(A) have again been relied and we find that the assessee had paid interest to the lenders and the interest component has been accepted by the AO. It is also established that the borrowed amounts stand paid in subsequent financial years. Then, we find that in case of M/s Manak Estate & Finance Pvt. Ltd., as on 19.09.2024 also the record on the site of Ministry of Corporate Affairs shows that this NBFC is active. The AO in his remand report specifically mentions that no information was received from RBI or the Registrar of Companies that any action was taken against these companies. These facts establish that the AO was merely driven by the report of the Investigation Wing, Kolkata that these lender entities did not exist in reality. The financials of these lenders and their statutory existence show that these lenders are operational and merely for the reason that directors of the company could not be produced, the documentary evidences of the assessee could not have been disregarded by the CIT(A). As M/s Yamini Agencies Pvt. Ltd. and M/s Manak Estate & Finance Pvt. Ltd., were NBFCs there was no burden on the assessee to establish their source of funds when otherwise there is no evidence to show that these NBFCs or M/s Funidea Housing Pvt. Ltd. had received any money in any from the assessee or any person or company associated with the assessee.

10. The Id. DR has though relied the assessment of M/s Yamini Agencies Pvt. Ltd. to draw advantage from the fact that this company had a credit of Rs.136,33,06,723/- and debit transactions of Rs.135,32,90,287/- and there is excess credit over debit, but, that cannot be a basis for drawing an inference that M/s Yamini Agencies Pvt. Ltd., was a paper company. Being an NBFC, such credit and debit entries are very much possible. Thus, we do not find any substance in the grounds of the Revenue as raised and argued before us.

Consequently, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10.10.2024.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 10th October, 2024.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi