

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI

BEFORESHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER  
(Through Video Conferencing)

ITA No. 2745/Del/2016  
(Assessment Year: 2011-12)

JCIT(OSD),  
Kamla Nehru Nagar,  
Ghaziabad  
  
(Appellant)

Vs. Sarvhit Trust,  
G-10, Krishna Plaza, Garh  
Road, Meerut  
PAN: **AAHTS3245C**  
(Respondent)

Revenue by : Shri K. Sampath, Ld. Adv  
Shri V. Rajakumar, Ld. Adv

Assessee by : Shri Manu Chourasia, Sr. DR

Date of Hearing : 02/02/2022

Date of pronouncement : /02/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The Revenue Department has preferred this appeal against the order dated 08.02.2016 impugned herein passed by the Id. Commissioner of Income Tax (Appeals), Meerut (in short "Ld. Commissioner ") for the assessment year 2011-12 u/s 250 of the Income Tax Act, 1961 ( in short 'the Act').

2. Brief facts of the case are that the Assessee being a charitable trust during the year under consideration declared the investment of Rs. 18.65 crores in construction of University building of Shridhar University in Village Bigodna, Tehsil Chirawa, Pilani, Rajasthan.

2.1 The AO during the assessment proceedings, issued a commission to ACIT, Circle, Jhunjhunu to conduct local inquiries with the suppliers from whom the Assessee trust claimed to have made purchases. The ACIT, Circle, Jhunjhunu after conducting local enquiry sent the Report dated 05.02.2014 to the AO wherein, it was stated that no such suppliers namely Radhey Shyam Building material CEERI Road and Kataria Cement Agency at Chirawa Road exist.

2.2 Vide notice dated 21.02.2014 an opportunity was provided to the Assessee to file its objection, in reply to which the Assessee simply stated that material purchased by the trust from two shops are still existing and the Assessee had paid them by cheques. Such explanation of the Assessee was not found convincing by the AO who ultimately made the addition of Rs. 1,03,94,934/- as per provision of section 69C of the Act to the extent of Rs. 49,71,668/- on account of Radhey Shyam Cement Agency and of Rs. 54,23,266/- on account of Kataria Cement Agency.

2.3 The AO during the assessment proceedings also observed that the Assessee trust had repaid loans amounting to Rs. 4.79 crores to Nishyan Farms (P) Ltd and Rs. 25 lakhs to Nishyam Developers (P) Ltd, which were taken during the previous year relevant to Assessment Year 2009-10 and 2010-11 respectively. In reply the

Assessee could not file plausible explanation and the AO made the addition of Rs. 4.79 crores and Rs. 25 lakhs as unexplained expenditure u/s 69 of the Act.

2.4 Further, it was also gathered by the AO that On verification/investigation by the Investigation Wing it was unearthed that the trust had received loan of Rs. 2.94 cores from Nishyam Farms (P) Ltd. which remained unpaid and therefore, the AO added the same to the income of the trust u/s 68 of the Act.

2.5 On the same pattern loan received during the Assessment Year 2010-11 for Rs. 2,99,50,000/- was also added to the income of the Assessee trust as unexplained cash credit.

2.5 Further, during the year under consideration, the Assessee trust had received fresh unsecured loan to the tune of Rs. 21,50,000/- and on being asked by the AO the Assessee could not file satisfactory evidence to discharge its onus, therefore, the AO also made the addition of Rs. 21,50,000/- as per provisions of section 68 of the Act.

3. Aggrieved against the said additions/assessment order passed by the AO the Assessee preferred the first appeal before the Id.Commissioner, who vide impugned order allowed the appeal of the Assessee and deleted the additions stated above made by the AO.

4. Aggrieved against the impugned order, the revenue is in appeal before us and raised the following grounds of appeal:-

“1. The Id. Commissioner of Income Tax(Appeals) has erred in law and on facts in deleting the addition of Rs. 1,03,94,934/- on account of unexplained expenditure u/s 69C ignoring the report of ACIT, Circle Jhunjhunu regarding non existence of parties i.e. Radhey Shyam Building Mate real and Kataria Coment Agency from whom the assessee has claimed to have purchased construction material.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 1,03,94,934/- on account of unexplained expenditure u/s 69C on the basis of valuation report which was not submitted by the assessee during assessment proceedings.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 5,04,00,000/- on account of loan repayment u/s 69C ignoring the fact that the loan of Rs. 2,94,00,000/- received from Nishyam Farms(P) Ltd, 2nd Floore, 46, Amrit Nagar NDSE-II, Delhi during A.Y. 2009-10 and loan of: Rs. 2,99,50,000/- received from Nishyam Farms (P) Ltd., 2nd Floor, 46, Amrit Nagar NDSE-II, Delhi during A.Y. 2010-11- was added by the A.O. u/s 68 during the relevant years.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs21,50,000/- on account unsecured loan u/s 68 ignoring the fact that the assessee could not prove creditworthiness of the lenders during assessment proceedings.

5. The order of the IdCIT(A) be cancelled and the order of the AO be restored.”

5. Heard the parties and perused the material available on record. Ground Nos. 1 and 2 of the appeal relates to same issue

with regard to the deletion of addition of Rs. 1,03,94,934/- on account of unexplained expenditure u/s 69C of the Act.

5.1 It was claimed by the revenue/ department that Id. Commissioner ignored the report of ACIT, Circle Jhunjhunu regarding non-existence of parties i.e. Radhey Shyam Building Material and Kataria Cement Agency from whom the Assessee has claimed to have purchased construction material. Further, the valuation report on the basis on which unexplained expenditure of Rs. 1,03,94,934/- has been deleted, was not substantiated by the Assessee during the assessment proceedings. As per the case of the AO, a commission was issued to ACIT, Circle Jhunjhunu to conduct local inquiries with the suppliers from whom the Assessee trust claimed to have made purchases. The ACIT, Circle, Jhunjhunu vide report dated 05.02.2014 reported that no such suppliers namely Radhey Shyam Building material at CEERI Road and Kataria Cement Agency at Chirawa Road exist. Against which vide notice dated 21.02.2014 an opportunity was provided to the Assessee to file its objection. In response to the same the Assessee simply stated that materials purchased by the trust from two shops still exist and the Assessee had paid them by cheque. However, the AO being not convinced by the said reply made an addition of Rs. 1,03,94,934/- as per provisions of section 69C of the Act.

5.2 Against the said addition, the Assessee in the appellate proceedings before the Ld. Commissioner filed written submissions as well as an application under Rule 46A of the Income Tax Rules, which were forwarded by the Ld. Commissioner to the AO for his

comments. In response to the directions of the Id. Commissioner, the AO vide remand report dated 18.06.2015 submitted his comments vide Remand Report dated 11.06.2015.

5.3 We observe from the remand report that the AO has stated the entire factual position and in the last part submitted as under”

***“Therefore, the contention of the Assessee deserves to be considered on merit of the case”***

5.4 Against the said remand report the Assessee also filed his reply before the Id. Commissioner and the Id. Commissioner while analyzing the facts and circumstances of the case as well as the assessment order and the remand report and the reply of the Assessee to the remand report, deleted the addition of Rs. 1,03,94,934/- made by the AO u/s 69 of the Act, by concluding as under:-

*“Facts of the case are considered. It is undisputed fact on record that assessee is a charitable trust and its objects are of charitable nature. Assessee is registered u/s 12A of the Act. Assessee investment in the building is not disputed by the assessing officer. Assessing officer simply invoked the provision of section 69C of the Act considering the report of commission that suppliers were not available on addresses. It would be appropriate to discuss here section 69C which provides that Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :*

*[Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]*

*Here assessee had spent the expenditure on building construction and source of the expenditure was proved from books of accounts. Expenditures were duly recorded in the books of accounts. There is no dispute about it. Only dispute is that suppliers could not be traced, the Assessee explained the possibility of non-tractability of suppliers. Assessee filed valuation report, map and copy of cash memos. Transactions were duly recorded in the books of assessee. Source of expenditure is out of funds available and duly verifiable from the books of assessee. Assessing officer has wrongly made the addition of Rs. 1,03,94,934/- by invoking the provision of section 69C of the IT ACT. Merely because the party was not traceable could not in itself be a reason sufficient enough to draw adverse inference when the transaction was visible in the books. The matter needed further, inquiry on part of the A.O when the counsel had given all the details in this regard particularly when the amounts are already applied for charitable purpose. The A.O neither in assessment nor in Remand has never doubted the charitable purpose and application of funds. The valuation report shows total investment is in excess of 18 crores. Hence, I delete the addition of Rs, 1,03,94,934/- under section 69C of the I.T Act.”*

5.5 We find that the Id. Commissioner duly considered the provisions of section 69C of the Act and came to the conclusion that the AO had wrongly made the addition under consideration by invoking the provision of section 69C of the Act because the Assessee had spent the expenditure on building construction and source of expenditure was also proved from books of account and the expenditures were duly recorded in the books of account which is not in dispute. The only dispute raised by the AO that the suppliers could not be traced on which the Assessee explained the possibility of non-traceability of the suppliers. Further, the Assessee filed valuation report, map, copy of cash memos and also expenditure. The transactions were duly recorded in the books of account, source of expenditure was also out of funds available and duly verifiable from the books of the Assessee. Finally, the Id. Commissioner held that the AO neither in assessment nor in remand report has ever doubted charitable purposes and application of funds. Before us the revenue/ department has raised the issue qua

deletion of addition of Rs. 1,03,94,934/- on two aspect: (i) Non-tracing of the parties;(ii) non-submission of valuation report during the assessment proceedings.

5.6 We find from the impugned order that the Ld. Commissioner thoroughly examined the issue and rightly held *that merely because the party was not traceable could not in itself be a reason sufficient enough to draw and adverse inference, when the transaction was visible in the books. The matter needed further enquiry on part of the A.O when the counsel had given all the details in this regard particularly when the amounts are already applied for charitable purpose. The A.O neither in assessment nor in remand report has never doubted the charitable purpose and application of funds.* Hence, the contention of the revenue/ department is untenable.

5.7 With regard to the non-submission of the valuation report before the AO, it was duly explained by the Assessee before the Id. Commissioner that during the assessment proceedings the said valuation report was not available, therefore, the Assessee filed the same along with application u/s 46A of the IT Rules. Even otherwise said valuation report was forwarded to the AO for remand report and had duly been considered by the AO while conducting remand proceedings. Hence, the said contention also is untenable. Resultantly, ground Nos. 1 and 2 raised in the appeal by the revenue department stands dismissed.

5.8 Now coming to the ground No. 3. The revenue department has raised the issue that the Id. Commissioner has erred in law and facts

in deleting the addition of Rs.5,04,00,000/- on account of loan repayment u/s 69 of the Act while ignoring the fact that the loans of Rs. 2,94,00,000/- and 2,99,50,000/-received from Nishyam Farms(P) Ltd pertains to the Assessment Years 2009-10 and 2010-11 respectively.

5.8.1 We find that the Id. Commissioner while considering the issue in hand, thoroughly considered the factual position to the effect that actually the loans was received in the AYs 2009-10 and 2010-11, however, the same were repaid in the assessment year under appeal. The then Id.CIT(A) in Appeal No. 248/2011-12 and 2012-13 has already deleted the addition of loan by treating the same as genuine. Further, ITAT in appeal No. 5942/Del/2014 for the AY 2010-11 in which year the loan of Rs. 2,99,50,000/- was taken from NishyamFarms (P) Ltd , has duly accepted the loans as genuine and loan of Rs. 25 lakhs already accepted by the AO in the AY 2010-11 cannot be added back. So, there is no justification to invoke the provisions of section 69 of the act of repayment of loans taken earlier and the loans were duly recorded in the books of account and repayment was made through banking channel and also duly recorded in the books of account therefore, AO had wrongly applied the provisions of section 69 of the Act to the case of the Assessee.

5.8.2 We do not find any material and reason to controvert the findings of the Id. Commissioner for deletion of the addition under challenge. Hence, ground No. 3 stands dismissed.

5.9 Ground No. 4 relates to the deletion of addition of Rs 21,50,000/- which was added by the AO on account of unsecured loan u/s 68 of the Act on the ground that the Assessee could not

prove creditworthiness of the lenders during the assessment proceedings. The Id. Commissioner while considering the addition in hand by the AO, thoroughly analyzed the factual position to the effect that the Assessee has demonstrated that amount was received through banking channel and confirmed by filling the copies of the bank statements, PANs of all the lenders and their confirmations qua loans. If the ITR was not filed by the persons who had advanced money to the Assessee then the Assessee cannot be held responsible as it was for the AO to make further inquiry and confront the Assessee. It was further observed by the Id. Commissioner, when the lenders had confirmed the nature of transactions and if the AO was not satisfied then he could have made further inquiry or ensured that action is taken in the hands of the lenders but not in the hands of the Assessee. Assessee trust had fully discharged its onus, however, the AO without making further inquiry made the addition arbitrarily in the case of the Assessee trust which is illegal. The Id. Commissioner further held that the Assessee has provided correct PAN and copy of PAN card qua Shuvam Yadav from whom the loan of Rs.2,50,000/- was received by the Assessee. The Id. commissioner ultimately deleted the addition of Rs. 21,50,000/- by considering the facts and circumstances and evidences produced on record.

5.9.1 Considering the analyzations and factual determination by the Ld. Commissioner, we do not find any perversity and impropriety in the decision qua addition in hand. Consequently the ground No. 4 is dismissed.

5.10 Ground no. 5 and 6 are formal in nature therefore do not require any independent adjudication.

6. In the result, the appeal of the Revenue Department stands dismissed.

Order pronounced in the open court on 22/02/2022.

-Sd/-  
(R.K.PANDA)  
ACCOUNTANT MEMBER

-Sd/-  
(N.K. CHOUDHRY)  
JUDICIAL MEMBER

Dated: 22/02/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi