

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. No. 4624/DEL/2011
A.Y. : 2008-09

ACIT, CIRCLE-1,
MUZAFFARNAGAR

(Appellant)

vs. M/S AFGAN CANE CRUSHER,
VILLAGE AND POST – BUTRADA,
SHAMLI, MUZAFFARNAGAR
(PAN/GIR NO. AAACFA8812G)
(Respondent)

Assessee by
Department by

: NONE
: MRS. ANUSHA KHURANA, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 20.7.2011 pertaining to assessment year 2008-09.

2. The grounds raised read as under:-

“(i) On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in deleting the addition of ₹ 13,80,000/- made by the Assessing Officer on account of unsecured loans by accepting unsecured loan as genuine. The decision of the Ld. Commissioner of Income Tax (Appeals) is not acceptable as the need for raising the loan has not been investigated into. The Ld. Commissioner of Income Tax (Appeals) has

not considered the fact that all the parties were related to assessee and not interest was paid to them. Further the Ld. Commissioner of Income Tax (Appeals) has not discussed the issue of raising the loan when the company has turnover of ₹ 3,62,47,198/- and was always in a position to repay the loan. Hence, the Ld. Commissioner of Income Tax (Appeals) has erred in principle by treating these loans as genuine only because it were accepted in past years also.

- (ii) On the facts and in the circumstances of the case, as the Ld. Commissioner of Income Tax (Appeals) has erred in law by restricting the sale of scrap to ₹ 5,000/-. The order of the Ld. Commissioner of Income Tax (Appeals) is not acceptable since the assessee is following mercantile system of accounting the values are to be reflected in books and value of scrap is genuine at the rate of 5% as compared to 2% calculated by the Ld. Commissioner of Income Tax (Appeals).
- (iii) On the facts and in the circumstances of the case, as the Ld. Commissioner of Income Tax (Appeals) has erred in law by restricting the expenses under the head 'Chemicals' to ₹ 1,00,000/- as against ₹ 1,40,000/- made by the Assessing Officer. The action of the Ld. Commissioner of Income Tax (Appeals) is not acceptable in principle because at the time of assessment proceedings, the assessee failed to produce complete bills and vouchers and the addition was made on account of non production of supporting evidences.

(iv) The order of the Ld. Commissioner of Income Tax (Appeals) be set aside and that of Assessing Officer restored.”

3. Apropos addition of ₹ 13,80,000/-.

In this case Assessing Officer observed that during the course of assessment proceedings, it was revealed that assessee company has shown unsecured loans of ₹ 13,80,000/- from the following persons:-

1.	Rashida Khatoon	₹ 10,000/-
2.	Rashid Khan	₹ 2,50,000/-
3.	Sanjida Begum	₹ 3,00,000/-
4.	Satish Kumar	₹ 1,70,000/-
5.	Anita Sharma	₹ 1,00,000/-
6.	Harish Prabhakar	₹ 1,50,000/-
7.	Sudesh Prabhakar	₹ 1,50,000/-
8.	Vimal Kumar & Sons	₹ 50,000/-
9.	Anup Kr. Prabhakar & Sons	₹ 2,00,000/-
		₹ 13,80,000/-

3.1 Assessee was asked to explain these loans and as to why these should not be added to the income of the assessee as these unsecured loans are outstanding for more than 3 years but no interest are being paid by the assessee company on the unsecured loans. Assessing Officer formed an opinion that this loans are income of the assessee and profits chargeable to tax u/s. 41(1) of the IT Act. Accordingly, he made the addition of ₹ 13,80,000/- u/s 41(1) IT Act.

4. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) noted that the aforesaid loans were duly recorded in the

books of accounts and confirmations of loans were also filed before the Assessing Officer wherein the depositors accepted to have made interest free loans to the assessee. Ld. Commissioner of Income Tax (Appeals) further observed that the unsecured loans have been raised by the assessee from relatives and friends in the financial year 2004-05 for obtaining credit limit from banks and the impugned sums do not represent trading liability for invoking provisions of section 41(1) of the Act. In view of the above facts Ld. Commissioner of Income Tax (Appeals) held that the Assessing Officer was legally and factually incorrect in invoking provisions of section 41(1) of the Act and made disallowance of ₹ 13,80,000/-.

5. Against the above order the Revenue is in appeal before us.

6. We have heard the Ld. Departmental Representative. None appeared on behalf of the assessee. Upon careful consideration, we find that the matter can be disposed of by perusing the records and hearing the Ld. Departmental Representative. We find that the addition in this case has been made by the Assessing Officer on the ground that the unsecured loans are more than 3 years old. Mere passage of 3 years will not mean that these liabilities are no longer payable. Moreover, the assessee has not written off these sums. Moreover these loans do not represent trading liability. Hence, section 41(1) cannot be invoked. The parties have also confirmed the same. Under the circumstances, there is no infirmity in the order of

the Ld. Commissioner of Income Tax (Appeals). Hence, we affirm the same in this regard.

7. Apropos issue of sale of scrap

On this issue Assessing Officer observed that assessee firm has shown expense of ₹ 2,18,699/- under the repair and maintenance. However, Assessing Officer noted that against repair and maintenance, no sale of discarded parts of plant and machinery has been shown by the assessee firm. Assessee in this regard responded that whatever scrap is generated from the plant and machinery is shown as sales, whenever the sales is made. Assessing Officer proceeded to estimate the scrap sale at 5% approximately and an amount of ₹ 10,934/- was added in this regard.

8. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) considered the issue and held that the addition made by the Assessing Officer was upheld in principle. However, looking to the extent of plant and machinery at ₹ 1,88,700/- only and apparent computation error made by the Assessing Officer while estimating the scrap, Ld. Commissioner of Income Tax (Appeals) opined that it would be reasonable and justified if addition on account of scrap sale is restricted at ₹ 5,000/- only.

9. Against the above order the Revenue is in appeal before us.

10. We have carefully considered the issue. We find that Ld. Commissioner of Income Tax (Appeals) has passed a reasonable order which does not need any interference on our part. Accordingly, we uphold the same.

11. Apropos expenditure under the head Chemical

On this issue Assessing Officer observed that on verification of bills and vouchers relating to chemical, it was found that some of the chemical bills are not fully vouched and verifiable. Assessing Officer made estimated addition of ₹ 1,40,000/- in this regard.

12. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) held that the disallowance is upheld in principle, but was on higher side. He further held that it would meet both the ends of justice if the amount of the disallowance is restricted to ₹ 70,000/- as against ₹ 1,00,000/- made by the Assessing Officer. Thus, Ld. Commissioner of Income Tax (Appeals) observed that assessee got relief of ₹ 40,000/- on this score.

13. Against the above order the assessee is in appeal before us.

14. We have carefully considered the submissions. We find that there is some discrepancy in ground raised by the revenue. Ld.

Commissioner of Income Tax (Appeals) has infact restricted the addition under the head 'chemical' from ₹ 1,00,000/- to ₹ 60,000/-. In our considered opinion, the order of the Ld. Commissioner of Income Tax (Appeals) is reasonable and does not need any interference on our part. Accordingly, we upheld the same.

15. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 28/12/2011.

Sd/-

SD/-

[I.P. BANSAL]
JUDICIAL MEMBER

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Date 28/12/2011

SRB

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

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By Order,

Assistant Registrar,
ITAT, Delhi Benches