

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-126-2018 (O&M)

Date of Decision: 1.11.2018

M/s Shree Krishana Kripa Feeds, Panipat

....Appellant.

Versus

Commissioner of Income Tax, Karnal

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. B.M. Monga, Advocate and
Mr. Rohit Kaura, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

CM-12060-CII-2018

This is an application under Order 41 Rule 27 of the Code of Civil Procedure for placing on record additional evidence.

By way of present application, the appellant seeks to produce affidavits (Annexure A-4 Colly); copy of accounts of M/s Vishal Traders and M/s Haryana Trading Company (Annexure A-5) and copy of death certificate (Annexure A-6). We find that the legal requirements for adducing additional evidence are not satisfied as it could not be explained by learned counsel for the appellant-assessee as to what prevented the appellant from producing the said material even after exercise of due diligence before the authorities below. Moreover, it is an attempt on the part of the assessee to keep the entire matter pending and have *de novo* trial

even after having lost before the Assessing Officer, CIT(A) and the Tribunal. Accordingly, the application for additional evidence is declined.

ITA-126-2018

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 8.8.2017 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Delhi Bench 'SMC', New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 5818/DEL/2016, for the assessment year 2012-13, claiming the following substantial questions of law:-

- a) Whether the impugned order passed by Id. Income Tax Appellate Tribunal is bad in law being perverse for lack of fact finding enquiry provided under the statute, devoid of proper appreciation of facts, circumstances and well settled and thus deserves to be set aside in the interest of justice?
- b) Whether the Income Tax Appellate Tribunal is justified in confirming addition of ₹ 7,20,000/- on account of unsecured loan without appreciating the fact that out of the alleged three loans two are repayment of debt towards the appellant firm, which is a result of non-appreciation of proper facts and thus deserves to be set aside being perverse?
- c) Whether the Income Tax Appellate Tribunal is justified in confirming addition of ₹ 21,46,261/- on account of unverified purchases without directing

proper enquiry of bank transactions thereby allowing tax on the basis of conjectures and surmises which order is bad in law and deserves to be set aside?

- d) Whether the ITAT is justified in confirming addition of ₹ 21,46,261/- on entire purchases which would lead to a case of taxing the entire sales without allowing the deduction of the corresponding purchase and is against the well settled law?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 20.9.2012 for the assessment year 2012-13 declaring income at ₹ 7,98,820/-. During the assessing proceedings, the assessee was asked to explain certain unsecured loans of ₹ 6,20,000/- (wrongly written as ₹ 7,20,000/-) received from three persons. The Assessing Officer treated the said loan as undisclosed income of the assessee and made the addition of ₹ 6,20,000/-. Since the appellant could not produce the record as sought, an addition of ₹ 21,46,261/- was made by the Assessing Officer. Accordingly, vide order dated 24.3.2015 (Annexure A-1), the Assessing Officer framed the assessment under Section 143(3) of the Act at ₹ 36,65,080/-. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 8.9.2016 (Annexure A-2) upheld the assessment framed by the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order

dated 8.8.2017 (Annexure A-3) affirmed the orders, Annexures A-1 and A-2, and dismissed the appeal. Hence, the present appeal by the assessee.

3. After hearing learned counsel for the parties, we do not find any merit in the appeal.

4. Question (a) is general in nature and, therefore, do not call for any specific adjudication.

5. Now coming to question (b), it may be noticed that the assessee had accepted unsecured loans from Kanta Chugh of ₹ 1.50 lakhs on 20.12.2011, Krishna Wanti Chugh of ₹ 2.50 lakhs and Renu Chugh of ₹ 2.20 lakhs on 8.2.2012 and the cash deposit had been made in the bank accounts of the said parties on the same day when the cheques were issued to the assessee. Since the assessee had failed to explain and establish the creditworthiness of the parties from whom the loans had been taken, the Assessing Officer made the addition of ₹ 6,20,000/- treating the unsecured loan as undisclosed income of the assessee.

6. The CIT(A) upheld the said addition of ₹ 6,20,000/- made by the Assessing Officer by observing as under:-

“2.4. After going through the facts and submissions, it is observed that that the AO has made the addition by highlighting that with regard to the three parties, Kanta Chugh, Krishna Wanti Chugh and Renu Chugh, there were cash deposits in the bank account of these parties immediately preceding the cheque issued to the appellant towards unsecured loans. The AO has highlighted that the credit worthiness of the parties had not been established by the assessee.

2.5. On page 3 of the assessment order the AO has pointed out that the poor cash balance in the saving bank accounts of the three parties raises doubt about the credit worthiness of three parties

2.6. Another important aspect detected by the AO highlights that the cash amount deposited in the saving bank accounts was deposited by one person, namely, Mukesh. Such an action appears to be suspicious and non genuine. The AO has therefore rightly raised his doubts that the genuineness and credit worthiness of these unsecured loans have not been established by the assessee and the initial onus had therefore not been discharged by the assessee.

2.7. On the other hand the AR of the appellant has only emphasized that Income Tax Return, PAN and other details have been filed by the assessee before the AO and therefore the credit worthiness of the parties has been established. However, the AR has not provided the details of returned income of the parties and the explanation for deposit of cash by one person immediately before cheques were issued to the appellant. Establishing the credit worthiness and genuine would imply that the parties would be having sufficient surplus saving and funds backed by capital assets to provide loan to the appellant. Merely by providing the Income Tax Return and PAN number is not enough to establish the

credit worthiness and genuineness of the unsecured loans. Accordingly, this addition made by the AO is upheld and the ground of the appellant is dismissed.”

7. The Tribunal while upholding the said addition of ₹ 6,20,000/- made by the Assessing Officer and affirmed by the CIT(A) had held as under:-

“6.1 After perusing the aforesaid finding of the Id. CIT (A), with regard to addition of ₹ 6,20,000/- on account of unsecured loan is concerned, I find that AO has made the addition by highlighting that with regard to the three parties, Kanta Chugh. Krishna Wanti Chugh and Renu Chugh; there were cash deposits in the back account of these parties immediately preceding the cheque issue to the assessee towards unsecured loans. The AO has highlighted that the credit worthiness of the parties had not been established by the assessee. I further find that on of the assessment order the AO has pointed out that the poor cash balance in the saving bank account of the three parties raises doubt about the credit worthiness of these parties. Another important aspect detected by the AO highlights that the cash amount deposited in the saving bank accounts was deposited by one person namely Mukesh. Such an action appears to be suspicious and non genuine. In my considered opinion, the AO has therefore rightly raised his doubts that the genuineness and credit worthiness of these unsecured loans have not been

established by the assessee and the initial onus had therefore not been discharged by the assessee. On the other hand the assessee has only emphasized that Income Tax Return, PAN and other details have been filed by the assessee before the AO and therefore the credit worthiness of the parties has been established. However, the AR has not provided the details of returned income of the parties and the explanation for deposit of cash by one person immediately before cheques were issued to the appellant. Establishing the credit worthiness and genuine would imply that the parties would be having sufficient surplus savings and funds backed by capital assets to provide loan to the assessee. Merely by providing the Income Tax Return and PAN number is not enough to establish the creditworthiness and genuineness of the unsecured loans. Accordingly, this addition made by the AO was rightly upheld by the Ld. CIT(A), 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 dismiss the issue in dispute raised by the assessee.”

The findings of fact recorded by the Assessing Officer, CIT(A) and the Tribunal were not shown to be perverse based on non-appreciation of material on record or based on misreading of any evidence on record. Thus, question (b) cannot be held to be a substantial question of law.

8. Adverting to questions (c) and (d) relating to addition of

₹ 21,46,261/- on account of bogus purchases, the Assessing Officer while

treating the purchases as bogus made addition of ₹ 21,46,261/- to the income of the assessee by holding that the purchases from M/s Haryana Trading Company and M/s Vishal Trader were enquired and summons were issued to them. As per the report dated 17.3.2015 of the Inspector, there was no concern existing in the name of M/s Haryana Trading Company at the given address and a certificate to this effect was also obtained from the Haryana Vaypar Mandal. The assessee was also confronted with the said details vide letter dated 18.3.2015. Similarly, M/s Vishal Traders was also not existing at the given address. In the bills of the said parties, there were no sales tax number/TIN number or CIN number. The assessee had failed to explain the said discrepancies.

9. The CIT(A) while affirming the addition of ₹ 21,46,261/- made by the Assessing Officer had recorded as under:-

“3.4. After going through the facts and submissions it is observed that the AO has conducted detailed enquiries regarding the details of purchases from M/s Haryana Trading Company and M/s Vishal Traders and had come to logically conclude that these purchases from the parties could not be established. The bills of the parties did not have Sales Tax No., TIN No. or CIN No. Further, on physical verification of the addresses these parties were not found to be existing, which was also supported by certificate from local authority.

3.5. The AR of the appellant has submitted that these purchases were part of the sale reflected in the Sales Tax Return. However, on going through the Sales Tax

Return there is no evidence to show that these purchases had been included in the details in the Sales Tax Return. It is pertinent to note that such Modus Operandi is used by some business persons to book bogus purchases for suppressing the profits of business. In the present case the argument of the AR that these purchases were the basis of the sales made, it is not established by facts and evidences. The value of goods as per the VAT return for the year ending 31.03.2012 has been shown at ₹ 53,53,28,987/-. Accordingly, it appears that these purchases from M/s Haryana Trading Company and M/s Vishal Traders have been used for suppressing the profits of the business.

3.6. Even though the books of accounts have not been rejected, since the AO has clearly established that the purchases were bogus, there is no justification for accepting the contentions of the AR that only parts of the purchase should be disallowed.

3.7. In view of the above observations this addition made by the AO is upheld and the ground is dismissed.”

10. The Tribunal while affirming the addition of ₹ 21,46,261/- had noticed as under:-

“With regard to addition of Rs.21,46,261/- relating to unverified purchases is concerned, I find that AO has conducted detailed enquiries regarding the details of purchases from M/s Haryana Trading Company and M/s

Vishal Traders and had come to logically conclude that these purchases from the parties could not be established. The bills of the parties did not have Sales Tax No., TIN No. or CIN No. Further, on physical verification of the addresses these parties were not found to be existing, which was also supported by certificate from local authority. I further find that the AR of the assessee has submitted that these purchases were part of the sale reflected in the sale tax return. However, on going through the sale tax return there is no evidence to show that these purchases had been included in the details in the sale tax return. It is worthwhile to note that such modus operandi is used by some business persons to book bogus purchases for suppressing the profits of business. In the present case the argument of the AR that these purchases were the basis of the sales made, is not established by facts and evidences. The value of goods as per the VAT return for the year ending 31.3.2012 has been shown at ₹ 53,53,28,987/-. Accordingly, it appears that these purchases from M/s Haryana Trading Company and M/s Vishal Traders have been used for suppressing the profits of the business. Even though the books of account have not been rejected, since the AO has clearly established that the purchases were bogus, there is no justification for accepting the contentions of the AR that only part of the purchase should be

disallowed. In view of the above observations this addition made by the AO was rightly upheld by the Ld. CIT(A), 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 dismiss the issue in dispute raised by the Revenue.”

11. In view of the findings recorded above, questions (c) and (d) would not arise.

12. As noticed above, no illegality or perversity could be pointed out by learned counsel for the assessee in the concurrent findings of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal which may warrant interference by this Court. No question of law, much less, substantial question of law arise in the appeal.

13. Accordingly, there is no merit in the appeal and the same stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 1, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes