

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.7144 & 7145/Del/2018

Assessment Year: 2015-16 & 2016-17

DCIT Central Circle-14 New Delhi	Vs	R B Farms and Estates Pvt. Ltd. 2686, Kashmere Gate, New Delhi PAN No. AACCR7224E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. I. P. S. Bindra, CIT
Respondent by	Sh. Ashwani Kumar, CA

Date of hearing:	21/10/2021
Date of Pronouncement:	21/10/2021

ORDER

PER N. K. BILLAIYA, AM:

1. ITA No. 7144/Del/2018 and ITA No.7145/Del/2018 are two separate appeals by the revenue preferred against a consolidated order of the CIT(A)-27, New Delhi dated 13.08.2018 pertaining to A.Y.2015-16 and 2016-17.
2. Since common grievance is involved in the captioned appeals and since CIT(A) has disposed of both the appeals by way of a consolidated order, both these appeals were heard together

and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance read as under :-

1. That the Ld. CIT(A) has erred in facts and on law in giving relief on account of additions made u/s section 68 in the case of assessee company based on the cash flow statement of another company i.e. M/s Anand Motors Products Pvt. Ltd. and also ignoring the fact that there is no direct linkage of cash generated out of bogus purchases in M/s Anand Motors Products Pvt. Ltd. to unsecured loans of Rs.59,40,000/- in M/s R B Farms and Estates Pvt. Ltd.
2. That the Ld. CIT(A) has erred in facts and on law in stating that the additions were made by the AO only on the basis that the application of the assessee is pending before ITSC and clearly ignoring the fact that the AO has made the addition as the assessee failed to explain the identity and credit worthiness of the loan givers and also failed to prove the genuineness of the transactions.
3. That the Ld. CIT(A) has erred in facts and on law in deciding appeal of the assessee based on cash flow statement submitted and admitted by Hon'ble ITSC without appreciating the fact that department has never accepted the cash flow statement filed by assessee and prayed for enhancing bogus purchases Rs. 72.70 Cr. based on seized documents/ or alternatively Bogus purchases of Rs. 104.63 cr. based on percentage of total purchases in rule 9/9A/D3 Report.
4. That the Ld. CIT(A) has erred in facts and on law in relying on cash flow statement submitted and ignoring the fact that the same was submitted without any basis/evidence.

4. In A.Y.2016-17 the quantum involved is Rs.59.40 lacs.

5. Briefly stated the facts of the case are that a search and seizure operation was carried out on AMP group and other related cases on 16.09.2015. Search u/s. 132 (1) of the Act was interlia conducted at premises of the assessee.

6. The assessee is engaged in the business of real estate activities.

7. During the course of search and seizure operation it was found that the assessee has received unsecured loans in F.Y. 2014-15, from two concerns, namely, Earthworks Metallurgical Private Limited and Tachyons Trading Private Limited as follows :-

Serial No.	Name of the Group Company	FY	Unsecured loan provider	Amount (in Cr)
1.	M/s R.B. Farms & Estates Private Ltd	2014-15	M/s Earthworks Metallurgical Private Ltd.	8.25
2.	M/s R.B. Farms & Estates Private Ltd	2014-15	M/s Tachyons Trading Private Ltd	2.71
TOTAL				10.96

8. During enquiries, the AO found that these unsecured loans are non-genuine. The AO was of the opinion that the group company has introduced its own unaccounted income as unsecured loans.

9. On further enquiry the AO found that the two companies from which the assessee has taken unsecured loans were not filing income tax returns nor do they have any creditworthiness.

10. The assessee was asked to explain the transaction in the light of section 68 of the Act.

11. In its reply the assessee contended that the unsecured loan has been met out of the fund/ cash received on account of bogus/ inflated purchase done by M/s. Anand Motors product Pvt. Ltd. The assessee pointed out that an application is filed before the Income Tax Settlement Commission. The AO was of the opinion that application of M/s. Anand Motors Product Private Limited (AMP Private Limited) is still pending for adjudication. The AO concluded by holding that the source of unsecured loan is remained unexplained and accordingly made addition of Rs.10,37,50,000/- in A.Y.2015-16 and Rs.59.40 lacs in A.Y. 2016-17.

12. Assessee carried the matter before the CIT(A) and reiterated its contention that the unsecured loan is met out of bogus/ inflated purchases done by group company

13. Considering the facts and the submissions the CIT(A) found that the application before the ITSC has been accepted and decided vide order dated 28.03.2018 framed u/s. 245 D(4) of the Act. The CIT(A) extracted para 4.4.3 of the order as under :-

“4.4.3 Commission’s Finding: We have heard both the parties and considered their submissions. It is observed that the applicant has explained the introduction of share capital through generation of cash from inflation of purchases. The cash flow statement submitted before the Commission has

been verified by the PCIT. Hence, no further addition is called for on this issue.”

14. The CIT(A) found that in the aforesaid order though all the relevant facts, quantum, names of lender companies etc. have been discussed and decided by ITSC but the name of the assessee company was not mentioned.

15. The ITSC vide order dated 08.08.2018 issued a corrigendum and included the name of the assessee as under :-

“4.4 It was found that M/s. Anand Motor Product Pvt. Ltd., M/s. AMP Motors Pvt. Ltd., had received share capital from certain companies to the extent of Rs.19 crores in the F.y.2009-10 & 2014-15 and M/s. RB Farms Pvt. Ltd. a group concern of the AMP Group had received unsecured loans worth Rs.10.96 crores from two non genuine companies during F.Y.2014-15.”

16. The CIT(A) found that the ITSC, New Delhi has accepted fund flow chart by the assessee and accordingly deleted the addition in both the assessment years i.e. 2015-16 and 2016-17.

17. The DR strongly supported the findings of the AO. It is the say of the DR that there is no linkage between the inflated purchase and the unsecured loans, therefore, these two separate

and distinct transactions and the CIT(A) should not have deleted the additions.

18. Per contra the counsel for the assessee strongly supported the findings of the CIT(A).

19. We have carefully considered the orders of the authorities below and have also gone through the orders of the ITSC, New Delhi placed on record in the form of a paper book.

20. It is an undisputed fact that before the ITSC the group company M/s. AMP Motor Private Limited have taken a plea that it has been inflating purchases from which it has generated cash. We are of the opinion that the cash so generated has been re-introduced in the books of the assessee in the form of unsecured loan from the two companies. Since the group company has paid taxes on such inflated purchases, we do not find any reason why the same amount, when re-introduced in the books should be taxed again.

21. Considering the totality of the facts we do not find any reason to interfere with the findings of the CIT(A) both the appeals by the revenue are dismissed.

22. Decision announced in the open court in the presence of both the representatives on 21.10.2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:-21.10.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21.10.2021
Date on which the typed draft is placed before the dictating Member	21.10.2021
Date on which the typed draft is placed before the Other member	21.10.2021
Date on which the approved draft comes to the Sr.PS/PS	21.10.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	21.10.2021
Date on which the fair order comes back to the Sr. PS/ PS	21.10.2021
Date on which the final order is uploaded on the website of ITAT	21.10.2021
Date on which the file goes to the Bench Clerk	21.10.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	