

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH: 'SMC-2', NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 AND
 SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
 (THROUGH VIDEO CONFERENCE)

ITA NO. 5140/DEL/2019
 A.Y. : 2010-11

M/S NEOTECH NUTRIENTS PVT. LTD. 306, MODI TOWER-98, NEHRU PLACE, NEW DELHI - 110 019 (PAN: AADCN0622M)	Vs.	ACIT, CIRCLE 18(1), NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Shaantanu Jain, Advocate
Department by	Sh. Umeshtakya, Sr. DR.

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the impugned order dated 30.03.2019 passed by the Ld. CIT(A)-37, New Delhi in relation to assessment year 2010-11 on the following grounds:-

"1. Because the action is challenged on facts and law that the reassessment proceedings u/s. 147 are void ab initio on the ground that there was no valid service of notice u/s. 148 of the Income Tax Act, 1961.

2. *Because the action for initiation of reassessment proceedings is unreasonable since while recording reasons, there is non application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material / reasonable cause and justification.*

3. *Because the action is being challenged since the addition of Rs. 25,00,000/- has been made without having cross examination of the person on whose statement or information the proceedings u/s. 147 were initiated which is in violation of the settled principle of law.*

4. *Because the action is being challenged since the addition of Rs. 25,00,000/- has been made without making proper investigation from the other party hereby assessee has discharged the onus by providing relevant documents.*

5. *Because the action for addition u/s. 68 amounting Rs. 25,00,000/- is being challenged on facts and law as the said loan is received by cheque and repaid by cheque after 15 days.*

Prayer

For any consequential relief and / or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.

2. At the time of hearing, Ld. Counsel for the assessee has not pressed the legal grounds involved in ground nos. 1-4 of the appeal, hence, the same are dismissed as not pressed.

3. The facts relating to the issue in dispute is that assessee has filed the return of income at Rs. 5,60,890/- for the assessment year 2010-11 on 1.10.2010. Later on, notice under section 148 of the I.T. Act, 1961 was issued to the assessee on 30.03.2017. In response to notice u/s. 148 of the Act, the assessee submitted on 06.10.2017 that return originally filed on 01.10.2010 for AY 2010-11 may be treated as return in response to notice u/s. 148 of the Act. AO, after adopting the prescribed procedures, under the law and considering the reply filed by the assessee, made the addition of Rs. 25 lakh under section 68 of the Income Tax Act 1961 and completed the assessment under section 147 read with section 143(3) of the I.T. Act vide order dated 26.12.2017. Aggrieved by the assessment order dated 26.12.2017, assessee filed the appeal before the Ld. First Appellate Authority, who vide his impugned order dated 30.03.2019 has dismissed the appeal of the assessee. Now the assessee filed the appeal against the impugned order dated 30.3.2019, before the tribunal.

4. At the time of hearing, Ld. counsel for the assessee draw our attention towards the written submissions alongwith documentary evidences filed by the assessee before the authorities below and especially draw our attention towards page number 30-31 of the paper book and stated that assessee has credited this entry of Rs. 25 lacs and repaid the same in the books of accounts of the assessee which is shown at page number 30 & 31 of the paper book, which remained explained, therefore, section 68 of the I.T. Act is not applicable in the case

of the assessee, hence, he requested that the addition in dispute may be deleted.

5. On the other hand, Ld. DR relied upon the orders passed by the revenue authorities.

6. We have heard both the parties and perused the relevant records especially the paper book containing pages 1-47 which includes the written submissions before the Ld. CIT(A); notice u/s. 148 of the Income Tax Act, 1961 dated 31.3.2017; Booked with India Post Indraprastha HQ dated 1.4.2017 timing 10.18.59 vide speed post no. ED539828587N; Delivered on 7.4.2017; Kunal M. Patel (HUF) vs. Hiren Bhatt or his successors to office & ors. (2011) 334 ITR 25 (Guj.); Reasons recorded dated 30.3.2017; Objections to notice u/s. 148 dated 11.10.2017 before AO; order disposing the objections dated 6.11.2017; Confirmation of account and ledger account of Birch Vinimay Pvt. Ltd. for the AY 2010-11; Bank Certificate alongwith bank statement showing receipt and payment of Rs. 25 lacs to Birch Vinimay Pvt. Ltd.; Company Master Data of Birch Vinimay Pvt. Ltd. and Balance sheet as on 31.3.2010 of Birch Vinimay Pvt Ltd. For the sake of convenience, the page no. 30 & 31 of the Paper Book i.e. Confirmation of Accounts for the period 1.4.2009 to 31.3.2010 and Ledger Account of Birch Vinimay Pvt. Ltd. for the period 1.4.2009 to 31.3.2010 showing receipt and re-payment of Rs. 25 lacs to Birch Vinimay Pvt. Ltd. are reproduced as under:-

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NEOTECH NUTRIENTS PVT LTD
 1410, HEMKUNT CHAMBERS 89,
 NEHRU PLACE,
 NEW DELHI

Birch Vinimay Private Limited
 Ledger Account

1-Apr-2009 to 31-Mar-2010

Date		Particulars	Vch Type	Vch No./Excise Inv.No.	Debit	Page 1 Credit
25-2-2010	By	ICICI BANK	Receipt	32		25,00,000.00
12-3-2010	To	ICICI BANK	Cheque Payment	ICI -146662	25,00,000.00	
					<u>25,00,000.00</u>	<u>25,00,000.00</u>

6.1 After going through the aforesaid details i.e. confirmation of accounts during the period 1.4.2009 to 31.3.2010 and Ledger Account of M/s Birch Vinmay Private Limited for the period 1.4.2009 to 31.3.2010 as shown above, we are of the view that assessee company has received a short-term advance amount of Rs. 25 lacs on 25.2.2010 from M/s Birch Vinimay Pvt Ltd. and repaid the same amount on 12.3.2010 vide cheque no. 146662 /RTGS in Account NO. 13390210002018 UCO Bank by the assessee to the aforesaid said company and the same has been entered in the books of accounts of the assessee. The Leger account of M/s Birch Vinmay Private Limited also establish the same. Therefore, we are of the view that since the assessee has repaid the advance through proper banking channel and M/s Birch Vinmay Private Limited has shown the same in its Ledger Account, therefore, no addition can be made in the hands of the assessee u/s. 68 of the I.T. Act., 1961, hence, the same deserve to be deleted. Our view is supported by the various decisions of the Hon'ble Delhi High Court which includes the following:-

- CIT vs. Karaj Singh (2011) 203 Taxman 218 (P&H), wherein it was held that loan repaid through banking channels – Tribunal, on the basis of material on record, having come to the conclusion that the amount of Rs. 1,50,000/- which was received by the assessee from N had

been repaid to him within a period of 15 days and the said transaction was a bona fide transaction and the provisions of section 68 were not attracted, no interference is called for with the order of Tribunal deleting addition.

- Yamuna Syntehtics P. Ltd. vs. DCIT (2004) 91 TTJ 69 (Del.) wherein it was held that loans received by the assessee through banking channels and repaid through banking channels – Addition under section 68 made on the basis of statement of K, Director not confronted to the assessee and not subjected to any cross objection examination – Further, repayment through banking channels showed that parties were existing and identifiable having bank accounts – balance sheet of the creditor furnished by asseesee identified the source of loans also –Statement of K is not supported by any material – Additions liable to be deleted.
- CIT vs. Smt. Poonam Rani Singh (2008) 6 DTR 96 (Delhi), wherein it was held that Deposit of US\$1 lac found in the bank account of assessee in USA – Report obtained by Foreign Tax Division of CBDT from American authorities revealed that the amount deposited with the bank came from explained sources and the

persons who had advanced the sums to the assessee and her husband were repaid the amount since the agreement between the loanee and the assessee and her husband and could not fructify- Despite this Report AO made an addition of Rs. 34,55,000/- to the income of the assessee which was deleted by CIT(A) and order of CIT(A) was confirmed by Tribunal- Contention of Revenue that even though the transaction may be genuine, there is nothing to suggest the creditworthiness of the loanee is not tenable – In view of an inter governmental exchange which resulted in a report from the IRS department of the American Government to the Foreign Tax Division of the CBDT, suggesting that the transaction was completely above board, the Revenue cannot seek to add the amount to the income of the assessee without any substantial material, but only on surmises – In view of the concurrent finding of fact with regard to the genuineness of the transaction, no substantial question of law arises.

6.2 Keeping in view the facts and circumstances as explained above as well as documentary evidences filed by the assessee especially paper book as discussed above, we are of the view that the amount in dispute is a short term loan which was duly

repaid by the assessee through proper banking channel to M/s Birch Vinmay Private Limited, hence, in our considered view the addition in dispute was wrongly been made in the hands of the assessee which needs to be deleted. Therefore, we delete the addition in dispute.

7. In the result, the Assessee's Appeal is partly allowed.

The decision is pronounced on 29.09.2020.

Sd/-

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

(H.S. SIDHU)
JUDICIAL MEMBER

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi