

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3820/Del/2018
Assessment Year: 2014-15

BLAZING TRAIL TECHNOLOGIES
INDIA PVT. LTD.
53-DG-III, VIKAS PURI,
NEW DELHI – 18
(PAN: AAFCB3876K)

(APPELLANT)

VS. ITO, WARD 5(1)
ROOM NO. 379,
C.R. BLDG
I.P. ESTATE,
NEW DELHI

(RESPONDENT)

Assessee by : Sh. Karanjot Singh Khurana, Adv.
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 05.1.2018 of the Ld. CIT(A)-2, New Delhi pertaining to assessment year 2014-15 on the following grounds:-

Being aggrieved by the order of the AO and the Ld. CIT(A), the appellant craves leave to prefer appeal on the grounds, without prejudice to one another, as follows:-

A. In the facts and circumstances of the case and in law and in violation of the principles of natural justice, the order of the Ld. CIT(A) is perverse in law and on facts on the following grounds:

A.1 The Ld. CIT(A) erred in dismissing the appellant's request for admission of additional evidence.

A.2 The Ld. CIT(A) erred in not considering the appellant's reply to the remand report of the AO.

B. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 6,88,115/- on account of disallowance of expenses.

C. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 22,00,000/- on account of share capital and share premium.

The appellant craves leave to alter, amend, add, modify, delete grounds of appeal before or at the time of hearing before this Hon'ble Tribunal.

2. The brief facts of the case are that assessee filed e-return of income on 30.11.2014 declaring loss of Rs. 7,42,003/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (In short "Act"). Subsequently, the case was selected for scrutiny under CASS and notice u/s. 143(2) of the Act dated 28.8.2015 was issued. As per information available on the official website of India Post, the notice was delivered at the registered address of the assessee on 03.9.2015. Thereafter, several notices, including questionnaire u/s. 142(1) of the Act were issued from time to time. However, there was no compliance on the part of the assessee. None attended the proceedings. Nor were any written communications received. Finally, a show cause notice u/s. 144 of the Act was issued to the assessee on 2.11.2016 and in response to the same a written submission was

received from the A.R. of the assessee, seeking more time for furnishing details / documents as called for and accordingly the case was adjourned to 23.11.2016 and thereafter to 01.12.2016. The AR finally attended the proceedings on 20.12.2016 and thereafter on 26.12.2016. However, beyond copies of certain bills, no details / documents were furnished. Again he sought time till 28.12.2016, stating that all the Directors were abroad and therefore, one final opportunity may be granted. Accordingly, the case was fixed for hearing on 28.12.2016, but the AR did not attend the proceedings on the said date. Despite the aforesaid show cause putting the assessee on notice that the proceedings shall be completed exparte in the event of non-compliance, the assessee has chosen to remain silent. Considering such continued non-compliance and the fact that the proceedings are getting barred by limitation on 31.12.2016, the AO has no option but to complete the proceedings u/s. 144 of the Act and made the addition of Rs. 6,85,115/- on account of

expenses and further made the addition of Rs. 22,00,000/- on account of share capital and share premium by completing the assessment at Rs. 21,43,110/- u/s. 144 of the Act vide order dated 29.12.2016. Against the said assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 05.1.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has erred in not considering the assessee's request for admission of additional evidences and not considered the assessee's reply to the remand report of the AO. He further submitted that Ld. CIT(A) has wrongly confirmed the addition of Rs. 6,85,115/- on account of disallowance of expenses. In this regard, he submitted that the assessee had receipts of Rs. 8,33,334/- from information technology services rendered by it during the captioned assessment year. Against this, the assessee had claimed expenses of Rs. 17,12,789/-. He further

submitted that assessee provided the vouchers in relation to the majority of the expenses, which are at page no. 29-91 of the PB. However, the AO without perusing the vouchers submitted made an adhoc addition of 40% of such expenses amounting to Rs. 6,85,115/- on the ground that the assessee has not produced its books of account alongwith bill/ vouchers, and also because the nature of such expenses and their nexus with the business of the assessee was not ascertainable as per the AO. With regard to addition of Rs. 22,00,000/- is concerned, he submitted that assessee had received an amount of Rs. 22,00,000/- (Rs. 2,00,000/- as share capital, and Rs. 20,00,000/- as share premium). The assessee justified the higher valuation of shares by submitting share valuation report and also provided the identity of the investor, which are at page4 no. 7-14 of the Paper Book. However, the AO treated the entire amount received as share capital and share premium as unexplained credit under section 68 of the Act holding that the assessee has failed to discharge its

onus of proving the source and capacity of share applicants as well as genuineness of the transactions. He further submitted that Ld. CIT(A) has confirmed both the additions without admitting the addition evidences under Rule 46A and failed to specify any of the circumstances under clauses (a) to (d) of Rule 46A(1). In view of above, he requested to set aside the orders of the authorities below and allow the appeal of the assessee.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order. As regards ground no. (a) relating to admission of additional evidence is concerned, it is noted that assessee has submitted some documentary evidences in the form of share application certificate, bank statement and KYC of share holder from which premium was received, bills and vouchers related to expenses. The assessee has not specified the reasons as to why these

evidences could not be furnished by it before the AO. However, the earlier Ld. CIT(A) directed the AO to examine the evidences and submit his comments and accordingly, the AO has submitted its Report vide letter dated 28.7.2017 has submitted that the assessee has failed to specify any of the circumstances mentioned in Rule 46A of the I.T. Rules from Clauses (a) to (d). Further the assessee has not given justification before the Ld. CIT(A) as to why it failed to submit the evidences before the AO which he intends to submit before the Ld. CIT(A), therefore, in the absence of any such justification, Ld. CIT(A) has rightly dismissed the request of the assessee for admitting the additional evidences, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue of dispute and reject the ground (A) raised by the assessee.

5.1 As regards ground (B) relating to confirming the addition of Rs. 6,85,115/- on account of disallowance of expenses is concerned, I find that details and vouchers

have not been linked to verify the genuineness and quantum and the bills and vouchers are a few only. Hence, the Ld. CIT(A) has rightly held that expenses as made by the AP appears to be reasonable and appropriate and therefore, the addition of Rs. 6,85,115/- was correctly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue of dispute and reject the ground (B) raised by the assessee.

5.2 As regards ground (C) relating to confirming the addition of Rs. 22,00,000/- on account of share capital and share premium is concerned, I find that AO observed that during the year under appeal the assessee has received a sum of Rs. 22,00,000/- out of which share capital was Rs. 2,00,000/- and share premium was Rs. 20,00,000/- for which the assessee completely failed to discharge its onus cast upon it under the provisions of section 68 of the Act i.e. identity, creditworthiness and genuineness of the transaction. The AO has stated that despite repeated

opportunity, the assessee did not provide even the primary details in respect of the identity and capacity of the lenders. As per the AO, only the names of the share holders were furnished by the assessee and therefore, the AO added the whole amount of Rs. 22,00,000/- u/s. 68 of the Act as unexplained read with the provisions of section 115BBE of the Act. However, in the appellate proceedings, the assessee has also filed additional evidences in the form of share valuation report dated 20.3.2014 alongwith confirmation from the share holder namely Mr. Subhash Chander Randeve but with no confirmation from the creditors, hence, the additional evidences have not been admitted, as aforesaid. Hence, the Ld. CIT(A) has rightly held that in the absence of any explanation to the nature and source of the credits and genuineness of transaction, he confirmed the addition of Rs. 22,00,000/-, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on

the issue of dispute and reject the ground (D) raised by the assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 10-04-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 10/04/2019

SRBhatnagar
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1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT By Order,

Assistant Registrar, ITAT, Delhi Benches