

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.1209/Del/2015
Assessment Year: 2010-11**

M/s Prinku Landfin P. Ltd., C/om M/s RRA Tax India, D-28, South Extension Part-1, New Delhi. PAN: AAACP7695R	vs	Dy. Commr. of Income-tax Circle-14(1) , New Delhi.
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Appellant

Respondent

Assessee by	Dr. Rakesh Gupta, Advocate Shri Somil Agarwal, Advocate
Revenue by	Shri Surender Pal, Sr. DR

Date of Hearing	04.12.2018
Date of Pronouncement	.01.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 05.01.2015 in Appeal No.1/13-14 for the Assessment Year 2010-11 by the learned Commissioner of Income-tax (Appeals)-7, Delhi, {hereinafter referred to as "the CIT(A)"}, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company and for the Asstt.Year 2010-11, they have filed their income-tax return on 26.9.2010 declaring a total income of Rs.1,24,57,330/-. Assessment was completed

by order dated 7.3.2013 u/s 143(3) of the Income-tax Act, 1961 (“the Act”) at an assessed income of Rs.1,82,49,644/- by making an addition of Rs.3,70,694/- by disallowing interest u/s 36(1)(iii), Rs.33,71,620/- by disallowing 95% of the expenses and Rs.20,53,000/- u/s 68 of the Act in respect of the share application money treating it as the unaccounted income of the assessee and by adding the commission at 2.5%.

3. When the assessee preferred appeal, learned CIT(A) by way of impugned order upheld the additions and dismissed the appeal. Hence, the assessee is in this appeal before us stating that the interest to the extent of Rs.3,70,694/- on account of car loan u/s 36(1)(iii) of the Act by recording incorrect facts. In respect of the disallowance of Rs.33,17,620/- towards 95% of the expenses of Rs.34,92,232/- under the head car running and maintenance, insurance and depreciation by recording wrong facts. So also assessee challenged the addition of Rs.20 lacs on account of share application money received from one M/s Pathik Merchandise Pvt. Ltd. and by making a further addition of Rs.50,000/- i.e. 25% of commission

4. Ground Nos. 4 to 6 are general in nature and do not require any specific adjudication.

5. Ground No.1 relates to the disallowance of the interest component on account of interest on car. According to the learned AO during the assessment proceedings, he found that the assessee company had rent out one Mercedes Benz at a monthly rent of Rs.28,500/-, car was purchased in February, 2008 by raising loan from ICICI bank with an EMI of Rs.1,27,072/- and the assessee company paid an interest of Rs.4,18,740/- attributable to the Benz car during the financial year 2009-10. Learned AO felt that it is beyond imagination of understanding and normal

business practice as to how a prudent businessman could cause a loss for its own venture for providing some sort of advantage to others. On this premise, learned AO disallowed the difference between the interest paid and the rent earned to the tune of Rs.76,740/- so also learned AO disallowed the interest on cars in the names of Prashant Bhalla stating that the payment of interest attributable to assets not put to use for the purpose of assessee's business is not an eligible deduction u/s 36(1)(iii) and, therefore, the amount of Rs.3,70,694/- added holding that the assessee company has made an excessive claim of interest u/s 36(1)(iii) and failed to disclose true particulars. On this aspect, assessee's case is that the Mercedes car which has been rented out for Rs.3,42,000/- was not the car on which the interest of Rs.4,18,740/- was paid but it was an old Mercedes car on which the interest was Rs.7860/-. However, learned AO made a mistake in this respect. Further all the vehicles except Toyota Land Cruiser are registered in the name of the assessee company and this fact is evident from the registration certificate submitted before the learned AO. It was also submitted before the learned AO that the vehicles were in the name of Prashant Bhalla on whose name the loan could be raised.

6. The learned DR placed reliance on the orders of the authorities below.

7. We have gone through the record. By way of letter dated 28.12.2012, which is at page 50 of the paper book, it was brought to the notice of the learned AO by the assessee that the Mercedes car, which was given on rent was only an old car in respect of which only Rs.7860/- was paid towards the interest and the amount of depreciation charged during the year was Rs.2,20,238/- which makes the total of Rs.2,28,098/- and as against this expenditure, the income from that car was Rs.3,42,000/-. However, the learned AO mistook this fact and instead of

taking the facts as they are wrong, he had taken the particulars relating to some other car in respect of which the interest paid was more. At page 17 of the paper book, the assessee furnished the account of interest of old Mercedes car and at page 95 of the paper book; the copy of account of old Mercedes car between 1.4.2007 and 31.3.2008 is also filed. It is further submitted that in respect of Asstt. Years 2006-07 to 2008-09, such an expenditure was allowed as deductible expense and for the year 2008-09, it was so after looking into the account in page no.95. This particular car was purchased in the year 2005-06 and the bank account at page no.97 & 98 of the paper book show the bank statement and the interest thereon in support of the submission of the assessee that ever since the interest expense was allowed as deductible expenditure.

8. In respect of aggregate amount of interest of Rs.7,12,694/- in respect of all the three vehicles, it is the submission on behalf of the assessee that all these vehicles have been used for the purpose of assessee's business not only in the year under consideration but also in earlier years and for all those years, the interest expense was allowed in the orders passed u/s 143(3) of the Act.

9. On a careful consideration of all these facts, we are of the prima facie opinion that there is likelihood of some factual mistake occurred in the observations of the learned AO. It is for the AO to verify whether the interest expense in respect of the old Mercedes car was Rs.7860/- whereas it was fetching a rent of Rs.3,42,000/-. AO will further verify whether there is another Mercedes car in respect of which the interest of Rs.4,18,740/- was paid and if both the cars are different, learned AO is directed to delete the addition made. This is more particularly in view of allowing this expenditure in the earlier years as a deductible expense. We accordingly set aside this issue and remand the matter to the file of

the AO for carrying out the above verification and allowing the deduction subject to such verification.

10. Now coming to the second ground relating to the disallowance of 95% of car running and maintenance, insurance and depreciation of car is concerned, assessee submits that all these vehicles have been put to use and for the earlier years in the assessment order passed u/s 143(3), no such disallowance was ever made. We find from page 57 of the paper book by letter dated 25.2.2013, the assessee submitted to the learned AO that all the cars are used for the purpose of assessee's business and depreciation and interest on car loans are claimed as genuine business expenses and after verification of the books of accounts on the earlier occasions also. On this aspect also, learned AO would verify whether such expenses were allowed for the earlier years and in case such expenses were allowed, it shall be construed that the vehicles were put to use for purposes and accordingly expenses are allowed as claimed. This issue is also remanded to the file of the AO.

11. Now coming to the last addition of Rs.20 Lacs on account of share application money and Rs.50,000/- towards 2.5% thereof on account of commission is concerned, learned AO observed that the assessee company avoided providing true and correct information regarding source of funds received and no person was produced to confirm the transactions and prove the creditworthiness of the share subscribers; that only some documents were submitted and no persons were produced; that there was no representation for the assessee in the proceedings on 1.2.2013; that summons were issued u/s 131 & 13(6) to the assessee company and other parties, who have subscribed to the shares of the assessee company remained uncomplied with; that notice u/s 133(6) issued to M/s Pathik Merchandise was received back unserved;

that none attended for the assessee company for furnishing the information; and M/s Pathik Merchandise is a defunct company and does not carry any business and the assessee had not discharged their burden u/s 68 by proving the identity, creditworthiness of the shareholders and genuineness of the transactions.

12. Learned CIT(A) upheld the findings of the learned AO holding that the identity and creditworthiness of the entity was not proved and the genuineness of the transactions was not established. He referred to the observations of the learned AO that summons was issued but no one from the company attended raising a doubt on its identity. According to the learned CIT(A), the assessee could not show the creditworthiness of the share applicant and no source of income was given to establish that the person had sufficient funds of its own to advance to the assessee.

13. It is the submission on behalf of the assessee that by way of letter dated 30.11.2012, the assessee submitted overwhelming evidences in the form of name of the party from whom the share application money was received during the year, its new as well as old address, copy of confirmation, copy of share application form, copy of Board Resolution, copy of ITR for AY 2009-10 and 2010-11, copy of PAN Card, copy of bank statement, copy of master data details downloaded from the website of Ministry of Corporate Affairs, copy of memorandum of Association, copy of Balance sheet as on 31.3.2009 and 31.3.2010 together with Profit & Loss Account and relevant schedules, copy of affidavit of the director of M/s Pathik Merchandise P. ltd. Confirming the transaction and copy of Form 18, which in turn prove the identity, genuineness and creditworthiness of the party. Form No.18 filed and copy of ITR of AY 2010-11 even shows the addresses of the subscriber company and if the intention of the assessee company had been to avoid providing true and

correct information regarding source of funds received, it would not have given the bank statement to prove the credit worthiness of the party voluntarily. It is further submitted on behalf of the assessee that the name of the assessee company also in the details of investments of the share applicant in their balance sheet which not only confirms the genuineness of the transactions but also confirms the creditworthiness and identity of the subscriber of the share capital. It is further submitted that M/s Pathik Merchandise was located in Kolkatta and the assessee company does not have any control over them and since there was very little time left at the disposal of the assessee for producing the directors of the share applicant company and the matter was posted at shorter intervals, they could not produce such persons. Learned AR also submitted that it is not known at which address Id. AO issued notice u/s 133(6) and anyhow the balance sheet of the said company sufficiently establishes that they were holding the funds to the tune of Rs.5,31,00,000/- proving their creditworthiness and such company being the income-tax assessee submitting regularly the ITRs, the genuineness of the transactions cannot be suspected.

14. Learned DR justified the orders of the authorities below on the ground that the alleged share applicant was a defunct company and in spite of sufficient opportunity, the assessee did not produce the representatives of such company thereby failed to discharge their liabilities to prove the essential ingredients u/s 68 of the Act.

15. In reply, it is submitted by the learned AR that the details of the share applicant company could be verified from the copy of master data details downloaded from the website of Ministry of Corporate Affairs, copy of memorandum of Association, copy of Balance sheet as on 31.3.2009 and 31.3.2010 together with Profit & Loss Account and

relevant schedules, copy of affidavit of the director of M/s Pathik Merchandise P. Ltd. Confirming the transaction and copy of Form 18, which in turn prove the identity, genuineness and creditworthiness of the party and it could be verified that such a company was shown to be active in status.

16. Be that as it may, it is now submitted by the learned AR that the assessee is ready to produce the representatives of the share applicant company before the learned AO so as to dispel all the doubts of the learned AO by furnishing the documents required by him. Having regard to the facts and circumstances involved in this matter and a careful perusal of the observations of the learned AO, we find that despite the fact that voluminous material was produced before the learned AO in the form of name of the party from whom the share application money was received during the year, its new as well as old address, copy of confirmation, copy of share application form, copy of Board Resolution, copy of ITR for AY 2009-10 and 2010-11, copy of PAN Card, copy of bank statement, copy of master data details downloaded from the website of Ministry of Corporate Affairs, copy of memorandum of Association, copy of Balance sheet as on 31.3.2009 and 31.3.2010 together with Profit & Loss Account and relevant schedules, copy of affidavit of the director of M/s Pathik Merchandise P. Ltd. While confirming the transaction and copy of Form 18, learned AO entertained the doubt that because of non production of the concerned persons on the dates fixed for that purpose, the creditworthiness of the share applicant and the genuineness of the transaction was not proved, since the assessee submits that given the opportunity they are ready to produce the directors before the AO for verification of the doubts, we are of the considered opinion that this is a fit case to remand this issue also for verification to the file of the AO

with a direction to the assessee that they shall cooperate with the proceedings before the AO to get the tax liability decided on merits. We accordingly remand the issue to the file of the AO.

17. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th January, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 10th January, 2019
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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