

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B.R BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA 2535/Bang/2019
Assessment Year : 2016-17

The Dy. Commissioner of Income-Tax, Circle-2(1)(1), Bengaluru.	Vs.	M/s Canadian International School Pvt. Ltd., No.8, Prestige Nebula, Level-5, Bangalore North. Bengaluru-560 001. PAN - AACCC 3383 R
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Kannan Narayanan, JCIT(DR)

Date of Hearing	:	08-07-2021
Date of Pronouncement	:	16-07-2021

ORDER

PER BEENA PILLAI, JUDICIAL

Present appeal has been filed by revenue against order dated 30/09/2019 passed by the Ld. CIT (A)-2, Bangalore for assessment year 2016-17 on following grounds of appeal:

1. Whether in the facts and circumstances of the case the CIT(A) was correct in holding that related party liability of M/s LDC Holding Pvt. Ltd. with respect to solar power installation charge was genuine?

2. Whether in the facts and circumstances of the case the Ld CIT(A) erred in holding that the liability towards M/s LDC Holdings Pvt. Ltd. for manpower supply charges as genuine in absence of evidences to support the claim of rendering of service or any contract/agreement entered into for this purpose.

Brief facts of the case are as under:

2. The assessee is engaged in running educational institution in providing educational services. It filed its return of income for year under consideration on 29/09/2016 declaring total income at Rs.4,81,14,710/-. The case was selected for scrutiny to verify large current liability in comparison to the total asset in the balance sheet, large increase and sundry credits and reduction in business income as compared to the previous year, and purchases shown in the ITR is less than the invoice value of imports shown the export import. Subsequently, notice under section 143 (2) was issued to assessee in response to which, representative of assessee appeared before the Ld.AO and filed requisite details as called for

The Ld.AO erred during the examination of details filed by assessee observed that, assessee has outstanding dues of Rs.2,34,55,202/-to LDC Holding Pvt. Ltd. He noted that the amount was paid towards manpower supply charges, repairs and maintenance of school building and solar power system installation charges. It also came to the notice of the Ld.AO that LDC Holding Pvt. Ltd. was a related concern of assessee.

2.1 The Ld.AO called assessee to explain the expenses claimed. Ld. The assessee by its submission filed on various dates submitted that the amount payable to LDC Holdings Pvt. Ltd. was with respect to Solar Power Plant installation. It was submitted that the said expenses was capitalised to cost of solar system and the same has not been debited to the profit and loss

account. Before the Ld. AO response was called upon from LDC Holdings Pvt. Ltd., from where it was concluded that LDC Holdings Pvt. Ltd., has offered the said amount to tax and the confirmation in respect of the same. Assessee thus submitted that the said amount could not be treated as bogus liability.

2.2 The Ld.AO after considering the contentions was of the opinion that the payment made towards solar power plant installation charges and manpower supply charges to LDC Holdings were bogus transaction. He thus made addition under section 68 of the Act in the hands of assessee to an extent of Rs.1,68,70,000/-.

2.3 Aggrieved by the addition made by the Ld.AO, assessee filed appeal before the Ld.CIT (A).

3. The Ld.CIT(A) after considering the submissions of assessee observed and held as under:

“6 I have considered the grounds of appeal, statement of facts and written submissions filed by the appellant, Ground No.1 and 6 are general in nature and do not require any specific adjudication.

6.1 Ground Nos.2 and 4 raised by the appellant are with reference to the addition of Rs.68,70,000/made u/s.68 of the Act in respect of the amount payable for installation of Solar Power Plant to M/s. LDC Holdings Private Limited. The Assessing Officer has giving the finding that the amount outstanding to the extent of Rs.68,70,000/- in the name of M/s. LDC Holdings Pvt. Ltd., is a bogus liability since the transaction for installation of solar plant is considered as bogus. For coming to this conclusion, the A.O. has examined the financials of M/s. LDC Holdings Pvt. Ltd., and held that the said company has shown solar installation charges only to the extent of Rs. 32,75,231/- . During the course of appellate proceedings the appellant has furnished copy of the invoice given by M/s. LDC Holdings Pvt. Ltd., for having installed solar power plant. The copy of the ledger account of M/s. LDC Holdings Pvt. Ltd., furnished before me has been perused, from which it is seen that they have shown the receipt of Rs.68,70,000/- from the appellant and incurred further installation

charges to the extent of Rs.32,75,231/-. In this view of the matter, it cannot be said that the appellant has not installed the solar power plant during the year. It is also seen that the solar power plant has been shown as a Fixed Asset in the financials of the appellant and depreciation has been claimed on the same, which has been allowed by the A.O. This also clearly establishes that the Solar Plant has been installed by the appellant. In course of hearing, the AR of the appellant was asked to furnish the ledger account of MIs. LDC Holdings Pvt. Ltd., in the books of the appellant for the subsequent year to ascertain if the amounts shown as due at the end of the year have been paid or not. The ledger account furnished before me has been perused. It is seen from the ledger account of M/s. LDC Holdings Pvt. Ltd., in the financial year 2016 17 that, the opening outstanding balance of the appellant was Rs. 2,34,55,202/- and in respect of this, the appellant has made payment to M/s. LDC Holdings Pvt. Ltd., of Rs.7,59,691/- on 29.08.2016, Rs.50,00,000/- on 10.11.2016, Rs.1,00,00,000/- on 28.12.2016, Rs.65,00,000/- on 06.01.2017 and Rs.11,95,511/- on 30.03.2017. Thus there was a complete repayment of the opening balance of Rs.2,34,55,202/- outstanding in respect of the year under appeal. The amount payable for installation of solar plant to the extent of Rs.68,70,000/- is also forming part of the opening balance due to M/s. LDC Holdings Pvt. Ltd., as on 01.04.2016. Thus, it is clear from the fact that the appellant has made payments to M/s. LDC Holdings Pvt. Ltd., in the subsequent year and the liability outstanding at the end of the year cannot be considered as a bogus liability. The AO has invoked the provisions of section 68 of the Act, to make the addition of Rs.68,70,000/- in respect of the amount due to M/s. LDC Holdings Pvt. Ltd. for the installation of solar power plant. I am of the considered view that the provisions of section 68 are inapplicable, as the appellant has proved the identity of the creditor, capacity as well as the genuineness of the transactions. Hence, the addition of Rs.68,70,000/- is hereby deleted. This ground is therefore allowed.

6.2 Ground Nos.3 and 4 raised by the appellant are related to the disallowance of Rs.1,00,00,000/- in respect of the amount due to M/s. LDC Holdings Pvt. Ltd., towards manpower supply charges. Even in respect of this addition, the AO has held that the appellant has not established the veracity of the liability to M/s. LDC Holdings Pvt. Ltd., for supply of manpower charges. The AO has held that the appellant has not given the details of the persons who were deputed by M/s. LDC Holdings Pvt. Ltd., to carry out work in the premises of the appellant. It is the appellant's case that they have furnished the invoice issued by M/s. LDC Holdings Pvt. Ltd., for supply of manpower during the financial year 2015-16. They have also furnished the confirmation of M/s. LDC Holdings Pvt. Ltd., and the

copy of the financials and return of income filed by the said company. They have also given the list of employees, who were sent to the appellant's premises for carrying out works during the year. Here again, I find that the A.O. has invoked the provisions of section 68 of the Act, without appreciating that the liability to M/S. LDC Holdings Pvt. Ltd., is genuine. As I have held in the earlier part of this order that the appellant has filed the ledger account showing the payments made to M/s. LDC Holdings Pvt. Ltd., in the next financial year and the entire amount outstanding has been paid, the provisions of section 68 of the Act have no application to the said liability shown by the appellant to M/s. LDC Holdings Pvt. Ltd. Hence, it cannot be held that the liability due to M/s. LDC Holdings Pvt. Ltd., on this score is bogus. The AO is directed to delete the addition of Rs,1,00,00,000/- made on this ground. The round is therefore allowed.

6.3 Ground No.5 relates to charging of interest u/s.234B of the Act. As regards the ground on charging of interest u/s. 234B of the Income Tax Act 1961 is concerned, the Honble Supreme Court in cases of Anjum M.H. Ghaswala Vs CIT, 252 ITR1 and Karanvir Singh Gossal Vs CIT reported in 349 ITR 692 has held that since charging of interest under these sections is mandatory in nature and therefore by the ratio of the above cited decisions interests is an integral part of tax. Therefore, no adjudication is needed.”

3.1 Aggrieved by the order of the Ld.CIT(A) revenue is in appeal before us now.

4. The Ld.Sr.DR submitted that, the work was given by assessee to LDC Holdings Pvt. Ltd. being a related party was a facet to siphon off money from the assessee and therefore the Ld.AO has rightly treated to be bogus liability. He submitted that the entire work was to be completed by M/s LDC Holdings Pvt. Ltd. However M/s LDC Holdings Pvt. Ltd. had incurred further expenditure for the said job by outsourcing it to a third-party.

4.1 In respect of manpower supply charges the Ld.Sr.DR submitted that, the 3 employees of M/s LDC Holdings Pvt. Ltd., vs. relative of the director of the assessee. He submitted that, the payments made to LDC Holding Pvt. Ltd., towards manpower

supply charges has no rational since the persons were such whose credentials did not match with the requirement of the job and yet payment made to them was way higher than what assessee paid to their own capable and experienced expert manpower. He submitted that, assessee before the Ld. AO did not provide the attendance register to substantiate its claim.

4.2 He thus vehemently supported the additions made by the Ld.AO under section 68 of the Act.

4.3 On the other hand the Ld.Counsel submitted that the findings recorded by the Ld. AO was purely on suspicion and surmises. He submitted that, assessee had in fact installed the solar power plant system on which depreciation was claimed for the year under consideration. He submitted that the Ld.AO disallowed the said expenses in the hands of assessee simply for the reason that M/s LDC Holding Pvt. Ltd. had debited a sum of Rs.32,75,231/-towards solar power plant installation charges in its financials whereas, it had received a sum of Rs.68,70,000/- from assessee.

4.4 In respect of manpower supply charges assessee had explained the need for utilising the manpower supply provided by M/s LDC Holdings Pvt. Ltd., during the year when there was extensive repair work carried out by assessee and personal supplied by LDC Holdings Pvt. Ltd., supervise the execution of this work. The Ld.AR submitted that the names of various persons who rendered services for assessee were available with the Ld. AO and no-fault was found in respect of the same. He

also submitted that the manpower supply payments are supported by bills issued by LDC Holdings Pvt. Ltd.

4.5 He thus supported the orders passed by the Ld.CIT(A).

We have perused submissions advanced by both sides in light of records placed before us.

4.6 The Ld.CIT(A) has made a categorical finding of fact that the amount payable for installation of solar plant forms part of opening balance due to M/s LDC Holding Pvt. Ltd., as on 01/04/2016. The Ld.CIT(A) has returned a finding of fact that, provisions of section 68 are in applicable, as assessee has proved the identity of the creditor capacity as well as the genuineness of the transaction.

5. Now coming to the manpower supply service charges paid by assessee, the Ld.CIT(A) notes that as long as M/s LDC Holding Pvt. Ltd. is genuine, no addition could be made in the hands of assessee under section 68 of the Act. The assessee had filed ledger accounts showing the payments made to LDC Holdings Pvt. Ltd., in respect of manpower supply service charges and that in the subsequent financial year the entire amount outstanding was paid by assessee. It is also been recorded by the Ld.CIT(A) that provisions of section 68 of the Act would not have any application to the said liability shown by assessee to M/s LDC Holding Pvt., for the year under consideration.

5.1 In our considered opinion no-fault could be profound in the view taken by the Ld. CIT (A). Merely because M/s LDC Holding Pvt. Ltd., outsourced solar plant installation work to a third-

party, would not make the transaction to be bogus. Similarly, in respect of manpower supply charges paid by assessee, except for the allegation by the Ld.AO that the employees who rendered services to assessee were related to the director of assessee would not lead to a conclusion that the necessity of such services were not required by assessee. In any case there is no evidence brought on record by the Ld. AO that assessee was not in requirement of any manpower supply services or that the solar plant machine was not installed by assessee.

5.2 Insofar as application of section 68 is concerned, the amount under consideration are expenses in the hands of assessee. Section 68 cannot be applied in the present facts of the case as there is no cash credits in the books of account of assessee. Thus in our view addition made in the hands of assessee by invoking provisions of section 68 are misconceived and has been rightly deleted by the Ld.CIT(A).

5.3 We therefore do not find any infirmity in the order passed by the Ld.CIT(A) and the same is upheld.

Accordingly, grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in open court on 16th July, 2021.

Sd/-
(B.R BASKARAN)
Accountant Member
Bangalore,
Dated, the 16th July, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT Bangalore

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		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-7-2021		Sr.PS
3.	Draft proposed & placed before the second member	-7-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-7-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-7-2021		Sr.PS/PS
6.	Kept for pronouncement on	-7-2021		Sr.PS
7.	Date of uploading the order on Website	-7-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-7-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS