

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.951/Ind/2016
Assessment Year:2012-13**

Deputy Commissioner of Income Tax Circle 2(1), Indore	बनाम/ Vs.	M/s KBG Life Infra Pvt. Ltd, 101- 102, 1 st floor, 385-390 Lokhandwala Street, Goyal Nagar Main Ring Road, Indore
(Revenue)		(Respondent)
P.A. No.AADCK7914K		

Revenue by	Smt. Ashima Gupta, Ld.CIT
Respondent by	None
Date of Hearing:	06.09.2018
Date of Pronouncement:	12.09.2018

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal filed at the instance of Revenue pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I, Indore, (in short 'CIT(A)'), vide appeal No. IT-119/2015-16 order dated 29.04.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 31.03.2015 by ACIT, Circle 3(1), Indore.

2. When the case was called for hearing none appeared on assessee's behest. Ld. Departmental Representative placed the copy of remand report dated 29.08.18 given by ACIT, Circle-2(1), Indore which was made on the direction of the Tribunal given on 4.7.2018. The case was heard with the assistance of Ld. Departmental Representative and the records available in the file.

3. Briefly stated facts as culled out from the records are that the assessee Company is engaged in the activity of civil construction and development. Income of Rs. 1,11,87,070/- declared in the Return of Income filed on 26.09.2012. Case selected for scrutiny through CASS. Necessary notice u/s 143(2) and 142(1) of the Act along with the questionnaire were duly served upon the assessee. Survey proceedings u/s 133(A) of the Act were conducted on 30.1.2002 at the business premises of the assessee and certain documents were impounded and assessee also surrendered undisclosed income as provided in para 2.1 of the impugned assessment order. The Ld. Assessing Officer on perusing the Profit & Loss Account & CIB information on ITD model generated through system, conducted enquiry about the fixed deposits made by the assessee as well as increase in cash in hand during the year. But due to lack of sufficient information, Ld.A.O could not examine the issues in the light of books of accounts and completed the assessment after making following additions to the total income

declared in the income tax return thereby assessing income at Rs.20,98,96,744/-;

Total income as per return	Rs.1,11,87,070/-
Add: Unexplained Investment	Rs.17,07,05,058/-
Add: Disallowance of legal expenses	Rs.13,17,264/-
Add:Interest on FDR not shown in the books of account	Rs.1,19,49,354/-
Add: Unexplained Cash Credit	Rs.97,39,949/-
Disallowance of Commission expenses	Rs.49,98,049/-
Assessed income	Rs.20,98,96,744/-

4. Aggrieved assessee preferred an appeal for the Ld.CIT(A). Remand report was called for and submissions filed by the assessee has been examined and Ld.CIT(A) concluded the appellate order by deleting all the additions made by the Ld.A.O.

5. Now the Revenue is in appeal before the Tribunal raising following grounds;

“1. Ld. CIT(A) has erred in law and on the facts and the circumstances of the case in deleting the addition of Rs.17,07,05,058/- on account of unexplained investment in FDR by ignoring the findings of AO and by bringing out source of investment specifically in his order.

2. Ld. CIT(A) has erred in law and on the facts and the circumstances of the case in deleting the addition of Rs.1,19,49,354/- on account of

interest on FDRs by ignoring the findings of AO and by bringing out source of investment specifically in his order.

3. Ld. CIT(A) has erred in law and on the facts and the circumstances of the case in deleting the addition of Rs.97,39,949/- on account of unexplained cash credit by ignoring the findings of AO and without having any evidences related to the genuineness of unexplained cash credit.

4. Ld. CIT(A) has erred in law and on the facts and the circumstances of the case in deleting the addition of Rs.149,98,049/- on account of disallowance of commission expenses by ignoring the findings of AO and ignoring the fact mere deduction of TDS on any payment does not prove its genuineness.”

6. Ld. Departmental Representative vehemently argued and supporting the order of Ld. Assessing Officer and also placed copy of remand report issued in pursuance of the directions given by the Tribunal on 4.7.18.

7. We have heard the contention of Ld. Departmental Representative and perused the records placed before us.

8. Apropos Ground No.1 & 2 relating to addition for unexplained investment in FDRs at Rs.17,07,05,058/-, interest estimated on these FDRs at Rs.17.07 crores at Rs.1,19,49,354/-. We observe that the Ld.A.O made impugned addition on the basis of CIB information generated through system at ITR model as per which details of various FDRs made by the assessee during the year were reflected. In the absence of necessary submissions and reply by the

assessee, Ld.A.O grossly added all the FDRs made during the year. Estimated interest accrued on these FDRs were also calculated and added to the income of the assessee.

9. When the matter came up before Ld.CIT(A, he) after making necessary verification of the books of accounts and documents filed by the assessee, deleted the impugned addition towards fixed deposit receipts of Rs.17,07,05,058/- as well as estimated interest accrued on Rs.1,19,49,354/- observing as follows;

“6. By these grounds the appellant has disputed the addition of RS.17,07,05,058/- being unexplained investment in FDRs and Rs. 1,19,49,354/- being interest on the said FDRs. The detailed facts of the case as per the assessment order are reproduced at Para No.2 above and the detailed submissions of the appellant are reproduced at Para No.3 above. The AO in the remand report has not made any comments on the merits of the explanation given by the appellant during the course of appellate proceedings.

6.1 As seen from the assessment order the said addition has been made as the appellant failed to give any explanation of the source of investment in the FDRs as reflected in the AIR/CIB Information as available with the AO, copy of which was supplied to the appellant, and books of accounts were not produced. During the course of appeal proceedings the appellant has given detailed explanation of the sources of the said investment. The appellant filed a chart showing the source of investment in the FDR and also explained that the FDRs were taken for short periods and were renewed when

matured which is reproduced as **Annexure -A**

6.2 Copy of the ledger account of FDR was also submitted and bank book and cash book was also produced for verification. The explanation of the appellant was verified with respect to the cash and bank book produced and it was seen that the FDI;Cs were duly recorded in the books of accounts and were routed through the bank account of the appellant. The cash deposit in the bank account was also explained to be from sale of flats or advance against sale of flats. Considering the totality of facts it is found that there was no basis to hold that the investment in FDR was not recorded or that it was out of unexplained sources. The investment and interest both were duly reflected in the books of accounts maintained by the appellant which were also audited. In view of the above the addition of Rs.17,07,05,058/- and grounds of the appellant Rs.17,07,05,058/- & Rs.1,19,49,354/- Deleted”

10. We further find that during the appellate proceedings before the Ld.CIT(A) remand report was called for from the Assessing Officer but no specific comment about the issue raised in this ground was made. Therefore when the case came up for hearing before us on 4.7.18, the Ld.A.O was directed to file the remand report on investigation made on FDRs within four weeks. In compliance there to the Ld.ACIT, Circle-2(1), Indore failed the remand report on 29.08.2018 on

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record. In this remand report Ld.A.O has specifically mentioned that source of investment in FDR and cash deposits reflecting in AIR information were found duly recorded/reflected in the bank accounts and books of accounts of the assessee. The relevant portion of the remand report dated 29.8.18 is mentioned below;

KBG Life Infra pvt. Ltd. ,
A.¥; 2012-13



OFFICE OF THE
ASSISTANT COMMISSIONER OF INCOME-TAX,
CIRCLE-2(1), Indore.

Room No. 204, Aayakar Bhawan (Annexe), Opp: White Church,
Indore E-mail: Indore.dcit2.1@incometax.gov.ip.Ph.:-2494077

No.:IND/ACIT/Cir-2(1)/Report/KBGLIPL/2018-19

Date: 29.08.2018

To

The Commissioner of Income-tax (DR),
ITAT, Indore.

[Submitted through Proper Channel]

Respected Sir,

Sub: Report in the case of KBG Life Infra Pvt. Ltd. for
the A.Y. 2012-13

Ref: Letter No. CIT(DR)/ITAT /IND/2018-19
dated 05.07.2018

Kindly refer to the above.

2. At the outset, it is submitted that amount of Rs. 17,07,05,058/- as per AIR information includes amount of Rs. 14,31,44,383/- as FOR and amount of Rs. 2,75,60,675/- as cash deposits exceeding Rs. 2,00,000/-. Thus whole of amount do not pertain to FORs only.

3. During assessment proceedings, supporting evidences and details had not been produced by the assessee and they were produced first time as additional evidences before the Ld. CIT(A) during the appellate proceedings. Remand report had been called by Ld. CIT(A)-1, Indore on additional evidences submitted by the assessee. Remand report dated 06.04.2015 in the case was submitted to the Ld. CIT (A)-1, Indore on 08.04.2015. It is pertinent to mention here that on FOR details submitted by the assessee, the AO, vide para 'b' on page 3 of remand report, had commented as under:-

... " However along with application submitted as fresh evidence under Rule 46A, the assessee company has submitted details of FOR with State Bank of India along with ledger, as reflected in AIR/CIB information, which is perused and appropriate decision may be taken on the basis of merit"

and the remand report submitted by the AO has been made part of appellate order dated 29.04.2018 in appeal no. IT-119/2015-16. It is pertinent to mention here that on merits of evidences, no adverse comments had been made by the then AO in the remand report submitted.

4. Vide para 6.1 and 6.2 of the appellate order dated 29.04.2015, it is seen that the Ld. CIT(A) had examined FDRs and cash deposits during appellate proceedings. Relevant portion of the order is enumerated as under:

"During the appeal proceedings the appellant has given detailed explanation of the source of investment. The appel/ant filed a chart showing the source of investment in the FDR and also explained that the FDRs were taken for short periods and renewed when matured which is reproduced as Annexure- A.

6.2 Copy of ledger account of FDR was also submitted and bank book and cash book was also produced for verification. The explanation of the appellant was verified with respect to the cash and bank book produced and it was seen that the FDRs were duly recorded in the books of accounts and were routed through the bank account of the appellant. The cash deposit in the bank account was also explained to be from sale of flats or advance against

sale of flats. ""

5. As per the directions of the Hon'ble Tribunal, report of AO on the issue of investment in FDR has only been sought. Accordingly, the assessee was asked to adduce evidences in support of investment made in FDRs for verification of facts by the AO. On the basis of details submitted and detailed verification made from original records i.e. certified bank statements, cash book, original receipts for cash deposits, ledger

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of flat owners, registered documents in their names etc, Sources of investment in FDRs and of cash deposits as per AIR Information for total amount of Rs. 17,07,05,058/- were found duly recorded/ reflected in bank accounts and books of accounts of assessee.

Submitted.

Yours faithfully,

Sd/-

(N.K. Agarwal)

Asst. Commissioner of Income-tax, Circle- 2 (1), Indore.

11. From perusal of the findings of Ld.CIT(A) as well as remand report and also on the perusal of the paper book filed by the assessee running from page 1 to 85 dated 23.12.16 and paper book running page 1 to 107 dated 29.6.18, we find that the addition made by the Ld.A.O has been rightly deleted by Ld.CIT(A) as the alleged fixed deposit receipts are not unaccounted and necessary transactions relating there to have been passed through the books of accounts verified by the Ld.A.O. As the impugned amount of fixed deposit receipt has been explained there remains no basis for the addition of interest computed there on. Ld. Departmental Representative failed to controvert the details submitted by the Ld.A.O in its

remand report. We, therefore in the given facts and circumstances of the case find no inconsistency in the findings of Ld.CIT(A) and therefore Ground No.1 & 2 of revenue's appeal deserves to be dismissed.

12. Apropos Ground No.3 related to deletion of addition of Rs.97,39,949/- on account of unexplained cash, Brief facts are that the Ld.A.O while examining the balance sheet observed that as on 31.3.2012, cash and cash equivalent of Rs.3,66,76,221/- has been reflected whereas the opening balance on 1.4.2011 stood at Rs.2,69,36,273/-. As the assessee failed to produce books of accounts, increase in cash and cash equivalent of Rs.97,39,949/- was added to the income. Ld.CIT(A) deleted the addition after making due verification of books of accounts.

13. Now the Revenue is in appeal before the Tribunal. Ld. Departmental Representative vehemently argued supporting the order of Ld. Assessing Officer.

14. We have heard the contention of Ld. Departmental Representative and perused the records placed before us. The impugned unexplained cash credit of Rs.97,39,949/- was deleted by Ld.CIT(A) observing as follows;

“7. Ground No.4: By this ground the appellant has disputed the addition of Rs.97,39,949/- being unexplained cash credit. The detailed facts of the case as per the assessment order are reproduced at Para No.2 above and the detailed submissions of the appellant are reproduced at Para No.3 above. The AO in the remand report has not made any comments on the merits of the explanation given by the appellant during the course of appellate proceedings.

7.1 The findings on the issue in dispute are recorded at Para No.6 page 12 of the assessment order. The AO found that as per the balance sheet as on 31.3.2012 the cash and cash equivalent stood at Rs.3,66,76,222/- out of which Rs.2,69,36,273/- pertained to the preceding year and the balance increase of Rs.97,39,949/- was not satisfactorily explained as no books were produced by the appellant. The amount was therefore treated as unexplained cash credit and added to the total income. The appellant argued that the addition of Rs. 97,39,949/-- was unjustified as the amount was the reflection of the cash and cash equivalent position for the year under consideration as per the books of accounts which were duly audited. It was also explained that the increase was in view of the increase in advances from customers, short term borrowings and increase in paid up capital. Considering the fact that the amount represented recorded transactions and the books were duly

audited there was no reason to conclude that the amount was not satisfactorily explained. In the result the addition of Rs. 97,39,949/- is therefore directed to be deleted. This ground of the appellants is therefore allowed. Rs.97,39,949/- Deleted”

15. Ld. Departmental Representative could not controvert the findings of Ld.CIT(A). We find that the impugned addition was made only due to lack of verification from the books of accounts. Ld. CIT(A) after duly appreciating the books of accounts produced before him has examined the regular entries appearing in the cash book and coming to the conclusion that the increase in cash and cash equivalent was in view of the increase in advances from customers, short term borrowings and increase in paid up capital. In the given facts and circumstances of the case we are of the considered view that the Ld.A.O was not justified in making the addition of Rs.97,39,949/- as the necessary increase has been duly explained and same is not specifically from a particular person or parties but it is a cumulative effect coming at the year end being excess

of cash and cash equivalent receipt as against the total of cash and cash equivalent paid during the year for various transactions done in due course of business. No interference therefore is called for in the findings of Ld.CIT(A). Ground No.3 of the Revenue's appellant is dismissed.

16. Apropos Ground No.4 related to deletion of addition of Rs.49,98,049/- on account of disallowance of commission expenses, Brief facts of the case are that the Ld.A.O observed that brokerage and commission expenses of Rs.49,98,049/- have been debited in the Profit & Loss Account. He directed the assessee to file the details about the genuineness of the expenses and also to provide details of tax deducted at source. Necessary information could not provided which left no option with the Ld.A.O except to disallow the commission expenditure of Rs.49,98,049/-. When the assessee came up in appeal before the Ld.CIT(A) about the impugned disallowance, the Ld.CIT(A) after going through the details of commission paid and tax

deducted at source and copies of accounts of brokers along with comparative chart for last three years, deleted the disallowance observing as under;

“8. Ground No.5: By this ground the appellant has disputed the addition of Rs.49,98,049/-being disallowance of commission expenses. The detailed facts of the case as per the assessment order are reproduced at Para No.2 above and the detailed submissions of the appellant are reproduced at Para No.3 above. The AO in the remand report has not made any comments on the merits of the explanation given by the appellant during the course of appellate proceedings.

8.1 From the assessment order Para No 7 page 13 it is seen that the primary reason for the disallowance was that the appellant failed to file any evidences *in* support of the claim of commission expenses.

8.2 During appeal proceedings the appellant has filed the details of commission paid TDS made on the commission paid, copies of accounts of brokers to whom commission paid and has also filed a comparative chart of the commission payment for the last three years. Appellant has also explained that the brokerage has been paid on the basis of advance received from the customers. The brokerage for the year has increased due to installments and final payments received during the year on which brokerage was paid in the year. It was also pointed out that the similar payment of brokerage in the years 2011 12 and 2013-14 was also found reasonable in scrutiny proceedings for those years and no disallowance was made. Considering all relevant facts the addition of Rs.49,98,049/- is therefore directed to be deleted. This ground

of the appellant is therefore allowed”. Rs.49,98,049/- Deleted”.

17. Now the Revenue is in appeal before the Tribunal. Ld. Departmental Representative vehemently argued and supporting the order of Ld. Assessing Officer.

18. We have heard the contention of Ld. Departmental Representative and perused the records placed before us.

19. The issue raised in this ground by the Revenue on deletion of disallowance of commission expenses of Rs.49,98,049/- has been deleted by Ld.CIT(A). We find that the assessee has filed ledger account of the broker which shows that regular commission have been paid round the year to various persons. Yearly details of the broker has also been furnished along with detailed ledger account showing Permanent Account Number of the brokers. Income Tax has been deducted at source on the alleged commission expenses as and when applicable. The alleged commission has been paid to the brokers for providing services of selling flats

constructed by the assessee. Respective details showing name of the flat owner, flat No and the sale consideration has been prepared and also been filed in the Paper Book running page No 36 to 85. Ld. Departmental Representative failed to controvert these details as well as the findings of Ld. CIT(A).

20. In the given facts and circumstances of the case we are of the view that the alleged amount of commission expenses are genuine and Ld.CIT(A) has rightly deleted the disallowance. We uphold the same and dismiss Ground No.4 raised by the revenue.

21. In the result the appeal of the revenue stands dismissed.

Order was pronounced in the open court on 12.09.2018.

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated : 12/09/2018

/Dev

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

KBG Life Infra Pvt. Ltd
I.T.A. No. 951/Ind/16

Private Secretary/DDO, Indore