IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 7157/Del/2019 : Asstt. Year : 2011-12

M/s. Red Pro Motors Pvt. Ltd. (Formerly known as Red Pro Linkers Pvt. Ltd.), 101, 10th Floor, PP Towers Netaji Subhash Place, Pitampura, New Delhi-110034	Vs	ITO, Ward 21(2), New Delhi-110002
(APPELLANT)		**(RESPONDENT)**
PAN No. AADCR9332C		

Assessee by : Sh. M. R. Sahu, CA
Revenue by : Sh. Ramesh Kumar, Sr. DR

Date of Hearing: 05.11.2020		**Date of Pronouncement: 14.12.2020**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the ld. CIT(A)-7, New Delhi dated 08.07.2019.

2. Following grounds have been raised by the assessee:

"1. That the initiation of the reassessment proceedings u/s 147/148 of the Income Tax Act is illegal and thus the assessment order passed u/s 143(3) r.w.s. 147 is null and void.

2. That the reasons recorded before the issue of notice u/s 148 of the Income tax Act are not bonafide and not proper. Hence, the assessment made on such invalid reasons should be quashed.

> *3. That the assessment order passed u/s 143(3) r.w.s 147 of the Income tax Act dated 07.12.2018 is bad in law and is against the provisions of the Income tax Act. Thus, the assessment completed u/s 143(3) r.w.s. 147 must be annulled and be treated as invalid assessment.*
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> *4. That the Ld. CIT(A) erred in law and on facts in confirming the addition made by the assessing officer as cash credit u/s 68 of the Income tax Act of Rs. 50,00,000/- without appreciating the facts of the case and giving the assessee a proper opportunity of being heard against the principals of natural justice. Thus, the addition must be deleted.*
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> *5. That the Ld. CIT(A) erred in law and on facts in upholding the addition made of Rs. 50,00,000/- u/s 68 of the Act as accommodation entry merely on the basis of a statement of a third party Mr. S K Jain which was not confronted to the assessee company and was not cross examined. Thus, the addition made must be deleted.*
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> *6. That the Ld. CIT(A) erred in law and on facts in sustaining the addition made by the assessing officer of Rs. 75,000/- being 1.5% of Rs. 50,00,000/- treating the said notional amount as unexplained investment as commission paid for taking the alleged accommodation entry without appreciating the facts on record. Thus, the addition made of Rs. 75,000/- must be deleted.*
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> *7. That the Ld. CIT(A) erred in law and on facts in levying interest u/s 234B of the Income tax Act as per the computation with the assessment order without appreciating the facts on record. Thus, the interest levied must be deleted."*

3. The assessee did not press the issue of reopening u/s 148 taken at Ground Nos. 1 to 3.

4. The assessee company was incorporated on 26.03.2008 under the Companies Act, 1956 and has Sh. Arun Kumar and

Sh. Ranjan Gupta as the Directors. For the instant year, the assessee filed return of income on 15.09.2011 declaring loss of Rs.13,159/-.

5. During the year, the assessee has received unsecured loan of Rs.50,00,000/- from one company namely M/s RKG Finvest Pvt. Ltd. The revenue alleged that as per the information received from the Investigation Wing that this company has been floated by the entry operators and is a dummy company involved in providing accommodation entry in the garb of ostensible business transactions though infact not conducting any business operations and as such the amounts received from M/s RKG Finvest Pvt. Ltd. are to be treated as bogus and taxable u/s 68 of the Income Tax Act, 1961. The AO has issued notice u/s 133(6) to the lender company and sent Inspector for verification of the premises of the lender company. While the lender company sent reply to the AO by E-mail, the Inspector reported that the lender company was at tenant for the period from April 2014 to March 2016 at the said premises. Based on the report of the Inspector, the AO held that the assessee failed to prove the genuineness of the transaction and added the amount of Rs.50,00,000/- received u/s 68 of the Act.

6. Aggrieved, the assessee went before the ld. CIT (A) who confirmed the addition made by the AO on the grounds that the assessee has not discharged the onus of proving the genuineness and creditworthiness of the transaction.

7. Before us, it was argued that the assessee has submitted all the relevant details to the Assessing Officer. The ld. AR has taken as to the reply dated 12.11.2018 wherein the details of

Audit Report, Balance Sheet, Confirmations, ledger, Bank Statement of the lender company along with the master data as per MCA portal has been submitted. The said loan has been repaid in the Financial Year 2011-12 and the ITR for the assessment year 2012-13 was also filed before the AO.

8. The ld. DR argued that it is clear case of bogus loan received from a dummy company and the notices have also come back unserved and the report of the Inspector proved non-existence of the lender company at the premises. Hence, the order of the ld. CIT (A) ought to be confirmed.

9. Heard the arguments of both the parties and perused the material available on record. For the sake of ready reference, the relevant part of the assessment order on this issue is reproduced as under:

> *"To cross examine the genuineness and credit worthy of the transaction of the party, notice u/s 133(6) was send to M/s RKG Finvest on 27.11.2018 on the address i.e. 22, Rajendra Park, New Dehi-110060 as mentioned in Company Master Data as well as provided by the assessee company vide letter dated 12.11.2018 though Inspector of this Ward. Report of the Inspector is reproduced as below:*
>
> *INSPECTOR'S REPORT:*
> *"Report in the case of M/s RKG Finvest Ltd., address-22, Rajindra Park, New Delhi -110060.*
>
> *As directed, I enquired the whereabouts of M /s RKG Finvest Ltd located at 22, Rajindra Park, New Delhi -110060 on 27.11.2018 to serve the notice U/s 133(6) of the IT Act, in the case of M/s Red Pro Motors Pvt. Ltd (formerly known as M/S Red Pro Linkers Pvt. Ltd). No Signboard of Company M/s RKG Finvest Ltd was found on the residential address as mentioned on notice U/s 133(6) of the IT Act. It is found from enquiry that Mr. Shiv Shanker and his other two*

brothers is owner of this premises. At the time of visit ***Mr. Shiv Shanker was present in the premises and I told me that the company M/s RKG Finvest ltd was his tenant for the period April, 2014 to March, 2016. T****his company does not run from here and he has no knowledge about the new address of the company. He also informed that one of the directors Mr. Jain is in prison right now."*

Thereafter, a reply was received on the official webmail of this ward i.e. delhi.ito21.2@incometax.gov.in from mail id rkg_finvest@rediffmail.com in response to notice u/s 133(6) dated 27.11.2018*. However, as per Inspector's report, notice was not served on the above party, since nobody related to M/s RKG Finvest was found at the above address.*

In view of the foregoing discussion, I therefore, conclude that a sum of Rs. 50,00,000/- credited in the books of account of the assessee since the primary onus lies upon the assessee company to prove that the genuineness of the transactions. The assessee company has failed to prove the genuineness within the meaning of section 68 of the Income tax Act for the year under consideration. Therefore, I held it to be the income of the assessee as unexplained cash credits within meaning of section u/s 68 of the Income tax Act and added to the income of the assessee."

10. The facts relevant for the adjudication of the issue are as under:

Date of Search /Survey in the case of S.K. Jain Group	14.09.2010 & 20.11.2010
Date of Receipt of Amount	23.02.2011
Date of Repayment	31.01.2012
Whether the information could be attributed to the seized/impounded material	No

Whether in such case, reopening can be based on the impounded material	No
Whether the information could be attributed to the post-search investigation	Yes – STR based
Whether M/s RKG Finvest Ltd. is considered as a dummy-sale company by the revenue	Yes
Value of the block of depreciable assets of M/s RKG Finvest Ltd.	Rs.2,09,02,868/-
Depreciation claimed	Rs.29,17,629/-
Bank balance	Rs.3,26,00,762/-
Cash in hand	Rs.24,37,170/-
Tax paid	Nil
Whether assessee discharged his onus of proving the identity, genuineness and creditworthiness of the transactions	Yes
Whether the loan receipt confirmation was submitted to AO	Yes
Whether the loan repayment details submitted to AO	Yes
Whether the Inspector report prove the existence of lender company at the premises during the period of April 2014 to March 2016	Yes
Whether the lender company replied to the notice u/s 133(6)	Yes
Whether the company is struck off	No

from the MCA	
Whether the revenue asked the assessee to produce the Directors of the lender company	No
Whether any summons were issued to the Directors of the lender company	No

11. The total amount of unsecured loans received by the assessee during the year is Rs.4.836 Crs. out of which the amount of Rs.50 lacs received from the M/s RKG Finvest Pvt. Ltd. is treated u/s 68 of the Act. To be précised, the allegations of the AO are that the lender company is the dummy company, the loan received is bogus, the Inspector report proved non-existence of the company at the given address and the notice u/s 133(6) has not been complied properly. The ld. CIT (A) after going through the facts held that despite repeated opportunities, no efforts was made to discharge the onus either through documents or by producing the persons. The ld. CIT (A) held that the assessee has not discharged his onus of proving the genuineness of the transaction or the creditworthiness of the lender.

12. We have examined each allegation of the revenue with regard to the material on record. The reasons u/s 148 started with the allegation that Rs.4.83 Crs. has been received by the assessee doesn't commensurate with the business activity of the assessee company and it was the assessee's own income taken under the guise of unsecured loans from entry provider in view of cash. The AO has not brought anything on record to

prove or to primarily support the allegation either in the form of any diary entry or statement. The material impounded and the evidences gathered on or before 20.11.2010 have been utilized to suspect the loan received on 23.01.2011 by the assessee and issued notice u/s 148 with the allegation that the said loan received is primarily bogus in nature. The dependency of the AO on the material prior to the lending of the loan in the absence of any other corroborated evidences cannot be held to be justifiable. The AO's contention that the Inspector could not find the lender company at the premises is wrong on facts as the Inspector report says that the company was in existence at the premises from April 2014 to March 2016. In that case, it is incumbent upon the AO to enquire about the new address of the company from the assessee which was not done. Further, the lender company has replied to the AO on the official mail which the AO did not dispute and duly mentioned in the assessment order. The AO has not issued any summons u/s 131 to the Directors of a lender company nor asked the assessee to produce the Directors. The AO has not enquired from the Directors of the assessee company as to how the amounts have been received and the purpose to prove the allegations that the loan is bogus. The allegation of the AO that the assessee company is a dummy company is found to be incorrect on the facts of the case as the depreciable assets of the lender company are to the tune of Rs.209 lacs on which the depreciation of Rs.21.97 lacs has been allowed. The bank balance to Rs.3.2 Crs. and the cash balance of Rs.24.31 lacs and the salary payments of Rs.14.7 lacs as on 31.03.2011, the date of incorporation being 20.11.1995 goes against the allegation of the AO that the assessee company is a dummy company. With regard to the reasons given by the ld. CIT (A) that the assessee has not made any effort to discharge the onus, we find that the assessee has submitted all the documents to discharge the primary onus along with details of repayment of the loan. Having received all the documents, the revenue failed to bring anything on record either by the way of statements recorded or by enquiries conducted or by any other evidence collected to rebut the evidences filed by the assessee.

13. In the instant case, the AO held that the assessee company is neither having any stock nor fixed assets and suspected that the company to be of a non-viable entity. Similarly, the AO has also suspected the lender company also as a dummy company but without bringing anything tangible on record to prove both or either of the allegations.

14. Further, reliance is placed upon the decision of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Himachal Fibres Ltd. (2018) 98 taxmann.com 173 in which the departmental appeal was dismissed confirming the decision of the Hon’ble Delhi High Court in the case of Pr.CIT Vs. Himachal Fibres Ltd. (2018) 98 taxmann.com 172 in which the Hon'ble Delhi High Court has followed its earlier decisions in the case of Pr.CIT Vs. Softline Creations Pvt. Ltd. (2016) 387 ITR 636, Pr.CIT Vs. N.C. Cables Ltd (2017) 391 ITR 11 and it has been held that *in a case where the assessee has furnished all relevant facts within his knowledge and has offered a credible explanation, then the onus reverts to the revenue to prove that these facts are not correct. In such a case, the revenue cannot draw the inference based upon suspicion or doubt or perception of culpability or on the quantum of the amount involved particularly when the*

question is one of taxation under the deeming provision. It was further held that neither doubt/suspicion nor the quantum shall determine the exercise of jurisdiction by the AO. Thus, going through the entire factum of the case, we hold that the addition made by the AO on account of unsecured loan of Rs.50 lacs could not pass the factual and judicial proprietary. Hence, the addition made by the AO is directed to be deleted.

15. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 14/12/2020.

Sd/-	Sd/-
(Amit Shukla)	**(Dr. B. R. R. Kumar)**
Judicial Member	**Accountant Member**

Dated: 14/12/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR