IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'C' BENCH, NEW DELHI
(THROUGH VIDEO CONFERENCE)

BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 5568/DEL/2011
[Assessment Year: 2004-05]

M/s Ikea Trading (India) Private Limited, C-16, Second Floor, C-Block Market, Pashchimi Marg, Vasant Vihar, New Delhi – 110 057 (PAN : AAACI1483Q)	Vs.	DCIT, Circle 11(1), New Delhi
[Appellant]		[Respondent]

AND

ITA No. 5877/DEL/2011
[Assessment Year: 2004-05]

DCIT, Circle 11(1), Room No. 312, CR Building, New Delhi	Vs.	M/s Ikea Trading (India) Pvt. Ltd. C-16, Second Floor, C-Block Market, Pashchimi Marg, Vasant Vihar, New Delhi – 110 057 (PAN : AAACI1483Q)
[Appellant]		[Respondent]

Date of Hearing : 24.06.2020
Date of Pronouncement : 30.06.2020

Assessee by : Shri Salil Kapoor, Advocate
Revenue by : Ms. Sunita Singh, CIT(DR)

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

ITA No. 5568/Del/2011 & ITA No. 5877/Del/2011 are the Cross Appeals filed by the Assessee and the Revenue respectively

against the very same order of the Ld. CIT(A)-XXX, New Delhi dated 10.10.2011 pertaining to assessment year 2004-05. Both these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. We first address the Assessee's Appeal i.e. ITA No. 5568/Del/2011. The solitary grievance of the Assessee is that Ld. CIT(A) erred in upholding the disallowance of Rs. 10,167,885/- made by the Assessing Officer on account of confirmations not received from creditors. Incidentally, the underline facts are identical for ground no. 2 raised in Revenue's Appeal and therefore, we deem it proper to consider Revenue's Ground No. 2 alongwith solitary grievance of the Assessee together for the sake of brevity.

3. Facts emanating from the assessment order shows that during the course of scrutiny assessment proceedings, the AO asked the assessee to explain the sundry creditors of Rs. 48,80,73,557/- appearing in the balance sheet as on 31.03.2004. The AO observed that the Assessee has merely submitted the names of the parties alongwith the addresses. Notices u/s. 133(6) of the I.T. Act, 1961 were issued, but many of the parties on the basis of the addresses given, out of which many were not complied with. This has been explained in the table form as under:-

	Amount as per books of IKEA	Amount confirmed / not replied	Balance to be added
M/s Anisa Carpets Limited	4612608		4612608
APL Delhi	5765282		5765282
APL Mumbai	4402603		4402603
Asian Handlooms	20855076		20855076
Atlantic Fabrics	9375816		NIL
Baranwal Carpet Mfg. Co.	3789345	1915116	1874229
Carpet International	62346423		62346423
Continental Home Furnishings	20400551		20400551
Coronet Products Pvt. Ltd.	3619691	Confirmed	NIL
Cosco India Ltd.	4560226		4560226
Accent's for living	2092517		2092517
AL Paper House	7633702		7633702
Vallabh Fabrics Ltd.	8994889	Confirmed	NIL
JS Gupta & Sons	4321965		4321965
Devtara Rag Rugs	8060311		8060311
		Total Addition	**146925493**

3.1 The AO accordingly made the addition of Rs. 146925493/-.

4. Before the Ld. CIT(A), the Assesee furnished confirmations as additional evidences under Rule 46A of the I.T. Rules. The Ld. CIT(A) called for a Remand Report. The AO submitted the Remand Report dated 11.10.2010 wherein he has not considered the

additional evidences. Once again the Ld. CIT(A) asked the AO to submit the detailed Remand Report and the same was submitted by the AO vide Remand Report dated 09.08.2011 wherein the AO had placed on record, the summary of various confirmations, list of parties to whom the notices returned unserved, list of parties to whom the notices were served, but no confirmation was received etc. After considering the additional evidences and the Remand Report of the AO, the Ld. CIT(A) concluded as under:-

> *"It would be important to mention that the balances amounting to Rs. 12,47,30,552/- (Rs. 9,92,62,868 and Rs. 2,54,67,684/-) have already been confirmed out of the total disallowances of RS. 14,69,25,483/-, which amounts to nearly 85% of the total conformation. It can be inferred that the creditors are genuine and not bogus. Based on evidence placed on record and following the "preponderance of probability". I hereby hold the creditors to be genuine and delete the entire disallowance except in the following cases and reasons thereof:-*

Name of creditor	***Amount of disallowance (in Rs.)***	***Reason of upholding the disallowance***
APL Delhi	*57,65,282*	*The appellant had failed to furnish the*

		account details and the relevant pay-outs details for verification and no confirmation
APL Mumbai	*44,02603/-*	*The appellant had failed to furnish the account details and the relevant pay-outs details for verification and no confirmation.*
Total	*1,01,67,885/-*	

Therefore the amount of disallowance being upheld of Rs. 1,01,67,885/- (Rs. 57,65,282 + 44,02,603_. The appellants gets relief of Rs. 13,67,57,609/-."

4.1 Aggrieved by the finding of the Ld. CIT(A), both the Assessee and Revenue are in appeals before us.

5. Ld. Counsel for the Assessee reiterated what has been stated before the lower authorities. It is a say of the Counsel that the AO has made the additions on the balance outstanding as on 31st March. It is a say of the Ld. Counsel that the entire outstanding is in relation to purchases made during the year under consideration and no adverse inference has been drawn so as to purchases are concerned. The Ld. Counsel vehemently stated that once the purchases have been accepted as genuine, the balance outstanding as on 31st March out of such purchases cannot be added u/s. 68 of the Act.

5.1 The Ld. DR strongly supported the finding of the AO and vehemently stated that before the Ld. CIT(A) balance amounting to Rs. 12.47 crores were confirmed out of total disallowance of Rs. 14.69 crores. It is a say of the Ld. DR that Ld. CIT(A) ought to have confirmed the difference of Rs. 2.22 crores whereas the Ld. CIT(A) has confirmed only Rs. 1.01 Crores.

6. We have given the thoughtful consideration of the orders of the authorities below. It is an undisputed fact that the AO has simply added the balance as on 31.3.2004 without realizing that the entire credit balance were the outcome of the purchases made during the year. It is also undisputed that in the immediately succeeding years the outstanding have been paid by the assesee. Once the purchases have been accepted as genuine and no adverse inference has been drawn, In our considered opinion the lower authorities were not at all justified in making the addition of the balance outstanding as on 31.3.2004. Our view is fortified by the decision of the ITAT, Delhi Bench 'A' (Special Bench) in the case of Manoj Aggarwal vs. Dy. CIT (Delhi) (SB)113 ITD 377 and the relevant part thereof read as under:-

> *"177. We have carefully considered the arguments of both the sides. We are unable to subscribe to the contention of Mr. Sudershan Kapoor, the learned counsel for one of the interveners that where an entry has been made in the books*

of account of the assessee as required by the VDIS of 1997, section 68 cannot be invoked when the declared asset is sold later and the sale proceeds are credited in the books of account. Section 68 of Chapter IV of the Finance Act, 1997, which provided for the Voluntary Disclosure of Income Scheme, 1997, says that the amount of the voluntary disclosed income will not be included in the total income of the declarant of any assessment year if certain conditions are satisfied. One such condition is that the declarant should have credited the amount in the books of account, if any, maintained by him for any source of income or in any other record and should have intimated the credit so made to the Assessing Officer. This is an enabling provision. It enables the hitherto undisclosed income to be brought into the accounts of the assessee as disclosed income since tax thereon has been paid under the VDIS. Once the tax is paid on the undisclosed income, it becomes disclosed income and thereafter there is no justification for denying the assessee the facility of bringing the declared income into account. In the cases of the interveners who are all declarants under the VDIS, 1997, this condition has been satisfied and there is no dispute about the same. The immunity given by section 68 of the Finance Act, 1997, is limited to this, that the declared income will not be assessed again as the income of the declarant for any assessment year under the Income-tax Act. Obviously the only provision, which the Assessing Officer can invoke for assessing the amount credited in the books of account, is section 68 of the Income-tax Act, but by virtue of section 68 of the Finance Act, 1997, the applicability of

section 68 of the Income-tax Act to the amount declared under the VDIS is ruled out. But the immunity stops there. When the asset representing the declared income or acquired out of the declared income is later sold, the powers of the Assessing Officer to examine the question whether there has been a real sale of the asset is not curtailed in any manner by any of the provisions of the VDIS, 1997. Supposing, to give an example, an assessee files a declaration under the VDIS that he had acquired gold bars for Rs. 5 lakhs out of his undisclosed income. He is required to credit his books of account with Rs. 5 lakhs as required by section 68 of the Finance Act, 1997, in addition to paying the tax thereon at concessional rates under the VDIS. Once the amount is credited the same cannot be taxed again for any assessment year under the provisions of the Income-tax Act, 1961. Supposing, the assessee in the example credits the books of account with the amount of Rs. 5 lakhs as on 31-12-1997, the Assessing Officer making his assessment for the assessment year 1998-99 cannot invoke section 68 of the Income-tax Act to assess the amount again. However, when the gold bars are sold by the assessee at any time later, say for Rs. 8 lakhs, and the amount of Rs. 8 lakhs is received by the assessee and credited by him in his books of account, there seems to be no bar on the Assessing Officer from examining the question whether there was real and actual sale of the gold bars which fetched Rs. 8 lakhs to the assessee. Such a power has not been either expressly or by implication taken away from the Assessing Officer. Such a power may be exercised by the Assessing Officer to ensure

that the provisions of the VDIS, 1997 have not been misused by an assessee. In the example given earlier, suppose that the assessee had falsely declared under the VDIS that he had acquired gold bars out of his undisclosed income of Rs. 5 lakhs. He pays tax under the scheme at concessional rates, pays no interest or penalty. There are actually no gold bars in existence. After the VDIS comes to an end, he falsely claims that he has sold the gold bars for Rs. 8 lakhs and brings the same to account. He may be no doubt paying capital gains tax on the surplus but by doing so he will be bringing into account a sum of Rs. 3 lakhs which are his own undisclosed monies. This would be abuse of the VDIS, 1997. It is to prevent this that the Assessing Officer examining the case of the assessee in the year of sale of the gold bars should be given the power to probe whether the gold bars were really sold. It is true that the existence of the gold bars with the assessee cannot be questioned because of the acceptance of the declaration made under the VDIS and issue of a certificate by the CIT. But it is certainly open to the income-tax authorities to require the assessee to prove that the gold bars were actually sold. Such proof may include details of the purchaser, his credentials, evidence in the form of bills, etc. It is also open to the income-tax authorities to examine such proof in the manner authorized by law and come to the conclusion whether the sale is genuine or not. While doing so, the Assessing Officer may rely on section 68 of the Income-tax Act.

178. *Mr. Ajay Vohra, learned counsel for one of the interveners contested the aforesaid position by submitting*

that the sale proceeds credited in the books cannot be treated as cash credit simplicitor so as to enable the Assessing Officer to invoke section 68. He says that the sale proceeds have been shown as income in the sense that after deducing the cost of the asset from the sale proceeds, the balance has been declared as capital gains and therefore the sale proceeds cannot be probed under section 68 and the assessee cannot be asked to prove the nature and source of the monies. His further submission is that in the cases before us, it is the department which says that the sale proceeds are in truth undisclosed income of the assessee and they have moved from the assessee and have been brought back as sale proceeds and, therefore, it is for the Assessing Officer to adduce evidence to show that the monies have emanated from the assessee. He contends that the apparent should be taken as the real state of affairs and if the department questions the same it is for them to prove that the apparent is not the real. Though prima facie the argument seems to be attractive, we are afraid that it cannot bear closer scrutiny. Section 68 of the Income-tax Act only gives statutory recognition to the well-settled position that any monies found credited in the accounts of the assessee have to be proved by the assessee in relation to their nature and source. It does not enact any new principle. Even long prior to the introduction of the section, courts had held that any amounts found credited in the books of the assessee and the assessee offered no explanation about the nature and source thereof or the explanation offered was not satisfactory, the amounts

so credited could be charged to income-tax as income of the assessee….."

6.1 Considering the totality of the facts in light of the decision of the ITAT, Delhi, Special Bench (Supra), we do not find any merit in the addition sustained by the Ld. CIT(A), hence, the entire addition made by the AO is directed to be deleted. Accordingly, the Assessee's appeal is allowed and ground no. 2 raised in Revenue's Appeal is dismissed.

7. In the result, the Assessee's Appeal is allowed.

8. We will now deal with the Revenue's Appeal No. 5877/Del/2011. The ground no. 1 relates to the addition of Rs. 20.15 crores made on account of failure on the part of assessee in submitting confirmations regarding the reimbursement of Duty Draw Back. Facts on record shows that while scrutinizing the return of income, the assessee was asked to explain the Duty Draw Back of Rs. 20.15 Crores which it claimed as reimbursed / reimbursable to the suppliers. In its reply the assessee submitted that the entire Duty Draw Back received by the Assessee has been completely passed by it to supporting manufacturers. The assessee also submitted sample copy of vouchers. The explanation of the assessee did not find any favour with the AO who was of the firm belief that the assessee has not furnished evidences in respect of the

reimbursement of entire Duty Draw Back to its suppliers. The AO further observed that the assessee has failed to give on record that such Duty Draw Back were actually passed on to its supporting manufacturers which is a primary requirement to justify its claim. The AO accordingly, made the addition of Rs. 20,15,27,543/-.

9. Before the Ld. CIT(A), the assessee strongly contended that the AO never asked for the complete details and the assessee considering the voluminous details filed only sample copies of Duty Draw Back / reimbursement. Before the Ld. CIT(A), assessee furnished the complete details alongwith supporting evidences and demonstrate that the Duty Draw Back has been reimbursed through the account payee cheques to the supporting manufacturers of the equivalent amount as soon as its account was credited by the electronic duty transfer. Ld. CIT(A) considered the evidences alongwith the Remand Report and observed that the AO has sent the notices u/s. 133(6) of the Act to the parties who were not at all in the list of Duty Draw Back. Ld. CIT(A) further observed that out of the list of 21 parties in respect of whom the disallowance of duty draw back was made, notices were correctly sent only to 02 parties. Since the notices not issued to the correct parties in respect of whom the disallowance have been made. The Ld. CIT(A) found that the claim of the assesssee was correct on perusing the

complete details furnished by the assessee and accordingly deleted the disallowance of Rs. 20,15,27,543/-.

10. Before us the Ld. DR strongly objected to the admission of additional evidences. It is a say of the Ld. DR that by way of additional ground, the Revenue has challenged the admission of additional evidences which is in violation of Rule 46A of the IT Rules. It is a say of the Ld. DR that Ld. CIT(A) ought not to have considered the additional evidences for deleting the disallowance. Strong reliance was placed on the assessment order.

10.1 Per contra, the Ld. Counsel reiterated what has been stated before the lower authorities and drew our attention to the Paper Book containing Duty Draw Back vouchers of all the parties which runs into 422 pages. It is a say of the Counsel that after examining the complete details furnished by the Assessee, the Ld. CIT(A) has rightly deleted the addition.

11. We have carefully gone through the orders of the authorities below. It is true that during the assessment proceedings, the Assessee furnished sample copies of vouchers. It is equally true that AO did not ask the assessee to furnish the complete details. We find that before the Ld. CIT(A), the assessee has furnished the complete details supported by vouchers and the same are also placed before us as mentioned in the Paper Book which runs into 422 pages. We

find that the Duty Draw Back has been reimbursed by the assessee to supporting manufacturers through account payee cheques. We also find that during the assessment proceedings, the AO had issued the notices u/s 133(6) of the I.T. Act to the persons whose names were not therein in the list of Duty Draw Back. Therefore, there was no question of them confirming the transactions. The notices to 02 parties were sent correctly. The confirmations and the transaction considering the facts in hand in totality and in light of voluminous documentary evidences, we do not find any error or infirmity in the finding of the Ld. CIT(A), hence, we decline to interfere with the finding of the Ld. CIT(A). Accordingly, the ground no. 1 raised by the Revenue is dismissed.

12. Ground no. 2 has already been adjudicated by us in Assessee's appeal, as aforesaid, therefore, no need for separate adjudication.

13. Ground no. 3 relates to the deletion of addition of Rs. 56,00,000/- made on account of excessive payment of salary to Director covered under section 40(A)(2)(b) of the I.T. Act.

14. During the course of scrutiny assessment proceedings, the AO asked the assessee to explain the payment of Rs. 10,636,420/- made to 02 persons covered u/s. 40(A)(2)(b) of the Act. The assessee furnished the details of remuneration paid to Director and claimed the same as per Industry Norms and is not in excess of

either limits prescribed under the Act or the Industry Norms for the particular class of industry. The AO was of the opinion that the assessee has failed to justify the nature of services rendered by the Directors so as to command such a huge remuneration. The AO accordingly, restricted the remuneration to Rs. 50 lacs and treated the balance of Rs. 56 lacs to the income of the assessee.

15. Assessee strongly agitated the matter before the Ld. CIT(A) and vehemently contended that the AO has not come to any logical conclusion nor has given any cogent reasons to justify the disallowance. It was brought to the notice of the Ld. CIT(A) that the AO has grossly failed to show that such expenditure is excessive and or unreasonable.

16. After considering the facts and submissions, the Ld. CIT(A) observed that in the case in hand, the employees are not the interested parties rather they are professionally qualified employees. The Ld. CIT(A) further observed that the AO had failed to bring on record or substantiate that how such salary payments were actually excessive. Ld. CIT(A) accordingly deleted the addition.

17. Before us, the Ld. DR strongly supported the findings of the AO. Per contra, the Ld. Counsel for the assessee reiterated what has been stated before the lower authorities.

18. We have carefully considered the orders of the authorities below. The undisputed fact is that the AO has not brought any comparable case to demonstrate that the payments made by the assessee were excessive/ unreasonable. A plain reading of Section 40A(2)(b) show that onus has been cast upon the AO to bring on record comparable cases to demonstrate that the transactions made by the assessee with the related parties are unreasonable and excessive. The AO has failed to bring such comparable case on record.

18.1 We further find that the payees are also assessed to tax at the same rate of tax. The CBDT Circular No. 6-P dated 06.07.1968 states that no disallowance is to be made u/s. 40A(2) in respect of the payments made to the relatives and sister concerns where there is no attempt to evade tax. This Circular has been considered by the Hon'ble Bombay High Court in the case of CIT vs. Indo Saudi Services (Travel) P. Ltd. 310 ITR 306. Considering the totality of the facts in light of the CBDT Circular (Supra), we do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, the Ground No. 3 raised by the Revenue is dismissed.

19. Before closing by way of additional ground the Revenue has challenged the admission of additional evidences by the Ld. CIT(A) which is in violation of Rule 46A of the IT Rules. We do not find any

merit in this challenge of the Revenue. Since the additional evidences were transmitted to the AO and the AO responded the same by submitting 02 Remand Reports, therefore, it cannot be said that AO was not given any opportunity of being heard.

20. In the Result, the Revenue's Appeal is dismissed.

21. In the result, the Assessee's Appeal is allowed and Revenue's Appeal is dismissed.

The order is pronounced in the open court on 30.06.2020.

Sd/-	Sd/-
[SUSHMA CHOWLA]	**[N.K. BILLAIYA]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 30th June, 2020
SRB
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi