

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE MS. DIVA SINGH, JUDICIAL MEMBER**

**ITA No. 1619/Del/2017
Assessment Year: 2012-13**

Jumbo Consultants Pvt. Ltd. C-1/2, Flat No. 10 Model Town New Delhi PAN : AAACJ2920R	Vs.	ITO Ward 13(4) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Praveen Kumar, Manager
Respondent by	Sh. T. Vasanthan, Sr. D.R.
Date of hearing	21-08-2017
Date of pronouncement	20.10.2017

ORDER

PER DIVA SINGH, J.M. :

The present appeal has been filed by the assessee assailing the correctness of the order dated 9.11.2016 of CIT(A)-5, Delhi pertaining to 2012-13 assessment year. On various grounds however the grievance of the assessee is covered by the ground no. 1 which reads as under:-

1. *That on the facts and circumstances of the case the assessment order passed under section 143(3) and the CIT(A) order is bad on fact and in the eyes of law for treating unearned interest income of Rs. 48,0000/- on notional basis for deemed interest on three year old doubtful debts which is never earned hence deserves to be quashed.*

2. Both the parties have heard. The learned AR in the course of his arguments inviting attention to the impugned order submitted that the assessee had advanced an amount of Rs. 40,00,000/- to Ms. Shalini Maheshwari sometime in 1989 on which notional interest has been charged by the Revenue. It was his submission that no such addition on the very same amount had been made in the immediately preceding

assessment year. He was unable to address whether the assessment was a scrutiny assessment or by way of a 143(1) order. However in 2015-16 assessment year, the purpose for which the amount was given it was submitted had been achieved. It was his argument that there are no borrowed funds with the assessee and the funds which have been advanced are from assessee's own funds and no expenses for interest has been claimed by the assessee. The person to whom the loan is advanced it was submitted is known to the assessee. The addition made by the tax authorities it was submitted was contrary to law.

3. The learned Sr. DR on the other hand relying upon the consistent orders of the AO and the CIT(A) submitted that the assessee is in the finance business and interest income is necessarily required to be received. Thus for what purposes a loan of Rs. 40,00,000/- was advanced to Mrs. Shalini Maheshwari and whether it was a trade advance or not has never been clarified by the assessee. The assessee it was submitted has claimed at some point of time that the amount became irrecoverable and subsequently has now come up with an argument that it has been settled. Thus in the face of these contradictory arguments, the claim of the assessee it was submitted that has correctly been rejected. However, whether any borrowed funds have been utilized by the assessee or not and whether it has correctly been settled by way of paying back, the assessee's facts which would be known to the assessee only as for what purposes the funds were advanced are not available on record and even if assessee now wants to argue that it has been settled then the assessee must be required to demonstrate these facts and the matter for the said purposes may be remanded to the CIT(A).

4. In the light of the submissions of the parties before the Bench taking note of the findings and reasons recorded by the CIT(A) in para 5.4 of his order it is deemed appropriate to set aside the impugned order to verify whether the funds advanced to Mrs. Shalini Maheshwari were from assessee's own funds or from borrowed funds. Apart from that whether it was a trade advance or not and whether as per the claim of the assessee it has been settled in 2015-16 assessment year are all facts which need to be addressed by way of evidences. Accordingly in the absence of any discussion

thereon the impugned order is set aside. Assessee is granted opportunity to file afresh evidences before the CIT(A) which shall be taken on record after obtaining a remand report of the Assessing Officer. It is hoped that the opportunity so provided in good faith is not abused by the assessee and is utilized by making full and proper compliances before the CIT(A). It is made clear that in the absence of the same, the CIT(A) would be at liberty to pass an order in accordance with law on the basis of day to day material available on record.

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

The order is pronounced in the open court at the time of hearing itself on 20th October, 2017.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

SH

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI

		Date	
1.	Draft dictated on	21.8.2017	PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		