

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI**

**BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1594/Del/2011
Assessment Year: 2005-06

DCIT, Circle -1, Ghaziabad	Vs.	M/s. Ankit Builders (P.) Ltd., D-41, Kaushambi, Ghaziabad
PAN : AADCA7265K		
(Appellant)		(Respondent)

Appellant by	Sh. Ravi Kant Gupta, Sr.DR
Respondent by	None Present

Date of hearing	20.12.2017
Date of pronouncement	22.12.2017

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 27/01/2011 passed by the Ld. Commissioner of Income-tax (Appeals), Ghaziabad [in short ~~the~~ Ld. CIT-(A)] for assessment year 2005-06 raising following grounds:

- 1. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case, by deleting the additions made on account of unverified and unconfirmed advances from customers, when the assessee did not produce books of accounts before the Assessing Officer, Neither in the course of original assessment proceedings, nor in the course of remand proceedings.*
- 2. Ld. CIT(A) erred in law and on the facts and circumstances of the case by deleting the addition of unverified and unconfirmed advances, when the assessee had failed to establish credit*

worthiness of the persons giving the advances and further failed to prove genuineness of the transaction.

3. *Ld. CIT(A) erred in law and on the facts and circumstances of the case by deleting the additions made on account of unverified advances simply relying on the affidavits of the creditors, which were never confronted to the deponents by the CIT(A) before taking cognizance thereof.*
4. *Ld. CIT(A) erred in law and on the facts and circumstances of the case by deleting the additions taking cognizance of the statements of the creditors, wherein the creditors had merely confirmed the purchase of the property and did not confirm the amount of advance, if any, paid by them till the close of relevant accounting period i.e. till 31.03.2005*
5. *Hence order of the Ld. CIT(A) deserves to be set-aside and the order of the AO be restored.*

2. At the outset, we may like to mention that when the appeal was called for, neither the assessee, nor its Authorised Representative appeared, nor any application for adjournment or any written submission was placed before the bench. However, on perusal of the record, we find that the appeal is pending since 2011 and despite several opportunities given to the assessee, the assessee is not appearing through its Directors or through its counsel. On the last occasion i.e. 05/10/2007, notice was issued to the assessee through Registered AD for fixing the date of hearing on 20/12/2017. On perusal of the record, we find that the notice has not returned back, thus it is deemed to be served. In view of the facts above, we are of the considered view that issuing further notice to the assessee would not be just and proper and the appeal is disposed off after hearing the Ld. DR appearing on behalf of the Revenue and on the basis of the record. We, therefore, proceeded to hear and adjudicate the appeal accordingly.

3. The briefly stated facts of the case are that during relevant period, the assessee was engaged in construction and development of a commercial property. The assessee filed return of income on 31/10/2005 declaring income of Rs.15,440/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short ~~the~~ Act) was issued on 16/10/2006 and sent through speed post, but it returned back unserved. Then the Assessing Officer served the notice on 30/10/2006 at the address of the assessee through affixture. The assessee did not comply with the said notice and subsequent statutory notices issued under section 143(2) and 142(1) of the Act along with questionnaire. The Assessing Officer provided various opportunities to the assessee for making compliance of the notices and even issued penalty notice under section 271(1)(b) of the Act. In view of the non-compliance, the Assessing Officer completed the assessment under section 144 of the Act i.e. best judgment assessment on 26/12/2007 on the basis of the material available on record and assessed the total income at Rs.45,30,940/-.

3.1 Aggrieved, the assessee filed appeal before the learned CIT-(A) and filed additional evidences which were forwarded to the Assessing Officer for his comments. The Assessing Officer submitted a detailed remand report and after taking into account the remand report and rejoinder of the assessee, the Ld. CIT-(A) allowed part relief to the assessee. Aggrieved with the relief allowed, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. In the grounds raised, the sole issue is related to addition on account of advances from the customers.

5. Before us, the Ld. Sr. DR relied on the order of the Assessing Officer and submitted that learned CIT-(A) has allowed relief to the assessee despite the failure of the assessee in producing books of

accounts. He also submitted that the assessee failed to establish creditworthiness of the persons giving advances and also failed to prove the genuineness of the transaction. According, to the learned Sr. DR the learned CIT-(A) has accepted the unverified advances relying only on the affidavit of the creditors. He further submitted that in the statements, creditors merely confirmed the purchase of the property. In view of the arguments, the Ld. Sr. DR requested to confirm the advances in question.

6. We have heard the submission of the Ld. senior DR and perused the relevant material on record. We find that the Assessing Officer observed advance from customer of Rs.44,62 000/-in the balance sheet and in absence of any details he made the addition. Before the learned CIT-(A) the assessee explained the reason of non-compliance of the various notices issued by the Assessing Officer. The assessee submitted that it purchased a plot of land in the year 2002 and constructed a commercial building on the said plot. After purchasing the plot, a booking office was opened nearby on the plot of land. According to the assessee, it sold almost entire space in the building to customers, who deposited purchase cost in instalments according to completion of the work at site under self financing scheme. The assessee company regularly received payments from the customers and which were shown under the head advance from customer in the account books. After completion of the space purchased by the customers, the registration documents were prepared and respective space(s) purchased by the customer were registered in their name and the amount received from the customer as advance from customer were transferred to the sales account. However, the customers, whose registration documents could not be prepared, there advances continued to remain in the head %advance from customers+. The total amount of advance from customers shown in the

balance sheet as on 31 /03/2005 was Rs. 44, 62,000/-. The assessee provided the list of 17 customers whose advances were appearing under the head advance from customers. The learned CIT-(A) has reproduced said list in the impugned order. The summary of the name and amount of said creditors is reproduced as under:

S.No.	Name of the creditor	Amount
1	Shri Rajesh Garg	Rs.4,70,000/-
2	Ms. Sadhna Garg	Rs 7,10,000/-
3.	Sh. Vipul Khandelwal	Rs. 1,50,000/
4.	Sh. Praveen Gupta	Rs. 2,00,000/
5.	Sh. Nitin Bdnsal	Rs. 1,00,000/-
6.	Sh. Dr. Rathore	Rs. 2,82,000/-
7.	Sh. V.K. Garg	Rs. 3,00,000/-
8.	Ms. Nidhi Garg	Rs. 2,00,000/-
9	Smt. Kusum L,ata Garg	Rs.2,00,000/-
10.	Sh. Jagdish Garg	Rs. 2,00,000/-
11.	Sh. O.P. Nangia	Rs. 1,00,000/-
12.	Sh. K.M. Sharma	Rs. 1,00,000/-
13.	Sh. Mukesh	Rs. 1,00,000/-
14	Sh. Sushil Sharma	Rs, 1,50,000/-
15.	Sh. N.C. Sharma	Rs. 2,00,000/-
16.	Shalini & Vikas Khosla	Rs. 6,00,000/-
17.	Shri Rafiq.	Rs. 4,00,000/-
	Total	Rs.44,62,000/-

7. The Ld. CIT-(A) forwarded the said list along with the submission of the assessee to the Ld. Assessing Officer calling for his remand report. During the remand proceeding, the assessee produced documents/affidavits from said customers. The Assessing Officer also deputed inspector and recorded statement of the few persons, which could be found. The Ld. Assessing Officer sent a detailed remand report in which advance from each person has been discussed in detail. The

Ld. CIT-(A) has reproduced contents of the remand report in the impugned order .

8. In the remand report, the Ld. Assessing Officer found following customers/creditors as verifiable and confirmed the amount of credit.

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|--|----------------------|
| 1. <i>Sh. VK Garg</i> | <i>Rs.3,00,000/-</i> |
| 2. <i>Sh. Jagdish Garg</i> | <i>Rs.2,00,000/-</i> |
| 3. <i>Smt Shalini and Vikas Khosla</i> | <i>Rs.6,00,000/-</i> |

9. In case of following persons statement was recorded by the Inspector and they confirmed the fact of purchase of property and payment through cash/cheques:

- | | |
|--------------------------------|----------------------|
| 1. <i>Sh. Rajesh Garg</i> | <i>Rs.4,00,000/-</i> |
| 2. <i>Ms. Sadhana Garg</i> | <i>Rs.7,10,000/-</i> |
| 3. <i>Sh. Praveen Gupta</i> | <i>Rs.2,00,000/-</i> |
| 4. <i>Ms. Nidhi Garg</i> | <i>Rs.2,00,000</i> |
| 5. <i>Smt. Kusum Lata Garg</i> | <i>Rs.2,00,000</i> |
| 6. <i>Sh Rafique</i> | <i>Rs.4,00,000/-</i> |

10. The advances appearing in the name of Sh. Nitin Bansal (Rs.1,00,000/-), was found part of the payments mentioned in the registered sale deed dated 23/04/2005.

11. The observation of the Ld. CIT-(A) on the comments of the Assessing Officer in the remand report, are summarized as under:

1. In most of the cases, the Assessing Officer has accepted genuineness of the advances.
2. Wherever doubts have been raised, the doubts are more in respect of bifurcations of cash and cheque payments.

3. Some of the advances are carry forward and thus on technical grounds those could not be added in the year under consideration.

12. Out of the amount of Rs.44,62,000/-, the learned CIT-(A) himself has held following credits amounting to Rs.7,32,000/- as unexplained:

Sl. No.	Name	Amount	Comments
1.	Sh. Vipul Khandelwal	1,50,000/-	No details
2.	Dr. Rathore	1,82,000/-	AO accept that Rs.1,00,000/- was read during A. Y. 2004-05
3.	Sh. K.M. Sharma	1,00,000/-	Claim of this being open balance is not verifiable
4.	Sh. Mukesh	1,00,000/-	Claim of this being open balance is not verifiable.
5.	Sh. N.C. Sharma	2,00,000/-	Claim of this being open balance is not verifiable.
	Total	7,32,000/-	

13. Since the assessee is not in appeal against the said addition sustained, the only grievance of the Revenue in respect of the balance amount of Rs.37,30,000/- from remaining customers/creditors.

14. In our opinion, the finding of the Ld. CIT-(A) on the issue in dispute is justified. In case of three credits, the Assessing Officer himself has recorded that advances are fully verified. We do not find any justified reasons for agitating the additions, where the Assessing Officer himself has accepted as no addition is warranted. Further, in case of few credits, the assessee has already furnished affidavits from the customers and in the statement recorded by the Inspector, the relevant customers have already shown the registered sale deed and owned the fact of payment

made, no addition is called for in the case of the assessee against such advances appearing in the balance sheet for relevant year ending. In few cases, the advances have been received in earlier years and thus, no addition could have been made in the year under consideration. Wherever, the credits have not been explained, the Ld. CIT-(A) has already sustained the addition. In our view, order of the Ld. CIT-(A) on the issue in dispute is well reasoned and we do not find any infirmity in the same and accordingly, we uphold the same. Accordingly, grounds of appeal are dismissed.

15. In the result, Appeal of the Revenue is dismissed.

The decision is pronounced in the open court on 22nd Dec., 2017.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 22nd December, 2017.

RK/(D.T.D)

Copy forwarded to:

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

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi