

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai**

**Before Shri Mahavir Singh, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

ITA No. 5258/Mum/2016
(Assessment Year: 2012-13)

A C I T - 2(3)(1)
Room No. 552, 5th Floor
Aayakar Bhavan, M.K. Road
Mumbai 400020

M/s. Volant Textile Mills Ltd.
A-Royal Industrial Estate
Vs. 4th Floor, Naigaon Cross Road
Wadala, Mumbai 400 -031

PAN – AAACV3463P

Appellant

Respondent

Appellant by: Shri Sourabh Kumar Rai
Respondent by: None

Date of Hearing: 07.02.2018
Date of Pronouncement: 14.02.2018

ORDER

Per Rajesh Kumar, AM

This appeal has been filed by the Revenue against the order of the CIT(A)-6, Mumbai dated 27.05.2016 for A.Y. 2012-13.

2. The only ground taken by the Revenue is against the order of the CIT(A) in not providing opportunity to the AO before adjudicating the matter on the basis of additional evidences filed by the assessee thereby constituting violation of Rule 46A of the I.T. Rules, 1961.

3. At the outset we would like to mention that none appeared on behalf of the assessee at the time of hearing nor any application for adjournment was received from the assessee. We therefore proceed to dispose off the appeal after considering the merit and hearing the learned D.R.

4. The brief facts of the case are that during the course of assessment proceedings the AO noticed that the assessee has shown unsecured loan of ₹16,61,81,984/- in the Balance Sheet whereas the assessee could

produce only conformation and details in respect of unsecured loans to the tune of ₹15,78,95,301/- and consequently added the difference of ₹82,86,683/- to the total income of the assessee as unexplained cash credit under Section 68 of the Income Tax Act, 1961 (hereinafter "the Act"). In the appellate proceedings the learned CIT(A) allowed the appeal of the assessee accepting the arguments that the said amount represent an old loan from M/s. Kirloskar Investment and Finance Ltd taken in F.Y. 1997-98. The assessee also filed copy of the lease agreement dated 12.11.1997 before the CIT(A) and list of loans taken by the assessee at page No. 51 of the paper book. The said amount of ₹82,86,682/- was shown as opening balance against Kirloskar Investment and Finance Ltd. and the CIT(A) observed that the assessee has not taken any fresh loan during the year. The said outstanding amount represented lease charges payable to Kirloskar Investment and Finance Ltd. and thus addition under Section 68 of the Act cannot be made. Thus he deleted the addition.

5. The learned D.R. vehemently submitted before us that the CIT(A) has accepted the additional evidences without confronting the same to the AO thereby constituting violation of principles of natural justice as the evidences, on the basis of which the addition was deleted, was not confronted to the AO by way of remand proceedings. Therefore, he pleaded that the issue be restored to the file of the AO to verify the evidences and decide the issue de novo.

6. We have heard the learned D.R. and perused the material available on record. As is apparent from the record and the order of the CIT(A) the addition has been deleted on the basis of the additional evidences filed by the assessee which were not before the AO in the assessment proceedings and therefore we find merit in the arguments of the learned D.R. that the issue be remitted back to the AO to decide the case of the assessee accordingly after considering said evidences. In view of the above we are inclined to set aside the order of the CIT(A) and restore the issue back to the file of the AO with the direction to consider the evidences which the

assessee may file before the AO and decide the same in the light of the said evidences.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 14th February, 2018.

Sd/-
(Mahavir Singh)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 14th February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -6, Mumbai*
4. *The CIT - 2, Mumbai*
5. *The DR, "I" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.