

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “A” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.2818/Kol/2013 &  
ITA No.04/Kol/2014**  
Assessment Year:2006-07

M/s Dalia Investment Pvt. Ltd., 34/2A, Ballygunge Circular Road, Kolkata-19 [PAN No.AABCD 0139 M]	<b>बनाम / V/s.</b>	DCIT, Circle-12, P-7, Chowringhee Square, Room No.7/11A, 7 <sup>th</sup> Floor, Kolkata-69
Income Tax Officer, Ward-12(1), Aayakar Bhawan, 7 <sup>th</sup> Floor, P-7, Chowringhee Square, Kolkta-69	<b>बनाम / V/s.</b>	M/s Dalia Investment Pvt. Ltd. 34/2A, Ballygunge Circular Road, Kolkata-19
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri S.K. Tulsian, Advocate
राजस्व की ओर से/By Respondent	Shri Imlimeren Jamir, Addt CIT
सुनवाई की तारीख/Date of Hearing	16-04-2018
घोषणा की तारीख/Date of Pronouncement	27-04-2018

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

The assessee as well as Revenue are in cross-appeals against the common order of Commissioner of Income Tax (Appeals)-XII, Kolkata dated 12.08.2013. Assessment was framed by DCIT, Circle-12, Kolkata u/s 144/143(3) of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act') vide his common order dated 05.12.200 for assessment year 2006-07.

Shri S.K. Tulsian, Ld. Advocate appeared on behalf of assessee and Shri Imlimeren Jamir, Ld. Departmental Representative appeared on behalf of Revenue.

2. Both the appeals are heard together and being disposed of by way of this consolidated order for the sake of convenience.

**First we take up assessee's appeal in ITA No. 2818/Kol/2013.**

3. The grounds raised by the assessee per its appeal are as under:-

*"1. For that the Ld. Commissioner of Income Tax (Appeals) erred both in law and in fact by confirming the following expenses, which were incurred exclusively for the purpose of business in spite of the fact that the Ld. Assessing Officer in his remand report does not raise any objection against all these expenses, though the assessment was made ex parte u/s. 144 of the I Act, 1961.*

- a) Freight – Rs.31,400/-*
- b) Power & Fuel – Rs.55,600/-*
- c) Salaries, wages & bonus – Rs.1,98,500/-*
- d) Travelling expenses – Rs.28,780/-*

*2. For that the Ld. Commissioner of Income Tax (Appeals) erred both in law and in fact by confirming 50% of material expenses amounting to Rs.1,52,719/- whereas total miscellaneous expenditure debited in the profit & loss account was Rs.11,650/-. Hence, it is prim facie wrong and without any basis.*

*3. For that the Ld. Commissioner of Income Tax (Appeals) erred both in law and in fact by reducing the agricultural income by Rs.2,40,000/- only instead of Rs.16,68,430/-.*

*4. For that the Ld Commissioner of Income Tax (Appeals) erred both in law and in fact by enhancing the profit by a sum of Rs.3,78,525/- on the basis of remand report given by the Ld Assessing Officer without any reasons and / or basis violating the settled law as pronounced by the jurisdictional High Court.*

*5. For that the order passed by the Ld. Commissioner of Income Tax (Appeals) is arbitrary, void Authorities Below initio and without any sanction of law.*

*6. For that the appellant seeks permission to raise additional ground/grounds or to modify any of the grounds before or at the time of hearing of the appeal."*

4. The assessee in ground No.1 has challenged the addition made by the Assessing Officer and subsequently confirmed by Ld. CIT(A), the additions are detailed as under:-

- a) Freight Rs. 31,400/-

- b) Power & fuel Rs. 55,600/-
- c) Salary, wages & bonus Rs.1,98,500/-
- d) Travelling expenses Rs. 28,790/-

Ld. AR for the assessee at the outset submitted that he has been instructed by assessee not to press the addition made by Assessing Officer and subsequently confirmed by Ld. CIT(A) with regard to freight, power & fuel and travelling expenses for ₹31,400/-, ₹55,600/-, ₹28,790/- respectively. Hence, the same are dismissed as not pressed.

Thus, the part ground of first issue of appeal raised by assessee remains to be adjudicated on account of addition made for salary, wages and bonus for ₹1,98,500/-.

5. Briefly stated facts are that assessee in the present case is a private limited company and engaged inter alia in the agricultural business. The assessee in the year under consideration has claimed an expense of ₹1,98,500/- on account of salaries, wages and bonus expenses. During the course of assessment proceedings, the assessee failed to furnish supporting evidence. Therefore, the AO disallowed the same and added to the total income of assessee.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that expenses were incurred by it for its business activities. The AO was erred in disallowing the entire expense. The Ld. CIT(A) called for remand report from AO who remained silent in his remand report in respect of salary, wages and bonus expenses. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

*“(ii) As regards the claim of expenses under the other head e.g. payments claimed for salary, wages & bonus at Rs.1,98,500.00, freight, power & fuel, conveyance/travelling, I find that these expenses are incurred mainly for the agricultural activity, income of which is exempt. Hence, I am of the view that the AO was perfectly correct in disallowing the said expenses. Hence, the disallowances made under these heads of expenses claimed are confirmed.”*

Being aggrieved by this order of Ld. CIT(A) assessee has come up in an appeal before us.

7. Ld. AR for the assessee before us filed two sets of paper book which is running pages from 1 to 18 (1) and 1 to 95 (2) respectively and submitted that the assessee besides agricultural has also declared other taxable income which was accepted by

the Revenue. Ld. AR in support of assessee's claim drew our attention on audited profit and loss account which is placed on page 10 of the paper book (1).

Ld. AR also submitted that assessee being a body of corporate has to incur certain expenses in order to keep its status active. Therefore, disallowance of all the expenses cannot be made.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

8. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, the assessee has claimed expenses under the head salary, wages & bonus which were treated by the lower authorities as incurred in connection with the agricultural income only. Thus the entire expenses of Rs.1,98,500.00 was disallowed. However we note that the assessee besides the agricultural income had also shown sales of Rs. 91,840.00 and rental income of Rs. 79,200.00. Therefore, it will be wrong on the part of the AO to treat the entire expenses towards the agricultural income only.

In addition to the above, we also note that it is well settled law that a private limited company being a body corporate has to incur certain expenses to keep its status active. In this regard, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. *Ganga Properties Ltd.* reported in 199 ITR 94 (Cal) wherein it was held as under:-

*"A limited company even if it does not carry on business, even if it derives income from other sources, has to maintain its establishment for complying with statutory obligation so long as it is in operation and its name is not struck off the register or unless the company is dissolved. So long as the company is in operation, it has to maintain the status as a company and it has to discharge certain legal obligations and for that purpose it is necessary to appoint clerical staff and secretary or accountant and incur incidental expenses. In this background, the conclusion of the Tribunal that the expenses incurred were wholly and exclusively for the activities to earn income was a reasonable conclusion.*

*The Tribunal was, thus, justified in allowing the expenditure claimed by the assessee as deduction."*

However the Ld. AR before us has not brought any material on record suggesting that the expenses claimed under the head of business were incurred exclusively for the business purpose and no part of it was incurred in connection with the exempted

declared by the assessee. In the absence of information we apprehend that the assessee should not avail the double deduction of the same expenses.

Indeed, the facts that the assessee has shown being sales and a body corporate cannot be just brush aside. Therefore the disallowance of the entire expenses cannot be made. But at the same time the amount of expenditure necessary for the sustenance of the company and which has nexus with the business activity of the assessee is eligible for deduction.

Thus in the absence of the information we are of the view that all the expenses incurred by the assessee cannot be treated as business expenses. Therefore in our view after considering the entire facts of the case the justice shall be served if the disallowance made by the AO is restricted to the reasonable extent. Hence, in the interest of justice & fair play we are inclined to restrict the disallowance of the expenses to the tune of 50% of the expenses claimed by the assessee. In view of above we restrict the disallowance to the extent of 50% of the expenditure as discussed above. Accordingly, AO is directed. Thus, the part ground regarding salary, wage & bonus of appeal of assessee is partly allowed.

9. Next issue raised by assessee in ground No.2 is that Ld. CIT(A) erred in restricting the disallowance of miscellaneous expenditure from ₹3,05,438/- to ₹1,52,719/- only.

The assessee in the year under consideration has claimed miscellaneous expenses of ₹3,05,438/- but during the course of assessment proceedings, failed to furnish the supporting evidence. Therefore, the AO disallowed the same and added to the total income of assessee.

10. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who restricted the disallowance to the tune of 50% of ₹3,05,438/- by observing as under:-

*“(iii) As regards the expenses claimed under the head Misc. expenses, I am of the view that the contention of the AO is apparently correct but entire disallowances of the claim was not warranted. Therefore, I restrict the disallowance made under this head or expenses to 50% of the claim as against 100% disallowed by the AO. Thus, this ground of appeal is partly allowed.”*

Being aggrieved by this order of Ld. CIT(A) assessee has come up an appeal before us.

11. Before us Ld. AR for the assessee submitted that assessee has claimed miscellaneous expenses in its profit and loss account for ₹11,600/- only but AO has wrongly treated the same at ₹3,05,438/- on the basis of wrong assumption of fact. He further submitted that miscellaneous expenditures were incurred in connection with business of assessee, therefore, same should be allowed in full.

On the other hand, Ld. DR for the Revenue vehemently relied on the order of Authorities Below.

12. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, the assessee has claimed miscellaneous expenses of Rs. 11,650 only where as the AO has disallowed entire miscellaneous expenses amounting to Rs. 3,05,438.00 only. However the learned CIT-A reduced the disallowances to the extent of 50% of the miscellaneous expenses i.e. 1,52,719/- (50% of 3,05,438.00). However on perusal of the audited financial statements we note that the assessee has claimed Miscellaneous Expenses only for Rs. 11,650.00. Therefore we hold that the disallowances made by the AO and subsequently party confirmed by the learned CIT(A) has been made without the application of mind. We also note that the disallowances of the expenses cannot exceed the amount of actual expenses claimed by the assessee. Therefore we are of the view no disallowance on account of Misc. expenditure in the given facts and circumstance is warranted. On questioned to the ld. DR, he failed to bring any satisfactorily reply. Hence we have no hesitation to reverse the order of authorities below. Accordingly AO is directed. Hence the ground of appeal of the assessee is allowed.

13. Next issue raised by assessee in ground No.3 is that Ld. CIT(A) erred in reducing the agricultural income to ₹2.40 lakh instead of ₹16,68,430/-.

14. The assessee in the year under consideration has shown its agricultural income of ₹16,68,430/- but during the course of assessment proceedings assessee failed to furnish the supporting evidence to justify that it has earned income from agricultural activities. Therefore, the AO treated the entire agricultural income as “income from other source”.

15. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that supporting evidence to justify the earning of agricultural income was shown during assessment proceedings. The assessee also contended that similar income was also shown in the earlier year which was accepted by the Department. The assessee also submitted that it has incurred expense in connection with agricultural income which needs to be set off to determine the correct agricultural income. Therefore, the entire amount cannot be treated as “income from other source”. The Ld. CIT(A) called for remand report from AO who submitted that assessee failed to furnish the name, address of the persons to whom the agricultural goods were sold. Therefore, it can be inferred that assessee had no agricultural income. However, assessee in rejoinder submitted before Ld. CIT(A) that notices were issued u/s 131 of the Act to the buyers who purchased agricultural products from assessee and some of the buyers appeared before the AO and confirmed the transaction for purchasing of agricultural produces from assessee. However these buyers failed to furnish their books of account. Therefore, the AO treated agricultural income as “income from other sources”. However the assessee cannot be penalized on account of non-furnishing of books of account by the buyers. The assessee in support of its claim relied on the judgement of Hon'ble jurisdictional High Court in the case of *CIT vs. Korlay Trading Co. Ltd.* Reported 322 ITR 820 (Cal).

The assessee also submitted that the husband of one of the Director of the assessee-company owns 4 acres of identical land in the same area and he has declared agricultural income of ₹10.25 lakhs which was accepted by the Revenue in terms of order passed by the Co-ordinate Bench of this Tribunal in the case of *ITO vs. J.H. Deb Kumar Sinha* in **ITA No.2101/Kol/2006**. The assessee also submitted that it has 12 acres of agricultural land which has given rise to the agricultural income of ₹16,68,435/-. However, Ld. CIT(A) after considering the submission of the assessee deleted the addition in part made by the AO by observing as under:-

*“4.7.4 Decision:*

*I have carefully considered the submission & counter reply put forth on behalf of the appellant along with the supporting details//documents furnished & case laws relied upon, perused the facts and case records including the impugned assessment order, the remand report and other materials brought on record. It is seen that the AO has considered the entire agricultural sale proceeds as the income of the appellant as*

*income from other source. To my mind, this treatment employed by the AO cannot be considered as a sensible and practical proposition and devoid of merit. I am of the view that even if the appellant failed to substantiate the earning of income from agricultural source, in that case the net income is required to be computed by deducting the relevant expenses debited to P&L A/c from the agricultural sale proceeds credited for consideration as the appellant's income from other source and not the entire of such sale proceeds. I also find force in the argument of the A/R that since the appellant company owned 12 Acres of agricultural lands in a place where the agricultural income shown by the husband of one of the directors is accepted by the Department, the claim of agricultural income of the appellant should not have been doubted. I have considered the enquiry findings of the AO while he was trying to ascertain the veracity of the claim of the appellant regarding the extent of agricultural income. I have also gone through the judgements of the case laws relied upon by the appellant.*

*In view of the above and after considering the entire facts and circumstances of the case, I am of the considered view that the AO was not justified in treating the entire sale process of the agricultural produce as income of the appellant. Therefore, the AO is directed to work out the net income (A) shown by the appellant under this source by deducting the related expenses from the total sales proceeds. Moreover, considering the location, productive capacity/fertility of the land, the reported yielding and earning capacity of the neighbouring owners as well as the past history of the appellant, I am of the opinion that the agricultural income of Rs.20,000/- per Acre can be reasonably considered as agricultural income of the appellant. Thus, Rs.2,40,000/-(B) can be accepted as agricultural income of the appellant during the relevant year. The balance out of the net income (C)= {A-B} be treated as undisclosed income from other source as against Rs.16,68,430/- considered by the AO in the assessment order. Thus, this ground of appeal is decided accordingly."*

Being aggrieved by this order of Ld. CIT(A) assessee has filed second appeal before us.

16. Ld. AR for the assessee before us submitted that Ld. CIT(A) has treated the agricultural income of ₹20,000/- per acre after considering the location, production capacity / fertility the return of yielding and earning capacity of neighbouring owners and the past history of assessee. But Ld. CIT(A) has not substantiated its finding on the basis of any documentary evidence. Ld. AR before us reiterated the same arguments that were made before Ld. CIT(A).

On the other hand, Ld. DR submitted that assessee failed to furnish any documentary evidence in support of assessee's agricultural income. Therefore he vehemently relied on the order of authorities below.

17. We have heard the rival contentions of both the parties and perused the materials available on record. In the instant case, the assessee has shown agricultural income of Rs.16,68,430/- which was treated by the AO as income from other sources.

The AO also in his remand report recommended to treat the amount entire amount of Rs. 16,68,430/- as income from other sources on the ground that the assessee failed to furnish the names and complete addresses of the person to whom such agricultural goods were sold.

17.1 However the Ld CIT(A) worked out the agricultural income of Rs. 20,000 per acre and accordingly treated the sum of Rs.2.40 lakh as agricultural income of the assessee and treated the remaining amount of Rs.14,28,430.00 (16,68,430.00 - 2,40,000.00) as income from other sources.

There is no dispute that the assessee owned to an agriculture land of 12 acres at Panagarh, Beldanga, District Burdwan, West Bengal. It is also undisputed fact that the husband of one of the Director namely Shri Deb Kumar Sinha of the assessee company also owned a piece of land about 4 acres in the same area. Shri Deb Kumar Sinha has declared an agricultural income of Rs. 10,25,000.00 in the AY 2003-04 in respect of the aforesaid land which was allowed by the Hon'ble ITAT in the case of ITO Vs. Shri Deb Kumar Sinha in **ITA No. 2101/Kol/2006** vide order dated 30-04-2007. The relevant extract of the order is reproduced below:-

*“10. We have given our careful consideration to the rival submissions mad before us and have perused the orders of tax authorities. In this case, the AO has disallowed the claim of the assessee observing that the assessee has not claimed such agricultural income in the immediately preceding year and has failed to file the details of the buyers of such agricultural trees. However, the Ld. CIT has given a categorical finding that the assessee has shown agricultural income in the previous year also and the Department has accepted the same. Apart from the above fact, we have also considered the remand report by the AO in which he has not controverted the evidences filed by the assessee before the Ld. CIT(A) and the Inspector deputed by him has confirmed the ownership of 4.5 acres of agricultural land with the assessee. We, therefore, considering the above facts do not see any reason to interfere with the order of Ld. CIT(A) in deleting the addition. We, therefore, uphold the same and reject the ground raised by the Revenue.”*

We find from the order of the Ld. CIT(A), it is clear that the assessee has earned agricultural income from its agricultural land but the same was quantified at Rs.20,000 per acre only. However, on perusal of the order of Ld CIT(A) we note that the basis of Rs.20,000 per acre has not been substantiated by the Ld CIT(A) on the basis of documentary evidences produced by assessee.

17.2 We also note that the assessee before the learned CIT-A submitted that some of the buyers of agriculture appeared before the AO and accepted to have purchased the agricultural products from the assessee. But the buyers failed to furnish the books of accounts. However, we find that the submissions made by the assessee have not been adjudicated by the Ld CIT(A) during the appellate proceedings.

17.3 The finding given by the co-ordinate Bench of this Tribunal in the case of *Shri Deb Kumar Sinha* (supra) having identical facts cannot be ignored as the identical issue was decided in favour of assessee. We also note that Shri Deb Kumar Sinha has shown agricultural income of Rs.2,27,777/- per acre whereas the assessee has shown only ₹1,39,035 per acre. The income declared by Shri Deb Kumar Sinha was based on the Inspector report furnished during the assessment proceedings. In view of above and after keeping reliance in the order of this Tribunal in the case of *Shri Deb Sinha* (supra) we are inclined to reverse the order of authorities below and directing the AO to delete the same. Hence, the ground of appeal of the assessee is allowed.

18. Next issue raised by assessee in ground No.4 is that Ld. CIT(A) erred in enhancing the income of assessee by ₹3,74,525/- on account of negative cash balance.

19. The AO during his remand proceedings has observed that there is negative cash balance in the cash book of the assessee for ₹3,78,525/- on 27.01.2006. Accordingly, the AO recommended the addition on account of negative cash balance of ₹3,78,525/- Accordingly, Ld. CIT(A) treated the negative cash balance of ₹3,78,525/- as unexplained cash credit by observing as under:-

*“Decision*

*The submissions and counter submissions are considered and the facts of the case perused. The judgments referred by the appellant are also gone through. I do not find any merit in the argument put forward on behalf of the appellant. The facts of the case laws relied upon by the appellant are distinguishable from the facts of the appellant. Moreover, I do not find any merit in the explanation offered by the appellant regarding the shortage of cash in the cash book on the different dates from 24.09.2005 to 25.02.2006 even though the appellant made investment in the property in question during the period. Therefore, I agree with the findings of the AO that the reply of the appellant indicates that its audited books of accounts were not correct as incorrect entries were made in the cash book. Even if the statement of the assessee is*

*taken to be true, the assessee company did not explain how it had negative cash balance of Rs.3,78,525/- on 27/01/2006.*

*In view of the above discussion and finding, the explanations offered by the appellant either before the AO or before me are not found to be convincing and acceptable and the negative cash balances are nothing but cash credits carried by the appellant company from undisclosed sources. Hence, the said sum of Rs.3,78,525/- added back to the total income of the appellant.”*

Being aggrieved by this order of Ld.CIT(A) assessee has come up an appeal before us.

20. Before us Ld. AR for the assessee submitted that the AO has exceeded his jurisdiction by examining the fresh issue during his remand proceeding. The AO was expected comment on the issues referred by Ld. CIT(A) and nothing else.

On the other hand, Ld. DR vehemently relied on the order of authorities below.

21. We have heard the rival contentions of both the parties and perused the materials available on record. The undisputed fact of the case is that the issue of negative cash balance as observed by the AO during the remand proceedings was not there during the original assessment proceedings. The matter was remanded by the Ld CIT(A) to the AO for his comments on the specific issue but the AO exceeded his jurisdiction by examining the fresh issue which was not subject matter of the remand report. In our considered view such addition made by the AO and subsequently confirmed by the Ld CIT(A) is liable to be deleted. In holding so we find support and guidance from the judgment of Honourable Bombay High Court in the case of *CIT vs. Indo-Aden Salt Works Company* reported in 36 ITR 429 (Bom) wherein it was held as under :

*“That brings us to the consideration of the real contention of the assessee which turns on the interpretation of the Tribunal's order when it directed the Appellate Assistant Commissioner to dispose of the appeal on its merits. It appears from that order that it was a common ground before the Tribunal at the hearing of that appeal that it was a case of succession within the meaning of section 25(4). It is also clear that the only question which the Tribunal was asked to consider and which the Tribunal had jurisdiction to consider was whether the Appellate Assistant Commissioner was right in deciding the appeal on the sole legal contention that there was no right in the assessee to claim relief in respect of super-tax. The Tribunal having reached the conclusion that the Appellate Assistant Commissioner had taken a technical and narrow view of the matter would have proceeded to go into the merits of the claim for relief in respect of super-tax. It was at that stage that counsel for the assessee stated that he wanted to lead certain evidence in respect of the claim for the assessee-firm for relief from super-tax. That this was what happened before the Tribunal is*

*expressly stated in the order of the Tribunal and it is only in this background and in this context that the words relating to vacating the order of the Appellate Assistant Commissioner and restoring of the appeal must be read. It is true that read by itself the last sentence of the order would suggest that the Appellate Assistant Commissioner was being directed to deal with the entire appeal on its own merits. The order of the Tribunal must, however, be read and understood in the proper context and in the light of all that is stated in the order itself and if we do so, as indeed we should do so, there is considerable force in the submission on behalf of the assessee that the order must be read as restricting the scope of the inquiry by the Appellate Assistant Commissioner only to the question of merits affecting the claim for relief from super-tax. We must, however, observe that there is in this case scope for the contention very strongly pressed before us by Mr. Joshi. On a consideration of the matter, we prefer to take the view that the order of the Tribunal required the Appellate Assistant Commissioner to inquire only into the matter of relief from super-tax on its merits.”*

We also find support and guidance from the order of ITAT Mumbai Bench in the case of *Aventis Pharma Ltd v. DCIT* in **ITA No.4179/Mum/2003** dated 12.12.2012, wherein it was held as under:-

*“7. Therefore, in view of the above discussion, we hold that the Assessing Officer while making certain additions by restricting 90% of the receipts by applying clause (baa) of Explanation to sec. 80HHC has travelled beyond his jurisdiction and scope of enquiry as directed by the Commissioner of Income Tax (Appeals) because it was not the subject matter of remand proceedings. Since the Assessing Officer was lacking the jurisdiction in the remand proceedings to go into the issue other than directed to be re-examined, the Commissioner of Income Tax (Appeals), in the appeal proceedings against the order giving effect also has no jurisdiction to go into the said issue because under the provisions of Sec. 251, the Commissioner of Income Tax (Appeals) can exercise his jurisdiction on the issue on which the Assessing Officer IT No.4179/M/03 Aventis Pharma Ltd. could have exercised but did not do so. In the case when the Assessing Officer has no jurisdiction over an issue, then in the appellate proceedings, the jurisdiction of the Commissioner of Income Tax (Appeals) cannot be enlarged beyond the jurisdiction of the Assessing Officer. Hence, we set aside the orders of the authorities below on this issue as without jurisdiction.”*

21.1 We also find support and guidance from the order of ITAT Delhi Bench in the case of *DCIT v. Daulat Ram Arora* in **IT(SS) No.8/Del/2013** dated 14.08.2015 wherein it was held as under:-

*“12. On a consideration of the same, we find that the AO in the present proceedings had incorrectly proceeded to re-consider the issues which already stood concluded by the Co-ordinate Bench. It is trite law that in the remand proceedings, the AO cannot travel beyond the directions given in the remand.*

In view of above proposition and respectfully following the aforesaid orders of ITAT Mumbai and Delhi Benches, we hold that the AO cannot take up the fresh issue in the remand proceedings. Thus we are inclined to reverse the order of authorities below. Accordingly, AO is directed. Hence, the ground of appeal of the assessee is allowed.

22. In the result, assessee's appeal is partly allowed.

**Coming to Revenue's appeal in ITA No.04/Kol/2014.**

23. The revenue has raised the following grounds:-

*"1. That is the facts and in law of the case the Ld. CIT(A) erred in deleting the addition made by the AO under the head liabilities amounting to Rs.14,90,887/- and provisions amounting to Rs.28,259/- ignoring the Asst. Order as well as Remand Report made by the AO.*

*2. That is the facts and in law of the case the Ld. CIT(A) erred in deleting the addition made by the AO under the head secured loans amounting to Rs.65,00,000/- though the assessee was unable to prove identity, authenticity & creditworthiness of the loan creditor."*

24. First issue raised by Revenue in ground No.1 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹14,90,887/- and ₹28,259/- on account liability and provision respectively.

25. The assessee in its balance-sheet has shown liabilities and provisions of ₹14,90,887 and ₹28,259/- only. But during the year assessee failed to furnish the details of liability and provision as discussed above. Therefore, the AO disallowed the same and added to the total income of the assessee.

26. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the liability of ₹14,90,887/- includes opening balance of ₹8,90,887/-Therefore, there is no question of making any addition on account of liability carried forward from the earlier years. The assessee further submitted that a sum of ₹ 6 lakh was received from M/s Compro Systems (India) Ltd. (CSIL for short) as advance rent and claimed to have furnished all necessary evidence at the time of assessment proceedings. But the AO disbelieved the same and added to the total income of the assessee.

The assessee also submitted that the provision of ₹28,259/- was brought forward from the earlier years. Therefore there is no question of making the addition on account of brought forward provision of ₹28,259/- only.

The Ld. CIT(A) called for remand report from AO who, in turn, submitted that the Inspector of Income Tax was deputed to confirm the amount of advance rent received from CSIL and such company was not found at the given addresses.

The assessee in rejoinder submitted that non-finding of company at the given address cannot be the ground for making the addition. The assessee in support of its claim has filed copy of confirmation and the assessment order and audited balance-sheet justifying that the amount of advance was paid by CSIL. However, Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*“4.3.3 Decision:*

*After considering the submission and counter reply furnished on behalf of the appellant along with the supporting documents/details, perusing the entire facts of the case including the observation and findings of the AO in the assessment order as well as in the remand report and other materials brought on record, i am inclined to agree with the contention of the appellant that mere non-finding of the person at present address cannot be the basis for disallowance of a sum, which was advanced some eight years back by brushing out the valid supporting and corroborative documents furnished by the appellant e.g. the confirmation letter of the company, the copy of the assessment order of the Assessing Officer for the said year and the audited balance-sheet with P&L A/c. Under the facts and circumstances of the case, the addition made by the AO is hereby deleted and this ground of appeal is allowed.”*

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

27. Ld. DR for the Revenue before us submitted that the addition has been deleted by Ld. CIT(A) on the basis of additional evidence which was accepted in contravention to the provision of Rule 46A of the IT Rules, 1962. Accordingly, Ld. DR prayed before the Bench to restore the matter before AO for fresh adjudication in accordance with law.

On the other hand, Ld. AR for the assessee submitted that merely non-finding the company at the given address cannot be the basis of making the addition in the hands of the assessee. The AO erred in not considering the confirmation furnished by CSIL. He further reiterated the same arguments that were made before Ld. CIT(A) though he relied on the order of Ld. CIT(A).

28. We have heard the rival contentions of both the parties and perused the materials available on record. It is not disputed that the current liabilities of Rs.14,90,887/- was inclusive of the opening balance of Rs.8,90,887/- which was

brought from the previous assessment years. Therefore there is no question for making the addition in respect of the amount brought forward from the earlier years.

Similarly the assessee has received a sum of Rs.6 Lacs from Csystem India Private Limited (for short CSIPL) during the year under consideration. Such receipt by the assessee was supported on the basis of assessment order and audited financial statements of CSIPL. The AO has also not disputed the aforesaid facts in his remand report but commented that CSIPL is not traceable at the given address. After considering the facts in totality we are of the view that the addition made by the AO cannot be sustained merely on the ground that the party is not traceable. The Revenue has not brought any defect in the submissions and details filed before the AO during the remand proceedings.

Similarly we note that the provision for income tax of Rs.28,259/- is arising from the earlier years therefore no addition for the same can be made for the year under consideration.

In view of above, we do not find any reason to interfere in the order of Ld CIT(A). Hence we uphold the same. Thus the ground of appeal raised by the Revenue is dismissed.

29. Next issue raised by Revenue in ground No.2 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹ 65 lakh on account of secure loan.

30. The assessee in the year under consideration has taken a secured loan of ₹65 lakh but failed to furnish the supporting evidence to the AO at the time of assessment proceedings. Therefore, same was disallowed and added to the total income of assessee.

31. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that AO has made the disallowance by treating the loan amount expenditure without applying his mind. The Ld. CIT(A) called for remand report from AO who has admitted that assessee has furnished the bank statement and confirmation from the party namely Mr. Asit Ray proprietor of Shree Mudralaya (SM for short) for the loan of ₹ 65 lakh.

However, AO in his remand report further submitted that Mr. Asit Roy has not shown any receivable in its balance-sheet from the assessee. The statement u/s 131 of the Act

of Shri Asit Roy was recorded wherein he admitted that he has not signed any confirmation. Ld. AO also submitted Shri Asit Roy was not the proprietor of SM during the financial year 2005-06. However, assessee in his rejoinder submitted that Mr. Asit Roy has appeared before AO in compliance to the notice issued u/s 131 of the Act. There was a confirmation from the manager of UCO Bank, where bank account of SM was maintained and confirmed that cash credit limit of ₹ 175 lakh was sanctioned to SM. Shri Asit Roy has not denied the transaction of loan in his statement furnished u/s. 131 of the Act. The assessee also submitted that all the transactions were routed through banking channel of the assessee as well as SM. The Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*“4.5.5 Decision:*

*I have carefully considered the submission put forth on behalf of the appellant along with the supporting details/documents furnished, case laws relied upon, perused the facts and case records including the findings of the AO in the impugned assessment order and other materials brought on record. It is contended by the A/R of the appellant that the genuineness of the identity, genuineness of the transaction and creditworthiness of the loan creditor, Shri Asit Roy cannot be doubted simply because the said creditor stated to the AO that he has not signed the confirmation. The A/R also stated that the loan amount has not been repaid till date due to some litigation been started between the husband of one of the Directors and the loan creditor. However, he never denied that he has given the loan and the AO has not brought on record any material to show that the amount not being reflected in the balance sheet as on 31.03.2006 of the creditor. The contention of the appellant appears to be correct as it is seen from the statement of the creditor recorded by the AO during remand proceeding that the said creditor in his reply to question No.4 of the AO regarding whether he has given any loan or advance to M/s Dalia Investment Pvt. Ltd. in FY 2005-06, his answer was **“I DO NOT REMEMBER, I WILL REPLY FROM RECORDS FROM BANK AND INFORM YOU.”** However, in reply to Q. no. 5 of the said statement he stated he has not signed the loan confirmation, copy of which shown to him. It is also seen that the Assessing Officer's report is silent on the point whether the relevant loan amount has been shown/reflected in the balance sheet (as on 31.03.2006) of the creditor as receivable from the appellant or not. Further, in the case records received from the AO pertaining to the creditor, the balance sheet for the relevant period is found to be unavailable.*

*I find force in the argument of the A/R that the bank account produced by the appellant before AO as well as before me during the appellate stage which clearly shows that Rs.65 lacs was issued from Shree Mudranalaya, from the account maintained with UCO Bank, Carnawalis street Branch, comprising two cheques (Nos 000612387 & 000612388) cleared on 25.01.2006 and deposited in the bank a/c of the appellant maintained with the Allahabad Bank, Gariahat Branch on the same date. It is also submitted that it would be revealed from the bank statement of the creditor that on 13.01.2006, the opening balance was Rs.60,61,618/- and from the bank*

*correspondence, it would also be revealed that Senior Manager, UCO Bank, Carnawalis Street Branch, Kolkata vide his letter dated 25.04.2006 informed M/s Shree Mudranalaya that they have sanctioned credit facilities in the “**form of cash credit i.e. Rs.175 lakhs**” which undoubtedly proves the creditworthiness of the creditor, the above loan of Rs.65,00,000 (Rs.35 lakhs + Rs.30 lakhs) are reflected in the two bank statements i.e. one of the loan creditor and another of the appellant. Thus, the genuineness of the transactions is proved.*

*As regards observation of the AO that during the relevant period, Shri Mudranalaya was not a proprietorship concern, it was a partnership concern, it is stated that from the two bank statements filed along with the other evidences, it would be revealed that both the partnership bank account as well as the proprietorship bank account of Shree Mudranalaya were maintained by Shree Mudranalaya in the same bank branch i.e. UCO Bank, Carnawalis Street Branch, Kolkata. the account numbers are 2836 of the proprietorship and 4294 of the partnership, which was opened on 29.04.2006. Therefore, it is argued that it cannot be said that only the firm's account in the UCO Bank was operated. Here it is proved that both the accounts of the firm i.e. partnership and the proprietorship were operated by the proprietor / partner of M/s Shree Mudranalaya. Therefore, it is proved beyond any doubt the identity of the creditor, creditworthiness of the creditor and the genuineness of the transactions. After going through the documents and bank statement furnished by the appellant, it appears that the above contention of the appellant is correct.*

*In the light of the above discussion and findings, considering the entire facts of the case, I am of the view that the ape has brought sufficient material evidence to prove the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. Moreover, the source of the creditor is also explained out of the sanctioned Bank loan which is evident from the letter of the bank as well as bank statements of the appellant and the loan creditor. Under this facts and circumstances, the addition made by the AO is found to be unsustainable. Therefore, it is held that the AO is not justified in making the addition of Rs.65 lacs as cash credit u/s. 68 of the Act and thus the same is hereby delete. Hence, this ground of appeal is allowed.”*

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

32. Before us the Ld. DR relied on the order of Ld. CIT(A) and prayed before the Bench to confirm the same. On the other hand the Ld. AR submitted that all evidence in support of loan amount of ₹65 lakh was duly furnished before the authorities below including the bank statement of both the parties. The creditworthiness of the SM cannot be doubted as it was sanctioned a loan amount of ₹ 175lakh by the UCO Bank. Mr. Asit Roy duly appeared before AO in response to the notice issued u/s. 131 of the Act. Therefore, the identity of the loan creditor cannot be denied. Ld. DR relied on the order of AO.

33. We have heard the rival contentions of both the parties and perused the materials available on record. In the instant case the assessee has received the loan of

Rs. 65 lacs from Messieurs Shree Mudralaya prop shri Asit Roy. The AO in his remand report has admitted the fact that the assessee has filed copy of the confirmation of the account from Shri Asit Roy and the copy of the bank statement. However further enquiries from the AO having jurisdiction over Shri Asit Roy revealed that there is no receivable in the accounts of Shri Asit Roy. Accordingly notice under section 131 of the Act was issued to Shri Asit Roy who admitted that he has not signed the loan confirmation. Shri Asit Roy also submitted that in the financial year 2005 – 06 he was not the proprietor of Shree Mudralaya. It was also submitted by Shri Asit Roy the PAN : AGWPR-2137-H does not belong to Shree Mudralaya- a partnership firm rather it belongs to him.

From the foregoing discussion certain undisputed facts emerge as detailed under :

1. The transaction of loan was routed through banking Channel and the amount of loan was outstanding at the end of the relevant financial year. This fact was accepted by Shri Asit Roy in his statement under section 131 of the Act.
2. It was also confirmed by the manager of UCO bank vide letter dated 25.3.2006 that shree Mudalaya was sanctioned a loan of Rs. 175 lakhs in the form of cash credit limit.
3. The amount of loan received by the assessee is reflected in its bank account as well as in the account of loan creditor.

In view of above we note that the identity, credit worthiness and genuineness of the transactions was established beyond doubt therefore no additions on account of unexplained cash credit as specified under section 68 of the Act can be made in the given facts and circumstances.

33.1 We also note that there is no adverse comment by the AO regarding the transactions of loan through banking Channel.

The argument of the learned DR that the additional evidences have been admitted by the CIT(A) in contravention to the provisions of Rule 46A of Income Tax Rules does not hold good as the same has not been challenged by the Revenue in the grounds of appeal.

Moreover, we note that the learned CIT-A adjudicated the issue after calling for the remand report from the AO and considering the submission of the assessee made

during the remand proceedings. In view of above it cannot be said that the Id. CIT(A) has admitted the additional evidence. Therefore, we do not find any reason to interfere in the order of Ld CIT(A) and uphold the same. Hence, the ground of appeal of the Revenue is dismissed.

34. In the result, Revenue's appeal is dismissed.

35. **In combine result, assessee's appeal in ITA No.2818/Kol/2013 is allowed partly and that of Revenue's appeal in ITA No.04/Kol/2014 is also dismissed.**

Order pronounced in open court on 27/04/2018

Sd/-  
(न्यायिक सदस्य)  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
Accountant Member

\*Dkp, Sr.P.S

दिनांक:- 27/04/2018 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-M/s Dalia Investment Pvt. Ltd., 34/2A, Ballygunge Circular Road, Kolkata-19
2. राजस्व/Revenue-DCIT, Circle-12/ITO Wd-12(1), Aayakar Bhawan, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता