

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.411/Ind/2018

Assessment Year: 2012-13

M/s. Urvashi World Wide Pvt.Ltd, 305, D/S-3 Scheme No.78, Indore (Appellant)	Vs.	Income Tax Officer Ward 4(5), Indore (Respondent )
PAN No.AAACU2067J		

Revenue by	Shri Lal Chand, CIT
Assessee by	Shri P.D. Nagar,CA
Date of Hearing	12.09.2018
Date of Pronouncement	19.9.2018

**ORDER**

**PER MANISH BORAD, AM.**

The appeal filed by the assessee pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), vide appeal No. IT-178/15-16/361 order dated 02.03.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 30.03.2015 by ITO-4(5), Indore.

2. Assessee has raised following grounds of appeal;

“1.That the learned Commissioner of Income tax (A) erred in law in not affording reasonable opportunity of being heard while dismissing the appeal due to non-attendance by the appellant or its counsel. He did not appreciate that proper notices were not served on the appellant because the registered office of the company was shifted to Mumbai since 26/07/2016 and there was no responsible person at Indore. The appellant had in fact requested to transfer the appellate proceedings to CIT (A), Mumbai for proper adjudication vide letter dated 21.02.2017. Such bonafide and honest belief that the proceedings will continue at Mumbai only, resulted into non-attendance by the appellant. Under the circumstances dismissal of appeal in default is unjustified, improper, bad in law and deserves to be quashed.

2)That the learned Commissioner of Income tax (A) erred in law in not considering the merits of the case in its true perspective. He ought to have at least called the case records, of the appellant before deciding the case on merits because all relevant documents in support of credits lying in the books were submitted along with proper evidences. Under the circumstances dismissal of appeal in

default even on merits without appreciating is unjustified, improper, bad in law and deserves to be quashed.

Without prejudice to above, the learned Commissioner of Income tax (A) erred in law in confirming the addition u/s 68 of the Act amounting to Rs.18, 92, 50,000/- lying to the credit of six companies who are associate concerns only. The AO did not appreciate the fact that a sum of RS.7.25 crores was accepted as loan in earlier year and it continued during the year. Not only identity, capacity, credit worthiness as well genuineness of loans taken was proved beyond doubt but even source of the source was proved because none of the loans were accepted from outsiders. Therefore, addition made at Rs. 18, 92, 50,000/- by the AO and confirmed by the CIT (A) is unjustified, improper, bad in law and deserves to be quashed.

4) That the learned Commissioner of Income tax (A) erred in law in confirming the addition u/s 68 of the Act amounting to Rs. 40,00,000/- being the amount of loan given to M/s .Swastik Worldwide Pvt Ltd ignoring the fact that the amount was not received by the appellant and it was not in the form of cash credit. It being a asset addition made by AO u/s 68 of the Act and confirmation thereof is wholly unjustified, improper and bad in law.

5) That the learned Commissioner of Income tax (A) erred in law in confirming the addition u/s 68 of the Act amounting to Rs.50 lacs being the amounts received towards share capital and premium thereon in earlier years from *M/s. Clifton Securities Pvt Ltd, Mis Zenser Merchandise Pvt Ltd & M/s Bhuwania Vinimay Pvt Ltd*. He did not appreciate that such amount by way of share application money was received in earlier years whereas shares were issued during the year.

The identity, capacity and genuineness of the transactions was also proved by documentary evidences yet addition made during the year ignoring the fact that the amounts were received in earlier years is wholly unjustified, improper, bad in law and deserves to be quashed.

The learned Commissioner of Income tax (A) further erred in law in confirming the addition of Rs.11,50,000/- u/s 2(22)(e) of the Act ignoring the fact that the appellant had advanced an amount of Rs.11,50,000/- to *M/s. Shrashti Homes Pvt Ltd* who does not hold any shares of the appellant company. Just because *M/s. Param Holdings Pvt Ltd*, and *M/s. Param Trust Pvt Ltd*, two shareholders of appellant company hold more than 10 shares of *M/s. Shrashti*

Homes Pvt Ltd, hence money advanced to *M/s. Shrashti Homes Pvt Ltd* at Rs.11.50 lacs cannot be assessed to tax in the hands of the appellant company under section 2(22) (e) of the Act.. By no stretch of imagination the money advanced by the appellant company to other private limited company can be assessed to tax in its hand because it was not received from any other company by the appellant hence addition so made and confirmed by CIT(A) is wholly unjustified and deserves to be quashed”.

3. At the outset Ld. Departmental representative submitted that the assessee did not appeared before Ld.CIT(A) even after being provided various opportunities of being heard. As a result of which Ld.CIT(A) has passed an ex-parte order dismissing assessee’s appeal. Ld. Departmental representative prayed that all the issues raised in this file needs to be set aside to the file of Ld.CIT(A) for fresh adjudication.

4. Ld. Authorized representative for the assessee raised no objection if all the issues raised in this appeal are set aside to the file of Ld.CIT(A).

5. We have heard rival contention and perused the record placed before us.

6. Brief case of the fact as culled out from the records are that the assessee is a private limited company engaged in the trading of agri based commodities. Return of income declaring total income of Rs.1,83,160/- in the e-mail return dated 29.09.2012. Case selected for scrutiny through CASS and notice u/s 143(2) /142(1) of the Act were issued. Representative on behalf of the assessee attended and filed necessary details. Assessment was completed on 30.03.2015 after making various additions at Rs.20,06,58,609/-. Against various additions made by Ld.A.O appeal was filed before Ld.CIT(A). Opportunity was provided at four occasions on 22.12.2016, 12.02.2017, 31.01.2017 and 02.03.2017 and neither the assessee nor its representative appeared before Ld.CIT(A) nor any written submissions were made. Due to this reason Ld.CIT(A) passed ex-parte order dismissing the assessee's appeal.

7. Now the assessee is in appeal before the Tribunal. Both the parties are have requested to go before Ld.CIT(A) once again for adjudication of the issues on merits. We accept the request of setting aside all the issues to the file of Ld. CIT(A) and direct the

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assessee to be compliant to the notice of hearing received from Ld.CIT(A) this time and should not take any adjournment unless otherwise required for and should also furnish all necessary documents and details for the adjudication of various issues raised in this appeal. Accordingly all the issues raised in this file are set aside to the file of Ld.CIT(A). Needless to mention that proper opportunity of being heard to be provided to the assessee.

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

The order pronounced in the open Court on 19.9.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 19<sup>th</sup> September, 2018

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR,  
ITAT, Indore/Guard file.

By order  
Private Secretary/DDO, Indore