

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4179 /Del./2016
(ASSESSMENT YEAR : 2012-13)**

M/s. MIQ Foods Pvt. Ltd.,
C/o Vinod Kumar Goel,
282, Boundary Road, Civil Lines,
Meerut.

(PAN : AAGCM8483J)

(APPELLANT)

vs. ITO, Ward 1(4),
Meerut.

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goel, Advocate
REVENUE BY : Shri Munshi Ram Bihagra, Senior DR

Date of Hearing : 07.01.2019

Date of Order : 16.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, M/s. MIQ Foods Pvt. Ltd. (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 19.07.2016 passed by Ld. CIT (Appeals), Meerut qua the Assessment Year 2012-13 on the grounds inter alia that :-

"1. That Ld. AO erred in facts and in completing the assessment U/s 144 of I.T. Act and Ld. CIT(A) has dismissed the appeal with considering the merits of the case, hence the order passed by CIT(A) is against the principle of natural justice.

2. *That Ld. AO erred in facts and law by making addition of Rs.35,00,000/- toward unsecured loan from Sh. M/s. AI-Faheem Metax Pvt. Ltd. ignoring the facts that the confirmation with address and PAN of the creditor was furnished and the facts that the said sums were received through cheque/RTGs. and CIT(A) also erred by confirming the same.*

3. *In the facts and circumstances the case the Ld. AO has erred in law in making addition of Rs. 7 lacs towards unsecured loans in the name of MIs. Farman ignoring the fact that the loan was received through cheque/RTGs. and CIT(A) also erred by confirming the same.*

4. *In the facts and circumstances of the case the Ld. AO has erred in law in making addition of Rs. 2 Crores towards unsecured loan from MIs. Hind Agro Pvt. Ltd. ignoring the fact that the sums were received through cheque/RTGs. and CIT(A) also erred by confirming the same.*

5. *In the facts and circumstances of the case the Ld. AO has erred in law in making addition of Rs.4400577/- towards trade payable ignoring the fact that the assessee company purchased the machinery from Frick India Limited for Rs.11900577/- and the balance of Rs. 4400577/- was payable to the machinery supplier and CIT(A) also erred by confirming the same.*

6. *In the facts and circumstances of the case the Ld. AO has erred in law in making addition of share application money of Rs.49 lacs in the name of M/s. Lodhi Enterprises ignoring the facts that the sums were received through banking channel and CIT(A) also erred by confirming the same.*

7. *In the facts and circumstances of the case the Ld. AO has erred in law in making addition of share application money of Rs.25 lacs in the name of Madhav Fin Corp. ignoring the fact that the said sums were received through banking channel and CIT(A) also erred by confirming the same.*

8. *That the assessee craves leave to add or modify the ground of appeal if the facts and circumstances warrant before or during the appeal proceedings and CIT(A) also erred by confirming the same.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer completed the assessment under section 144 of the Income-tax Act, 1961 (for short 'the Act') by making addition under different heads which is as under :-

		Rs.
<i>A. Taxable income as per return</i>		<i>Nil</i>
<i>Add :</i>	<i>i. Addition on account of unsecured loans</i>	<i>24200000</i>
	<i>ii. Addition on account of sundry creditors</i>	<i>4400577</i>
	<i>iii. Addition on account of share application money</i>	<i>7400000</i>
	<i>iv. Addition on account of share premium</i>	<i>9880000</i>
<i>TAXABLE INCOME</i>		<i>45880577</i>
<i>Taxable Income Rounded</i>		<i>45880580</i>

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Bare perusal of the assessment order at page 3 goes to prove that the Id. AR for the assessee attended assessment proceedings on

18.03.2015 and at his request, the case was adjourned to 20.03.2015. But, on 20.03.2015, none appeared and again ld. AR for the assessee appeared on 23.03.2015 who has filed the written submissions supported with ledger accounts and bank statements of lenders of unsecured loans, trade creditors, share application money and share premium. AO without examining the submissions supported with documents made by the assessee proceeded to make the statement u/s 144 of the Act on 27.03.2015.

6. It appears that AO has not provided adequate opportunity of being heard to the assessee rather proceeded to hold that mere copies of ledger accounts, bank statements of the lenders of the unsecured loan, trade creditors, share application money and share premium do not prove the identification, creditworthiness and genuineness of the transactions. AO has neither himself procured the presence of the trade creditors, lenders of unsecured loans and share applicants nor directed the assessee to produce them rather proceeded to make the assessment u/s 144 of the Act in haste.

7. Moreover, addition of Rs.9,88,00,000/- does not pertain to year under assessment. Even, ld. CIT (A) has not provided an opportunity of being heard to the assessee who has sought to lead additional evidence under Rule 46 of the Income-tax Rules, 1962 but proceeded to dismiss application for additional evidence. So,

in these circumstances, we are of the considered view that the matter is required to be restored back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee. We order accordingly.

6. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 16th day of January, 2019.

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 16th day of January, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.