

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.7498/DEL/2018
Assessment Year: 2015-16

Jotindra Steel & Tubes Ltd., 602, Chiranjiv Tower, Nehru Place, New Delhi.	v.	ACIT, Central Circle-3, New Delhi.
TAN/PAN: AAACJ 1872C		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Jain, Adv.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	16	04	2019
Date of pronouncement:	26	04	2019

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 08.10.2018 passed by the Commissioner of Income Tax (Appeals)-XXIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Years 2015-16. In the grounds of appeal, the assessee has challenged the addition of Rs.25 lac made u/s.68 and also the ld. CIT (A) has erred in law and on facts in rejecting the application under Rule 46A filing of additional evidences.

2. Before us, ld. counsel for the assessee submitted that assessee has received advance of Rs.25 lacs from M/s. Solaris Infra Projects Pvt. Ltd. for supply of Tower cranes. Ld. Assessing Officer held that assessee could not file any confirmation from the said party and inspector was deputed to serve the notice u/s. 133(6) to the said party. However, the

same could not be served. Ld. Assessing Officer after confronting this issue to the assessee has affirmed the said addition u/s.68. The assessee's contention before the Assessing Officer was that assessee has taken the order of 3 Tower Cranes for an amount of Rs.3 crores for which it has received advance of Rs.25 lacs from M/s. Solaris Infra Projects Pvt. Ltd. The said party failed to pay the committed money to the assessee and has failed to respond even to the assessee.

3. Before the ld. CIT (A), the assessee had filed additional evidences giving detailed reason as to why such evidences could not be filed before the AO. It was further submitted that assessee has already filed an FIR against the said company and there was a complaint in the Economic Offence Wing, New Delhi against the said party. Correct address of the said party was also given along with documents. The ld. CIT (A) has rejected the assessee's additional evidences and has upheld the order of the Assessing Officer on the ground that the assessee has failed to discharge the burden of proof, identity, creditworthiness and genuineness of the lender.

4. After considering the rival submissions and the findings given in the impugned orders as well as material referred to before me, I find that assessee has taken an order for three Tower Cranes for value of Rs.3 crore for which it has raised purchased order. In lieu of such purchase of order, the assessee has received advance of Rs.25 lac, the amount was received from M/s. Solaris Infra Project Pvt. Ltd. in assessee's bank account through RTGS on 8th May, 2014 and the bank

statement was also filed before the Assessing Officer. The said amount is still outstanding in the assessee's books of account and same has not been paid back. In support, copy of ledger account was also filed and it was also point out that the said party has never claimed the amount paid to the assessee. The assessee company is engaged in import of Tower Cranes which are given on rent and in support one of the import bills were also filed. The assessee before the Id. CIT (A) has explained the reason in its petition under Rule 46A for admission of additional evidences which has been rejected by the Id. CIT (A). In the said petition, it has been stated that the sister concern of the assessee has filed a claim in the office against M/s. Solaris Infra Project Pvt. Ltd. and also FIR has been filed, because the said company has defrauded high amount of money to the tune of Rs.25 crore. Due to ongoing complaints and FIR lodged against the said party, he did not respond or co-operate with the assessee or with the Department. Along with the said petition, catena of evidences have been filed and was explained that due these circumstances, the party was not responding to the assessee; and later on assessee has given the correct address of the party and also filed other documents in support of its case. Under these facts and circumstances and in the interest of substantial justice, all the documents filed by the assessee should have been admitted for adjudication on merit. Accordingly, I am restoring the entire issue to the file of the Assessing Officer who shall examine all the evidences filed by the assessee and assessee will co-operate with the Assessing Officer in conducting any inquiry from the said party. The

Assessing Officer will give due and proper opportunity of hearing to the assessee to substantiate its case. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 26th April, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 26th April, 2019

PKK: