

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND.  
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 5591/Del/2010  
Assessment Year: 2007-08

KMG International Ltd. 375, Main Road, Gazipur, New Delhi PAN No. AACCK0590Q	Vs.	ACIT Circle 5 (1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No. 6064/Del/2010  
Assessment Year: 2007-08

ACIT Circle 5 (1) New Delhi	Vs.	KMG International Ltd. 375, Main Road, Gazipur, New Delhi PAN No. AACCK0590Q
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Revenue by	Sh. Vijay Kumar Chadha, Sr. DR
Assessee by	Sh. Binod Kumar Bindal, Advocate

Date of hearing:	11/09/2019
Date of Pronouncement:	15/11/2019

**ORDER**

**PER R.K PANDA, AM:**

These are cross appeals. The first one is filed by the assessee and the second one filed by the revenue and are directed against the order dated 26.10.2010 of the CIT(A)-8, New Delhi

relating to A. Y. 2007-08. For the sake of convenience these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading in electrical goods, chemicals etc. It filed its return of income on 27.10.2007 declaring total loss of Rs.27,00,990/-. The AO during the course of assessment proceedings noted from the tax audit report filed by the assessee that in the said report the unsecured loans accepted or repaid by the assessee company were reported as "nil" as required to be reported in para -24 (a) and 24 (b) of annexure to the tax audit report in form No. 3 CD. Subsequently, on being asked by the AO to file the various details, the assessee filed the same according to which it had received loans from 6 persons only. However, from the bank statement, it was revealed that, besides above six parties, the Assessee had also accepted loans and repaid the same during the year. In spite of sufficient opportunities given to file confirmations/bank accounts, copy of Income Tax returns and to produce them with their books of accounts, the assessee could not submit any of the details asked for nor could produce them. The AO, therefore, held that the assessee had neither intended to bring the said loans on records nor the assessee is in possession of any other document to prove the identity, credit worthiness and genuineness of the loans. All the said loans have been taken on 2 days i.e. 19.06.2008 and 20.06.2006 and have been shown as repaid to all simultaneously on 19.09.2006. He, therefore, added the unsecured loans from

the following parties to the income of the Assessee u/s 68 of the I.T. Act being unexplained cash credit:

<u>Name of party</u>	<u>Amount</u>
Vinita Surana	Rs. 4,00,000/-
Dhani Devi Surana	Rs.6,00,000/-
Radhey Shyam Khemka	Rs.1,60,000/-
Shree Lai Vijay Kumar Bagla HUF	Rs.2,75,000/-
Bagla & Co,	Rs.1,90,000/-
Rajesh Kumar Khemka	Rs.1,00,000/-
Bagla Store	Rs.7,00,000/-
Harsh Surana	Rs.2,40,000/-
Ilonika Surana	Rs.4,90,000/-
Tarun Jain	Rs.1,00,000/-
Tarun Jain	Rs.1,00,000/-
Shivani Jain	Rs.2,00,000/-
Shivani Jain	<u>2,00,000/-</u>
Total	Rs. <u>37,55,000/-</u>

3. The AO further noted that the assessee had also taken the following unsecured loans during the year under consideration.

(a) Shiv Vani Oil & Gas Exploration Services Ltd.	Rs. 2,00,00,000/-
(b) Basudev Garg, Director of the company	Rs. 6,25,000/-
(c) Kunal Garg Memorial Trust, (in which both Directors are Trustees)	Rs. <u>22,50,000/-</u>
Total	<u>2,28,75,000/-</u>

The assessee was asked to submit details, confirmations, copies of Bank statements and copies of Income Tax Returns and also

required to produce them with their books of accounts for verification. However, despite several opportunities, assessee could only file their confirmation and failed to file other required details and also failed to produce them. Thus the assessee failed to prove credit worthiness and genuineness of the loans. The AO, therefore, added the unsecured loans of Rs. 2,28,75,000/- to the total income of the Assessee u/s 68, being unexplained cash credit.

4. The AO noted that the assessee had received an amount of Rs.46,17,000/- as advance on 11.09.2006 from SNS Trading, DMCC, Dubai. He noted that the said party is a related concern of the assessee company, as per related party disclosure in the Statutory Audit report. From the copy of sales contract dated 04.09.2006 filed, he noted that the said amount is explained to have been received as 50% advance for supply of 100 MT skimmed milk powder by the assessee and the date of shipment has been mentioned as October / November 2006. However, no such sale was made till end of the year and the balance remained as outstanding. He asked the assessee to file details and documentary evidence in this regard. However, the assessee failed to make compliance. The AO, therefore, held that the said credit amount of Rs. 46,17,000/- remained unexplained by the assessee and, therefore, he added the same to the income of the Assessee u/s 68.

5. The AO further noted that the assessee has made a payment of Rs. 6,17,091/- on account of Commission. He asked

the assessee to give details and the basis of commission paid and also to provide confirmation of the same from the recipient. However, despite several opportunities, assessee could not file any details or confirmation. He, therefore, disallowed the commission paid amounting to Rs. 6,17,091/- and added to the income of the assessee.

6. The AO observed that the assessee has received a sum of Rs.15,00,000/- from M/s. Rishi Promoters (P) Ltd as advance against property. The assessee was asked to give details/ nature and documentary evidence of this advance and as to when this advance was materialized. However, despite several opportunities, assessee filed only a copy of account in assessee's books which shows only the receipt of this amount of Rs. 15,00,000/-. In absence of any other details or confirmation, the said amount of Rs.15,00,000/- remains unexplained and therefore, the AO added the same to the income of the Assessee.

7. The AO noted that the assessee has claimed interest expense of Rs.7,26,519/- paid to two Directors and a relative of Directors on loans received from them. He noticed that during the year, the assessee has given advances of Rs. 44,42,838/- to M/s. KMG Macro Investments (P) Ltd. and Rs. 79,88,000/- to M/s. KMG Milk Food Limited and has not charged any interest from these two parties, who are related concerns of the Assessee as per the Statutory Auditors Report. He, therefore, held that the interest paid to directors & relative of Directors on loans is not for the purpose of the business and disallowed the same. He noted that the chargeable interest on interest free loans would be

much more than the amount of interest disallowed. However, he restricted the disallowance to the extent of interest claimed.

8. The AO noted that the assessee has made investment in shares of different companies. Although the assessee has not received any dividend income during the year from the said company, however, the AO relying on various decisions disallowed an amount of Rs. 91,928/- u/s. 14 A of the IT Act 1961. He accordingly determined the total income of the assessee at Rs.3,16,13,603/-.

9. In appeal the Ld. CIT(A) deleted an amount of Rs.6,00,000/- out of the total addition of Rs.37,55,000/- made by the AO on account of unexplained cash credit. Similarly he deleted the addition of Rs.2,28,75,000/- made by the AO u/s. 68 of the IT Act being the unexplained unsecured loans. He also deleted the amount of Rs.46,17,000/- made by the AO u/s. 68 of the IT Act on account of unexplained advances, Rs.7,26,519/- made by the AO being the interest paid to the directors of the company and deleted the addition of Rs.19,928/- made by the AO u/s. 14 A of the IT Act. He however sustained the other additions made by the AO.

9.1 Aggrieved with such part relief granted by the CIT(A), the revenue as well as the assessee are in appeal before the Tribunal by raising the following grounds :-

ITA No. 5591/Del2010

(Grounds raised by the assessee)

1. The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 31,55,000/- u/s 68 for the amounts received as loans from Mrs. Vinita Surana Rs. 4,00,000/-, Mrs. Dhani Devi Surana

Rs.6,00,000/-, Mr. Radhey Shyam Khemka Rs. 1,60,000/-, Shree Lai Vijay Kumar Bagla HUF Rs. 2,75,000/-, M/s Bagla & Co. Rs. 1,90,000/-, Mr. Rajesh Kumar Khemka Rs. 1,00,000/-, M/s Bagla Store Rs.7,00,000/-, Mr. Harish Surana Rs. 2,40,000/- and Ms. Monika Surana Rs. 4,90,000/- ignoring the evidences placed on record to discharge the onus on the appellant. Hence the said addition must be deleted.

2. The learned CIT(A) erred in law and on facts that in directing the assessing officer to disallow interest on above mentioned loans without issuing die statutory show cause of enhancement of income to the appellant. Thus the said directions given must be reversed.
3. The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 6,17,091/- on account of payment of commission paid ignoring the evidences placed on record. Hence, the said addition must be deleted.
4. The learned CIT(A) erred in law and on facts in confirming the addition of Rs.1,50,000/- u/s. 68 for the amount received from M/s. Rishi Promoters (P) Ltd. as advance against property ignoring the evidences placed on record. Hence the said addition must be deleted.
5. The learned CIT(A) erred in law and on facts in confirming the disallowance u/s.14A of the Act of Rs.20,645/- on account of interest establishment and administrative expenses ignoring the evidences placed on record. Hence, the said addition must be deleted.
6. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.

ITA No. 6064/Del/2010

**(Grounds raised by revenue)**

1. The order of the learned CIT(Appeals) is erroneous & contrary to facts & law.

2. On the facts and in the circumstances of the case and in law, the learned CIT(Appeals), Has erred in deleting the addition of Rs.31,55,000/- out of total addition of Rs.37,55,000/- mad u/s of the Act being the unexplained cash credits.

2.1 The Ld CIT(A) ignored the fact that the assessee did not discharge its onus proving the creditworthiness of the creditors and genuineness of the transaction.

3. On the facts and in the circumstances of the case and in law, the leaned CIT(Appeals) has erred in deleting the addition of Rs.2,28,75,000/- made u/s 68 of the Act being the unexplained unsecured loans.

3.1 The Id. CIT(A) ignored the fact that the assessee did not discharge its onus proving the creditworthines / of the creditors and genuineness of the transaction.

4. On the facts and in the circumstances of the case and in law, the learned CIT(Appeals) has erred in deleting the addition of Rs.46,17,000/- made u/s 68 of the Act being the unexplained advances.

4.1 The Id. CIT(A) ignored the fact that the assessee did not discharge it onus proving the genuineness of the advances received from overseas.

5. On. the facts and in the circumstances of the case and in law, the learned CIT(Appeals) has erred in deleting the addition of Rs.7,26,519/- being the interest paid to the directors of the company.

5.1 The Id. CIT(A) ignored the fact that the assessee paid interest on borrowed capital from its sister concerns.

6. The Ld. CIT(A) ignored the fact that the disallowance was made by AO in accordance with the provisions.

6.1 *The ld. CIT(A) ignored the fact that the disallowance was made by AO in accordance with the provision of rule 8D of IT Rules.*

7. *The Ld. CIT(A) erred in law by accepting the addition evidence under Rule 46A of IT Rules despite having been opposed by the A.O and the fact that the assessee was provided due opportunity during the course of assessment proceedings.*

8. *The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of hearing.*

10. Ground of appeal No.1 and 8 by revenue and ground of appeal No. 6 by the assessee being general in nature are dismissed.

11. Ground appeal No. 2 and 2.1 by the revenue and ground appeal No. 1 and 2 by the assessee relate to the part relief granted by the CIT(A) out of the total addition of Rs.37,55,000/- made by the AO on account of unsecured loan from 13 parties, the details of which are given at para No. 2.1 of this order.

12. We have heard the rival arguments made by both the sides and perused the orders of the authorities below. We find the AO made the addition of Rs.37,55,000/- on the ground that the assessee did not file the requisite details in respect of all the creditors. The assessee filed list of only six creditors whereas according to the AO as per the bank statement, there were more loans obtained by the assessee during the year from different persons which were repaid. We find before CIT(A) the assessee filed certain additional evidences based on which the Ld. CIT(A)

called for a remand report from the AO and after considering the same deleted the addition of Rs. 6 lacs being loan obtained from Sh. Tarun Jain Rs. 2 lacs and Mrs. Shivani Jain Rs. 4 lacs on the ground that the assessee has submitted the requisite information which was examined by the AO and no adverse comment regarding their creditworthiness was made by the AO in the remand report. He further noted that a perusal of the bank accounts of the above two persons reveals that there is no credit either by way of cash deposit or transfer immediately before giving loans to the assessee company. Further both of them have shown substantial income in their returns of income for which he deleted the addition of Rs.6 lacs pertaining to Mr. Tarun Jain and Mrs. Shivani Jain. So far as the balance amount of Rs.31,55,000/- is concerned he sustained the addition on the ground that the assessee company has not been able to prove that the remaining creditors had the capacity to advance money to the assessee company. Further, the AO after examination of the balance sheets and the computation of their total income found that these parties are having meager income.

13. We do not find any infirmity in the order of the CIT(A) on this issue. So far as the deletion of Rs. 6 lacs being loan obtained from Mr. Tarun Jain and Mrs. Shivani Jain are concerned we find the AO in the remand report has not made any adverse comments regarding the creditworthiness of the said persons. Further their income tax returns show substantial income have been declared by them, a finding given by the CT(A) and not controverted by the Ld. DR. We further find the Ld. CIT(A) has also given a finding

that their bank accounts do not reveal any credit either by way of cash deposit or transfer immediately before giving loans to the assessee company. We, therefore, find no infirmity in the order of the CIT(A) in deleting the addition of Rs. 6 lacs made by the AO. The grounds of appeal No. 2 and 2.1 raised by the revenue are accordingly dismissed.

14. So far as the ground raised by the assessee challenging the addition of Rs.31,55,000/- is concerned we find from the order of the CIT(A) that though the assessee has proved the identity of the creditors but could not substantiate the creditworthiness of the creditors and genuineness of the transactions. He has given a finding that immediately before issuing the cheques to the assessee there are credits in the bank accounts of the creditors and no source thereof has been explained. Further he has given a finding that the parties are having meager income and in some cases the taxable income ranges from Rs.1,811/-to Rs.45,464/-. We further find from the remand report of the AO wherein he has observed as under :-

*“Assessee was also asked to file copy of their complete returns with computation of income, audit report and balance sheet, however, none of these required details could be filed by the assessee. From the perusal of acknowledgement of return filed by the assessee of the first 9 parties, it is seen that all these 9 persons are related persons showing their addresses at Churu, Rajasthan and have also filed their income tax returns with ITO Ward, Churu, even though all of them have their bank accounts in Bank of Baroda, Sadar Branch, Delhi, from where they have issued cheques to the*

*assessee. As per acknowledgment of returns these 9 persons have returned income of Rs.49,383/-, Rs.1,52,215/- , Rs. 1,07,138/-, Rs.98,464/-, Rs.1811/-, Rs.45,464/-, Rs. 1,14,506/-, Rs.5,88,216/- (income of father of minor Harsh Surana) and Rs.62,340/- respectively. Thus it is seen that all these persons have petty income except one and income below taxable limit and with this petty income it is not easy to understand how they can manage their own life and life of their family, in this period of inflation and how they can save heavy amount of lacs of rupees to deposit with the assessee. These squared up deposits were found credited in the books of assessee and it is the duty of the assessee to explain their genuineness and credit worthiness of such depositors, however assessee has failed to produce them for examination and also failed to produce the required details to verify their creditworthiness and genuineness of deposits in their names in spite of several opportunities given during the assessment time and again during the remand proceedings. In view of these facts the additions or Rs.31,55,000/- made in respect above 9 parties needs to be sustained. The balance four deposits of Rs.2 lacs in the name of Tarun Jain and Rs.4 lacs in the name of Shivani Jain, seems acceptable looking to their creditworthiness as seen from the deposits and balances in their bank accounts”.*

15. Since the parties are assessed in Churu, Rajasthan showing meager income and have issued cheques from bank account maintained with Delhi having one common address and amounts were transferred to those accounts before issuing cheques to the assessee, therefore, the same do not inspire confidence regarding the creditworthiness of these persons and genuineness of the transactions. We, therefore, do not find any infirmity in the order of the CIT(A) sustaining the addition made by the AO to the extent of Rs.31,55,000/- out of Rs.37,55,000/-.

The ground of appeal No.1 by the assessee is accordingly dismissed.

16. So far as the ground of appeal No. 2 by the assessee is concerned it is the submission of the ld. Counsel for the assessee that the Ld. CIT(A) without issuing any statutory show cause notice of enhancement to the assessee has directed the AO to disallow the interest paid on the loans / credits claimed in the names of the above persons. However, we do not find any merit in the argument of the assessee since after the order of the CIT(A) the total income does not exceed the assessed income. Since he has given substantial relief to the assessee, therefore, the total income is not enhanced and, therefore, ground raised by the assessee on this issue is dismissed.

17. So far as the ground appeal No.3 by the assessee is concerned the Ld. Counsel for the assessee did not press this ground for which the Ld. DR has no objection. Accordingly the said ground is dismissed as not pressed.

18. So far as the ground appeal No. 4 by the assessee is concerned it relates to the disallowance of Rs. 15 lacs made by the AO u/s. 68 of the IT Act being the amount received from M/s. Rishi Promoters Private Limited which has been upheld by the CIT(A).

19. We have heard the rival arguments made by both the sides and perused the record. We find the AO made addition of Rs. 15 lacs being the amount received by the assessee from M/s. Rishi Promoters Private Limited as advance against Property on the ground that despite several opportunities the assessee did not file

the requisite details. We find the Ld. CIT(A) sustained the addition made by the AO by observing as under :-

*“9.5 I have carefully examined the claim of the appellant company with reference to the documents placed before me. As stated earlier, the amount of Rs 151acs is claimed to have been received by the appellant company against proposed sale of a property situated at G-17, Jangpura Extension, New Delhi-110014. In normal course, in matters pertaining to purchase and sale of immovable properties, a formal agreement to sale is invariably executed. This is necessary because the value of immovable property keeps on fluctuating depending upon the market conditions and unless there is a formal agreement duly notarized, there are always chances of one of the parties going back on the promised purchase/sale of the property. Therefore, it is only expected that in the present case also there should have been formal agreement lending support/credit to the claim of the appellant for receiving advance of Rs 151acs against the proposed sale of property situated at G-17, Jangpura Extension, New Delhi-110014. Though the appellant company claims that **“due to unavoidable circumstances”** the proposed sale had to be cancelled, nothing explaining such circumstances has been brought on record. Further, no copy of IT return or balance sheet has been filed by Rishi Promoters (P) Ltd indicating/reflecting advance of Rs 151acs to the appellant company. It is a matter of normal accountancy*

*that any advance of capital nature are always classified separately and shown in the necessary schedules to the balance sheet. Though Rishi Promoters (P) Ltd have filed a confirmation to the effect that proposed purchase of property had to be cancelled for unavoidable circumstances, no documentary evidence has been filed suggesting that any decision was ever taken by the board of directors to purchase a property from the appellant company. Therefore, in the absence of requisite/relevant information, it is difficult to agree with the appellant company that the advance in question was received against the sale of immovable property. In the course of appellate proceedings also the appellant company has only filed schedule of fixed assets as appearing in its balance sheet, but nothing has been elaborated about the circumstances leading to cancellation of agreement to sale with Rishi Promoters (P) Ltd. It is also not known as to whether anything was paid to compensate the party whose interest was adversely affected with cancellation of proposed transaction of sale of property. Therefore, in the absence of requisite particulars, it is difficult to grant relief to the appellant company and therefore, the addition of Rs 15 lacs is being sustained.”*

20. We do not find any infirmity in the order of the CIT(A) on this issue. The Ld. Counsel for the assessee has not satisfied the conditions prescribed u/s. 68 of the IT Act i.e. identity and capacity of the creditor and the genuineness of the transactions.

In the instant the assessee has merely filed the PAN number of M/s. Rishi Promoters alongwith their confirmation and the ledger account of M/s. Rishi Promoters Private Limited in the books of the assessee. Although the assessee has filed the audited accounts of M/s. Rishi Promoters showing advance against property at Rs.6,14,25,000/-, however, it is very difficult to find out from the same as any advances given to the assessee company especially when such advances were shown at Rs.8,43,31,716/- in the preceding year and the assessee has failed to file any documentary evidences as to what were the unavoidable circumstances for which the proposed sale had to be cancelled. The Ld. Counsel for the assessee could not bring any other material before us other than the material placed before the CIT(A) so as to take a contrary view other than the view taken by the CIT(A) on this issue. We, therefore, uphold the order of the CIT(A) on this issue and ground appeal No.4 by the assessee is dismissed.

21. So far as the ground of appeal No. 5 by the assessee and ground appeal No. 6 and 6.1 by the revenue are concerned, these relate to the part relief granted by the CIT(A) out of the disallowance of Rs.91,928/- made by the AO u/s. 14 A of the IT Act.

21.1 After hearing both the sides we find it is an admitted fact that the assessee has not received any dividend income during the year. Therefore, in view of the decision of Hon'ble Delhi High

Court in the case of CIT(A) Vs. Holecim India (Private) Limited vide ITA No.486/14 and ITA No. 299/14 order dated 05.09.2014 and the decision in the case of Cheminvest Limited Vs. CIT reported 370 ITR 33 the addition sustained by the CIT(A) is not justified. It has been held in these decisions that no disallowance u/s. 14 A can be made where the assessee has not received any exempt income. The ground No. 5 by the assessee is accordingly allowed and ground appeal No. 6 and 6.1 by the revenue are dismissed.

22. So far as ground No. 3 to 3.1 by the revenue are concerned the same relates to the order of the CIT(A) in deleting the addition of Rs.2,28,71,000/- made by the AO u/s. 68 of the IT Act.

23. After hearing both the sides we find the AO made the addition on the ground that the assessee company failed to furnish the necessary confirmation, copy of bank accounts and copy of IT return etc and failed to produce the books of accounts of the creditors. We find before CIT(A) the assessee filed certain additional evidences based on which the Ld. CIT(A) called for a remand report from the AO. We find the AO in the remand report has accepted that the assessee filed the requisite details and proved the creditworthiness of the loan creditors. The relevant observation of the AO in the remand report reads as under :-

**“2. Addition of Rs.2,28,75,000/- u/s. 68 for unsecured loans from 3 parties :-**

*Assessee has shown these deposits from 3 parties as under :*

(a) Shiv Vani Oil & Gas Exploration Services Ltd. Rs.2,00,000/-

(b) Basudev Garg, Director of the company

Rs. 6,25,000/-

(c) Kunal Garg Memorial Trust, (Directors of Co. are trustees) Rs.22,50,000/-

*These additions were made as assessee failed to file confirmations, bank statements and copy of IT returns of the above three parties during assessment proceedings. Now, assessee has filed their confirmations, copy of bank statements and copy of returns which reflects their credit worthiness and deposits with the assessee.”*

24. We find based on the remand report of the AO the Ld. CIT(A) deleted the addition holding that the assessee company has duly discharged the onus cast on it. The Ld. DR could not controvert the factual findings given by the CIT(A) while deleting the addition. We, therefore, do not find any infirmity in the order of the CIT(A) deleting the addition of Rs.2,28,75,000/- made by the AO u/s. 68 of the IT Act. Accordingly, the grounds raised by the revenue on this issue are dismissed.

25. Grounds appeal No. 4 and 4.1 by the revenue relates to order of the CIT(A) in deleting the addition of Rs.46,17,000/- made by the AO.

26. After hearing both the sides we find the AO made the addition of Rs.46,17,000/- being the advance received from SNS Trading, DMCC, Dubai on the ground that the said parties are related concerns of the assessee and although the amount was received as advance, however, no such sale was made till the year end and the assessee failed to file requisite details. We find the Ld. CIT(A) deleted the addition by observing as under :-

*“7.5 I have carefully considered the submissions made on behalf of the appellant company, findings recorded by the*

*Id.AO in the assessment order and observations made by him in his remand report. I have also gone through the documents placed in the course of hearing before me. On a careful consideration, I find that there is no denial of the fact that the money in question has been received by the appellant company through banking channels and due disclosures in this regard had been made by the company before the concerned authorities, namely, foreign department division of Canara Bank which deals with the remittances of foreign currency from overseas. In the letter dated 08-09-06 itself the appellant company has made disclosure of receipt of USD 100000 from SNC Trading DMCC, Dubai. Therefore, I am in agreement with the Id. Counsel for the appellant that there was nothing doubtful or debatable so far as the receipt of the money from Dubai is concerned, as due disclosures and necessary evidences are on record. In the course of appellate proceedings, the appellant company has also produced copy of FIRC issued by the foreign exchange division of Canara Bank wherein the purpose for which the money has been received by the appellant company has been clearly stated as advance against supply of goods. Therefore, in my view, the AO was not justified in bringing to tax a sum of Rs 4617000 on account of the fact that the assessee company failed to satisfy him with respect to the capacity in which Mr. KS Negi has signed the contract on behalf of the appellant, to produce the copy of bank account of SNS Trading Co. and that whether the assessee company was dealing in skimmed milk in the year under consideration or any of the*

*previous or succeeding years. In my view, while these issues may point certain lapses in procedure followed by the appellant company while entering into agreement with its related concern, namely, SNS Trading, DMCC, Dubai, this itself is not sufficient to hold that the amount in question was unexplained funds of the appellant company which has been adjusted or arranged with the help of sister concern operating from Dubai. It has to be appreciated that the transaction in question has been made in foreign exchange, money has come by means of banking channels and before say that the money in question represented unexplained funds of the appellant company is without any justifiable basis and at best can amount to suspicion or doubt entertained by the ld.AO. However, in the absence of any further material/investigation to suggest laundering of unaccounted money, no adverse inference can logically/legally be drawn against the appellant company. Therefore, the addition in question is being deleted.”*

27. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. We find the assessee during the appeal proceedings has produced the copy of FIRC issued by the foreign exchange division of Canara Bank wherein the purpose for which money has been received by the assessee has been clearly stated as advance against supply of goods. The Ld. CIT(A) has also given the finding that money in question has been received by the assessee through banking channels and due disclosures in this regard had been made by the company before the concerned

authorities namely the foreign department division of Canara Bank which deals with the remittances of foreign currency from overseas. Merely because said parties are related concern the same in our opinion cannot be a ground for making the disallowance. In this view of the matter and in view of the detailed reasonings given by the CIT(A) on this issue we do not find any infirmity in the same. Accordingly, the grounds of appeal raised by the revenue on this issue are dismissed.

28. So far as the grounds of appeal No.5 and 5.1 by the revenue are concerned, the same relate to the order of the CIT(A) in deleting the addition of Rs.7,26,519/- made by the AO being the interest paid to the directors of the company.

29. After hearing both the sides we find that the assessee had received loans from directors and their relatives and had paid interest to the tune of Rs.7,26,519/-. According to the AO since the assessee has not charged any interest from M/s. KMG Macro Investments Private Limited and from M/s. KMG Milk Food Limited to whom advances of Rs.44.43 lacs and Rs. 79.88 lacs respectively have been given and they are also related concerns of the assessee, therefore, the interest paid to the directors and relatives of the directors on loans is not for the purpose of business. We find the Ld. CIT(A) deleted the addition by observing as under :-

*10.5 I have carefully considered the findings recorded by the Ld. AO and submissions made on behalf of the appellant company. On consideration, I find that the*

*disallowance in question has been made by the Ld. AO mainly because the appellant company has provided interest free advances to its sister concerns, namely, M/s KMG Investments (P) Ltd and M/s KMG Foods Ltd. According to the ld.AO, the appellant company would have saved payment of interest to the directors and their relatives had it not provided the interest free advances to the aforesaid two sister concerns. Therefore, according to the Id. AO, the loans obtained from the directors and payment of interest thereon was in order to make interest free advances to the sister concerns and, therefore, the interest was not paid wholly and exclusively for the business purposes of the appellant company. However, on a careful consideration, I find that the ld.AO has failed to examine the basic issue as to whether the loans raised/from the directors and their relatives had any nexus with the payment of interest free advances to the sister concerns. In my view unless this nexus with the payment of interest free advances to the sister concerns. In my view, unless this nexus is established , there is no basis either to hold that the loans were not raised for the business purposes or to disallow the interest paid to the directors and their relatives. Admittedly, the AO has not brought any material on record to establish the fact that the payment interest of Rs.726519/- was pertaining to the borrowings which were utilized by the appellant company for making interest free advances to the sister concerns. In view of the aforesaid fact situation, the disallowance of Rs 726519 is being deleted.*

30. However, a perusal of the order of the CIT(A) shows that he has nowhere examined the availability of the own funds with the assessee for extending such huge interest free advances whereas assessee is paying interest to the directors and their relatives on advances received from them. Although the assessee has filed voluminous paper book, however, the audited accounts of the assessee company have not been filed. We, therefore, deem it proper to restore the issue to the files of the AO with a direction to find out the own capital and free reserves of the assessee company. In case the own funds and free reserves of the assessee company are more than the interest free advances given to the sister concerns namely M/s. KMG Investment Private Limited and M/s. KMG Milk Foods Private Limited, the AO is directed to delete the disallowance of interest. Needless to say, the AO shall give one opportunity of being heard to the assessee. The grounds raised by the revenue are accordingly allowed for statistical purposes.

31. So far as the ground of appeal No.7 is concerned it is the grievance of the revenue that the Ld. CIT(A) has admitted the additional evidence under rule 46 A of the IT Act.

32. After hearing both the sides we find it is the grievance of the revenue that the Ld. CIT(A) should not have accepted the additional evidences filed by the assessee before him during the appeal hearing. However, a perusal of the order of the CIT(A) shows that he has given justifiable reasons as to why the assessee was prevented by sufficient cause from submitting the requisite details/ documents. He had given a categorical finding

that the AO has passed the order without giving sufficient time to comply with the various requirements made by him on the dates of hearing immediately preceding the assessment order. We find the Ld. CIT(A) has forwarded all those details to the AO for his comments and remand report. Therefore, the revenue should not have any grievance on this issue. The ground of appeal No. 7 is accordingly dismissed.

33. In the result, the appeal filed by the revenue is partly allowed for statistical purposes and the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 15.11.2019.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

\*Neha\*

Date:- 15.11.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	06.11.2019
Date on which the typed draft is placed before the dictating Member	15.11.2019
Date on which the approved draft comes to the Sr.PS/PS	15.11.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	15.11.2019
Date on which the fair order comes back to the Sr. PS/ PS	15.11.2019
Date on which the final order is uploaded on the website of ITAT	15.11.2019
Date on which the file goes to the Bench Clerk	15.11.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	