

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

**Before SH. BHAVNESH SAINI, Judicial Member
&
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 3050 & 3051/Del./2012
Asstt. Year: 2006-07 & 2007-08**

Era Advertising & Marketing Ltd. (Now M/s Heena Developers P. Ltd.) H-108, 2 nd Floor, New Asiatic Bldg., Connaught Place, New Delhi.	Vs	ACIT Central Circle 9 New Delhi.
(APPELLANT)		(RESPONDENT)
PAN No. AABCH8216M		

**Assessee by : Sh. K. Sampath, Adv.
Sh. V. Raja Kumar, Adv.
Revenue by : Ms. Nidhi Srivastava, CIT DR**

Date of Hearing	05.12.2019
Date of Pronouncement	16.12.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(Appeals)-XXXII, New Delhi dated 24.02.2012 and 02.03.2012 pertaining to assessment years 2006-07 and 2007-08 respectively.

2. Following grounds have been raised by the assessed:

Grounds of appeal for AY 2006-07:

"The on the facts and in the circumstances and in the law the authorities below erred in :

- 1. Determining taxable income of Rs. 16,01,569/- as against the returned income of Rs. 13,56,553/-;*
- 2. Passing order u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 relying on the estimates and not on the basis of seized material;*
- 3. In applying provisions of section 145(3) of the Act even though books of account were never produced before the authority and no material defects were pointed out therein;*
- 4. In estimating undisclosed income of sum of Rs. 2,50,859/- and Rs. 3,50,710/- based figure appearing in balance sheet despite the fact that such books of account were never relied upon;*
- 5. In treating a sum of Rs. 10,00,000/- as income without any basis, material and evidence;*
- 6. Error in making assessment without understanding the facts of the case.*

All the above actions being most arbitrary, erroneous, untenable and unlawful, it is prayed that same must be quashed."

Grounds of Appeal for AY 2007-08:

While the other grounds are similar to the grounds taken above except the difference in the amounts, the assessee has taken up

another ground at no. 5 that the Ld. CIT(A) erred in confirming the addition of Rs. 25 lakhs on account of alleged sales to M/s Reliance India Ltd. on protective basis.

3. At the outset, Ld. AR inviting our attention to the assessment order under consideration submitted that the assessee who is found mentioned at Sl. No.-11 in the list of companies where Konichiva Builders Ltd. is found mentioned in Sl. No.-1. It was submitted that the Tribunal in Konichiva Builders Ltd. restored the issue of allowance of expenditure incurred to the AO. It was submitted that in both these set of cases additions had been made on identical facts and the arguments remain the same in response to Q.no.2 extracted in that order by the Tribunal which has been extracted by the AO in the present proceedings also.

4. The Ld. CIT DR considering the order of the Tribunal in Konichiva Builders Ltd. had no objection if identical direction is given herein.

5. Heard the arguments of both the parties and perused the material available on record.

6. We find that the Tribunal has restored the matter back to the file of the Assessing Officer to determine the issue of allowability of the expenses incurred out of the estimated income of 2% against the claim of the assessed which is 0.25% to 0.5%.

7. For the sake of ready reference the relevant portion of the order of the ITAT in ITA No. 3046/Del/2012 in the case of the assessee is reproduced hereunder:

The facts of the case as emanating from the assessment order dated 29.12.2008 in 2001-02 assessment year 3 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 passed u/s 143(3) r.w.s 153A of the Act it is seen are identical in all the remaining years except for the difference in amounts. Accordingly the facts from the order of 2001-02 assessment year are being extracted for ready-reference:- "A search & seizure action was conducted on 12-12-2006 at business and residential premises of Shri. S.K.Gupta along with various concerns in which he and his family members were interested. Similarly action u/s 132 of IT Act, 1961 was conducted in the case of various companies owned or controlled by him and also in the case of different individuals connected with the said companies. This is one of such cases covered under search & seizure action. Consequent to search action the case was centralized with this office and as such notice u/s 153A of IT Act 1961 was issued to the assessee on 25-2-2008. 1.1. Background of the case . While conducting discreet inquiries, the investigation wing gathered that Shri S.K.Gupta a Chartered Account by profession, is running various companies from a premises of "Trump and Gates" situated at H-108, 2 floor, New Asiatic Building. Connaught Place, New Delhi and also from the premises of his firm namely M/s Gupta & Rakesh Associates at 231, Gulmohar Enclave, New Delhi. In the course of the search operation, it was reported by the investigation wing that a large number of companies

were being operated and controlled by Shri S. K Gupta from his main office premises at H-108, Connaught Place. The list of these Companies is as under:-

1. **Konichiva Builders Ltd.**
2. B.T.Technet Ltd.
3. Swen Television Ltd.
4. T & G Quality management consultants Ltd.
5. Hitech Computech Pvt. Ltd.
6. Centenary software pvt. Ltd
7. Trump and Gates
8. T & G Quality Servrces
9. GTM Konichiva Builders
10. Gupta Rakesh Associates
11. **Era Advertising and Marketing Coy Pvt Ltd**
12. PG Travels Hindustan Com
13. Shark Communication Pvt Ltd
14. Spg Finvest Pvt Ltd.
15. Krishna Informedia
16. Bolni Exim India Ltd
17. Bharti Properties Pvt Ltd
18. Marketing Insurance Brokers Pvt Ltd
19. Cam Soft (India) Pvt Ltd
20. Ours Trading Pvt. Ltd
- 21.Pawar Estates Pvt Ltd
22. Rajdhani Leasing Ltd
- 23.DMC Vaults Ltd
24. Sigma Farms Ltd
25. North India securities Pvt Ltd
26. Hamara Samay TV News Network Pvt Ltd

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- 27.Cel Cel Technologies Ltd
28. Chip Set Solutions Pvt Ltd
29. Trump & Gates
30. Servel Technology System Pvt. Ltd.
31. PG Travels Hindustan Com Pvt Ltd
32. J.A. Financial & Marketing Consultants Pvt. Ltd.
33. Saksham Infocom Pvt Ltd

6.1. Considering the following facts which have been summed up in the impugned order the AO in the year under consideration made an addition of Rs.47,151/-. The relevant extract is reproduced form the impugned order:-

2.1.1. "The AO has given various findings about these companies including the appellant company based on the reports from the Investigation Wing and his own proceedings

during the impugned assessment, which can be summarised as under: (i). These companies were created ostensibly for providing a variety of services ranging from consultancy of advertising to Software Development, various professional services, annual maintenance services, upgradation services, customer care, retainership, sponsorship etc. and accordingly bills/invoices have been issued in the names of these companies including the appellant but in fact no such actual services have been rendered by them to the respective beneficiaries. (ii). Shri. S.K. Gupta did not possess the necessary infrastructure or the required man power to render such variety of services through these companies. (iii). These companies were merely issuing accommodation bills for various expenditure to various entities for the sake of tax evasion. Such bills and invoices were found and seized from the premises covered u/s 132 of the Act. (iv). No other evidence was found during search indicating any such actual services rendered by the appellant or other companies as claimed. (v). Shri S.K. Gupta in various statements recorded on different dates between December, 2006 to December, 2008 both before the officers of Investigation Wing and in post search inquiries and before the Assessing Officer, admitted in detail his modus operandi of providing accommodation bills through the appellant company and other companies in lieu of cheques received and cash returned to the beneficiaries. (vi). Evidence of duplicate set of books of accounts, hand written cash books and ledger accounts,

various cheque books and blank cheques signed by various authorized signatories/Directors of the appellant company and other companies were found and seized from Shri. S.K. Gupta's premises. Some of these Directors/Authorized Signatories were found to be employees, relatives or friends of Sh. S.K.Gupta. (vii) The Assessing Officer has given elaborate and adequate opportunities to the appellant company to explain their matter during the assessment proceedings and to counter the findings of the Assessing Officer. 5 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 (viii) The Assessing Officer himself has repeatedly recorded statements of Shri S.K.Gupta and has confronted him in detail about the findings.” 6.2. On the basis of the above facts the AO arrived at the following conclusions. These are extracted from the assessment order:- 4. "Inferences:- i. It is proved beyond doubt on the basis of documentary evidences, confessional statement of Shri. S.K.Gupta, the main person controlling the state of affairs of the assessee. Husband of Smt. Saroj Gupta, director of the assessee company and results of the assessment that assessee is engaged in the accommodation entry business and not doing any genuine sale & purchase as claimed in the final account statements annexed with return of income. ii. Since assessee has failed to produce any regular books of account, sale & purchase and expenses vouchers the book results shown by the assessee are liable to be rejected by taking recourse to provisions or section 145 (3) of IT Act 1961. iii. The assessee has not been

successful in establishing that any genuine business activity was being carried out other than the accommodation entry business. No physical evidence of supporting infrastructure was found by the investigation wing at the time of search nor the same has been adduced before the undersigned. iv. The assessee has not produced any confirmations from the debtors and creditors to whom bills have been issued and bills have been procured. v. The assessee failed to provide documentary evidences in the form of rent deeds/receipts and other expenses vouchers and bills, which could establish the genuine credentials of the assessee as a genuine software design & development and other IT related services provider to the genuine customers. Even the big corporates like Reliance Industries Ltd, NIIT, HCL Group, FIITJEE. Mothersons Sumi Innovative & Design Ltd, ASL Insurance Brokers Pvt Ltd, Accord Insurance, Allianz Securities. Link Engineer Ltd, Pashupati Fabrics etc, who themselves are having their own infrastructures for IT related requirements, have approached the assessee as well as its other related group companies for getting accommodation .bills. But surprisingly none of them had any corroborative evidence other than the same bills or in some cases a general agreement, without any supporting evidences of software development. Even assessee had no supporting documents of purchase or outsourcing, where from it could issue sale bills to these corporates or other desirous companies/concerns. (i) The assessee has failed to correlate its surrender

income in different assessment years, with the actual deficiencies of the business relevant to accommodation entry business on account of providing accommodation sale bills, expenses bills in the form of job work charges, advertisement charges. web designing charges-and providing investment entries. (ii) The assessee has intact indulged in accommodation enteries business and has not done any genuine business. So the income of the assessee from the accommodation entry business is computed @ 2% net rate on sale turnover and investment turnover in view of the assessee's statement coupled with 6 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 prevalent market condition for such entries. No further expenses are to be allowed, as this is the net rate. 5. With these remarks, the total income is computed as under: With these remarks income of the assessee is computed as under: (i) Total income as per 153 A return Rs.19,060/- Add:- Income earned from Accommodation entry Business (a) On the Accommodation Sale Bills/Turnover @ 2% of Rs.23,57,555/- Rs.47,151/- Rs.66,211/- 6.3. In appeal before the First Appellate Authority the CIT(A) held as under:- 2.3.5."Taking into consideration the totality of facts and circumstances of the case as discussed hereinabove, it is held that the addition made by the AO on account of net income earned from accommodation entry business to the tune of Rs.47,151/- is justified and is, therefore, confirmed. Since the AO has given a categorical finding that the appellant had only indulged in accommodation entries

business and had not done any genuine business and rejected the books results on that ground, the net profit shown in the return has lost its relevance and should not be given any credence. The AO is, therefore, directed to recomputed the total income accordingly. This disposes off all the grounds of appeal taken by the appellant against the impugned assessment order.” 7. Aggrieved by this the assessee in appeal before us has raised the following grounds:- 1. “Determining taxable income of Rs.47,151/- as against the returned income of Rs.19,060/-; 2. Passing order u/s 143(3) r.w.s 153A of the Income Tax Act, 1961 relying on the estimates and not on the basis of seized material; 3. In applying provisions of section 145(3) of the Act even though books of account were never produced before the authority and no material defects were pointed out therein; 4. In estimating undisclosed income of sum of Rs.47,151/- based figure appearing in balance sheet despite the fact that such books of account were never relied upon; 5. Error in making assessment without understanding the facts of the case.” 8. As brought out earlier the Id. AR at the time of hearing has chosen to confine his arguments to the limited plea that the expenditure incurred by the assessee for earning the income by way of providing accommodation entries may be allowed for which purposes the issue may be restored to the AO. A perusal in the decision in Konichiva Builders Ltd. shows that facts have been appreciated in the following manner:- 7 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 4. “The assessee

in this case belongs to a group of about 33 cases of various companies operated and controlled by one Sh. S K Gupta Chartered Accountant by profession, from his office premises of "Trump and Gates" situated at H-108, 2nd floor, New Asiatic Building, Connaught Place, New Delhi and also from the premises of his firm namely M/s Gupta & Rakesh Associates at 231, Gulmohar Enclave, New Delhi, which were both covered during search and seizure operation u/s. 132 of the Act by the Investigation Wing of the Income Tax Department. In the various statements of Sh. SK Gupta recorded on various dates both before the Officers of the Investigation Wing and in post search enquiries before the AO, he admitted in detail, his modus operandi of providing accommodation bills through the assessee company and another companies in lieu of cheque received and cash return to the beneficiaries. There was also seizure of duplicate set of books of accounts, cheques signed by various authorised signatories / Directors of the assessee company and other companies (which were found to be employees, relatives or friends of Sh. SK Gupta) from Shri S.K. Gupta's premises. From the above, AO observed that it became abundantly clear that the assessee company, in fact, indulged in accommodation entries business and did not do any genuine business. All the sale and purchases etc. booked in these companies were found to be bogus. Proper books of accounts were not found to have been maintained. In these circumstances, the books of accounts of the assessee were rejected and additions

were made on estimate basis, the same were affirmed by the Ld. CIT(A) in appeal.” 8.1. The issue pertaining to books of accounts etc. was considered by the Coordinate Bench in the following manner:- 6. “The first issue pertains to rejection of books of accounts. Ld. Counsel of the assessee in this regard submitted that he is not vehemently pressing this issue. We find that in the search and on the basis of material recovered and statements obtained it has been duly established that assessee was indulging in bogus accommodation entries. No actual sale and purchase was done by the assessee. Proper books of accounts were not maintained. In these circumstances, we do not find any infirmity in the orders of the authorities below in which the books of accounts have been rejected.” 8.2. It is seen that considering the statement recorded of Sh. S.K.Gupta which facts have been summed in the following paras 8 & 9 in the order of the Coordinate Bench which are identical to the facts in the present proceedings also. It is seen that it is this statement which forms the basis of the addition by way of a estimate of income at the 2%. It is further seen that considering the arguments advanced on behalf of the assessee which are found recorded in the following para 10. The issue has been remitted to the AO in para 11 by way of speaking 8 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 direction. These specific paras are extracted from the order of the Co-ordinate Bench relied upon by the assessee:- 8. “Heard both the parties. On this issue, we find that it is established that

assessee was engaged in the business of providing bogus accommodation entry. Hence, the income in this regard has to be estimated. In this regard, the addition has been made by the AO on the basis of statements given by the Director, S.K. Gupta. In this regard, it is relevant to quote the precise question and answers thereof given by Sh. SK Gupta:- "Q.(2) Please state categorically the percentage commission charged by you for providing accommodation sale bills, accommodation purchase / expenses bills and investment and loan entries through your various group companies. Ans. The average commission earned by various group companies in providing different type of accommodation entries was to the tune of 1.5% to 2.0% out of which I have to incur our normal expense on a/c of salary, rent, bank charges, conveyers, telephone, water and electricity." 9. On the basis of statements as well as prevalent market condition, the AO has estimated the income @ 2% without allowing any amount for the expenditure. Ld. CIT(A) has affirmed the said. 10. In this regard Ld. Counsel of the assessee has pleaded for allowance of expenditure incurred to earn the income. We find that when addition is being made on the basis of statement, the statement has to be relied in full . Revenue cannot choose to rely on one part of the statement and ignore the rest of the statement in the absence of any cogent material. This is supported by the common law maxim of approbate and reprobate. 11. In this case the assessee company's Director has agreed that the commission was to the

tune of 1.5% to 2%. Hence, estimation of commission income @ 2% cannot be disputed. However, at the same time it has also been submitted in the same statement that the assessee has to incur the expenditure on account of salary, rent bank charges, conveyers, telephone, water and electricity. However, it is also settled that mere submission that expenditure has been incurred cannot lead to allowance of expenditure. Assessee has to prove with cogent material that the expenditure has been incurred to earn the income. In these circumstances we remit the issue to the file of the AO. The Assessing Officer shall examine the aspect of allowance of expenditure on the basis of cogent materials to be submitted by the assessee. 9. In the afore-mentioned peculiar facts and circumstances addressing the limited plea of the assessee in the light of the arguments advanced by the parties before us wherein Ld. AR has placed reliance upon the order of the Division Bench in the case of Konichiva Builders Ltd. and the Ld. CIT DR though not opposing it has invited our attention to the order of the SMC Bench in the case of 9 I.T.A .No.- 3046-3049/Del/2012 & 3069/Del/2012 Centenary Software Pvt. Ltd. We find on considering the order in Centenary Software Pvt. Ltd. relied upon by the Revenue that the Ld. AR before the SMC Bench had not raised any plea in regard to allowance of expenditure and had instead canvassed before the SMC Bench that as per judicial precedent the accepted income should be between 0.25% to 0.50%. This argument it is seen was not

accepted. The claim for allowability of estimating the expenses it is seen was not canvassed before the SMC Bench. Accordingly the said order in the circumstances had no occasion to consider the plea. In the facts before us, Ld. AR has drawn specific attention to Question No.-2 which has been extracted in the case of Konichiva Builders Ltd. also in para 8 of their order which is also considered at page 18 of the Assessment order in the year under consideration. In view of the above there being no change in facts and circumstances of these cases respectfully following the order of the Tribunal in Konichiva Builders Ltd. the issue of allowability of expenses in similar lines is restored to the AO herein also requiring the assessee to prove its claim with cogent material the limited plea of the assessee is accepted.

8. Regarding the issue of addition of Rs. 25 lakhs in the hands of the assessee on protective basis, we find that the addition has been confirmed by the Ld. CIT(A) on the grounds that no evidence has been produced to prove that substantive assessment has been made in the hands of M/s Reliance Industries Limited. Before it has been submitted that the addition has been made in substantive capacity in the case of M/s Reliance Industries Ltd. The Assessing Officer is hereby directed to verify the records of M/s Reliance Industries Ltd. and a form that this amount has been added, and give relief in the case of this assessee for the AY 2007-08.

9. In the result, the appeals of the assessee are allowed for statistical purposes.

Order Pronounced in the Open Court on 16/12/2019

Sd/-

(BHAVNESH SAINI)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 16.12.2019

*Kavita Arora, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR