

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SH BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 2397/DEL/2016  
(Assessment Year – 2008-09)**

The Asstt. Commissioner of Income Tax, Central Circle – 18, Jhandewalan, New Delhi-110 055  <b>(APPELLANT)</b>	Vs	Tirupati Constwell Pvt. Ltd., Plot No.3, Dwarka City Centre, Sector – 10, New Delhi – 110 017 (PAN : AACCT 2478 E)  <b>(RESPONDENT)</b>
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**AND  
CO No. 128/DEL/2019  
(Arising out of ITA No.1297/DEL/2016)  
( Assessment Year – 2008-09 )**

Tirupati Constwell Pvt. Ltd., Plot No.3, Dwarka City Centre, Sector – 10, New Delhi – 110 017 (PAN : AACCT 2478 E)  <b>(APPELLANT)</b>	Vs	The Asstt. Commissioner of Income Tax, Central Circle – 18, Jhandewalan, New Delhi-110 055  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Sh. Sanjay Goyal, CIT-D.R.</b>
<b>Revenue by</b>	<b>Sh. Mahavir Singh, Adv.</b>

<b>Date of Hearing</b>	<b>30.01.2020</b>
<b>Date of Pronouncement</b>	<b>30.01.2020</b>

**ORDER**

**PER N. K. BILLAIYA, AM**

This appeal by the Revenue and cross objection by the assessee are preferred against the very same order of the Commission of Income Tax (Appeals)-27, New Delhi dated 22.02.2016 pertaining to Assessment Year 2008-09.

2. The substantive grievance of the Revenue relates to the deletion of four additions namely:

1. Rs.2.90 crore added u/s 68 of the Act.
2. Rs.12 lakhs added on account of Director's remuneration.
3. Rs.6,46,438/- added u/s 14A r.w.r. 8D
4. Rs.1,03,08,430/- added as unaccounted receipts and the CIT(A) confirmed only Rs.5,42,550/-

3. Representative of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record in the form of paper book considered in the light of Rule 18(6) of the ITAT Rules.

4. The assessee is in the business of construction. A search was conducted at the business and residential premises of the assessee on 14.09.2010 and accordingly proceedings u/s 153A were initiated.

5. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has taken unsecured loans from the following parties:

- |                                       |                  |
|---------------------------------------|------------------|
| 1. Haguru Engineering Pvt. Ltd.       | Rs.2,10,00,000/- |
| 2. World Broadbank Communication Ltd. | Rs. 20,00,000/-  |
| 3. Victory Portfolio Ltd.             | Rs. 60,00,000/-  |

6. The assessee was asked to furnish details in the light of the provisions of Section 68 of the Act. Simultaneously, notices u/s 133(6) were sent to all the parties at the addresses supplied by the assessee. Reply to the notice was received only from Haguru Engineering Pvt. Ltd. whereas in respect of other two parties no reply were received. The assessee only filed copy of ledger and copy of the bank statement. On perusal of the same the AO found that on the date of issuance of cheque similar amount was deposited in the bank account and was of the opinion that the creditworthiness and the genuineness of the transactions are not established by the assessee. Not satisfied with the reply of the assessee, the AO made the addition of Rs.2.90 crores u/s 68 of the Act.

7. Proceeding further the AO noticed that the assessee has debited Rs.72 lakhs as Director's remuneration out of which Rs.60 lakh was paid to Subhash Dabas and Rs.12 lakhs was paid to Suraj Mal Dabas. On receiving no justification of salary paid to Suraj Mal Dabas, the AO disallowed the same and made the addition of Rs.12 lakhs.

8. Proceeding further the AO noticed that the assessee has made investment in shares for the purposes of earning of exempted income. Invoking the provision of Section 14A r.w.r. 8D disallowance was computed and addition was made amounting to Rs.6,46,438/-.

9. On further perusal of Form 26AS the AO noticed that the assessee has shown Rs.20,18,12,138/- as contract receipts whereas contract receipts as per Form 26AS was Rs.21,26,63,118/-. The AO sought explanation from the assessee in respect of the difference and on receiving no plausible reply addition of Rs.1,08,50,980/- was made.

10. The assessee carried the matter before the CIT(A) and furnished some evidences in respect of cash creditors. The additional evidences so furnished were sent to the AO. The AO submitted his remand report as under:

**"3. Unsecured loans**

*During the year the assessee had received Rs.2,90,00,000/ from following parties:*

<i>S. No.</i>	<i>Name of Loaner</i>	<i>Loan Amount</i>
1.	<i>M/s Haguru Engineering Pvt Ltd.</i>	<i>Rs.2,10,00,000/-</i>
2.	<i>M/s World Broadband Communication Ltd.</i>	<i>Rs. 20,00,000/ -</i>
3.	<i>M/s Victory Portfolio Ltd</i>	<i>Rs. 60,00,000/-</i>
	<i>Total</i>	<i>Rs.2,90,00,000/-</i>

*Since the identity, creditworthiness and genuineness of transaction was not proved same was added back as unexplained credit us 68.*

*The additional evidences in respect of unverifiable unsecured loan were examined and report on the same is as under:*

**3.1 Unsecured loan from M/s Haguru Engineering Pvt. Ltd.**

*The assessee claimed that during the year under consideration the assessee has taken a loan amounting to Rs.2,10,00,000/- from M/s Haguru Engineering Pvt. Ltd. Now, the assessee has submitted a chart showing name, address and PAN no. of the loaner company along with its audited balance sheet and confirmation of account as additional evidences. A perusal of the bank statement shows that during under consideration same amount was credited & same amount was debited on the same date from account of M/s Haguru Engineering Pvt. Ltd. Its bank statements further show that on different dates same amount have been deposited and withdrawn during same day or next day. Giving indication that M/s. Haguru Engineering Pvt. Ltd. is not doing any business except providing accommodation entries.*

**3.2 Unsecured loan from M/s World Broadband Communication Ltd.**

*The assessee claimed that during the year under consideration the assessee has taken a loan amounting to Rs.20,00,000/- from M/s. World Broadband Communication Ltd. Now, the assessee has submitted a chart showing name, address and PAN no. of the loaner company as additional evidences only. Therefore, in absence of any confirmation and other details genuineness, creditworthiness and capacity of the loaner cannot be established.*

**3.3 Unsecured loan from M/s Victory Portfolio Ltd.**

*The assessee Claimed that during the year under consideration the assessee has taken a loan amounting to Rs.20,00,000/- from M/s. World Broadband Communication Ltd. Now, the assessee has submitted a chart showing name, address and PAN no of the loaner company along with balance sheet and bank statements as additional evidences. A perusal of the bank statement shows that during the year under consideration on different dates same amount have been deposited and Withdrawn during same day or next day, giving indication that M/s Victory Portfolio Pvt. Ltd. is not doing any business except providing accommodation entries.*

*In view of the above, decision may be taken on merits of the case.*

**4. Directors Remunerations**

*During the year assessee had paid Rs 10,00,000/- to Sh. Suraj Mal Dabas, Director. Since, inspite of being asked vide questionnaire dated 31.12.2012, no justification of payment to Sh. Suraj Mai Dabas for work done by him was submitted by the assessee company same was disallowed and added that to the income of the company. Now, the assessee has submitted financially statements, important operational*

*documents, labour muster rule, bank guarantee papers duly signed by Sh. Suraj Mai Dabas. It has also filed form 16. In view of the above decision additional evidences may be considered on merits subject to recommendation made regarding the admissibility of additional evidences in para 2.*

**5. Disallowance u/s 14A read with Rule 8D**

*During the year under consideration the assessee have invested in shares for the purposes of earning exempt income but has not made any disallowance related to this exempt income. Accordingly, in view of provisions of section 14A disallowance under this head was worked out and was added to the income. The assessee has submitted no additional evidence in this regards he has only challenged the applicability of the section 14A. The decision may be taken on merits.*

**6. Difference of Contract receipts as per 26AS**

*The assessee had shown Rs.20,18,12,138/- as contract receipt in P/L accounts whereas as per 26AS it was Rs. 21,26,63,118/-. In absence of any explanation or reconciliation the difference amount of Rs.1,08,50,980/- was added as unexplained income of the assessee. Now, the assessee has submitted that such amount of difference may be attributed to advances being shown inform 26AS or application of the relevant accounting standard - 7 related to revenue recognition of construction contracts by the auditors of appellate company and such differences may be over looked considering the peculiar nature of business of the assessee. From the above it is apparently clear that even now the assessee has failed to explain the nature of such receipts and cause for its omission from contract receipts shown in P/L accounts. No additional evidence was filed on this issue. ”*

11. After considering the submissions, the additional evidences and the remand report of the assessee, the CIT(A) was convinced with the genuineness of the cash creditors and deleted the addition of Rs.2.90 crore.

12. In respect of Director's remuneration, the AO in his remand report observed that the assessee has submitted financial statements, important operational documents, labour muster role, bank guarantee papers duly signed by Shri Suraj Mal Dabas and accepted the work done by Suraj Mal Dabas. On the basis of the remand report the CIT(A) deleted the addition of Rs.12 lakh.

13. In so far as the addition u/s 14A is concerned. The CIT(A) deleted the addition on finding that there is no exempt income.

14. The addition on account of difference in contract receipts in P&L account and as per Form 26AS was restricted to 5% of the difference and addition of Rs.5,42,550/- was confirmed.

15. Aggrieved by this the Revenue is before us. The DR vehemently stated that the assessee has failed to discharge the initial onus cost upon it by the provision of section 68 of the Act. It is the say of the DR that the assessee has grossly failed in establishing the genuineness of the transaction in the light of the documentary evidences filed by it. Per contra, the counsel for the assessee stated that the assessee has done whatever it could do in discharging the initial burden. The counsel pointed out that the bank statements were made available to the AO along with PAN details. It is the say of the Counsel that the bank statements clearly show the acceptance of loan from the three parties and the assessee cannot be asked to explain the source of the source.

16. We have carefully considered the rival contentions and have gone through the bank statement brought on record. In the case of Huguru Engineering Works Pvt. Ltd., we find that Rs.60 lakhs was taken by the assessee on 29.10.2007 however, on the same date Rs.60 lakhs was credited in the bank account of Huguru Engineering Works Pvt. Ltd. and prior to that the balance in the account of the company was only Rs.627/-. Similarly, 2 cheques were received from this company on 28.03.2008 amounting to Rs.70 lakhs and 80 lakhs each and on the same date Rs.1.50 crores is found to be deposited in the bank account and prior to this transaction the bank balance of this company was NIL. In the case of Victory Portfolio Limited the P&L account of this company shows net income of Rs.4.20 crore but it is not known from where this company has earned Rs.4.20 crore shown as net income.

17. In the case of World Broadband Communications Ltd. no evidence has been brought on record except the PAN No.

18. On careful consideration of the bank statements of Huguru Engineering Works Pvt. Ltd., we are of the considered view that the bank transactions raise suspicion towards the genuineness of the transaction similarly in the case of Victory Portfolio Limited the income shown in its P&L account raises suspicion thereby creating doubt on the genuineness of the transaction. In the case of World Broadband Communications Ltd. there is no evidence except the PAN details.

19. We are of the view that the assessee should furnish satisfactory documentary evidences to establish the genuineness of the transactions along with the creditworthiness of the lender, we, therefore, restore this issue to the files of the AO. The assessee is directed to furnish relevant satisfactory demonstrative evidences to discharge its onus under section 68 of the Act.

20. Ground No.1, 2 & 3 are treated as allowed for statistical purposes.

21. Addition on account of Director's remuneration has been deleted on the acceptance of the transaction by the AO in his remand report, therefore, no interference is call for.

22. Addition u/s 14A r.w.r 8D has been deleted on finding that there is no exempt income. As there is no exempt income no addition is to be made u/s 14A of the Act and the CIT(A) has rightly deleted the same, therefore, no interference is called for.

23. In so far as the difference in the contract receipts shown in the P&L account and Form 26AS, before us the counsel for the assessee stated that the amount stand reconciled and furnished a reconciliation statement which is as under:

**Reconciliation of Receipts as per TDS (26AS) and Books:-**

Receipts as per TDS claimed and allowed in return of income:-

1. Mera Baba Reality Associates Pvt. Ltd.	:	16,19,64,513=00
2. Delhi State New Spare Employees Federation	:	4,91,10,281=00
3. Interest received from banks	:	<u>16,68,306=00</u>
Shown in the Asstt. order (21,26,63,118)	:	21,27,43,100=00
Less : Interest Income separately shown	:	<u>16,68,306=00</u>
		21,10,74,794=00
Less : Receipts on 31.03.2008	:	<u>91,50,534=00</u>
Net Receipts	:	<u>20,19,24,260=00</u>
Shown in P&L Account	:	<u>20,18,12,138=00</u>
	:	<u>1,12,122=00</u>

(This difference is small and may be same interest being shown in earlier on next year.)

24. However, we find that before the AO the assessee did not give any reconciliation statement and before the CIT(A), contended that the difference amount is advances received from various parties and whereas before us the counsel has furnished a reconciliation statement as above.

25. In the light of these contradicting statements, we are of the considered view that reconciliation statement so filed before us needs to be examined/verified by the AO. We accordingly restore this issue to the files of the AO. The assessee is directed to reconcile the entire difference with satisfactory explanation and if the reconciliation is not accepted by the AO then the entire difference of Rs.1,03,08,430/- shall be treated as the unaccounted receipts of the assessee. Ground No.7 is treated as allowed for statistical purposes.

26. In the result, appeal of the Revenue is allowed in part for statistical purposes.

27. Coming to the CO, we find that it is barred by 1223 days.

28. Before us the counsel for the assessee sated that the Director's of

the company directed the CA to file Cross Objection on receiving the memo of the appeal filed by the Revenue. It is the say of the counsel that the CA did not file the CO on time which caused the delay in filing and the delay should be condoned.

29. We have carefully perused the order sheet entries in revenue's appeal, we find that counsel Mahavir Singh, Advocate is appearing in this case from 28.02.2019 till 05.08.2019 and it is only on 04.10.2019 the Cross Objection was filed. On these demonstrative facts, we do not find any merit in the contention of the counsel. The arguing counsel Mahavir Singh, Advocate was very much aware of the appeal of the revenue since 28.02.2019 and yet did not care to file any cross objection which needs to be filed within 30 days from the date of the appeal filed by the Revenue. We are not convinced with the explanation of the counsel. We decline to condone the delay, the CO is accordingly dismissed.

30. In the result, appeal of the Revenue is allowed in part for statistical purposes and Cross Objection of the assessee is not admitted.

**Order pronounced in the Open Court on 30<sup>th</sup> January, 2020.**

**Sd/-**

**(BHAVNESH SAINI)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated: 30/01/2020  
*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI