

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

Before Sh. H. S. Sidhu, Judicial Member

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

ITA No. 4282/Del/2017 : Asstt. Year : 2012-13

Income Tax Officer, Ward-6(1), New Delhi-110002	Vs	M/s Chetan Constructions Pvt. Ltd. B-108, Swasthya Vihar, New Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AAACC2853J		

**Assessee by : Sh. Ajay Bhagwani, CA
Revenue by : Sh. Saras Kumar, Sr. DR**

Date of Hearing: 18.12.2019	Date of Pronouncement: 04.02.2020
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ORDER

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

The present appeal has been filed by the revenue against the order of Id. CIT (A)-2, New Delhi dated 28.02.2017.

2. During the F.Y. 2011-12, the company has received advances of Rs.2,19,00,000/- from the following companies:

S. No.	Name of the company	Amount of advance(Rs.)
1.	M/s Artha Software Pvt. Ltd.	35,00,000/-
2.	M/s Corporate Network Solution Pvt. Ltd.	50,00,000/-
3.	M/s Gajanan Realcon Pvt. Ltd.	19,00,000/-
4.	M/s Garnet Textiles Pvt. Ltd.	50,00,000/-
5.	M/s Shivanjali Impex Pvt. Ltd.	25,00,000/-
6.	M/s Zesty Construction Pvt. Ltd.	40,00,000/-
	Total	2,19,00,000/-

3. Accordingly, during the assessment proceedings, the assessee company was asked by the Assessing Officer to prove the identity,

creditworthiness and genuineness of the aforesaid advances. In response, the A.R. of the company vide his letter dated 26.08.2014 filed confirmations of the companies from whom advances of Rs. 2,19,00,000/- have been received by the company. The A.R. of the company vide letter dated 22.09.2014 stated that during the year company has advanced a sum of Rs.12,22,00,000/- to M/s Nidhi Promoters Pvt. Ltd. towards booking of space in a commercial building being constructed by M/s Nidhi Promoters Pvt. Ltd. in Sector-4, Dwarka, New Delhi. In turn, the assessee company has accepted advances of Rs. 11,54,00,000/- from various parties for sale of space in commercial building at Dwarka, as booked by the company. Notices u/s 133(6) of the Income Tax Act, 1961 were issued to furnish requisite details on 29.09.2014 to the investor companies. Though, there was no response initially, later all these companies filed details on the same day on 24.11.2014. Later, the Assessing Officer issued Summons under section 131 of the Income tax Act, 1961 were issued to the Principal Officers of the investor companies on 05.02.2015 requiring them for personal deposition on 11.02.2015 with requisite details in order to ascertain identity, creditworthiness and genuineness of transactions held with the assessee company. In all the cases, notices u/s 131 of the Income Tax Act, 1961 were returned un-served.

4. Therefore, summons under section 131 of the Income tax Act, 1961 were issued in the name of the directors of these companies on 16.02.2015 requiring them for personal deposition on 20.02.2015. Summons issued under section 131 of the Income tax Act, 1961 were returned un-served in the case of Sh. Ankur Verma, director of M/s Artha Software Pvt. Ltd. & Sh. Vikas Kadam, director of M/s Corporate Network Solution Pvt. Ltd.

5, The A.R. of the company vide his letter dated 20.02.2015 claimed that addresses of all these entities has been changed and provided their new addresses for the future correspondence.

6. In compliance to summons issued u/s 131 of the Income tax Act, 1961 in the cases of M/s Maggot Impex Pvt. Ltd., M/s Rational Steel & Alloys Pvt. Ltd. & M/s Artha Software Pvt. Ltd., director of the companies Sh. Suraj Bhan (Mob.9213506366) S/o late Sh. Chander Sen R/o D-20/4, Gali No.3, Kamar Vihar, New Delhi-110094 filed letter dated 20.02.2015.

7. Statements of Vikas Kadam, Ankur Verma were recorded by the Assessing Officer and Sh. Suraj Bhan provided the details by way of a letter. In conclusion the Assessing Officer held that the companies do not have sufficient taxable income to lend the advances. The Assessing Officer highlighted the following points while making the addition:

"i) It is significantly noteworthy that all the above companies given advances to the assessee company in the month of March, 2011 in F. Y. 2010-11 & January, 2012 in F.Y. 2011-12.

ii) Further, these companies had filed merely the extracts of bank statements; it was difficult to discern whether these companies had sufficient creditworthiness to match the advances given to the assessee company. Another vital fact which emerged from perusal of extracts of these bank statements was revelation of a common trend wherein prior to each transaction of transfer of funds to the assessee company, these companies had received exactly same amount of funds from some other source on the same date, which was then transferred to the assessee company.

iii) These companies audited by the common auditor i.e. M/s Anil Meenu & Company.

iv) In compliance to notice issued u/s 133(6) of the Income Tax Act, 1961, submissions were filed on the same date i.e. 24.11.2014.

v) In the statement of Sh. Vikas Kadam stated that he is director in 2 companies namely M/s Corporate Network Solution Pvt. Ltd. & M/s Gajanan

Realcon Pvt. Ltd. But from ROC data he has been found directors in 6 more companies.

vi) In the statement of Sh. Ankur Verma stated that he is director in one company namely M/s Artha Software Pvt. Ltd. But from ROC data he has been found directors in 11 more companies.

vii) In the letter filed by Sh. Suraj Bhan stated that he is not connected with the companies in the name of M/s Maggot Impex Pvt. Ltd., M/s Rational Steel & Alloys Pvt. Ltd. and M/s Artha Software Pvt. Ltd. But from ROC data he has been found directors in 12 companies.

viii) The assessee as well as these companies has not filed any copy of written document such as Agreement to Sale / Purchase' for justification of advances received against the booking of space.

ix) Simultaneous change of address by these investors as intimated by the A.R. of the company vide letter dated 20.02.2015.

x) Not a single investor has been provided space and the advance has been refunded.

xi) In the balance sheet of the assessee company there is inventory of Rs. 1,16,13,561/- under the head 'Current Assets' against which the company has raised advances of Rs. 11.55 crore as on 31.03.2012.

xii) In the statement, Sh. Ankur Verma stated that in M/s Artha Software Pvt. Ltd., Sh. Suraj Bhan is other director of the company which has been later denied by the A.R. of the assessee company vide letter dated 16.03.2015."

8. The Id. CIT (A) deleted the addition holding that all the six parties from whom the assessee had received money of Rs.2,19,00,000/- duly appeared before the AO and filed confirmations, copies of their Income Tax returns, copies of their bank statements, copies of their Balance Sheets as required by the AO. Directors of two of these companies have appeared before the AO and given statements and confirmed making payment to the assessee for booking of space. It is a fact on record that money paid by these entities during the FY 2011-12 along with money paid during the FY 2010-11 was refunded by the assessee in a short

period of time and evidences in respect of receipt of money and refund were filed during the course of appellate proceedings. All the transactions of receipt of money and refund thereof were through banking channels. These parties are regularly filing their tax returns and balance sheets and profit & loss a/cs with ROC and copies of these were filed before the AO as well as me. Details of company master data on website of ROC to show that these companies are live companies as required by me were filed during the appellate proceedings.

9. The Id. CIT (A) further held that it is a case of mere suspicion by the AO of it being a case of accommodation entry. The AO has made addition of the amounts received by the assessee from six entities by relying on inadequate educational qualifications of directors, working profiles of directors, fact of there being no major business activity done by these incomes reported by these entities, bank accounts being in entities, very low turnovers and same bank and branch of these entities. The AO has alleged that it is a case of accommodation entries in lieu of cash.

10. The Id. CIT(A) further held that, however AO has failed to bring on record any evidence of cash earning outside books of account by the assessee and its deployment back in books by way of accommodation entries as well as reasons for its refund in a very short period of time. The AO has completely ignored the refund of money received by assessee within a short period of time that too before the assessee's case was taken up for scrutiny. There is nothing on record to suggest that any search or survey was conducted on these entities resulting into any finding by the Investigation Wing or department or any statement being recorded in which these entities have accepted indulging into the business of accommodation entries. There is no evidence brought on record by AO by making any investigation or inquiries resulting into any incriminating

documents or any statement being recorded in which these entities have accepted indulging in the business of accommodation entries. Narrating thus, the Id. CIT(A) held that additions are to be made on hard facts or on corroborative evidences and not on suspicions, presumptions and surmises. Ld. CIT(A) relied on the judgment of the Hon'ble Supreme Court in Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775(SC), Omar Salay Mohd. Salt vs. CIT 37 ITR 151 (SC) and Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288 (SC) where in it was held that there must be something more than mere suspicion in support of an assessment and mere suspicion cannot take the place for the purpose of passing an order of assessment. As all six entities who paid money to assessee had duly appeared and filed details required by the AO and tendered statements accepting that they had entered into transactions of booking of space and paid money to the assessee and filed documents evidencing their identities, genuineness of transactions and creditworthiness and explained source of money paid by them to the assessee and in view of the fact that money stands refunded even before the case of assessee was taken up for scrutiny, and on the basis of various judicial pronouncements relied upon, it was concluded by the Id. CIT(A) the assessee had duly discharged its onus as cast upon it as per the provisions of the Income Tax that addition was wrongly made in the case of the assessee.

11. Before us during the hearing the Ld .DR reiterated the facts taken up by the Assessing Officer. He argued that the cases are being audited by the same Auditor and the complaints to notice u/s 133(6) of the Act were filed on the same date. The Directors appeared to be on the ROC data as Directors of some more companies also. He argued that the Directors of these companies are dummy Directors and working on behalf of the main entry operator (page no. 9 of the assessment order). He further relied on the judgment in the case of Nova Promoters & Finance and argued that in

view of the link between the entry providers and the incriminating material merely filing of PAN, acknowledgment of income tax returns of the entry provider, bank account statements etc. was not sufficient to discharge the onus. The Id. DR has also relied on the judgment of Hon'ble Delhi High Court in order dated 22-11-2013 in the case of CIT V/s N.R. Portfolio P Ltd., Hon'ble Apex Court in the case of Me Dowell & Co Limited 154 ITR-148 on the issue of using dubious means by the assessee for tax evasion. He also relied on the judgment of the Calcutta High Court in the case CIT vs. L.N. Dalmia in 207 ITR 89 wherein held that for determining whether the transaction is sham or illusory or a device or a ruse, the Income-tax authorities are entitled to penetrate the veil covering it and ascertain the truth. According to the Court the authorities are entitled to look into the surrounding circumstances to find out the reality and truth and other case laws as mentioned in the assessment order.

12. Rebutting, the Id. AR argued that all the details have been given to the authorities along with copy of the bank statement, ITR, replies have been given to the notices issued u/s 133(6) of the Act and all the Directors have attended before the Assessing Officer and given their statements which proves the identity, genuineness and creditworthiness of the parties. He argued that the total amount advanced by the company for booking space in commercial building being constructed by M/s Nidhi Promoters Pvt. Ltd. in Dwarka, New Delhi was of Rs.12.22 crores and the company has raised advances of Rs.11.5 crores, out of which the Assessing Officer suspected only an amount of Rs.2.19 crores and made addition u/s 68 of the Act without any basis. He also relied on the judgments of the Hon'ble High Court in the case of Smt. Harshila Chordia Vs ITO 298 ITR 349 (Raj.), CIT Vs Mahesh G. Pomnani in ITA 900 of 2009 (Guj.) and CIT Vs Pancham Dass Jain 156 Taxman 507 (All.). It was also argued that the amounts have been repaid in a short span of six months

even before the case has been selected for scrutiny and even before filing of the return in due time allowed u/s 139(1) of the Act.

13. Based on the arguments of both the parties and records available with us, the following queries have been examined:

- i. Whether the assessee has paid an amount of Rs.12.22 crores for be booking commercial space – Yes
- ii. Whether the assessee has raised an amount of Rs.11.54 crores from various parties for sale of space – Yes
- iii. Whether the amounts have been returned due to non-commencement of the project - Yes
- iv. Whether such refund has been issued even before filing of the returns for the year in before taking up for scrutiny – Yes
- v. Whether compliance to notices u/s 133(6) have been made – Yes
- vi. Whether compliance to notice u/s 131 has been made by the Directors – Yes
- vii. The Assessing Officer alleged that the Directors namely Manish Kumar Jain, Suman Jain, Ankesh, Ranju Rani, Ankur Verma, Suraj Bhan, Vikas Kadam and Rajesh Verma are operating on behalf of main entry operator. In this context, whether any details of the main entry operator has alleged have been brought on record by the revenue – No
- viii. Whether this advancing of loan is traced to any link or outcome of any accommodation entry operation unearthed by the department – No
- ix. Whether any information with the department regarding the bogus nature of the advances – No
- x. Whether enquiries have been conducted by Investigation Wing, if any, pointed out any suspicious transactions with the entities related to the assessee – No

- xi. Whether there was any substantial corroborative evidence to prove the bogus nature of these advances – No
- xii. Whether the ratio of Nova Promoters regarding the link between the entry provider and the incriminating material exists in the instant case – No
- xiii. Whether the companies which have advanced been strike off from the ROC – No
- xiv. Whether the Directors are also Directors in other companies – Yes
- xv. Whether the observation of the Assessing Officer that there were no agreements for booking of the space is correct – No
- xvi. Whether the observation of the Assessing Officer that investors have not provided space and advance have been refunded is correct - Yes
- xvii. Whether the decision in the case of Andaman Timber Industries Vs CCE is applicable to the instant case – No

14. Hence, keeping in view the entire facts and legal proposition specific to the instant case and since, the revenue has not brought any tangible material on record to support the addition made u/s 68 of the Act regarding the advances received by the assessee for booking of commercial space, we hereby decline to interfere with the order of the Id. CIT (A).

15. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 04/02/2020.

Sd/-

(H. S. Sidhu)
Judicial Member

Sd/-

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

Dated: 04/02/2020

Subodh