

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No. 4159/Del/2017
Assessment Year: 2011-12**

**DCIT, Circle 7(1),
New Delhi.**

(Appellant)

**vs. Delco Infrastructure Projects Ltd.,
158, Sector-9, Pocket-I, Dwarka,
New Delhi.**

**PAN: AABCV2032P
(Respondent)**

**Assessee by: Shri Jagdish Singh, Sr. DR
Department by: None**

**Date of Hearing: 16/01/2020
Date of Pronouncement: 14/02/2020**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 03/03/2017 in appeal No. 81/14-15 passed by the learned Commissioner of Income Tax (Appeals)-3 Delhi ("the Ld. CIT(A)"), for the assessment year 2011-12, in the case of M/s. Delco Infrastructure Projects Ltd. ("the assessee"), Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company, engaged in the business of civil construction. For the assessment year 2011-12, it had filed its return of income on 30/09/2011 declaring an income of Rs.1,95,46,030/-. Learned Assessing Officer, however, completed

assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") at Rs.9,31,71,400/-by making certain additions which includes the addition of Rs.2,47,50,000/-under section 68 of the Act on account of the share application money received by the assessee and Rs.4,80,60,180/-by disallowing the trade creditors.

3. Aggrieved by such additions, assessee preferred appeal. Ld. CIT(A) found that the share capital to the tune of Rs.2,01,50,000/-was received by the assessee in the preceding years and there was no credit in the books of accounts of the assessee during the previous year in respect of such amount and therefore, deleted the same. In respect of the share capital amount received during the year to the tune of Rs.46 Lacs, received from one Accurex Infotech Private Limited, Ld. CIT(A), on verification of the assessment record, found that no notice under section 133(6) of the Act or summons under section 131 of the Act were issued to M/s Accurex Infotech Private Limited nor any evidence was brought on record by the learned Assessing Officer by conducting the investigation to indicate that the transaction was in the nature of accommodation entry, and, therefore, while following the decisions of the Hon'ble jurisdictional High Court in the case of CIT vs. Fair Finvest Ltd in ITA No. 232/2012 order dated 22/11/2012, CIT vs. Gangeshwari Metal Private Limited in ITA 597/2012 dated 21.01.2013, CIT vs. Vrindavan Farms (P) Ltd., ITA 71/2015 dated 12/08/2015 and CIT vs. Rakam Money Matters (P) Ltd ITA No. 778/2015 dated 13/10/2015 returned a finding that the Assessing Officer failed to make any effort to make proper enquiry so as to ascertain the genuineness of the entity and satisfy

himself of its creditworthiness, and to take the matter to the logical end. He therefore deleted the addition of 46 Lacs also.

4. CIT(A) further found that out of the disallowed trade creditors to the tune of Rs.4,80,60,180/-, a sum of Rs.3,14,10,051/- and Rs.42,47,439/- should also be deleted because of the explanation offered by the assessee that the trade creditors have the running account and the transactions were accepted by the learned Assessing Officer in the subsequent years. Challenging such deletions, Revenue preferred this appeal.

5. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned unserved. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are the considered opinion that no time could be granted. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

6. Insofar as the first ground is concerned, out of the total deletion of Rs.2,47,50,000/- under section 68 of the Act, the finding of the Ld. CIT(A) that addition of Rs.2,01,50,000/- is unsustainable because such amount was received by the assessee in the preceding years and there

was no credit in the books of accounts of the assessee in respect of such amount during the previous year, goes unchallenged and the Revenue confines the challenge only to the extent of Rs. 46 Lacs deleted by the Ld. CIT(A) in respect of M/s Accurex Infotech Private Limited.

7. Ld. DR, however, could not controvert the factual finding of the Ld. CIT(A) that on verification of the assessment records, it was found that no notice under section 133(6) of the Act or summons under section 131 of the Act were issued in the case of M/s Accurex Infotech Private Limited and the Assessing Officer failed to make any effort in that direction to secure the presence of the Directors and to take the matter to its logical end, and also that the Assessing Officer failed to seek the assistance of the Assessing Officers of the concerned company whose ITR and PAN card details were furnished. CIT (A) therefore, in the light of the decisions cited before him including the one in the case of Rakam Money Matters (P) Ltd (supra), did not find any option but to delete the addition of Rs. 46 Lacs.

8. In this factual situation, we find that there is a lapse on the part of the learned Assessing Officer to pursue the course open to him under law and in the circumstances in the light of the decision of the Hon'ble jurisdictional High Court in the case of Rakam Money Matters (P) Ltd (supra) and other cases we find that the view taken by the Ld. CIT(A) that the Assessing Officer failed to come up with the material to disprove what had been produced by the assessee is certainly a plausible view and the findings of the Ld. CIT(A) cannot be said to be perverse. On this premise, we dismiss ground No. 1.

9. Now coming to the sundry creditors to the tune of Rs.42,47,439/-and Rs.3,14,10,048/-, on verification of the details, Ld. CIT(A) found that the closing balance of Rs.3,04,21,207/- as on 31/3/2011 was reduced to Rs.52,86,110/- as on 31/3/2012 and the assessments for the assessment years 2012-13 and 2014-15 were completed by the Assessing Officer under section 143(3) of the Act and the transactions were accepted. Further Ld. CIT(A) found that the verification of the assessment record revealed that the details of the creditors of Rs.9,92,16,749/-were filed during the assessment proceedings, but the learned Assessing Officer made the selective verification of the creditors and observed that the details of only creditors worth Rs. 9,49,69,310/- were filed and thereby the disallowance of the remaining amount of Rs.42,47,439/-was made. On a perusal of the details of the total creditors of Rs.9,92,16,749/- it was found that the position of balances as appearing on 31/3/2011 was accepted by the Assessing Officer in the subsequent years.

10. There is no denial of the fact that the creditors who have supplied the goods on day-to-day basis to the assessee have running account and the details of the balances as on 31/3/2010, 31/3/2011 and 31/3/2012 are incorporated in the impugned order. Further there is no denial of the fact that the closing balances as on 31/3/2011 was reduced to Rs.52,86,110/- as on 31/3/2012 and while computing the assessment for the assessment years 2012-13 and 2014-15, the learned Assessing Officer accepted the transactions. In these circumstances we do not find any illegality or irregularity in the findings of the Ld. CIT(A). We accordingly confirm the same and dismiss ground Nos. 2 and 3.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 14th February, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 14/02/2020.

*aks/-