

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI R.C. SHARMA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA No. 545/MUM/2015 (A.Y. 2011-12)

M/s. Kale Entertainment & Resorts Pvt. Ltd., S/4, 101, Sunder Nagar, S.V. Road Malad (W), Mumbai – 400 064 PAN: AACCK6915H	v.	DCIT, Central Circle – 32(3) Room No. 32(3), Ground Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Shri Sashikant G. Goyal
Department by	:	Shri K.C. Selvamani
Date of Hearing	:	16.12.2019
Date of Pronouncement	:	26.02.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.10.2014 for the A.Y. 2011-12.
2. On a perusal of the record we noticed that this appeal has been disposed off exparte by the Tribunal by order dated 30.08.2017 for non-prosecution. The Tribunal has gone into the merits of the addition made by the Assessing Officer. Subsequently, the order of the Tribunal

dated 30.08.2017 was recalled in M.A. No. 205/Mum/2018 as there was no representation by the assessee or his counsel when the matter was called for hearing on 06.06.2017.

3. Subsequently, when the matter came up for hearing on 16.12.2019, at the outset the Learned Counsel for the assessee submitted that this is a case where addition was made u/s. 68 of the Act in respect of loan creditor for want of confirmations. The Ld. Counsel for the assessee submits that in the course of the assessment proceedings though notice u/s. 133(6) of the Act was issued to the creditor M/s. Bhakti Gems to verify the genuineness of the unsecured loan provided to the assessee the loan creditor could not respond as there were some differences between assessee and the creditor. Learned Counsel for the assessee submitted that even the confirmations could not be obtained from the creditor due to which the addition was sustained by the Assessing Officer and also the Ld.CIT(A).

4. Ld. Counsel for the assessee further submits that in the course of the penalty proceedings initiated by the Assessing Officer the assessee has provided confirmations from M/s. Bhakti Gems, copy of Income-tax return acknowledgement of Mr. Vasant P. Medida proprietor of M/s. Bhakti Gems and copy of bank statements and submitted that the loan

transaction is genuine. The creditor identified, the credit worthiness of the creditor was also proved by providing Income Tax Returns and bank statements. Learned Counsel for the assessee submitted that considering these evidences the Assessing Officer dropped the penalty proceedings by treating the loan transaction as genuine. Before us the assessee furnished additional evidences in the form of loan confirmations, bank statements, copy of Income-tax return acknowledgment and submitted that since these evidences go to the root of the matter, it is requested that the said evidences may be admitted and the same may be restored to the file of the Assessing Officer for denovo adjudication, especially when the Assessing Officer has accepted these evidences and dropped the penalty proceedings.

5. Ld. DR has no serious objection in restoring these evidences to the file of the Assessing Officer for verification and completion of assessment denovo.

6. On hearing both the sides and perusing the additional evidences furnished before us, we are of the view that these additional evidences filed by the assessee shall go to the root of the matter and therefore in the interest of justice the same are admitted. As these evidences were not filed before the Assessing Officer we remand these additional evidences

to the file of the Assessing Officer by restoring the addition to the file of the Assessing Officer for denovo adjudication in accordance with law.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 26th February, 2020

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER
Mumbai / Dated 26/02/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum