

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'D', NEW DELHI]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 945/Del/2018
Assessment Year : 2012-13.

Kerria Projects Pvt. Ltd. C/o Luthra & Luthra Law Offices, 103, Ashoka Estate Building, Barakhamba Road, New Delhi – 110 001 PAN : AAGCA5774Q	Vs.	Income Tax Officer, Ward - 14 (3) New Delhi.
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Kanika Jain, Advocate;
Respondent by	Shri G. Johnson, Sr. D.R.;

Date of hearing:	06/01/2020
Date of Pronouncement:	20/03/2020

ORDER

PER PRASHANT MAHARISHI, AM:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-36, New Delhi, dated 13.11.2017 for assessment year 2012-13 wherein the appeal filed by the assessee against the order passed under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 31.03.2015 by the Income Tax Officer, Ward 14 (3), New Delhi, making an addition of Rs.4,02,85,241/- under Section 41(1) of the Act was confirmed. The solitary ground of appeal challenges the same.

2. The brief facts show that assessee is a company, engaged in the business of real estate, filed its return of income declaring 'NIL' income on 25.09.2012. The return was selected for scrutiny to examine the difference between the opening stock of the current year with closing stock of the previous year. Assessing Officer perused the balance sheet of the assessee and found that a loan liability of Rs.4,02,85,241/- from M/s. Sky Event Management Private Limited has been squared off with fresh loan taken from M/s Unitech Limited. Assessee submitted that as on 31.03.2011, the above loan was payable and during financial year 2011-12 the company's share holding changed to M/s Unitech Limited and the above loan was taken over by M/s. Unitech Limited. There is neither an acceptance of new loan nor repayment of old loan. There is no cessation of any liability, but it has resulted into replacement of name of lender because of share purchase agreements between two parties transacting shares of appellant company. Assessing Officer issued 133(6) notice to M/s. Sky Event Management Private Limited, which returned un-served. The notice was also issued to M/s Unitech Limited which replied that all the shares of assessee company along with the loan liability was purchased under sale purchase share agreement. Assessing Officer further raised a query to the assessee, which was replied by furnishing the confirmation from M/s. Sky Event Management Private Limited, M/s. Unitech Limited supported by the sale purchase agreement ledger account of the parties. Assessing Officer held that assessee did not produce any bank account or other statement showing that the above liability was discharged. Therefore, he held that the above liability is non-existent and bogus. He further held that the share purchase agreement is neither registered nor executed on the stamp paper. He also rejected the contention of the assessee that the company was not benefitted by cessation of liability. Therefore, in view of the provisions of Section 41(1) of the Act he made an addition of Rs.4,02,85,241/- and assessed the income of the assessee at the above sum vide order passed under Section 143(3) of the Act on 31.03.2015.

3. On appeal before the learned CIT (Appeals) vide para No. 4.2.3 he held that the Assessing Officer has correctly held that no liability exists towards M/s. Sky Event Management Private Limited as no evidence of related transactions through banking channels were ever filed either by the assessee or by M/s. Unitech Limited. Hence, he held that the above liability ceased to exist. Therefore, assessee is in appeal before us.

4. The learned Authorized Representative submitted a detailed paper book containing 425 pages as well relied upon the several decisions to support the case of the assessee and submitted that there is no cessation of the liability, but the liability got transferred in the name of M/s Unitech Limited. It was further submitted that the provisions of Section 4(1)(1) does not apply to the facts of the case.

5. The learned Departmental Representative supported the orders of the lower authorities and specifically referred to para No. 4.2.3 of the order of the CIT (Appeals).

6. We have carefully considered the rival contentions. The provisions of Section 4(1)(1) of the Act provides that where any 'allowance or deduction' has been made for any year, in respect of such loan expenditure or trading liability incurred by the assessee and in subsequent year assessee obtains, whether in cash or any other manner, any amount in respect of such allowance or some benefit in respect of trading liability by way of remission or cessation shall be deemed to be the profits and gains of business. In the present case the assessee has obtained an un-secured loan from M/s. Unitech Limited (Holding Company) during Financial Year 2009-10. The holding company of the assessee transferred its investment in the assessee

company as well as loan given by M/s. Unitech Limited to the appellant to another company, namely, M/s. Sky Event Management Private Limited as per share purchase agreement dated 29th September, 2009. In view of this, the Appellant has transferred the loan outstanding in the name of M/s. Unitech Limited to M/s. Sky Event Management Private Limited. In Assessment Year 2010-11, the above transaction was duly disclosed in its annual accounts. Subsequently, during the current financial year, M/s. Sky Event Management Private Limited transferred its investment in the shares of the assessee company once again back to M/s. Unitech Limited along with its liability. This too by virtue of a share purchase agreement. Consequently, the outstanding loan appearing in the name of M/s. Sky Event Management Private Limited was once again appearing in the name of M/s. Unitech Limited. According to the agreement dated 16th March, 2012 the above liability was also taken over by M/s. Unitech Limited and, therefore, in the books of accounts of the assessee M/s. Sky Event Management Private Limited loan was replaced in the name of M/s. Unitech Limited. Naturally, in the present case the assessee has not taken any 'deduction or allowance' with respect to the above sum in any of the earlier years. Admittedly, the loan of M/s. Unitech Limited was also not held to be a 'trading liability'. The assessee has completely shown the transactions in the form of confirmation as well as share purchase agreement. Irrespective of the fact, that whether the share purchase agreement is executed on the stamp paper or not, it does not show that assessee has taken any benefit in the form of deductions and allowances of the above amount. The liability is clearly shown in the annual accounts of the assessee supported by share purchase agreements and confirmation of the parties. In view of this, we are of the view, that provisions of Section 41(1) of the Act cannot be applied. Relevant several judicial precedents relied upon by learned AR also supports the case of the assessee. We do not think it necessary to discuss them, their ratio have been noted and applied. Therefore, the orders of the lower authorities are reversed and an

addition of Rs.4,02,85,241/- made under Section 41(1) of the Act is directed to be deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on : **20/03/2020**

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Date : 20/03/2020

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI