

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.4792/Del/2015
(ASSESSMENT YEAR: 2008-09)**

Income Tax Officer, Ward-5(4), New Delhi.	Vs.	M/s Cee Aar Decors Pvt. Ltd., H-54, 2 nd Floor, DDA Flats, Ashok Vihar, New Delhi-110052, PAN -AABCC 6962D
(Appellant)		(Respondent)

Appellant By	Sh. Rajiv Saxena, Adv. Sh. R.P. Mall, Adv.
Respondent by	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	10.06.2020
Date of Pronouncement	31.08.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the Department against order dated 30.03.2015 passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi {CIT(A)} for Assessment Year 2008-09.

2.0 The brief facts of the case are that the return of income for the captioned year was filed declaring the income at Rs. NIL. The case was selected for scrutiny as per the CBDT Instruction. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had received advance against shares amounting to Rs.6,30,46,500/- as reflected under the head 'Current liabilities and provisions'. The Assessing Officer required the assessee to file the details of the 19 companies from whom the advances had been received along with confirmations and Bank statements. The Assessing Officer also issued notices u/s 133(6) of the Income Tax Act, 1961 (hereinafter called the 'Act') to the said 19 companies. However, none of the parties filed any confirmations in response to the notices. In case of five companies viz. (i) Mahesh Buildwell Pvt. Ltd.; (ii) Kailash Propcon Pvt. Ltd.; (iii) Siddhi Buildwell Pvt. Ltd.; (iv) Texcity Construction Pvt. Ltd.; and (v) Radha Ballabh Construction Pvt. Ltd, the postal authorities returned the notices 'un-served'. The Assessing Officer made enquiries from the Bank and it was ascertained that either one or both the Directors of the assessee company were also Directors in the companies making

advances towards share capital. The Assessing Officer also observed that all the companies were having addresses of either Chennai or Kolkata but the Bank Accounts of all these companies were maintained with Axis Bank, Ashok Vihar Branch, Delhi and that the addresses of these companies as appearing in the Bank Statements were the same as that of the assessee company. The Assessing Officer also noted that the assessee company had hardly any business activity and that there were no accumulated reserves which would merit the assessee company receiving advances for shares. The Assessing Officer also noted that in the Bank Accounts of the companies, the debit entries were mostly the same as the credit entries, which created a suspicion about the genuineness of the transactions and the identity and creditworthiness of the lending companies. The assessee company did file confirmations from the various companies regarding advances received by it but the Assessing Officer was of the opinion that identity and the creditworthiness could not be established because there was non-compliance to the notices issued u/s 133(6) of the Act and also because notices were received back in some of the cases. Based

on these observations, the Assessing Officer concluded that all the 19 companies were merely paper entities created by the assessee company. The Assessing Officer also was of the opinion that the onus u/s 68 of the Act was not sufficiently discharged by the assessee company by way of establishing the identity, creditworthiness and genuineness of the transactions relating to advance against shares. The Assessing Officer proceeded to treat the entire amount of Rs.6,30,46,500/- as unexplained cash credit u/s 68 of the Act and completed the assessment at Rs.6,30,46,500/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the addition. The assessee also moved application before the Ld. First Appellate Authority to admit additional evidence under Rule-46A of the Income Tax Rules, 1962. Remand report was called for by the Ld. CIT (A) with respect to the additional evidence and, thereafter, considering the rejoinder of the assessee to the remand report, the Ld. CIT (A) admitted additional evidences and, thereafter, based on such evidences directed the Assessing Officer to delete the impugned addition.

2.2 Now, the Department is before this Tribunal challenging the deletion of Rs.6,30,46,500/- by the Ld. CIT (A) on the following grounds:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.6,30,46,500/- made u/s 68 of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.6,30,46,500/- u/s 68 of the Income Tax Act, 1961 holding that the assessee has discharged its onus in explaining the credits in the books of account without appreciating the fact that the assessee has failed to prove the credit worthiness of the alleged creditors and genuineness of the transactions.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds(s) of appeal at any time before or during the hearing of this appeal.”

3.0 The Ld. SR. DR submitted that in this case the assessee has claimed to have received advances against shares from 19 companies but none of the parties to whom notices u/s 133(6) of the Act were issued have given any confirmation in response thereto and in fact in case of five companies such notices were returned ‘un-served’ by the Postal Department. It was submitted that, thus,

it was apparent that these companies were simply paper companies and the identity, creditworthiness as well as genuineness in all the transactions was absent. It was also submitted by the Ld. Sr. DR that the assessee company had no business activity and that the Directors of the assessee company were also Directors of the lending companies. The Ld. Sr. DR also submitted that before the Assessing Officer, the assessee had been given numerous opportunities but the assessee did not avail the same and it was only later that the additional evidences were filed before the Ld. CIT (A). It was further submitted that that it was a case where the corporate veil needed to be lifted to ascertain the actual transaction and bring to it tax. The Ld. Sr. DR argued that the Ld. CIT (A) had not given any concrete finding on the genuineness of the transactions. The Ld. Sr. DR placed reliance on the judgment of the Hon'ble Apex Court in the case of *PCIT Vs. NRA Iron & Steel (P.) Ltd.* [2019] 412 ITR 161 (SC) wherein the Hon'ble Apex Court had held that where there was a failure of the assessee to establish the creditworthiness of the Investors Companies, the Assessing Officer was justified in making additions u/s 68 for share capital/ share

premium. The Hon'ble Apex Court had held that merely because the assessee company had filed all the preliminary evidences, it could not be said that the onus on the assessee to establish the creditworthiness stood discharged. The Sr. DR also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of PCIT vs. NDR Promoters Pvt. Ltd. reported in [2019] 410 ITR 379 (Delhi) wherein it had been held by the Hon'ble Delhi Court that where the Assessing Officer had made additions to assessee's income u/s 68 in respect of amount received as share capital from several companies, in view of the fact that all these companies were managed by one person only, who was engaged in providing accommodation through paper companies and all such companies were located at the same address, the impugned addition was justified. The Ld. Sr. DR prayed that the addition deleted by the Ld. CIT (A) deserved to be restored.

4.0 In response, the Ld. AR submitted that the Ld. CIT (A) had rightly deleted the impugned addition. It was submitted that the advance against share capital had been received from the 19

companies which were group companies and were duly assessed to tax. It was submitted that the share application money had been received through banking channels and complete details in respect of share application money received had been furnished before either of the Lower Authorities i.e., the Assessing Officer or the Ld. CIT (A). It was further submitted that the share applicants had responded to the Assessing Officer in the remand proceedings and confirmed the transactions which controvert the findings of the Assessing officer that share applicants were paper companies which were non-existent. It was also submitted that the Assessing Officer had completed the assessment in respect of most of the lending companies and there was no adverse remarks by the Assessing Officer in any of the said assessments. It was further argued that there is no allegation against any of the companies that they were accommodation entries providers. It was also submitted that the case laws relied upon by the Sr. DR were pertaining to entry providers and, therefore, these case laws cannot be relied upon in the present case. The Ld. AR also submitted that the advance received against shares was returned in March, 2019 i.e. in the

immediately succeeding year and, therefore, it cannot be said that the transactions was not genuine. The Ld. Authorized Representative also submitted that in this case, the impugned transactions stood explained in view of the various documents and responses submitted by the parties either before the Assessing Officer or before the Ld. First Appellate Authority and, therefore, the Ld. CIT (A), after duly considering all the evidences, had rightly allowed the assessee's appeal. The Ld. AR prayed that the order of the Ld. CIT (A) be upheld.

5.0 We have heard the rival submissions and have also perused the material on record. It is evident from the assessment order that the assessee had submitted complete details of the lenders before the Assessing Officer. However, when the Assessing Officer made enquiries by issuing notices to each of the lenders u/s 133(6) of the Act, no response was received and notices in 5 of the 19 companies were returned 'un-served'. However, the assessee furnished additional evidences before the Ld. CIT (A) under Rule-46A of the Income Tax Rules, 1962 and the Ld. CIT (A) duly called

for remand report from the Assessing Officer seeking his comments on the additional evidences such filed. It has been only after considering the comments of the Assessing Officer that the Ld. CIT (A) has accepted the assessee's contention that these were genuine loans and, thereafter, the assessee was given relief. It is also to be noted that all the five companies from whom the notices were returned 'un-served' in the original assessment proceedings responded directly this time during the remand proceedings. Therefore, it cannot be said that their identity or genuineness can be doubted. These companies have duly confirmed that they have made the advance to the assessee company. It is also seen that the Bank Statements and income tax returns of these companies are also on record. Thus, from the evidences on record, the identity and existence of the lenders cannot be doubted as replies have been received in response to notices issued u/s 133(6) of the Act. By placing on record, the Bank Accounts particulars, PAN No., Income Tax Returns and financials etc., there is a prima facie material to prove the creditworthiness and genuineness of the transactions. Therefore, keeping in view the above position, we are of the

considered opinion that there is no infirmity in the order of the Ld. CIT (A) vide which after considering all these evidences, he has deleted the impugned addition. In our considered opinion, the assessee has discharged its onus of proving identity of the lenders, genuineness of the transactions as well as creditors. It also to be noted that the assessments of these lending companies have also been completed and orders of the same are on record and nothing adverse has been found or pointed out in these assessment orders.

As far as the decision relied upon by the Ld. Sr. DR in the case of *NRA Iron& Steel (P.) Ltd. (supra)* is concerned, we may mention that the facts of the present case are entirely different from the facts of the said case. In the said case none of the share applicants produced the bank statement to establish the source of funds for making the huge investment in shares even though they were declaring a very meager income in their returns and many of the share applicants were found non-existent at the addresses provided by the assessee. However, in the present case the replies have been received in response to all the notices sent u/s 133(6) of the Act. Copies of their ITRs, copy of their financials and copy of their bank

accounts of the applicant companies are also on record. Thus, the facts of the present case are different from the case-law relied upon by the Ld. Sr. DR. Similarly, the other case laws being relied upon by the Department are also on a different footing altogether and we are afraid that they do not help the Department's cause in any way. Therefore, we are of the view that the Ld. CIT (A) was correct in deleting the addition and impugned order does not call for any interference by this Tribunal.

6.0 In the final result, the appeal of the Department stands dismissed.

Order pronounced on 31/08/2020.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:31/08/2020

PK/PS

Copy forwarded to:

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

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI