

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(A)', KOLKATA  
[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE PRESIDENT (KZ) &  
S. S. GODARA, HON'BLE JUDICIAL MEMBER]  
[Through Virtual Court]**

**I.T.A. No. 2692/Kol/2018  
Assessment Year: 2013-14**

***M/s. ARC Insulation & Insulators Pvt. Ltd.....Appellant  
P.O. Bowali, Vill. Ramdevpur,  
South 24 Pgnos. - 743384. (W.B.)  
[PAN: AAHCA 6355 Q]***

***Vs***

***ITO, Ward - 15(1), Kolkata.....Respondent  
Kolkata - 700 107.***

**Appearances by:**

*Shri K.M. Roy, FCA & Shri Rajiv Choudhary, Adv. appearing on behalf of the Assessee.  
Shri Dhruvajyoti Ray, JCIT appearing on behalf of the Revenue.*

Date of concluding the hearing : October 06, 2020

Date of pronouncing the order : October 21, 2020

**ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 5, Kolkata dated 28.09.2018.

2. The assessee in the present case is a company which filed its return of income for the year under consideration on 17.01.2014 declaring a loss of Rs. 13,93,312/- under the normal provisions of the Act and book profit of Rs. 5,04,720/- u/s 115JB of the Act. During the year under consideration, the assessee had received loan of Rs. 17,16,547/- and Rs. 1,25,000/- from Shri Vinod Agarwal and Shri Gopal Bajoria respectively. In order to verify the said loan, notices u/s 133(6) were issued by the AO to Shri Vinod Agarwal and Shri Gopal Bajoria. The Notice sent to Shri Vinod Agarwal however was returned unserved by the Postal Department whereas there was no response to

the said notice from Shri Gopal Bajoria. Even the assessee also could not establish satisfactorily the identity and capacity of the said two creditors as well as the genuineness of the relevant loan transactions despite sufficient opportunity afforded by the AO in this regard. The AO, therefore, treated loan received from both this creditors as unexplained and addition of Rs. 18,41,547/- was made by him to the total income of the assessee u/s 68. He also made further disallowance of Rs. 56,180/- u/s 40(a)(ia) and determined the total income of the assessee under the normal provisions of the Act at Rs. 5,04,415/- in the assessment completed u/s 143(3) of the Act vide an order dated 11.03.2016. In the said assessment, he also made both the additions u/s 68 and 40(a)(ia) to the book profit of the assessee-company and determined the book profit u/s 115JB at Rs. 24,02,447/-.

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), documentary evidence including the copy of bank statement of loan creditor Shri Vinod Agarwal was filed by the assessee-company in support of its case. from the perusal of the said bank statement, the Ld. CIT(A) was of the view that Shri Vinod Agarwal was just a name lender and the assessee-company was using his bank account for laundering and rotating his unaccounted money. He, therefore, was of the view that a peak credit of Rs. 50,26,516/- appearing in the bank account of Shri Vinod Agarwal with HSBC Bank was liable to be added to the total income of the assessee u/s 68 of the Act. He also noted that there was another bank account maintained the name of Shri Vinod Agarwal

with HDFC Bank and peak credit of the same was Rs. 30,85,138/-. According to Ld. CIT(A), the combined peak credit of both these accounts amounting to Rs. 81,11,654/- was liable to be added u/s 68 instead of the addition of Rs. 18,41,547/- made by the AO. He, therefore, issued a notice on 24.09.2018 requiring the assessee to show cause as to why the addition made by the AO on this issue should not be enhanced. As mentioned by the Ld. CIT(A) in his impugned order, there was however no reply received from the assessee in response to the said notice till the passing of his impugned order. He accordingly enhanced the total income of the assessee and dismissed the appeal of the assessee with the said enhancement. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. During the course of appellate proceedings before the Tribunal, the assessee has filed the following additional / revised grounds:

- "i. That the aggregate addition of Rs. 18,97,727/- towards unexplained cash credit for Rs. 18,41,547/- and Rs. 56,180/- towards disallowance u/s 40(a)(ia) u/s 115JB is beyond the scope of the provision since the computation of book profit is a self-contained code and artificial additions cannot be implemented which are otherwise permissible under the normal computation of tax.*
- ii. That the enhancement of income to Rs. 81,11,654/- u/s 68 of the Act by CIT(Appeals) in respect of addition sustained by AO for Rs. 17,16,547/- is patently illegal as the notice for enhancement was never served.*
- iii. That without prejudice to above CIT(Appeals) has seriously erred in taking a convoluted approach of adding the peak credit balance of the bank account of the lender as deemed income without appreciating that at the most only the accretion of the credit balance in the books of the company can only be added and the quantum of loan liquidated can never tantamount to income."*

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards ground no. 1 which is additional ground, the learned counsel for the assessee has submitted that even though addition u/s 68 and disallowance u/s 40(a)(ia) was made by the AO while computing the total income of the assessee under the normal provisions of the Act as well as for the purpose of computing book profit of the assessee-company u/s 115JB of the Act, the issue relating to the said additions made by the AO while computing book profit u/s 115JB was not raised by the assessee-company in its appeal filed before the Ld. CIT(A) due to inadvertence. He has contended that since this issue is clearly arising from the order passed by the Assessing Officer in the assessee's case for the year under consideration and the same is legal in nature, the adjudication of which does not require investment into new facts, the additional ground raised by the assessee may be admitted. The Ld. DR, on the other hand, has not raised any material objection for admitting the said additional ground. He however has contended that since this issue was not raised by the assessee before the Ld. CIT(A), an opportunity may be given to the Ld. CIT(A) to consider and decide the same on merit. We find merit in this contention of the Ld. DR. The additional ground is accordingly admitted and the issue raised therein is remitted to the Ld. CIT(A) for deciding the same in accordance with law after giving the assessee a proper and sufficient opportunity of being heard.

6. As regards the common issue raised in ground no. 2 and 3, which are the revised grounds, relating to addition made by the AO u/s 68 which is not only confirmed but enhanced by the Ld. CIT(A),

the learned counsel for the assessee has submitted that the notice of enhancement was issued by the Ld. CIT(A) on 24.09.2018 and since the impugned order enhancing income of the assessee was passed by the Ld. CIT(A) on 28.09.2018, the assessee did not get proper and sufficient opportunity to submit its reply to the enhancement notice issued by the Ld. CIT(A). He has contended that the Ld. CIT(A) thus has enhanced the income of the assessee without giving proper notice to the assessee and the enhancement made by the Ld. CIT(A) cannot be sustained. The Ld. DR, on the other hand, has contended that if at all the assessee did not get sufficient opportunity to submit its reply to enhancement notice issued by the Ld. CIT(A) as alleged by the learned counsel for the assessee, the issue relating to enhancement of assessee's income may be sent back to the Ld. CIT(A) for deciding the same afresh after giving proper and sufficient opportunity of being heard to the assessee. We find merit in this contention of the Ld. DR. The impugned order of the Ld. CIT(A) on this entire issue relating to addition made by the AO u/s 68 and further enhanced by the Ld. CIT(A) is accordingly set aside and the matter is remitted back to the Ld. CIT(A) for deciding the same afresh in accordance with law after giving the assessee proper and sufficient opportunity of being heard.

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

Order Pronounced in the Open Court on 21<sup>st</sup> October, 2020.

Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 21/10/2020**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. ARC Insulation & Insulators Pvt. Ltd., P.O. Bowali, Vill. Ramdevpur, 24-Pgs. (South) – 743384.
2. ITO, Ward – 15(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT, Kolkata