

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4455/DEL/2019 (A.Y 2010-11)

(THROUGH VIDEO CONFERENCING)

M/S Adonis Infrastructure Pvt. Ltd. D-16, Kamla Nagar New Delhi-110007 (APPELLANT)	Vs	ITO Ward-1(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Ved Jain & Nishay Kantoor, CAs
Respondent by	Sh. R. K. Gupta, Sr. DR

Date of Hearing	06.10.2020
Date of Pronouncement	10.11.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 25/03/2019 passed by CIT(A)- 1, New Delhi, for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO of reopening the assessment and the assessment order passed by him despite the fact that such reopening of the assessment and the reassessment order passed was

bad both on facts and in law.

3 (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the addition of an amount of Rs. 6,60,00,000/- made by AO on account of share capital under Section 68 of the Act.*

(ii) *That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity, creditworthiness and genuineness of the transaction and the fact that the money so invested in the share capital is the money received by way of inheritance by Mrs. Sumita Pandey.*

4. *Without prejudice to the above, the learned CIT(A) has erred both on facts in law in not giving adequate opportunity to the assessee to place on record the evidence to establish source of source of source of money.”*

3. The assessee filed its return of income on 13.08.2010 for the assessment year 2010-11 declaring loss of Rs. 52,931/-. Information was received from the office of Dy. Director of Income Tax (inv.)-1, New CGO Complex NH-NIT Faridabad (HARYANA) 121001 vide letter dated 25/02/2016 as follows:

A survey u/s 133A of the Income Tax Act, 1961 was conducted on the premises of M/s RPS Infrastructure Group entities on 21/10/2013. The RPS Group is in the business of real estate development and Sh. Rakesh Chand Gupta and Shanti Prakash Gupta are the key promoters of the group. The various companies of the RPS Group have received share capital and share premium from various dummy companies. M/s Adonis Infrastructure Private Limited, which is one of the Group companies, has received following amounts towards share capital/premium from the dummy companies:

	<i>Name of the entities who invested</i>	<i>Amount received (in Rs.)</i>	<i>F.Y</i>
<i>M/s Adonis Infrastructure Pvt. Ltd.</i>	<i>M/s Bharti Contractors Pvt. Ltd.</i>	<i>3,20,00,000</i>	<i>08/09/2009</i>

	<i>M/s Vision Associates Pvt. Ltd.</i>	<i>3,15,00,000</i>	<i>08/09/2009</i>
	<i>M/s Vision Associates Pvt. Ltd.</i>	<i>25,00,000</i>	<i>27/02/2010</i>

Thereafter, the case was reopened and notice u/s 148 dated 23.03.2017 was issued after obtaining necessary approval from the Competent Authority. Assessment u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 was passed on 18.12.2017. In the assessment order, the Assessing Officer made addition on account of unexplained cash credit u/s 68 amounting to Rs. 6,60,00,000/- and disallowed Rs. 33,370 since the amount is capital in nature.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the reassessment proceedings initiated by the Assessing Officer shall be bad in law as the same are not in compliance with the statutory conditions prescribed u/s 147 read with 148 and are pending on the basis of information received from Investigation Wing on the basis of borrowed satisfaction without independent application of mind and by indulging into conjecture and surmises is bad in law. The reasons to believe have been formed without any application of mind and merely on the basis of borrowed satisfaction. The Ld. AR in his submission has given the details of credentials of the companies which were allegedly submitted by A.O as dummy entities. The Ld. AR further submitted that the assessee has filed ITRs of all the parties and substantial income was reported as per these ITRs of the said companies. The Ld. AR relied upon various decisions. The Ld. AR submitted that the entities are not paper entities as suggested by the report of the Assessing Officer and there is a substantial income and net worth of the entities. The Ld. AR submitted that the Assessing Officer merely acted on the basis of alleged

information received from the Investigation Wing and acted on borrowed satisfaction without application of his own mind. The Ld. AR further submitted that there is a mechanical approval granted by competent authority. The Ld. AR submitted that the assessee has filed additional evidence application under Rule 29 of the Income Tax Rules, 1962. The Ld. AR submitted that the said documents were not produced before Lower Authorities due to the non availability of the documents at the relevant time. The Ld. AR submitted that these documents comprised family settlement deed, financial statements of EMTA Industries Ltd for Assessment Year 2010-11, acknowledgement of ITR of EMTA Industries Ltd. for Assessment Year 2010-11 and bank statement of EMTA Industries Ltd for the relevant period during Assessment Year 2010-11. The above said documents of the nature of family settlement arrangement documents could not be furnished since the same being of private nature could not be obtained by the assessee. However, after repeated request to Smt. Sumita Pandey, the assessee obtained the said documents. These documents have material bearing on the issue involved and goes to the root of issue and established the assessee's case for negating the primary basis for making addition by the Assessing Officer which was sustaining by the CIT(A) by establishing the source of funds in the hands of Smt. Sumita Pandey. Therefore, the Ld. AR submitted that these additional evidence be admitted under Rule 29 of the Income Tax Rules 1962. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT(A) Vs. Text 100 India Pvt. Ltd. 351 ITR 57.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR submitted that the additional evidence should not be admitted at this juncture. As regards the legal issue, the Ld. DR submitted that the reasons were properly recorded and satisfaction was given. Therefore, the reopening is valid.

7. We have heard both the parties and perused the material available on

record. From the perusal of the records, it can be seen that the approval in respect of reasons given by the Assessing Officer for reopening are just and proper and as per the provisions of the Income Tax Act, 1961. As the case laws referred by the Ld. AR are distinguishable as in those case laws, the reasons and the competent authority has not given an approval as per the provisions of Section 147/148. Therefore, the legal issue raised by the assessee does not stand and is dismissed. On merits, the Ld. AR submitted that there is an additional evidence which was obtained after assessment proceedings and appellate proceedings before CIT(A) was over. Therefore, it will be appropriate to look into the additional evidence. While going through the additional evidence, we noticed that these are the primary evidences which will show the creditworthiness of the source of source which was asked by the Assessing Officer as well as CIT(A). Therefore, we are admitting additional evidence and remanding back the entire issue to the file of the Assessing Officer for verifying this additional evidence and after going through the said evidence, arrive at a proper conclusion as to whether the addition in respect of Section 68 is sustainable or not. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, the appeal of the assessee is partly allowed for statistical purpose.

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

Order pronounced in the Open Court on this 10th Day of November, 2020

Sd/-
(G. S. PANNU)
VICE PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 10/11/2020

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	03.11.2020
Date on which the typed draft is placed before the dictating Member	03.11.2020
Date on which the typed draft is placed before the Other Member	10.11.2020.
Date on which the approved draft comes to the Sr. PS/PS	10.11.2020.
Date on which the fair order is placed before the Dictating Member for pronouncement	10.11.2020.
Date on which the fair order comes back to the Sr. PS/PS	10.11.2020.
Date on which the final order is uploaded on the website of ITAT	10.11.2020.
Date on which the file goes to the Bench Clerk	10.11.2020.
Date on which the file goes to the Head Clerk	