

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

(Through Video Conferencing)

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5611/DEL/2016
[Assessment Year: 2004-05]**

Lancer Telecom India (P) Ltd. 483, Yojna Vihar, Vikas Marg Extn., New Delhi-110092	ACIT, Circle-4(1), New Delhi-110002
PAN-AAACL5240J	
Assessee	Revenue

Assessee by	Sh. V.K. Tulsian, Adv.
Revenue by	Sh. E.V. Bhaskar, Sr. DR

Date of Hearing	09.08.2021
Date of Pronouncement	09.08.2021

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 28.02.2014 of the learned CIT(A)-VIII, New Delhi, relating to Assessment Year 2004-05.

2. Facts of the case, in brief, are that the assessee is a private limited company, engaged in the business of telecommunication. In this case, the original assessment was

completed u/s 143(1) of the Act on 01.03.2005 at income of Rs.25,81,000/-. Subsequently, the case of the assessee was reopened u/s 148 of the Act after recording following reasons:-

“Assessment in this case was completed at an income of Rs.25,81,000/- on 01.03.2005. As per the information received from Investigation Wing, Income Tax Department, New Delhi regarding list of Accommodation Entries, the above mentioned assessee was found to have taken accommodation entries amounting to Rs.30,03,390/- from the following parties.

- i. *Swetu Stone Pvt. Ltd. amounting to Rs.15,01,875/-*
- ii. *Sekhawa Finance Pvt. Ltd. amounting to Rs.15,01,515/-*

During the course of search/survey on the above parties, it has been proved that said companies/parties are involved in giving accommodation entries to various individuals/companies. In view of the above, I have reasons to believe that the income of Rs.30,03,390/- chargeable to tax has escaped assessment within the meaning of section 147/148 of the Income Tax Act, 1961.”

3. Notice u/s 148 was issued to the assessee on 30.03.2011. Since, there was no response from the side of the assessee a notice was issued u/s 144 of the Act on 01.09.2011. Subsequently, the Authorized Representative of the assessee appeared before the AO and filed certain details. During the course of assessment proceedings, the AO asked the assessee to substantiate with evidence to his satisfaction regarding the receipt of share application money amounting to Rs.30,03,390/- from various parties by proving the identity and

creditworthiness of the share applicants and genuineness of the transactions. In absence of any satisfactory explanation given by the assessee, the AO, invoking the provisions of section 68 of the Act, made addition of Rs.30,03,390/- to the total income of the assessee.

4. Since, the assessee did not appear before the learned CIT(A) despite number of opportunities granted, the learned CIT(A) in the ex-parte order passed by him upheld the addition made by the AO.

5. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising following grounds:-

1. *Whether the Ld. CIT(A) was justified by upholding the order of Ld. A.O. on the premises that no written submission or evidence filed and therefore, confirm the Additions even without considering the GOA.*
2. *Whether the Ld. CIT(A) was justified by upholding the order of Ld. A.O. that they is no infirmity / illegality by assuming the jurisdiction u/s 147 and there are no difference even if allegation based upon the statement of company i.e. the provider that transaction entered are in the nature of Accommodation entries.*
3. *Whether the LD CIT(A) was justified by holding that there is no illegality by issuing notice u/s 148 because the same have been issued after proper approval as required u/s 151(2).*
4. *Whether the LD CIT(A) was justified by holding that there is no illegality by making additions u/s 68 on account of*

unexplained credit even without brought on record any adverse material.

5. *Whether the LD CIT(A) was justified by holding that addition u/s68 on account of credit of Rs. 30,03,390/- received the during the year form the two company as un explained u/s 68.*
6. *Whether the LD CIT(A) was justified by holding that the statements recorded by investigation wing are sufficient evidence to disregard the submissions of the Appellant even if neither fresh statement recorded during assessment proceedings nor a opportunity provided to appellant to cross-examination the same.”*

6. The learned counsel for the assessee at the time of hearing submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case since there was no proper representation made before the learned CIT(A).

7. The learned DR on the other hand heavily relied on the order of the AO and the CIT(A) and submitted that despite number of opportunities granted, the assessee did not avail of the opportunities, therefore, the order of the learned CIT(A) should be upheld and the appeal filed by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the

assessee. We have also considered the various decisions cited before us. It is an admitted fact that due to non-substantiation of the identity and creditworthiness of the share applicants and genuineness of the transactions, the AO invoking the provisions of section 68 of the Act made addition of Rs.31,03,390/-. We find due to non-appearance of the assessee before the learned CIT(A) despite number of opportunities granted, the learned CIT(A) in the ex-parte order passed by him sustained the addition made by the AO. It is the submission of the learned counsel for the assessee that in the interest of justice, the assessee be given an opportunity to substantiate its case before any of the lower authorities. Considering the totality of facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the learned CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case by filing requisite details and the learned CIT(A) shall decide the issue as per fact and law. The assessee is also hereby directed to appear before the learned CIT(A) without seeking any adjournment under any pretext failing which the learned CIT(A) is at liberty to pass appropriate order as per law. We hold and direct

accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

The order was pronounced in the open court at the time of hearing itself i.e. on 09/08/2021.

Sd/-
[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Delhi; Dated: 09/08/2021.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi