



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE**

**BEFORE S/SHRI C.M. GARG, JUDICIAL MEMBER AND  
MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.479/Ind/2017**  
Assessment Year : 2013-14

The Asst. Commissioner of Income Tax 4(1), Main Building, Indore	Vs.	M/s. Vastu Developers, 475, Jawahar Marg, Indore
PAN/GIR No.AAHFV 3957 E		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Singh, SR DR  
Revenue by : Shri Prakash Jain & Ms Shreya Jain, CAs

**Date of Hearing : 27 /7/ 2021**  
**Date of Pronouncement : 29/ 09/2021**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the CIT(A)-III, Indore dated 25.4.2017 for the assessment year 2013-14.

2. The revenue has taken the following grounds:

" 1. Whether on the facts and in the circumstances of the case the Id CIT(A) is justified in allowing the assessee's claim by deleting the addition made u/s.68 in respect of alleged unsecured loans taken by the assessee amounting to Rs.1,50,00,000/-.

2. Whether on the facts and in the circumstances of the case, the Id CIT(A) is justified in allowing the assessee's claim of having made interest payments on the same unsecured loans amounting to Rs.14,08,759/-."

3. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received loan of Rs.1,05,00,000/- from Achiever Cmmotrade Pvt Ltd., and Rs.45,00,000/- from Excellent Infrabuild Pvt Ltd in the year under consideration. The assessee has also shown loan of Rs.1,00,00,000/- from M/s. Cube Infrastructure Pvt Ltd., as opening loan. The Assessing Officer issued notice u/s.133(6) of the Act to the above parties at the address given, however the notices were returned back unserved. Thereafter, the AO issued commission u/s.131(1)(d) of the Act to DDIT (Inv)-II, Kolkata, who also reported that none of the above companies were found at the given address. The address given by two loan providers is being used by another bogus company namely Beautiful Tradelink Pvt Ltd. Hence, these companies are paper company and used by entry operator Shri Narendra Kumar Jain. Although the assessee has filed PAN number, income tax return and assessment order, the AO observed that from the above, the identity, creditworthiness and genuineness of the transactions cannot be established. Hence, the AO treated the loan as unexplained cash credit and added the same to the income of the assessee u/s.68 of the Act in respect of loan of Rs.1,50,000/-. However, in respect of loan of Rs.1,00,00,000/- from Cube Infrastructure Pvt Ltd., as opening balance, he treated the same as unexplained in the relevant assessment year. The AO found that the assessee has paid interest of Rs.2,55,539/- to Excellent Infrabuild Pvt Ltd., Rs.4,88,096/- to Achiever Commotrade Pvt

Ltd., and Rs.6,65,124/- to Cube Infrastructure Pvt Ltd., totaling to Rs.14,08,759/-. As the loans were treated as unexplained, therefore, the interest paid of Rs.14,08,759/- on the unsecured loan was also treated as unexplained and added the same u/s.68 of the Act.

4. On appeal, the Id CIT(A) observed that during the remand proceedings, notices u/s.133(6) were sent to all the three creditors at the addresses provided by the assessee and the replied have been received. The assessee has furnished confirmation, bank statement, copy of return and copy of the ledger account. On the basis of above documents, especially the income tax returns of three creditors, the AO doubted the creditworthiness of the creditors to advance the loan to the assessee as the amount shown in the income tax returns are negligible in comparison to the loan advanced to the assessee. The Id CIT(A) thereafter emphasized the key financial position of the creditor companies, as under:

Name of the company	Loan given	Income as per I.T.return available with AO	Share capital & reserve surplus as per audited balance sheet as on 31.3.13	Share capital & reserve surplus as per audited balance sheet as on 31.3.12
Cube Infrastructure	1,00,00,000 (loan given in P.Y)	13,77,610	10,62,70,276	10,48,81,724
Achiever Commotrade Ptd Ltd.	1,05,00,000	12,97,330	11,50,08,187	11,41,11,730

Excellent Infrabuild Pvt Ltd.	45,00,000	16,55,268	5,00,43,444	5,08,99,654
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5. From the above financial details of above three creditors, the Id CIT(A) observed that the identity, creditworthiness and genuineness of transactions are not doubted. He also noted that from the significant income returns, and reserves and surplus, it is ample clear that all creditors have sufficient funds to advance the loan. Hence, he deleted the addition of Rs.1,50,00,000/- made by the AO. Aggrieved by the deletion of addition, the revenue is in appeal before the Tribunal.

6. Ld Sr DR supporting the order of the Assessing Officer submitted that when the Assessing Officer issued commission u/s.131(1)(d) to the DDIT 2(2), Kolkata for conducting enquiry, it was reported that none of the companies who have advanced the loan are not found in the given address. It was submitted that one company Cube Infrastructure Pvt Ltd., is an identified paper company of Shri Narendra Kumar Jain who is an accommodation entry of Kolkata and all three companies have been controlled and operated by Narendra Kumar Jain, entry operator. As the above three companies are not found in the address given, the loan transaction are bogus and the AO has rightly added the same to the income of the assessee and Id CIT (A) is not justified in deleting the addition. He

submitted that the Id CIT(A) is also not correct in deleting the addition made in respect of interest amount of Rs.14,08,759/-.

7. Replying to above, Id A.R. of the assessee supported the order of the Id CIT(A). Id A.R. submitted that when the creditors have sufficient reserves and surplus as per the audited balance sheet, doubting creditworthiness of the loan creditors is unjustified.

8. We have heard the rival submissions and perused the relevant materials placed on the record of the Tribunal. We have also perused the impugned order of the Id CIT(A), wherein, he has discussed the issue at length while deleting the addition. The relevant portion of his findings is as under:

"4.1 I have gone through the assessment order and the appellant's contention. The party wise details of the additions made by the A.O. are as under:-

Name of the Party	Amt of Loan received during the year	Interest Paid
Achiever Commotrade (P) Ltd	1,05,00,000	4,88,096
Excellent Infrabuild (P) Ltd	45,00,000	2,83,932
Cube Infrastructure (P) Ltd	Nil	6,65,124
Total	1,50,00,000	14,08,759

4.2 The Assessing Officer issued notice u/s 133(6) to the above mentioned parties at the addresses as given on MCA-21 site. After the notices were returned back unserved the AO issued commission u/s 131 (I)(d) to DDIT (Inv.)-II, Kolkata who also reported that none of the above companies were found at the given addresses. The Assessing Officer relied on the report of the DDIT that one of the company's which had given the loan in the previous year is a company of Shri Narendra Kumar Jain who is an accommodation provider. Further, the address of the other two creditors Achiever Commotrade (P) Ltd and Excellent Infrabuild (P) Ltd. 282, Rabindra Sarani, 4<sup>th</sup> floor, Room No. 404, Kolkata is being used by another

bogus company Beautiful Tradelnk Pvt. Ltd.. another company of the same entry provider, 5hri Narendra Kumar Jain. The appellant has submitted that in response to the show cause notice it file copy of balance sheet, loan rrmation letter, IT return acknowledgment, 26AS statement of the creditor companies.

4.3 In the remand report the Assessing Officer has first emphasized that appellant's application for admission of additional evidence filed under rule 46A should be rejected as sufficient opportunities were allowed during the assessment proceedings. After perusing the facts of the case I am of the view that the appellant, did not have sufficient time during the assessment proceedings. The enquiries were made by the Assessing Officer at the addresses obtained from the MCA-21 site and the appellant was not left with sufficient time to provide the correct addresses.

4.4 During the remand proceedings notices u/s 133(6) were sent to all the three creditors at the addresses provided by the appellant and the replies have been received. The confirmation of account, bank statement, copy of return and copy of the ledger account of the appellant have been submitted.

4.5 The Assessing Officer has emphasized that the three credit: companies had filed returns of income which are negligible in comparison ..o the quantum of the loan and has therefore submitted that these companies do not have sufficient creditworthiness to lend such huge amounts. The key financials of the creditor companies are as under:-

Name of the company	Loan given	Income as per income tax return available with AO	Share capital & reserve surplus as per audited balance sheet as on 31.3.13	Share capital & reserve surplus as per audited balance sheet as on 31.3.12
Cube Infrastructure	1,00,00,000 (loan given in the P.Y)	13,77,610	10,62,70,276	10,48,81,724
Achiever Commotrade Pvt Ltd.	1,05,00,000	12,97,330	11,50,08,187	11,41,11,730
Excellent Infrabuild Pvt Ltd.	45,00,000	16,55,268	5,00,43,444	5,08,99,654

4.6 In the absence of any other corroborative evidence brought on record by the Assessing Officer, the creditworthiness of the three creditor companies has to be accepted in view of the above financial details. The

three companies have disclosed significant income in the returns of income and have sufficient share capital and reserves and surplus. Further, it is seen that Shri Narendra Kumar Jain who has been identified as an entry provider in Kolkata is not a Director of the three companies.

4.7 The various judicial rulings cited by the appellant also support its case.

4.8 In view of the above, it is held that the addition of Rs. 1,50,00,000/- treated as unexplained credit u/s 68 on account of unsecured loan of Rs. 0,000/- from M/s Excellent Infrabuild Pvt. Ltd. and Rs. 1,05,00,000/- from M/s Achiever Commo Trade (P) Ltd. is not sustainable. Ground Nos. and 2.4 are allowed.

**5. Ground No. 3 (erroneously written as ground no. 4)**

This ground of appeal is regarding the interest of Rs. 14,08,759/- paid to following creditors :-

(i)	M/s Excellent Infrabuild Pvt. Ltd	:	Rs. 2,55,539
(ii)	M/s Acheiver Commodtrade P. Ltd.,	:	Rs. 4,88,096/
(iii)	M/s Cube Infrastructure Pvt. Ltd	`:	Rs. 6,65,124/-

5.1 The addition of Rs. 1,50,00,000/- on account of loan unsecured loan of Rs. 45,00,000/- from M/s Excellent Infrabuild Pvt. Ltd. and Rs. 1,05,00,000/- from M/s Achiever Commo Trade (P) Ltd. has been deleted as discussed above and therefore, the addition on account of interest paid to these creditors is also deleted. Further, as discussed above, there is no justification in treating the opening balance of loan of Rs. 1,00,00,000/- from M/s. Cube Infrastructure Pvt Ltd., as unexplained and, therefore, the addition on the interest paid during the year also does not survive."

9. Ld Sr. DR could not point out any specific defects in the order of the Id CIT(A). From the financial status as enumerated by Id CIT(A) in the impugned order, we find that all three creditors have sufficient reserves and surplus as reflected in their audited balance sheet, hence, there is no question to doubt their creditworthiness to advance the loan to the assessee. It is also noted by Id CIT(A) has accepted that Shri Narendra Kumar Jain is an entry provider in Kolkata but he is not a director of above

three companies. Based on the fact that Shri Narendra Kumar Jain is an entry provider, it cannot be assumed that he has managed to rout the money from the creditors to the assessee. In the circumstances, in the absence of any specific defect being pointed out in the order of the CIT(A), we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and the grounds of appeal of the revenue are dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced u/s.34(4) of I.T.Rules, 1963 on 29 / 09/2021.

Sd/-  
**( MANISH BORAD )**  
**ACCOUNTANT MEMBER**

Sd/-  
**( CHABNDRA MOHAN GARG )**  
**JUDICIAL MEMBER**

Indore ; Dated 29/ 09/2021  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : The Asst. Commissioner of Income Tax 4(1), Main Building, Indore
2. The Respondent. M/s. Vastu Developers, 475, Jawahar Marg, Indore
3. The CIT(A)-III, Indore
4. Pr.CIT-III Indore,
5. DR, ITAT, Indore
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**