

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3149/Del/2017
Assessment Year : 2005-06**

M/s Malhan Constructions Private Limited, Malhan One, Plot No.1, Sunlight Colony, Ashram, New Delhi-110014	vs	DCIT, Circle-6(1), New Delhi
PAN-AAECM5142L		
APPELLANT		RESPONDENT
Appellant by	Sh. Amitosh Moritra, C.A.	
Respondent by	Sh. Gaurav Pundir, Sr. DR	
Date of Hearing	13.09.2021	
Date of Pronouncement	11.10.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee pertaining to assessment year 2005-06 is directed against the order of Ld. CIT(A)-6, New Delhi dated 22.03.2017.

The assessee has raised following grounds of appeal:-

1. *That the Learned Assessing Officer has erred in framing the assessment order and the Learned CIT (A) has erred in certifying it partly, treating the unsecured loans of Rs. 45,00,000 as unexplained credits U/s 68, as in doing so he has completely disregarded the facts, informations/ documents produced before them and explanations provided by the assessee during the assessment and appeal proceedings.*

2. *That in making and confirming these additions the Ld. Assessing Officer as well as Commissioner of Income Tax (Appeals-6) have ignored the rulings of the various courts of the country and has gone on to make the additions on completely baseless and whimsical grounds, without even considering the information verifiable and traceable with the Department itself.*

3. *The Learned Assessing Officer and Learned Commissioner of Income Tax (Appeals-6) have passed the orders by completely ignoring the assessee's replies which contained pertinent information merely to make an addition to augment revenue for the Income Tax Department.*

4. *That in making and confirming the addition, The Learned Assessing Officer as well as Commissioner of Income Tax (Appeals-6) have not adduced any reasons for disbelieving the information and documents submitted by the assessee even in the face of circumstantial evidence in the form of subsequent events informed to the Ld. Assessing Officer and the Learned Commissioner of Income Tax (Appeals-6).*

5. *That in making and confirming these additions the Ld. Assessing Officer as well as Commissioner of Income Tax (Appeals-6) have completely ignored the provisions of the Income Tax Act.*

6. *That in making these additions the Ld. Assessing Officer as well as Commissioner of Income Tax (Appeals-6) have gone against the principles of natural justice in the light of the facts and circumstances of the case.*

2. The only effective ground in this appeal is against the sustaining the addition of Rs.45,00,000/- as unexplained credit u/s 68 of the Income Tax Act, 1961 (hereinafter 'the Act').

3. Ld. Counsel for the assessee reiterated the submissions as were made before Ld.CIT(A). Ld. Counsel for the assessee submitted that before the Assessing Officer, certain evidences in support of the claim with regard to information belong from Ms. Neha Madan, Shri K.L.Arora & Shri R.N.Arora could not file before the Assessing Officer. However, the same was filed before Ld.CIT(A) by way of additional evidences. Ld.CIT(A) treated the transaction with Shri K.L.Arora as genuine and deleted the addition of Rs.8,00,000/- and rest of the addition of Rs.20,00,000/- in respect of Ms.

Neha Madan and Rs.25,00,000/- in respect of Shri R.N.Arora was confirmed. Ld. Counsel for the assessee submitted that authorities below failed to appreciate the fact that the assessee had discharged its primary onus by filing the evidences in support of its claim. Further, Ld. Counsel for the assessee submitted that the authorities below ought to have appreciated and in the interest of principle of natural justice ought not to have disregarded the evidences filed by the assessee. Ld. Counsel for the assessee submitted that the additions have been sustained on the basis that there was some adverse comments by the Investigation Wing regarding the assessee. Ld. Counsel for the assessee submitted that in respect of Ms. Neha Madan inadvertently done by mistake and even wrong but same was rectified. Ld. Counsel for the assessee submitted that in respect of Shri R.N.Arora, Ld.CIT(A) has recorded the fact that the assessee has submitted its own bank statement but did not file any bank statement of the creditor therefore, the creditworthiness of the creditors could not be ascertained. Ld. Counsel for the assessee submitted that Revenue has sufficient power. The Assessing Officer could have issued notice and summoned the person for verifying the genuineness of the transaction but the Assessing Officer chose not to make inquiries in the prejudiced manner made addition of the amount. He submitted that the Assessing Officer has not carried out any independent inquiry by himself whether he was influenced by the reports submitted by the Investigation Wing. It was further submitted that the reasons for re-opening of the assessment was also on the basis that the Investigation Wing had stated in its communication dated 31.03.2012 that the company has

received accommodation entry of Rs.20,00,000/-. However, the Assessing Officer made additions of Rs.53,00,000/-. He submitted that the order of the authorities below cannot be sustained in view of the binding precedents on this issue.

4. Ld.Sr.DR supported the orders of the authorities below.

5. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee had filed certain additional evidences before Ld.CIT(A) related to impugned additions. These documents were supplied to the Assessing Officer for his comments and verification. Ld.CIT(A) out of three transactions found that one transaction was genuine of Rs.8,00,000/- related to Shri K.L.Arora but the loan of Rs.25,00,000/- and Rs. Rs.20,00,000/- received from Shri R.N.Arora and Ms. Neha Madan was found to be unexplained therefore, he made additions. Admittedly, the addition had been made u/s 68 of the Act. The assessee was required to prove tone of the identity of the creditors, genuineness of the transaction and creditworthiness of the creditors. It is the case of the Revenue that the assessee has failed to discharge its onus to prove the genuineness and creditworthiness of the persons giving unsecured loans. To prove the genuineness of the transaction, it is case of the assessee that it has supplied evidence in the form of bank statement hence, the transaction was genuine and with regard to the creditworthiness, income tax return and the PAN No. of the creditor were given to the Assessing Officer. The

Assessing Officer did not accept these documents and proceeded to make addition without making any independent inquiry by himself. We find merit into this contention of the assessee as from the records, it is evident that the Assessing Officer had not issued any notice to the creditors. The relevant findings of the Assessing Officer in paras 3 & 4 of his assessment order are reproduced herein below for the sake of clarity:-

3. *“To substantiate the information received from the Investigation Wing, New Delhi that certain persons, called beneficiaries, has resorted to money laundering by giving unaccounted cash to persons called entry operators & in turn taking from them cheques/DDs in the garb of share application money, unsecured loans or sale proceeds of nonexistent goods thereby ploughing back undeclared cash into its accounts/business, the assessee company was asked to file the confirmations of all the unsecured loans raised during the financial year, along with ledger account, copy of return and bank statements of the lenders. In response the assessee company has submitted information in respect of parties mentioned below vide its letters dated 18.02.2013, 28.02.2013, & 06.03.2013:*

Table-I

S.No.	Name of lender party	PAN No. & Address	Amount (Rs.)	Closing balance as on 31.03.2005
1.	K.L.Arora	ADJPA2623D	800000	800000
2.	Neha Madan	AEPPM7026L	2000000	2000000
3.	R N Arora	AAKPA5265H	2500000	2500000
4.	Aruna malhan	AHVPM7935L	86075	86075
5.	Devi Dass Malhan	AHVPM7951J	10931075	10931075
6.	Malhan Builders	AAAFM8130D	2007000	2007000
7.	Malhan Constructions	AAJFM3366L	8622533	8622533
8.	Manish Malhan	AIDPM5790Q	4731075	4731075

9.	N K Malhan	AHVPM7964R	350000	350000
10.	Rajiv Malhan	AJSPM2713K	4755000	4755000

4. A perusal of submissions received from the assessee company reveals that in the name of confirmations from lenders assessee company has only filed one page standard proforma claimed to be confirmation of the unsecured loans obtained from the said parties. Therefore, the information in respect of the parties listed below is inadequate to prove their genuineness & creditworthiness:-

Table-II

S.No.	Name of lenders	PAN No. & Address	Amount (Rs.)	Closing balance as on 31.03.2005
1.	K.L.Arora	ADJPA2623D	800000	800000
2.	Neha Madan	AEPPM7026L	2000000	2000000
3.	R N Arora	AAKPA5265H	2500000	2500000
		Total	5300000	5300000

4.1. Further verification reveals that the PAN mentioned in the confirmation of Ms. Neha Madan is invalid and hence, the party Ms. Neha Madan is treated as, non existing. However, the remaining confirmations filed by the assessee company accompanied with the ledger account and copy of acknowledgement of ROI of the lending parties, whereas copy of their bank statement for the relevant period is still missing.”

6. The Assessing Officer ought to have made necessary inquiry from the lenders regarding their source of income etc. We, therefore, considering the totality of fact hereby, set aside the finding of lower authorities qua amount received from Ms. Neha Madan and Shri R.N.Arora and restore the issue to the file of Assessing Officer for decision afresh. Needless to say that Assessing Officer would provide reasonable opportunity to the assessee. The Assessing Officer shall cause inquiry from the lenders and record a clear

finding regarding genuineness and creditworthiness of the lenders. This ground of assessee's appeal is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 11th October, 2021.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Shekhar / Amit Kumar

Copy forwarded to:

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

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI