

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

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 280/Del/2019 : Asstt. Year : 2015-16

Anush Finlease & Construction Pvt. Ltd., Plot No. 11, CBD Centre, Shahdara, New Delhi-110032	Vs	ACIT, Central Circle-18, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCA7004R		

Assessee by : None

Revenue by : Sh. Sanjay Kumar, Sr. DR

Date of Hearing: 07.12.2021

Date of Pronouncement: 08.02.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-27, New Delhi dated 07.12.2018.

2. Following grounds have been raised by the assessee:

"1. The CIT(A) erred in law and on facts in confirming the addition of Rs. 14,56,81,000/-

a) without allowing adequate opportunity to the appellant to submit evidences by allowing more time for inspection already applied of the assessment folder or

b) without directing the assessing officer to provide for inspection of the assessment folder before disposing off the appeal ignoring that the inspection of assessment folder was required for proper and judicious disposal of appeal and which had already been applied. Thus, the addition so confirmed ignoring the principles of natural justice should be deleted.

- 2. The CIT(A) erred in law and on facts in confirming the addition of Rs. 14,56,81,000/- without allowing an opportunity to confront and cross-examine the evidences collected at the back of the assessee and relied upon in the assessment order and without allowing an opportunity to rebut them. Thus, the addition so confirmed ignoring the principles of natural justice should be deleted.*
- 3. The CIT(A) erred in law and on facts in confirming the addition of Rs. 14,56,81,000/- on account of unsecured loans u/s 68 of the Act ignoring the evidences placed on record to discharge the onus cast upon u/s 68 of the Act. Thus, the addition so confirmed should be deleted.*
- 4. The CIT(A) erred in law and on facts in issuing directions to reduce the interest of Rs. 71,90,352/- due on the above loans from the Work in progress of the project as the same was capitalized therein ignoring that the said interest was paid / payable on genuine loans. Thus, the said direction should be reversed and the interest amount should be allowed to be capitalized.”*
3. The assessee is constructing a hotel needed huge capital to fund the hotel project and therefore took various secured and unsecured loans during the year.
4. Before the revenue authorities, the assessee provided a complete list of the lenders mentioning their names addresses and PAN, amount of loan taken from them, copies of their bank statement. The assessee submitted that the onus cast on the assessee to prove the identity and creditworthiness of the lender and genuineness of the transaction has been discharged by the way of confirmation, ITRs and their bank statements.
5. The Assessing Officer held that documents like ITRs, computation of income, confirmations and bank accounts by seven lenders have been submitted by them through DAK or

post and stated that they do not prove the creditworthiness of the lenders.

6. To verify the veracity of these loans, the AO has issued summons u/s 131 to the parties requiring following details:

- i. Personal deposition
- ii. To furnish Income Tax Return for A.Y. 2015-16 along with Computation, Balance Sheet with its Schedules and Profit & Loss A/c.
- iii. Details of loan or advance given to above mentioned assessee company in F.Y. 2014-15 relevant to A.Y. 2015-16, whether any interest was received on the loan amount. If yes, please confirm the Rate of Interest and amount of interest received and explain the source for the authenticity and creditworthiness of the loan given to the assessee company.
- iv. To furnish copy of bank account out of which such loan was provided showing the availability of fund. If above loan is paid out of some immediate credit received then also furnish the genuineness of the amount/ fund creditworthiness of such received by you.
- v. Whether any promissory note was entered with assessee company for transaction of loan amount, if yes please confirm.
- vi. Furnish attested copies of ledger account of the company from your books of accounts from 01.04.2014 to 31.03.2015

7. It was submitted that Mr. Deepak Gupta is the director of the assessee company and lenders are the family members of the director to whom notices were also served except one who has left his old address.

Particulars	Status of notice
<i>Mr. Rajesh Kumar Gupta</i>	<i>Served</i>
<i>KrishahLal Gupta HUF</i>	<i>Served</i>
<i>Mr. Harish Gupta</i>	<i>Returned unserved as 'left'</i>
<i>Mr. Gaurav Gupta</i>	<i>Served</i>
<i>Mr. KrishanLal Gupta</i>	<i>Served</i>
<i>MsNamrata Gupta</i>	<i>Served</i>

8. Similarly notices have been served on various other lenders as under:

Particulars	Status of notice
<i>Amebernuj Finance & Investment (P) Ltd.</i>	<i>Served</i>
<i>Pramod Kumar Mittal</i>	<i>Served</i>
<i>Kamia Rani</i>	<i>Returned unserved as 'left'</i>
<i>M/s Round Square Exim (P) Ltd.</i>	<i>Served</i>

9. The assessee stated that since the summons were served on them, their identity stands proved. It was pleaded that the lenders are not under the control of the assessee and the assessee cannot pressurize them to appear before the Assessing Officer. It was argued that the funds of the lenders got stuck with the assessee as it could not refund them as agreed as the construction of the hotel did not go as planned and thus the lenders were not in good terms with the assessee. They were not ready to take any more pain or make any efforts for the assessee. Some of them knowingly returned the summons. Thus, the assessee was not in a position to influence

them to appear before the Assessing Officer. It was argued that documentary evidences were placed on record by the assessee to discharge its onus cast u/s 68 of the Act.

10. It was submitted before the revenue authorities that photocopies of the master data of these companies as taken from the official website of the Ministry of Company affairs is enclosed by the assessee where their status has been shown as active which shows that these companies are in existence. Complete addresses of their registered offices and email addresses are submitted before the revenue authorities. Thus, the assessee pleaded that existence of such companies is proved beyond doubt. Documentary evidences in the form of ITRs, balance sheet and bank account prove the creditworthiness and genuineness of the transactions.

11. The assessee relied on the judgments in the case of CIT vs. Jalan Hard Coke Ltd (2018) 95 taxmann.com 331 (SC) [DoJ 15/05/2018], CIT vs. Jalan Hard Coke Ltd (2018) 95 taxmann.com 330 (Raj).

12. The Id. CIT(A) confirmed the addition holding that the service of summons does not prove the three basic ingredients of identity, creditworthiness and genuineness of transactions, particularly in the present case where many entries have been established to have come from entry operator. The Id. CIT(A) held that the Income Tax Department in the past few years have unearthed lot of entities who were involved in the "entry operator business". All such entry operators route their cash through web of companies, which are not doing any substantial business, to the final beneficiary either in the form of share capital, unsecured loans or even exempted long term capital gain entries. The Id. CIT(A) held that in the present case also

the Investigation Wing has identified 14 such companies who have given entries to the appellant. The remaining loan givers were either not existing on the given address or if summons were served, they did not respond. The Id. CIT(A) held that the possibility that these directors have taken bogus entries from the entry operator, and then have given loans out of this money cannot be ruled out.

13. Aggrieved with the order of the Id. CIT(A), the assessee filed appeal before us.

14. Before us, the Id. AR submitted that the summons u/s 131 were issued to the lenders in the end of November 2017. Notice was issued to the assessee on 24.11.2017 to produce the lenders which was served on the assessee on 30.11.2017 and the assessment order was passed on 18.12.2017. Thus, effectively the assessee was given 14 working days to produce 34 parties which is actually insufficient time. It must be appreciated that each person or party is not available as and when required. Requests have to be made to the lenders to make themselves available for appearance before the Assessing Officer. The assessment proceedings commenced on 16.03.2016 and if the Assessing Officer wanted to verify the lenders, the verification process should have commenced back then and not at the end of the assessment proceedings. Thus, sufficient time was not given to the assessee to produce the lenders and the principles of natural justice have been violated. It is, therefore, requested that the assessee should be allowed sufficient opportunity to produce the said lenders for verification or submit necessary evidences regarding them. Thereafter, the AO issued show cause notice dated 24.11.2017 to the Principal Officer of the assessee company with respect to these loans

annexing the details of remarks with respect to these summons. The case was fixed for hearing on 01.12.2017. The assessee sought adjournment of five days from the AO which was granted, but on 5.12.2017 nobody appeared or submitted the details/explanation or produced the loans creditors for examination. The Id. AR thus argued that there is absolute failure on the part of the revenue to afford sufficient time to substantiate their case.

15. We have gone through the details filed by the parties and also arguments of the revenue. We have also gone through the details of all the 34 companies which have lent the amounts to the assessee. We have also gone through the details filed by various loan parties before the revenue authorities. After going through the entire details, we hold that the assessee has failed to undisputedly prove the genuineness of the loans or the creditworthiness of the parties. At the same time, the revenue has also failed to conduct complete enquiries to bring much needed evidences on record.

16. The Hon'ble Supreme Court in the case of Kapurchand Shrimal Vs CIT, 1981 AIR 1965 held that the duty of the Tribunal does not end with making a declaration that the assessments are illegal and it has no duty to issue any further directions too. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature.

17. We cannot also be oblivious to the fact that the enquiries related with the summoning of the lender parties has been made at the end of the period within which assessments can be completed making it impossible for the Income-tax officer to make the enquiries as well as the assessee to comply the requirements.

18. We are conscious of the facts that no tax can be levied without the authority of law as mandated by Article 265 of the Constitution of India. Similarly, the exchequer should not be deprived from its legitimate tax due. In our view, the assessee would not be prejudiced in setting-aside proceeding, if they have merit in their favour. Considering the aforesaid factual & legal discussion and in the interest of justice to both the parties, we deem it proper to remand the matter to the file of the Assessing Officer with instructions to the Supervisory Officers to act in accordance with the provisions of the Income Tax Act in conducting the enquiries. Needless to say, the revenue shall follow principles of natural justice while concluding the proceedings.

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

Order Pronounced in the Open Court on 08/02/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 08/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR