

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

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1700/Del/2019  
[Assessment Year : 2014-15]**

|   |   |  |
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| Bhasin Infotech & Infrastructure Pvt.Ltd., 28, Raja Garden Chowk, New Delhi-110015.<br>PAN-AACCB9344D | vs  | ACIT,<br>Central Circle-2,<br>New Delhi. |
| <b>APPELLANT</b>  |   | <b>RESPONDENT</b>                        |
| <b>Appellant by</b>   | S/Shri Salil Kapoor, Vikas Jain,<br>Sumit Lalchandani, Adv. |  |
| <b>Respondent by</b>  | Shri Satpal Gulati, CIT DR                                  |  |
| <b>Date of Hearing</b>  | 10.02.2022  |  |
| <b>Date of Pronouncement</b>  | 31.03.2022  |  |

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order of Ld. CIT(A)-23, New Delhi dated 11.01.2019 for the assessment year 2014-15. The assessee has raised following grounds of appeal:-

1. *“That the CIT(A) has grossly erred in law and on facts in enhancing the Income of the appellant 10,12,50,000/- against the returned loss of(-) Rs. 2,73,530/-.*
2. *That notice u/s 251 (2) of the Income Tax Act, 1961 and enhancement made by the CIT(A) are illegal, bad in law and without jurisdiction.*

3. *That the CIT(A) has grossly erred in law and on facts in making enhancement of Rs. 9,25,00,000/-. The CIT(A) has failed to appreciate that transaction which were subject matter of enhancement were never considered by an A.O. from the point of view of taxability.*
4. *That CIT(A) has grossly erred in law and on facts in making an enhancement and sustaining addition under section 68 of the Act. The CIT (A) has failed to appreciate that loan were taken in the earlier years.*
5. *That CIT(A) has grossly erred in law and on facts in not considering submissions of the appellant assessee and thus acted against the principals natural justice.*
6. *That the CIT(A) has erred in law in making an addition of Rs. 87,50,000/-. when the appellant has discharged its onus of proving identity and creditworthiness of unsecured creditor and genuineness of transaction before the assessing officer.*
7. *Without prejudice, the CIT(A) has grossly erred in law and on facts in passing direction U/s 150(1) of the Income Tax Act, 1961 when he himself made enhancement/confirmed addition made by an AO on all the transaction.*
8. *That CIT(A) has grossly erred in law and on facts In making enhancement/confirming an addition when he himself failed to conduct inquiry despite request by an appellant.*

9. *That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made is uncalled for.*
10. *That the observations made by the CIT(A) are illegal bad in law and contrary to the record. No proper opportunity was given by CIT(A) and his observations in regard are baseless and contrary to the principles of natural justice.*
- 11 *That the addition/disallowance made are illegal, unjust and bad in law and are based on mere surmises conjunctures and the same cannot be justified by any material on record.*
- 12 *That interest U/s 234A and 234B of the Income Tax Act, 1961 has wrongly and illegally charged and has been wrongly worked out.*
- 13 *The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing.*
- 14 *Whether there is any delay in filing of appeal (if yes, please attach application seeking condonation of delay)."*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the assessee filed its return of income electronically, declaring loss of Rs.2,73,530/- on 17.12.2014. The case of the assessee was

selected for scrutiny under CASS. After issuing statutory notices and considering the material placed on record, the assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was framed vide order dated 30.12.2016. The Assessing Officer ("AO") while framing the assessment, found that the assessee had received unsecured loan from eight parties during the year. The Assessing Officer after considering the documentary evidence, made addition of Rs.87,00,000/- out of the loan and advances of Rs.9,72,50,000/-. Hence, the AO made addition of Rs.87,00,000/- and added the same into the income of the assessee thereby, the AO assessed the income at Rs.84,26,470/- against the loss of Rs.2,73,530/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who during the course of appellate proceedings, issued a notice of enhancement regarding remaining loan and advances that were accepted by the AO. In response thereto, the assessee filed its explanation. However, the explanation filed by the assessee was not found sufficient and Ld.CIT(A) proceeded to make enhancement of Rs.9,72,50,000/-. However, it is noteworthy that Ld.CIT(A) also issued direction to the AO to verify the loan amount received by the

assessee during other Assessment Year and take necessary steps to bring the same for taxation.

5. Now, the assessee is in appeal before this Tribunal.

6. The assessee has raised multiple grounds however, the only effective ground in this appeal is against the proposed enhancement made by Ld.CIT(A) in respect of unsecured loan from M/s. Hirise Hospitality Pvt.Ltd. & M/s. Mithilanchal Investment & Finance Pvt.Ltd. and further sustaining the addition of Rs.87,50,000/- made by the AO.

7. Ld. Counsel for the assessee submitted that Ld.CIT(A) exceeded his jurisdiction by making enhancement of income. He contended that the impugned order is *ex facie*, patently illegal and grossly unjust. He contended that the Ld.CIT(A) failed to appreciate the fact that loans were taken in earlier years. He submitted that Ld.CIT(A) in fact under the garb of enhancement exceeded his jurisdiction which is not permissible under law. Ld.CIT(A), in fact exercised revisionary jurisdiction which is not conferred upon him. He contended that during the appellate proceedings, it was categorically stated that the Assessing Officer had verified the issue

of loan and more particularly, the assessee had furnished all relevant information and supporting evidences. He contended that the enhancement cannot be sustained on the basis of whim and fancies of Ld.CIT(A). There need to be some justification for such an action. He took us through the impugned appellate order and the assessment order to buttress the contention that the action of the authorities below is arbitrary and highly unjust.

7.1. Ld. Counsel for the assessee submitted that the assessee has filed application for admission of additional evidences under Rule 29 of the Income Tax Rules, 1962 (“the Rules”). He contended that during the course of assessment proceedings, a show cause notice was issued to the assessee to furnish complete details of unsecured loans received during the Financial Year 2013-14 relevant to Assessment Year 2014-15 that also included loans that were taken in the earlier years. Ld. Counsel for the assessee drew our attention to the para 2 of the application. He contended that the assessee had filed requisite information with documentary evidences. However, AO made addition in respect of three persons namely, Pearl Creation of Rs.50,00,000/- and Shri Sudhir Kumar of Rs.27,50,000/- and Shri Amul Aggarwal of Rs.10,00,000/-. Ld.

Counsel for the assessee further submitted that the authorities below have included unsecured loans which were received in earlier years. He submitted that unsecured loans were taken from Shri Amul Aggarwal of Rs.10,00,000/- and Rs.1,25,00,000/- from M/s. Mithilanchal Investment & Finance Pvt. Ltd. and Rs.27,50,000/- from Shri Sudhir Kumar pertain to earlier years. He contended that no inquiry was conducted by the authority below. He further contended that there was ongoing litigation between Hirise Hospitality Pvt.Ltd. and the assessee. He contended that that proceedings were initiated by Hirise Hospitality Pvt.Ltd. after passing of impugned order by Ld.CIT(A) and the same was not available with the assessee. He further submitted that the following documents may be admitted as additional evidences for fair disposal of appeal:-

- a. *“First Information Report u/s 154 of Cr.P.C. dated 09.03.2019.*
- b. *Letter dated 11.01.2019 for cancellation of space/Unit allotted to Hirise Hospitality Pvt.Ltd.*
- c. *Legal notice dated 21.01.2020 along with annexures.*
- d. *Reply to Legal Notice dated 01.02.2020.”*

He contended that the impugned order was passed without making any inquiry and verifying the material facts.

8. Per contra, Ld.CIT DR pointed out that the grievance of the assessee is baseless. He contended that Ld.CIT(A) has duly considered the contention of the assessee and gave direction to the AO to verify the genuineness of the loan and tax it in appropriate Assessment Year. Therefore, the assessee should not have any grievance.

9. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that the Ld.CIT(A) in para 6.2 of the impugned order has noted the factum of addition made by AO and in paras 16.3 & 16.4 of the impugned order, he decided the issue of additions made by the AO by observing as under:-

*16.3. “As mentioned in the assessment order before Assessing Officer, in respect of the above said three parties, even the addresses were not provided by the appellant. Before undersigned also, situation remained same. The basic question is as to whether appellant discharged its onus (cast upon it by the provisions of section 68 i.e. to prove identity and creditworthiness of the lender and genuineness of the*

transaction). Certainly answer to this question is “No”. Therefore, action of the Assessing Officer, in terms of making addition under section 68 in respect of the loan received from these two parties is confirmed.

**Directions under section 150(1)**

16.4. In view of the averment/contention of the AR (though unsubstantiated) that Rs.10,00,000/- (from Sh.Amul Aggarwal) was received on 02.09.2008 and Rs.27,50,000/- (from Sh.Sudhir Kumar) was received on 30.11.2012, the A.O. is directed under section 150(1) to examine the case under section 147/148 for the relevant assessment years, independently and in case the conditions under relevant sections are found to be satisfied, the proceedings may be initiated notwithstanding anything contained in section 149 subject to provisions of section 150(2). In case, the above stated amount (or part of it) is assessed & attains finality, in those assessment years, the addition to that extent may be deleted in this assessment year.”

10. We find that the AO had made addition in respect of three parties namely, Shri Amul Aggarwal of Rs.10,00,000/-, Rs.50,00,000/- from Pearl Creation and Rs.27,50,000/- from Shri Sudhir Kumar. It is seen that out of three additions, the Ld.CIT(A) in the case of two persons namely Shri Amul Aggarwal and Shri Sudhir Kumar, the contention of the assessee is that these transactions relate to earlier has been accepted and direction

issued to AO to verify the same. In case of amount received from Pearl Creation, no supporting evidence was provided proving genuineness of the transaction, identity and creditworthiness of the party. Therefore, we do not see any infirmity into the finding of the Ld.CIT(A), the same is hereby affirmed. The grounds related to these additions are dismissed.

11. In addition to the aforesaid, Ld.CIT(A) had also issued show cause to the assessee for enhancement of income by proposing to make addition in respect of amount received from Hirise Hospitality Pvt.Ltd. of Rs.8 crore, M/s. Mithilanchal Investment & Finance Pvt. Ltd. of Rs.1.25 crore which was ultimately enhanced. Out of this amount related to M/s. Mithilanchal Investment & Finance Pvt. Ltd., the following direction was issued by Ld.CIT(A):-

*19.5. "In view of the averment/contention of the AR (though unsubstantiated) that Rs. 1.25 crores (from M/s. Mithilanchal Investment and Finance Pvt. Ltd.) was received on 30.06.2011, the AO is directed under section 150(1) to examine the case under section 147/148 for the relevant assessment years, independently and in case the conditions under relevant sections are found to be satisfied, the proceedings may be initiated notwithstanding anything contained in section 149 subject to provisions of section 150(2). In case, the above stated*

*amount (or part of it) is assessed & attains finality, in that assessment year, the addition to that extent may be deleted in this 11. On the above finding, We do not see any infirmity into the above finding of Ld.CIT(A) and the same is well-reasoned and no prejudice would cause to the assessee. The AO is directed to verify the transaction and consider in the appropriate Assessment Year.*

*19.6. The appellant is entitled to the reduction of Rs.1.15 crore in AY 2017-18 in respect of forfeited amount (of M/s. Mithilanchal Investment and Finance Pvt.Ltd.), provided that the corresponding addition in AY 2012-13 is not disputed by the appellant and the appellant is able to show that it was actually added in Assessment Year 2017-18.”*

12. Hence, we do not see any reason to disturb the finding of the Ld.CIT(A) in respect of transaction with M/s. Mithilanchal Investment & Finance Pvt. Ltd. (supra). For remaining party, it is the case of the assessee that there were certain litigation between Hirise Hospitality Pvt.Ltd. and the assessee. The FIR was also registered on 09.03.2019. A letter dated 11.01.2019 was also addressed for cancellation of space/unit allotted to Hirise Hospitality Pvt.Ltd. Ld.CIT(A) had enhanced the income related to transaction with this party namely Hirise Hospitality Pvt.Ltd. by observing as under:-

| <b>S.No.</b> | <b>Name</b>                              | <b>Amount (Rs.)</b> | <b>Remarks</b>   |
|--------------|--|---------------------|--|
| 1.           | M/s. Hirise Hospitality Private Limited. | 8 crore             | <p>i) As per the table in para 4 of the assessment order, figure of Rs. 760,00,000/- is shown. However, a perusal of ledger account filed during course of the appellate proceedings shows that total of Rs. 8 crores were received by way of nine entries. As per the ledger account, seven credit entries of Rs. 50 lakh each have been shown on 13.05.2013; credit entries of Rs. 25 lakhs and Rs. 4,25,00,000/- have been shown on 15.05.2013. It is also seen that actually re-payment of Rs. 40 lakhs have been shown by four entries of Rs. 10 lakhs each. Description of one of the entry shows that the repayment was actually to M/s. Mist Avenue Private Limited (and not to the said party). As such the provisions of section 68 apply in terms of credit entries. Therefore, entire credit of Rs. 8 crores is considered for the addition by way of enhancement.</p> <p>ii) In the letter dated 16.12.2016, addressed to the appellant, it has been mentioned that notice under section 133(6) of the Income Tax Act, 1961 was issued to this party but no response has been received. Summons, under section 131(1A) had been issued to this party for personal deposition. The letter further asked the appellant to produce the said party alongwith copies of statement of the bank account and other documents (of the said party) mentioned therein. However, neither the party was produced, nor any copy of the bank statement of the paid party was produced, nor any copy of other requisitioned documents was produced. During the present appellate proceedings, also, the appellant failed to produce this party.</p> <p>iii) During the present appellate proceedings, in spite of various opportunities, the appellant did not claim that any copy of bank account or profit and loss account/ Income Tax Return of this company was ever filed before the AO. The appellant submitted a photocopy of letter dated 20.12.2016 addressed to the AO, in which it has been claimed that</p> <p>a) necessary evidence of dispute with this' party were being produced.</p> <p>b) a copy of balance sheet of this party as downloaded from MCA (Ministry of Company Affairs) was enclosed.</p> <p>c) a copy of bank statement evidencing receipt of the said payment was enclosed.(it seems that the letter was talking above the statement of the bank account of the appellant).</p> <p>However, during the present appellate proceedings, the appellant did not furnish any of the documents mentioned at a), b) or c), above. Of course, a photocopy of bank statement of the appellant has been submitted which evidence receipt of only Rs. 10 lakhs (it will be discussed below).</p> <p>iv) During the present appellate proceedings, the appellant produced the following:</p> <p>a) a simple (unauthenticated) photocopy of ledger account of this party (which does not have address of the party) in the books of the appellant which is</p> |

|   |  |  |   |  |      |      |
|---|--|--|---|--|------|------|
|   |  | <p>purportedly confirmed by the director/authorised signatory of this party. This being a simple photocopy does not have any evidentiary value. It is also noted the description of the party in the ledger a/c is "Hirise Hospitality Pvt. Ltd. (Ahmadabad)" whereas the letter dated 27.12.2016 (discussed at sub-para (c), below) mentioned address of this party as that of Kolkata.</p> <p>b) a simple (unauthenticated) photocopy of bank statement of the appellant which has one entry (dated 19.09.2013 for Rs. 10 lakhs) with description, 'RTGS/HIRISE HOSPITALITY PVT LTD'. However, description of other entries (which are claimed to be showing receipt of money from this party) do not contain any reference to the name of this party.</p> <p>c) a simple (unauthenticated) photocopy of a letter dated 27.12.2016. This letter was purportedly signed by authorised signatory and addressed to "Bhasin Motors Ltd., New Delhi", confirming balance as on 31.03.2014. This being a simple photocopy does not have any evidentiary value. Moreover, it is not understood, how this letter has been addressed to the appellant (instead of the AO). It is apparent that this letter was obtained by the appellant. Therefore, appellant could have easily produced this party either before the AO or at least before the undersigned.</p> <p>Interestingly, it is also noted that the signature on the purported confirmation of ledger account and confirmation letter, which are supposed to be signed by the same person are actually differing.</p> <table data-bbox="669 1108 1398 1234"> <tr> <td data-bbox="669 1108 930 1199">Signature on the confirmation on the ledger account</td> <td data-bbox="1097 1108 1398 1199">Signature on the letter confirming balance on 31.03.2014</td> </tr> <tr> <td data-bbox="721 1199 786 1234">Sd/-</td> <td data-bbox="1203 1199 1268 1234">Sd/-</td> </tr> </table> <p>v) Certainly, from the above documents (which have been produced as a result of various opportunities afforded to the appellant to produce any document to prove that before AO, it had discharged the onus of proving identity &amp; creditworthiness of this party as well as genuineness of the transactions), the onus of proving identity &amp; creditworthiness of this party as well as genuineness of the transactions cannot be said to have been discharged. Therefore, it is held that the appellant failed to discharge the onus of proving identity &amp; creditworthiness of this party as well as genuineness of these transactions.</p> | Signature on the confirmation on the ledger account | Signature on the letter confirming balance on 31.03.2014 | Sd/- | Sd/- |
| Signature on the confirmation on the ledger account | Signature on the letter confirming balance on 31.03.2014 |  |   |  |      |      |
| Sd/-  | Sd/-   |  |   |  |      |      |

12.1. It is seen that Ld.CIT(A) enhanced income on the ground that the assessee failed to discharge its onus for proving identity and creditworthiness of this party as well as the genuineness of the transaction. The assessee has filed certain documents that goes to

demonstrate that there were ongoing litigation between the parties. Therefore, looking to the facts and circumstances of the present case, we are of the considered view that this transaction needs further verification at the end of the AO. We therefore, set aside the order of Ld.CIT(A) and restore this issue to the assessing authority for decision afresh. The AO is hereby directed to carry out requisite inquiry to ascertain the true facts about the transaction and decide the issue afresh giving adequate opportunity to the assessee of representing case effectively. Thus, ground related to this transaction is allowed for statistical purposes.

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

Order pronounced in the open Court on 31<sup>st</sup> March, 2022.

**Sd/-**

**(G.S.PANNU)  
PRESIDENT**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI