

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1334/MUM/2019  
Assessment Year: 2010-11**

Flair Engineering Pvt. Ltd.,  
4<sup>th</sup> floor, Chawda Commercial  
Centre, Chincholi Bunder Road,  
Malad (W),  
Mumbai-400064.  
**PAN No. AABCF 1094 P**  
**Appellant**

**Vs.**

ITO-12(2)(2),  
Mumbai-400020.  
  
**Respondent**

Assessee by : None  
Revenue by : Mr. Achal Sharma, CIT-DR

Date of Hearing : 13/04/2022  
Date of pronouncement : 10/05/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 07/01/2019 passed by the Ld. Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2010-11, raising following grounds:

1. *The learned CIT (A) has grossly erred both in law and on facts in confirming the order of assessment passed u/s 147/143(3) of the Act on 30.03.2015 determining the income of the appellant at Rs.20,05,29,919/- as against the income returned at Rs.5,29,919/-.*
2. *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that initiation of the reassessment proceedings u/s 147 of the Act is without satisfying the statutory preconditions as envisaged w/ 147 of the Act, and hence initiation of the reassessment proceedings itself is bad in law.*
3. *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that learned AO has initiated the reassessment proceedings without having any tangible material for the formation of reasons to believe that the income of the assessee has escaped assessment, and hence assumption of jurisdiction is bad in law.*
4. *The Learned CIT (A) has grossly erred both in law and on facts in confirming the addition of Rs. 20,00,00,000/- as unexplained cash credit u/s 68 of the Income Tax Act.*
5. *The learned CIT (A) erred in confirming the charging of interest amounting to Rs.4,30,04,302/- u/s. 234B & 234C of the Income Tax Act, 1961.*
6. *The order passed by the learned CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts and is passed without application of mind and in violation of the principles of natural justice.*

2. At the outset, we may like to mention that, despite notifying when the case was called for, neither anyone appeared on behalf of the assessee nor any adjournment was filed. In the circumstances, we were of the opinion that assessee was not interested in prosecuting the appeal and therefore same was heard *ex-parte* qua the assessee, after hearing arguments of the Ld. Departmental Representative and on perusal the relevant material on record.

3. Briefly stated facts of the case are that after recording reasons to believe that income escaped assessment, the Assessing Officer issued notice under section 148 of the Income-Tax Act, 1961 (in short 'the Act'). In the reassessment proceeding completed under section 143(3) read with section 147 of the Act on 30/03/2015, the Assessing Officer made addition of ₹20,00,00,000/-in terms of section 68 of the Act. The assessee challenged the legality of reassessment proceeding and merit of the addition in the appeal filed before the Ld. CIT(A), however could not succeed. Aggrieved,

the assessee is before the Tribunal by way of raising the grounds as reproduced above.

4. We have heard arguments of Ld. Departmental Representative and perused the material on record. We find that Ld. CIT(A) has rejected the contention of the assessee challenging the legality of the reassessment proceeding observing as under:

*“5.4.1 I have considered the submissions of the appellant. I have also gone through the records. I found that in this case the appellant did not raise any objections to the reopening in the course of the assessment proceedings. In the assessment order, the AO had no occasions to discuss the reasons for reopening. The appellant could not produce the copy of reasons recorded before me. The appellant was entitled to a copy of reasons recorded u/s.148(2) and the onus in this case was on the appellant to prove, with reference to reasons recorded u/s.148(2) that the AO did not have any tangible material to reopen the assessment. Therefore, hold that the appellant has not been able to substantiate its contention with supporting documents. I, therefore, dismiss ground of appeal No. 2”.*

5. We find that assessee did not contest its grounds before the Ld. CIT(A) seriously as the assessee even did not file a copy of the reasons recorded before the Ld. CIT(A). In view of the above, in our

opinion the Ld. CIT(A) is justified in rejecting the contention of the assessee that the Assessing Officer did not have any tangible material to reopen the assessment. Accordingly, we uphold the finding of the Ld. CIT(A) in absence of any rebuttal by the assessee. The grounds challengingly legality of the reassessment proceeding are accordingly dismissed.

5.1 Further the Ld. CIT(A) has upheld the addition under section 68 of the Act in absence of documentary evidence filed by the assessee. The observation of the Ld. CIT(A) are reproduced as under:

*“6.4.3 By this office letter dated 17.12.2018 the appellant was requested to produce the following documents at the time of next hearing on 24.12.2018.*

*(a) Vouchers in respect of the entries passed in the accounts the following parties:*

- 1) Aim Infrastructure Pvt. Ltd.*
- 2) Pearl Infrastructure Pvt. Ltd.*
- 3) Sterling Sez & Infrastructure Ltd.*
- 4) Sulabhaya Engineering Pvt. Ltd.*
- 5) Tropical Infrastructure Pvt. Ltd.*

6) *Jaico Textile Pvt. Ltd.*

7) *NCHPL*

(b) *Correspondences with the aforementioned parties in respect of transactions with those parties.*

6.4.4 *The appellant did not produce the documents called for. Those documents were necessary for verifying the genuineness of appellant's transactions with the four creditors as claimed by the appellant, In failing to produce the vouchers and correspondence, the appellant has failed to establish the genuineness of the transactions.*

6.4.5 *I also find that the appellant did not furnish the ledger and bank accounts of NCHPL. According to the appellant, the account of NCHPL was debited by Rs. 20 crores and also credited by Rs. 20 crores during the P.Y. 2009-10. I am unable to rule out possibility of:*

*(a) the 4 aforementioned parties making separate entries directly debiting NCHPL for payment made to NCHPL to whom payment was made.*

*(b) NCHPL making separate entries directly crediting the 4 aforementioned parties for the payments received.*

*(c) NCHPL making separate entries directly debiting Jaico Textile Pvt. Ltd. and Doral Trading Pvt. Ltd. for payments made to them*

*(d) Jaico Textile Pvt. Ltd. and Doral Trading Pvt. Ltd. making separate entries directly crediting NCHPL for the payments received.*

*6.4.6 The onus was on the appellant to prove that the entries mentioned in para 6.4.5 were not passed by the parties concerned in their respective books. Therefore, the onus was on the appellant to produce the books of account of the parties involved in the journal entries passed. The appellant has failed to do so. Therefore, I hold that the appellant has failed to establish the genuineness of the transactions recorded in its books. Therefore, I confirm the addition made by the AO. In the result, the ground of appeal No.3 is dismissed”.*

6. We find that before the Assessing Officer the assessee failed to discharge its onus in terms of section 68 of the Act of filing documentary evidence in support of identity & creditworthiness of the unsecured loan parties and genuineness of the transaction, thereafter the Ld. CIT(A) provided further opportunity and called for certain documents, however assessee failed in complying the queries raised by the Ld. CIT(A). In view of above facts and circumstances, we are of the opinion that Ld. CIT(A) is justified in upholding the addition, in absence of any rebuttal filed by the assessee before us. The grounds challenging the merit of the addition are accordingly dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced in the open Court on 10/05/2022.**

Sd/-

**(VIKAS AWASTHY)  
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;

Dated: 10/05/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**