

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5884/Del/2016
Assessment Year: 2012-13

ITO Ward-2 (4) New Delhi	Vs	M/s. ANB Promoters & Developers Pvt. Ltd. B-443, New Friends Colony, New Delhi-110025 PAN No. AAFCA2254E
(APPELLANT)		(RESPONDENT)

Appellant	None
Respondent	Sh. Kanav Bali, Sr. DR

Date of hearing:	08/08/2022
Date of Pronouncement:	08/08/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-1, New Delhi dated 19.09.2016 pertaining to A.Y.2012-13.

2. The solitary grievance of the revenue is that the CIT(A) erred

in deleting the addition of Rs.1.55 crores made by the AO u/s. 68 of the Act.

2. This appeal was first listed for hearing on 01.07.2019 on which date none appeared on behalf of the assessee. Thereafter on every occasion this appeal was not attended by the assessee nor by his authorised representative inspite repetitive service of the notices. We decided to proceed exparte.

3. The DR was heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that during the year under consideration the assessee has received loans from the following parties :-

S.NO.	Name of the party	Amount
1.	Marketing Times Automobiles Pvt. Ltd.	95,00,000
2.	Freak Buildcon Pvt. Ltd.	20,00,000
3.	Zaraf Infra Development Pvt. Ltd.	20,00,000
4.	Zoom Building Materials & Products Pvt. Ltd.	20,00,000
5.	Gama Instrumentation Pvt. Ltd.	20,00,000
6.	Gautam Budh Infrastructures Pvt. Ltd.	20,00,000
7.	Mahender Paul	4,75,000
		1,99,75,000

5. The assessee was given ample opportunities by the AO to explain the identity, genuineness of the transaction and the

capacity of the persons who have given the loans to the assessee. Assessee though furnished the names and addresses of the parties. But on the given addresses the notices sent by the AO returned un-served. When the Income Tax Inspector was sent by the AO he submitted his report that the parties do not exist at the given address. The AO was left with no choice but to make addition u/s. 68 of the Act.

6. Before the CIT(A) the assessee furnished confirmations from the respective parties except in two cases namely M/s. Zaraz Infra Development Pvt. Ltd. and Mahender Paul for loan of Rs. 20 lacs and 4.75 lacs respectively. On the strength of the loan confirmation and the submissions of the assessee the CIT(A) deleted the addition. However, the addition of Rs. 24.75 lacs was confirmed.

7. We do not find any merit in the deletion of the addition by the CIT(A). When the notices returned un-served on the addresses how can the CIT(A) accept the confirmations from the parties who were not in existence at the given addresses which fact has also been confirmed by the visit of the Income Tax Inspector. Merely because the transactions were done through account payee cheques would not discharge the primary onus cast upon the assessee by the provisions of section 68 of the Act.

8. In our considered opinion inspite of several opportunities the assessee has grossly failed in charging the primary onus cast upon it and the CIT(A) grossly erred in accepting the submission of the assessee without any further verification on his part when his powers are coterminous that of the AO.

9. On the given facts we set aside the findings of the CIT(A) and restore that of the AO thereby allowing the appeal of the revenue.

10. Decision announced in the open court on 08.08.2012.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .08.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.08.2022
Date on which the typed draft is placed before the dictating Member	10.08.2022
Date on which the typed draft is placed before the Other member	12.08.2022
Date on which the approved draft comes to the Sr.PS/PS	12.08.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	12.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	12.08.2022
Date on which the final order is uploaded on the website of ITAT	12.08.2022
Date on which the file goes to the Bench Clerk	12.08.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	