

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

आयकर अपीलिय अधीकरण, न्यायपीठ - "A" कोलकाता,

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.530/Kol/2019  
Assessment Year: 2015-16**

Desun Healthcare & Research Institute Ltd. (PAN: AACCN0884A) 8/1A/1, Keyatalla Road, Kolkata-700029.	Vs.	Deputy Commissioner of Income-tax, Circle-12(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Manoj Kataruka, Advocate

Respondent by : Md. Ghayas Uddin, CIT, DR

Date of Hearing : 18.08.2022

Date of Pronouncement : 10.10.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal by the assessee is arising out of the order of Commissioner of Income-tax(Appeals) – 4, Kolkata in appeal number 74/CIT(A)-4/C-12(1)/17-18 dated 31.01.2019 against the assessment order passed under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) by DCIT, Circle – 12(1), Kolkata, dated 21.12.2017.

2. Grounds of appeal taken by the assessee are reproduced as under:

*"1. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the AO. is without providing reasonable opportunity of being heard in violation of the principles of natural justice and therefore the order passed is bad in law.*

*2. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the AO. by passing an ex-parte order is without considering the submissions recorded in the statement of facts and in violation of the principles of natural justice without providing reasonable opportunity of being heard and therefore the order passed is arbitrary, excessive and illegal.*

3. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the AO. of Rs.9,27,33,249/- as bogus loan liabilities is contrary to the provisions of law and the addition is illegal.

4. That without prejudice to the above grounds and on the facts and in the circumstances of the case and on the basis of admitted position by the AO. of the loan liability being of previous years the addition made by the AO as confirmed by the Ld.CIT(A) of Rs.9,27,33,249/- as bogus liability of the year under dispute is erroneous and bad in law.

5. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the AO. of Rs.6,66,038/- on account of interest expenses in respect of the alleged bogus loan liability is contrary to the material evidences on record and the addition is arbitrary, excessive and illegal.

6. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made u/s 14A read with Rule 8D(2) by the AO. of Rs.9,87,573/- in the absence of any exempt income is against the settled principles of law and the addition made is therefore arbitrary, excessive and illegal.

7. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the A.O. RS.9,87,573/- u/s 14A while calculating of the book profit u/s 115JB is erroneous and bad in law.

8. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the A.O. of Rs.21,171 /- on account of loss on motor car is arbitrary, excessive and erroneous.

9. That the order of the Ld. CIT(A) confirming the addition made by the A.O. is arbitrary, excessive and illegal.

10. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”

3. Before us, Shri Manoj Kataruka, Advocate represented the assessee and Md. Ghayas Uddin, CIT(DR) represented the Department.

4. In the course of hearing, Ld. Counsel for the assessee at the outset submitted that ground numbers 01, 02, 06, 07 and 08 are not pressed. Accordingly, these grounds are dismissed as not pressed. Further, ground number 09 and 10 are general in nature for adjudication and, therefore, these are also dismissed.

5. Before taking up the remaining three grounds, viz. ground number 03, 04 and 05, the facts of the case are that assessee is engaged in the business of running an advanced pathological laboratory. It filed its return of income on 28.09.2015 reporting total income of Rs.28,92,130/-. Assessment u/s. 143(3) of the Act was completed vide order dated 21.12.2017 on a total income of Rs.9,73,00,161/- by making additions/disallowances, inter alia, including disallowance of bogus loan liability of Rs.9,27,33,249/- and interest expenses of Rs.6,66,038/-. In the course of assessment proceedings, Ld. AO show caused the assessee vide letter dated 15.12.2017 to prove the identity, creditworthiness and genuineness of the loan creditors and also to explain as to why the loan liability should not be considered as bogus liability. In respect of the loan liability of Rs.9,27,33,249/- Ld. AO incorporated the details in a table in paragraph 4.2 of the impugned order which is reproduced as under:

4.2. In response to the same, the assessee company vide letter dated 23.10.2017 furnished the same & stated that these are brought forward unsecured loans. Ongoing through the details of unsecured loans submitted by the assessee company, it is seen that the assessee had shown unsecured loan of Rs.9,27,33,249/- as on 31.03.2015 from various parties as under:

S.No.	Name & address of the loan creditors	Amount (Rs.) F.Y.2013-14	Amount (Rs.) F.Y.2014-15
1.	Allied Tools Corporation	58,51,718	58,51,718
2.	Bombay Engineering Company	52,50,530	52,50,530
3.	Electronic Components & Systems	52,45,970	52,45,970
4.	ESP Electro Circuits	48,51,200	48,51,200
5.	G.A. Enterprise	45,85,836	45,85,836
6.	Kopran Laboratories Ltd.-CHEM	59,91,560	59,91,560
7.	M/S. Bijoy Enterprise	47,75,550	47,75,550
8.	Mission Hiring Corporation	56,31,836	56,31,836
9.	Nutech Calibrators and Engineers	50,87,149	50,87,149
10.	Railton Electronics	54,45,780	54,45,780
11.	S.S. Enterprise	52,79,200	52,79,200
12.	Medilab & Co.	74,99,856	74,99,856
13.	Nibso Metals Pvt. Ltd.	73,33,260	73,33,260
14.	Spacelabs Healthcare Limited	75,00,000	75,00,000
15.	Zigma Meditech India Pvt. Ltd.	1,24,03,804	1,24,03,804
	Total	9,27,33,249	9,27,33,249

Further, vide letter dated 05.12.2017, the assessee company was requested to furnish evidences i.e. copy of bank statements regarding the receipt of unsecured loans. However, the assessee company didn't furnish the same & stated vide letter 13.12.2017 that their record had been kept in godown and requested to allow them more time to produce the requisite documents.

5.1. Assessee made the submission before the Ld. AO vide its letters dated 05.12.2017 and 21.11.2017 wherein it has stated that these unsecured loans are brought forward from the preceding years for which it submitted a tabulated detail and the same is reproduced as under:

**Details of Unsecured Loan : Brought Forward from Previous Year**

PARTY NAME	ADDRESS	Amount	Amount	Amount
		(Rs.) F.Y.2013-14	(Rs.) Payment	(Rs.) F.Y.2014-15
				B/F
ALLIED TOOLS CORPORATION	28/A, NETAJI SUBHAS ROAD, KOLKATA-700001	58,51,718	-	58,51,718
BOMBAY ENGINEERING COMPANY	56/3A, SANTOSH ROY ROAD, SAKHER BAZAR, JAMES LONG SARANI, KOLKATA-700008	52,50,530	-	52,50,530
ELECTRONIC COMPONENTS & SYSTEMS	32, EZRA STREET, KOLKATA-700001	52,45,970	-	52,45,970
ESP ELECTRO CIRCUITS	76, CHRISTOPHER ROAD, KOLKATA-700046	48,51,200	-	48,51,200
G.A.ENTERPRISE	223A, JODHPUR PARK, 2ND FLOOR, KOLKATA-700068	45,85,836	-	45,85,836
KOPRAN LABORATORIES Ltd. - CHEM	60B, CHOWRANGHEE ROAD, KOLKATA - 700 020	59,91,560	-	59,91,560
M/S. BIJOY ENTERPRISE	PLOT NO.35, SECTOR II, THE VASAI TALUKA INDUSTRIAL CO-OP. ESTATE LTD., GAURAI PADA, VASAI (EAST), THANE-401208	47,75,550	-	47,75,550
MISSION HIRING CORPORATION	12, BOW STREET KOLKATA - 700 012	56,31,836	-	56,31,836
NUTECH CALIBRATORS AND ENGINEERS	5B, LAKE VIEW ROAD, 2ND FLOOR, FLAT-C, KOLKATA-700029	50,87,149	-	50,87,149
RAILTON ELECTRONICS	3/C, MADAN STREET, KOLKATA-700072	54,45,780	-	54,45,780
S.S.ENTERPRISE	R.T.C HOUSE, 4TH FLOOR, DR.SURESH SARKAR ROAD, KOLKATA-700014	52,79,200	-	52,79,200
MEDILAB & CO.	22, LAKE PLACE, KOLKATA - 700 029	74,99,856	-	74,99,856
NIBSO METALS PVT. LTD.	5A, HARISH MUKHERJEE ROAD, KOLKATA - 700 025	73,33,260	-	73,33,260
SPACELABS HEALTHCARE LIMITED	155, RAJESH COMPLEX, VINAY NAGAR COLONY, HYDERABAD -500059, TELANGANA, INDIA.	75,00,000	-	75,00,000
ZIGMA MEDITECH INDIA PVT. LTD.	9/19, KUMMALAMMAN KOIL STREET, CHENNAI - 600 010	1,24,03,804	-	1,24,03,804
	<b>Grand Total :</b>	<b>9,27,33,249</b>	<b>-</b>	<b>9,27,33,249</b>

5.2. However, Ld. AO proceeded to complete the assessment by treating these loan liabilities as bogus loan liabilities. Ld. AO also made a pro-rata disallowance in respect of interest expenses in relation to the unsecured loans which were treated as bogus loan liability. The pro-rata disallowance of Rs.6,66,038/- was made out of the total interest expenses of Rs.6,97,038/- claimed in the P&L Account. Aggrieved, assessee went in appeal before the Ld. CIT(A) wherein the additions were sustained.

5.3. Before us, ld. Counsel for the assessee strongly submitted that all throughout the proceedings before the authorities below, assessee has claimed and demonstrated that the loan liability in respect of which addition has been made is not in respect of the current year, fact of which has been admitted by the Ld. AO himself in the assessment order wherein he has tabulated the details of unsecured loans by specifying the amounts for all the fifteen parties in two columns, (i) with the header "amount F.Y. 2013-14" and (ii) "amount F.Y. 2014-15". The total for both the columns is the same. Ld. Counsel thus, submitted that addition made by the Ld. AO cannot be covered by the provisions of section 68 of the Act as the said section applies only in respect of the year when the liability is credited in the books of account of the assessee. Since these are old liabilities which are carried forward from the earlier years and no money was received by the assessee from these parties in the year under consideration, he thus, submitted that Ld. AO in no circumstance can make the addition of preceding years' liabilities in the current year and, therefore, the addition so made ought to be deleted.

5.4. Ld. Counsel referred to the audited financial statement of the assessee including the Balance Sheet as on 31.03.2015 and pointed to the long term borrowings reported in the said Balance Sheet for the two years i.e. 'as at 31.03.2014' and 'as at 31.03.2015' which are identical

in amount. Ld. Counsel also placed on record audited financial statements of the assessee for the FYs 2010-11, 2011-12 and 2012-13 to demonstrate that these unsecured loans have been received by the assessee in the preceding years and have continued at the same amount except for one party wherein the payment of Rs.2,63,080/- was made in the FY 2012-13.

5.5. Ld. Counsel also placed on record the copy of assessment order passed u/s. 143(3) of the Act dated 30.08.2016 for AY 2014-15 in assessee's own case and submitted that the closing balance of unsecured loans at 31.03.2014 standing at Rs.9,27,33,249/- has been subjected to the assessment and has been accepted by the department when the assessment for AY 2014-15 was completed u/s. 143(3) of the Act by Ld. DCIT, Circle-12(1), Kolkata. He thus, pointed that the closing balance as at 31.03.2014 is the opening balance for the year under consideration and remained at the same amount as the closing balance as at 31.03.2015, there being no change/movement, therefore, no addition is called for in respect of this amount which has already been subjected to scrutiny assessment.

5.6. To buttress his submission, Ld. Counsel placed reliance on the decision of Coordinate bench of ITAT, Kolkata in the case of M/s. Green Star Corporation Vs. ACIT in ITA No. 2463/Kol/2017 dated 09.04.2021 wherein similar issue was dealt in.

5.7. He also referred to the decision of Hon'ble High Court of Bombay in the case of Ivan Singh Vs. ACIT (2020) 422 ITR 129 (Bom.) wherein the substantial question of law before the Hon'ble Court was "*On the facts and in the circumstances of the case and in law, whether the Tribunal was right in sustaining the additions made of old outstanding sundry credit balances amounting to Rs.62,24,163 under s. 68 of the said Act?*" While answering the substantial question of law, Hon'ble Court made a reference to the definition of expression "*previous year*" as

defined u/s. 3 of the Act according to which *“it means the financial year immediately preceding the assessment year.”* While considering the provisions of section 68 of the Act, Hon’ble Court observed that *“from the plain reading of provisions of sec. 68 of the Act, it does appear that where any sum is found to be credited in the books of account maintained for any previous year and there is no proper explanation for such credit, the sum so credited can be charged to the income tax as the income of the assessee of ‘that previous year’”*. Hon’ble Court thus, noted that in the said case, the material on record indicated that the AO had relied on the credits for the FY 2006-07. However, the sum so credited in terms of such credit is sought to be brought to tax as the income of the assessee for the AY 2009-10 which means for the previous year 2008-09 in terms of definition u/s. 3 of the Act. Before answering the substantial question of law in favour of the assessee, Hon’ble High Court placed reliance on the decision of Hon’ble Supreme Court in the case of *Bhor Industries Ltd. Vs. CIT*, AIR 1961 SC 1100 wherein in the context of provisions of the Merged Status (Taxation Concessions) Order (1949), the Hon’ble Supreme Court has interpreted the expression *“any previous year”* to mean as not referring to all the previous years but, the previous year in relation to assessment year concerned. Accordingly, the Hon’ble High Court based on the aforesaid observation and noting, answered the substantial question of law in favour of the assessee and against the respondent/revenue.

5.8. In respect of separate disallowance of interest expenses, ld. Counsel submitted that this is a consequential effect arising out the treatment of unsecured loans as bogus liability by the Ld. AO and once the addition made in respect of unsecured loans is held in favour of the assessee, its consequential effect will also get deleted in respect of pro-rata disallowance of interest expenses.

5.9. Per contra, Ld. CIT, DR submitted that assessee has not filed confirmation letters in respect of these loans and has not produced the Directors/concerned persons from the investors and hence could not prove the essential requirements of identity, creditworthiness and genuineness of the transaction and, therefore, a direction may be given to get these verified and proved by the assessee before the ld. AO.

6. We have heard the rival contentions and perused the material available on record. We have also given thoughtful consideration to the judicial precedent referred before us in the case of *Ivan Singh (supra)*. Admittedly, it is an undisputed fact that the loan liability in respect of unsecured loans totaling to Rs.9,27,33,249/- for fifteen loan creditors is outstanding for past several years and there was no money which was received by the assessee from these parties during the year under consideration. From the perusal of the order of ld. AO, more particularly paragraph 4.2 (reproduced above), we find that ld. AO has noted that all these loan creditors are brought forward unsecured loans from the preceding years. It is also an undisputed fact that assessment of the assessee for the immediately preceding year i.e. AY 2014-15 has been completed u/s. 143(3) of the Act and these unsecured loans had been subjected to the said assessment proceeding. Also, by referring to the financial statements placed on record by the assessee for FY 2010-11, we note that the balance of all these parties have continued at the same figure except for one, for which a payment of for Rs.2,63,080/- was made in FY 2012-13. Ld. AO has treated these unsecured loans as bogus loan liability by observing that these parties did not appear before him and their identity, creditworthiness and genuineness of the transactions were not established by the assessee. We also note that ld. AO had issued summons u/s. 131 of the Act to these parties asking them to appear before him, in response to which, certain parties appeared and their statements were taken on oath. By placing his

reliance on the statements recorded against the summons issued u/s. 131 of the Act, ld. AO proceeded to treat these unsecured loans as bogus loans liability and made the addition.

6.1. In the present set of facts, we note that no money has been received by the assessee from these loan creditors during the year under consideration. All these unsecured loans have been brought forward from the preceding year i.e. AY 2014-15 which has been subjected to scrutiny assessment u/s. 143(3) of the Act. The closing balance of all these unsecured loans in AY 2014-15 are the opening balance of AY 2015-16 and have remained same as closing balance also for the same year.

6.2. From the perusal of decision of Hon'ble Bombay High Court in the case of *Ivan Sing (supra)*, we observe that Hon'ble Court noted in para 12 about the main ingredients in section 68 of the Act which provides that the sum so credited in the books and which is not sufficiently explained, may be charged to tax as income of the assessee of "*that previous year*". We find that in the present factual matrix of the case, the said decision of Hon'ble High Court of Bombay fully supports the contentions made by the Ld. Counsel of the assessee. Therefore drawing force from the said decision and considering the undisputed factual matrix of the case, we hold that assessee is justified in submitting that the addition so made by the Ld. AO in respect of old loan liabilities is not permissible. Accordingly, ground nos. 3 and 4 taken by the assessee are allowed.

6.3. Since the addition made by the ld. AO in respect of unsecured loans by treating it as bogus loan liability has been deleted vide ground nos. 3 and 4 dealt in above, the consequential pro-rata disallowance made by the Ld. AO in respect of interest expenses is also directed to be

deleted and the ground no. 5 taken by the assessee in this respect is allowed. Accordingly, appeal of the assessee is partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 10th October, 2022

**Sd/-**

**(SANJAY GARG)  
JUDICIAL MEMBER**

**Sd/-**

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

Dated: 10.10.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. The CIT(A)-4, Kolkata.
4. The CIT .Kolkata
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata