

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष  
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.617/Kol/2019  
Assessment year: 2014-15

Rama Krishna Techno & Engineering (P) Ltd. ....Appellant  
(PAN: AAFCR0014B)

vs.

ITO, Ward-13(3), Kolkata .....Respondent

**Appearances by:**

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl, CIT, Sr.DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 1, 2022

Date of pronouncing the order : December 01, 2022

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 04.12.2018 of the Commissioner of Income Tax (Appeals)-5, Kolkata (hereinafter referred to as the 'Ld. CIT(A)') u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:

*"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was unjustified in confirming the addition of Rs.1,50,00,000/- made by the AO on account of unsecured loan by wrongly invoking the provisions of section 68 of the Act.*

*2. For that the Ld. CIT(A) ought to have considered that the three ingredients to escape the mischief of section 68 viz., the identity, creditworthiness and genuineness of the loan creditors were established.*

*3. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."*

3. Brief facts of the case are that during the assessment proceedings the AO noted that the assessee during the year had taken unsecured loan of Rs.1.62 cr. from various parties. To verify the identity and creditworthiness of the creditors and genuineness of the transactions the AO issued notice u/s. 133(6) of the Act. However, the said notices were received back unserved from four parties viz. M/s. Trustworthy Viniyog (P) Ltd., M/s. Virat Vintrade (P) Ltd., M/s. Rolex Dealers (P) Ltd. and M/s. Linkline Construction (P) Ltd. with the postal remark such as "Addressee cannot be located, Addressee not known, Addressee moved etc." On being informed, the assessee furnished some additional particulars in respect of three companies and requested to issue the notice to all of them. The AO considering the request of the assessee reissued the notices to the aforementioned four parties and all the notices again came back unserved. The AO thereafter held that the assessee had failed to prove the identity of the creditors and thus, the source of the same shown to have been received from them also remained unexplained. He accordingly invoked the provisions of section 68 of the Act and added the amount of Rs. 1.50 cr. shown to have been taken as unsecured loan from the aforesaid four parties into the income of the assessee as unexplained income.

4. Being aggrieved by the said order of the AO, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) also taken note of the fact that the notices sent to the creditors were received back unserved and since the existence of the concerned parties did not establish and further that the examination of the bank account details of the said creditors revealed that the sum was deposited in the bank account of these creditors and equivalent amount was transferred to the bank account of the assessee as loan on the same date. The Ld. CIT(A), therefore, noted

that the transaction shown by the assessee was highly suspicious and cannot be believed. He accordingly, confirmed the action so made by the Ld. AO. Being aggrieved, the assessee is in appeal before this Tribunal.

5. The Ld. Counsel for the assessee has submitted that all the four parties had replied to the notices issued by the AO u/s. 133(6) of the Act. In this respect the Ld. AR of the assessee has brought to our attention to the paper book pages 15 and 16 and submitted that the reply by M/s. Trustworthy Viniyog (P) Ltd., one of the creditors was sent by registered post on 28.12.2016 whereas, the impugned assessment order was passed on 28.12.2016 itself. The Ld. Counsel has submitted that the AO has failed to take note of the replies furnished by the concerned parties in response to notices issued u/s. 133(6) of the Act.

6. The Ld. DR, on the other hand, has submitted that since the notices sent by the AO were received back unserved, the AO has rightly proceeded to frame the assessment without further waiting for the receipt of reply to the notices u/s. 133(6) issued by the AO. The Ld. DR has further pointed out to the relevant observations made by the Ld. CIT(A) that the sums were deposited on the same date in the bank account of the respective creditors which were transferred to the account of the assessee. He has further submitted that the address of the two creditors was same which also creates doubt about the identity and existence of these creditors.

7. After hearing the rival submission, we are of the considered view that in this case further enquiries requires to be made to verify the existence and identity of the creditors and also relating to their creditworthiness and genuineness of the transactions. The replies filed by the concerned parties to the notices u/s. 133(6) of the Act have remained to be considered by the AO, though the AO otherwise was

justified in proceeding with the assessment when the notices sent through registered post was received back unserved with the remark of the postal authorities such as “Addressee cannot be located, Addressee not known, Addressee moved etc.” In view of the above circumstances, the impugned order of the Ld. CIT(A) is set aside and the matter is restored to the file of the Ld. CIT(A) with a direction to pass the appellate order afresh after making or cause to make necessary enquiries relating to the identity, creditworthiness of the creditors and genuineness of the transactions. Needless to say that the Ld. CIT(A) will give adequate opportunity to the assessee to present its case and pass a speaking order. Therefore, the appeal of the assessee is treated as allowed for statistical purposes.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 01 December, 2022

Sd/-

[डॉक्टर मनीष बोराड /**Dr. Manish Borad**  
लेखा सदस्य /**Accountant Member**

Dated: 01.12.2022.

*JD (Sr.PS)*

*Copy of the order forwarded to:*

1. Appellant – M/s. Ram Krishna Techno & Engineering (P) Ltd., C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> floor, Kolkagta-700069.
2. Respondent - ITO, Ward-13(3), Kolkata
3. CIT(A)-5, Kolkata.
4. CIT- , Kolkata.
5. CIT(DR), ITAT, Kolkata.

Sd/-

[संजय गर्ग /**Sanjay Garg**  
न्यायिक सदस्य /**Judicial Member**