

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.32/Ind/2020**  
**Assessment Year: 2013-14**

ITO 1(1) Bhopal	<b><u>बनाम/</u></b> Vs.	M/s. Amkay Colonisers and Builders Pvt. Ltd. 16, Amar Stambh, Z-1, M.P. Nagar Bhopal
(Appellant / Revenue )		(Respondent / Assessee)
<b>PAN: AAECA 6272 F</b>		
Assessee by	None	
Revenue by	Shri P.K. Mishra, CIT- DR	
Date of Hearing	12.12.2022	
Date of Pronouncement	20.12.2022	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 28.11.2019 passed by Ld. Commissioner of Income-Tax (Appeal)-1, Bhopal [**"Ld. CIT(A)"**] which in turn arises out of Assessment-order dated 31.03.2016 passed by Ld. ITO 1(1), Bhopal [**"Ld. AO"**] u/s 143(3) of Income-tax Act, 1961 [**"the Act"**] for Assessment-Year [**"AY"**] 2013-14, the revenue has filed this appeal on following grounds:

"1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,30,279/- disallowed by the AO u/s 14A of the Income Tax Act, 1961 read with rule 8D of the income Tax Rules, 1961.

2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 3,75,00,000/- made by the AO on account of unexplained income u/s 68 of the IT Act.

3. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.4,65,031/- made by the AO u/s 36(1)(iii).”

2. When the case was called for hearing, none appeared on behalf of assessee. On perusal of records, it is found that during earlier hearing also, nobody appeared on behalf of assessee, hence the notice of hearing was served through the office of Ld. DR. Vide letter F. No. CIT(DR)/ITAT/IND/2022-13 dated 21.11.2022, the office of DR has filed a service-report accompanied by a copy of the notice of hearing duly acknowledged by sign and seal of the director of assessee-company wherein the hearing fixed on today i.e. 12.12.2022 is duly notified to assessee. Still when the matter was called for hearing today, none appeared on behalf of assessee. But the Ld. DR representing the revenue was ready to argue. In view of this, the matter is being decided after hearing the Ld. DR and considering the material held on record ex-parte *qua* the assessee.

**Ground No. 1:**

3. This ground relates to the disallowance of Rs. 1,30,729/- u/s 14A read with Rule 8D on account of expenses incurred for earning exempted income.

4. During assessment-proceeding, the Ld. AO found that the assessee has derived revenue from agricultural-activity (exempted segment) as well as non-agricultural activity (taxable segment) and prepared separate P&L A/c of two segments but debited Sundry Office Expenses of Rs. 23,834/-, Directors' Remuneration of Rs. 1,80,000/- and Telephone Expenses of Rs. 1,21,867/- to the P&L A/c of non-agricultural activity, although these expenses are related to normal functioning of the company and therefore incurred for both segments. The Ld. AO computed 40% of these expenses as

incurred for earning agricultural activity (exempted segment) and thus made a total disallowance of Rs. 1,30,279/- consisting of Sundry Office Expenses of Rs. 9,533/-, Directors' Remuneration of Rs. 72,000/- and Telephone Expenses of Rs. 48,746/-.

5. During first-appeal, the Ld. AO dealt with this issue as under:

*“9. Ground No.1, 2, & 3:- Through these grounds of appeal the appellant has challenged the disallowance of Rs.9533/-, Rs.72,000/- & Rs.48,746/- (Rs.1,30,279/-). The appellant company is engaged in the cultivation of farm land at Firdos Farm Village Chiklod, District Raisen and shown agricultural income of Rs. 36,88,464/-. The appellant is also engaged in running a Swimming Pool and Health Club at Hotel Ashoka Lake View campus, Bhopal. **The office expenses debited to the profit and loss account cannot be exclusively considered for non-agriculture business. The appellant is also earning exempt income i.e. agriculture income and incurring the office expenses, director remuneration and telephone expenses. Therefore, the A.O. is justified in disallowing the expenses which are not related to normal functioning of the company. Therefore, the addition made by the A.O. amounting to Rs. 9,533/-, Rs. 72,000/- & Rs. 48,746/- (Rs. 1,30,279/-) is Deleted.** Therefore, appeal on these grounds are Allowed.”*

6. With the able assistance of Ld. DR, we note that in the underlined sentences of aforesaid para 9 of the appeal-order, the Ld. CIT(A) has himself observed that the A.O. is justified in disallowing the expenses and despite such observation, in the later part he has deleted the disallowance of Rs. 1,30,279/-. Thus, it is manifest that the Ld. CIT(A) has made a drafting mistake in the order and mistakenly deleted the disallowance, though the preceding observations made by him clearly demonstrate that he was of the view that the disallowance was required in the situation and that he agreed with the disallowance made by Ld. AO. Being so, we hardly need to mention anything further, suffice it to say that we too agree that the impugned expenses are incurred for normal functioning of the company and therefore incurred for entire business consisting of agricultural as well as non-agricultural activities. Therefore, the Ld. AO is quite justified in making 40% disallowance while framing assessment. Upholding the same, we dismiss the Ground No. 1.

**Ground No. 2:**

7. This ground relates to the addition of Rs. 3,75,00,000/- made by AO on account of bogus cash credit u/s 68.

8. During assessment-proceeding, Ld. AO observed that the assessee had shown a short-term borrowing of Rs. 3,75,00,000/-. When the Ld. AO /confronted the assessee about the nature and source of this borrowing, the assessee submitted that it had received an advance / security deposit from M/s Rajat Consumers and Services Private Limited ["RCSPL"] under an agreement of land to be used for herbal purpose. The assessee further submitted an unregistered agreement dated 07.11.2012 entered with RCSPL executed on a stamp-paper of Rs. 100/-. The terms of agreement are noted by Ld. AO on Page No. 3 and 4 of the assessment-order, according to which RCSPL was obligated to give a security deposit of Rs. 8,00,00,000/- but however deposited Rs. 3,75,00,000/- during the year. The assessee also filed a copy of its own bank account in which the receipt of Rs. 3,75,00,000/- on various dates, was credited. The assessee also filed a copy of the ITR and audited accounts of RCSPL. On perusal, Ld. AO observed that the registered office of RCSPL was said to be at 38/1345, Ravi Kiran Building, Shubash Nagar, Chembur, Mumbai but the address given in ITR was Ground Floor Shop No. 2, Santi Sadan, P K Tagore Street, Kolkata-700 071. Ld. AO issued notice dated 08.03.2016 u/s 133(6) to Mumbai address of RCSPL which was returned unserved by postal authorities with remarks "Left". Thereafter, the Ld. AO issued another notice to Kolkata address but the speed-post tracking report revealed that the notice could not be delivered due to non-availability and insufficient address. Thus, the AO observed that RCSPL was neither available at Mumbai address nor at Kolkata address. Ld. AO also issued a commission u/s 131(1)(d) dated 07.03.2016 to the PDIT (Inv), Kolkata. In response, the DDIT (Inv) Unit 3(1), Kolkata informed that though the summon u/s 131 was issued to M/s RCSPL on 15.03.2016 but there was no compliance by RCSPL. In order to gauge the creditworthiness of RCSPL, Ld.

AO also analysed its ITR and found that RCSPL had shown a meagre income of Rs. 30,521/-. Ld. AO further observed that as on 31.03.2012, RCSPL had shown loans & advances of Rs. 25,000/- which had increased to Rs. 11,71,53,969/- as on 31.03.2013 (inclusive of advance of Rs. 3,75,00,000/- to the assessee). With these observations, Ld. AO concluded thus:

*“7.7 In view of the above the assessee has failed to prove the genuineness of the transaction in taking deposits of Rs.3,75,00,000/-. The non compliance of notices u/s 133(6) issued to M/s. Rajat Consumers and Services Pvt. Ltd. and also non-compliance of summon issued by DDIT Investigation Kolkatta coupled with the fact that no progress towards herbar agricultures evidence that M/s. Rajat Consumers & Services Pvt. Ltd. is a paper/shell company. As per above discussion M/s. Rajat Consumer & Services Pvt. Ltd appears just provided entry to the assessee company. M/s. Rajat Consumers & Services Pvt. Ltd. has failed to prove its identity by responding to the notices issued u/s 133(6) as also summon issued u/s 131 of the DDIT Investigation Kolkata. Therefore, addition of Rs.3,75,00,000/- is being made to the total income of the assessee on account of credit from unexplained sources for which genuineness is not established. Penalty proceedings under section 271(1)(c) are being initiated for concealing the particulars of income and furnishing inaccurate particulars of income.”*

9. During appellate proceeding, Ld. CIT(A), however, deleted the addition by observing and holding thus:

*“10. **Ground No. 4:-** Through this ground of appeal the appellant has challenged the addition of Rs. 3,75,00,000/- on account bogus cash credit.*

***10.1** The Appellant has entered into a JV Agreement with Rajat Consumers and Services Private Limited ('RCSPL'). The said agreement was duly submitted during the course of assessment proceedings.*

*As per the terms of the agreement, the Appellant was eligible to receive an advance of Rs. 8 crores, which was to be adjusted against the profits arising in the future years from the agricultural activities, envisaged as per the terms of the agreement.*

*The advance of Rs. 3.75 crores has been in pursuant to the above referred agreement. The same has also been recorded in the books of accounts of the Appellant.*

*During the course of assessment proceedings, the Appellant furnished the following details of RCSPL in support of the transaction:*

- JV Agreement entered by the Appellant*
- Transaction / ledger account with the Appellant*

- Copy of bank account statement reflecting the advance given
- Acknowledgment of Return of Income for FY 2012-13
- Copy of Balance Sheet for the year ending 31 March 2013

**10.2** The Appellant has discharged its onus of offering explanation in respect of the credit found in its books of accounts. The A.O. made the addition by applying the section on account of cash credit.

The provisions of section 68 of the IT Act are as under:

**68.** Where any sum is found credited in the books of an Appellant maintained for any previous year, and the Appellant offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the Appellant of that previous year:

**Provided** that where the Appellant is a Company (not being a Company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such Appellant-Company shall be deemed to be not satisfactory, unless-

a) the person, being a resident in whose name such credit is recorded in the books of such Company also offers an explanation about the nature and source of such sum so credited; and

b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

**Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital Company as referred to in clause (23FB) of section 10."

From the perusal of the above section, it is clear that as per the mandate of section 68 of the IT Act the said section applies to:

- (i) cash credits for which assessee offers no explanation about the nature and source thereof or
- (ii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory. In other words, the said section applies to instances of "unexplained" credits.

In the present case, the action of the AO in invoking the provisions of section 68 merely because the notices were returned unserved / unattended, without considering the other documentary evidence is unjustifiable.

The A.O. has not brought on record any evidence to refute the documentary evidence submitted by the appellant. The entire basis for invoking the provisions of section 68 of the IT Act by the learned A.O. is on the fact that notices issued under the IT Act were not served / not attended to. **No cogent reason has been stated in the impugned order which undermines the conclusive evidence submitted to corroborate the genuineness of the transaction undertaken such as JV agreement, confirmation from party, income-tax return and financial statements and the same has been rejected on capricious and arbitrary grounds.** Further, the opinion of the AO as stated in the impugned order is not based on proper appreciation of material and other circumstances available on record.

In this regard, reliance is placed on the decision of the **Hon'ble Supreme Court** in the case of **Commissioner of Income-tax v. P. Mohanakala ([2007] 161 Taxman 169)** where in the Hon'ble Supreme Court has observed that opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The relevant paragraph of the judgment is reproduced below for ready reference:

*"The expression "the assessee's offer no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on paper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."(Emphasis **Supplied**)*

**10.4 The Hon'ble Calcutta High Court** in the case of **CIT v. S.C. Ghosal ([1977] 106 ITR 980)**. In this case, based on evidences such as existence of creditors, assessment file number of creditors and the confirmation received from the creditor, the High Court upheld the order of the Tribunal. The relevant extract of the judgment is reproduced below for your ready reference:

*"On a careful consideration of the facts and circumstances we are unable to accept his contentions. It does not appear to us that the Tribunal has decided the matter only on the basis of onus. Positive evidence had been adduced by the Appellant which was accepted by the Tribunal. To reiterate, such positive evidence is (a) the existence of the creditors (b) the assessment File numbers of the creditors, (c) the confirmation letters of the creditors in support of the Appellant's claim, and (d) books of account at least in the case of one creditor, i.e., Bhagwandas Purushottamdas of Bangalore, and (e) the discharged hundis. The Tribunal has duly taken note of such positive evidence and the fact that there was no contrary evidence forthcoming from the revenue. The revenue only relied on the prevalent practice of utilising fictitious hundis through bogus persons. It appears to us that the*

Tribunal accepted the evidence of the Appellant as sufficient to discharge their preliminary onus and in that process further noted that there was no further evidence to the contrary. In the absence of any such evidence the contentions of the Appellant stood proved."(Emphasis Supplied)

The **Hon'ble Allahbad High Court** in the case of **Commissioner of Income-tax v. Avant Grade Carpets Ltd. (2015 20 Taxman 165)** wherein after considering the balance sheet of lender as well as confirmatory certificates in respect of advances given to assessee, the additions made the AO under the provisions of section 68 of the IT Act, were deleted. The relevant extract of the judgment is reproduced below for your ready reference:

"On perusing the records, it appears that the finding that the assessee was rerouting its own funds was based on surmise. The CIT (A) had the benefit of considering the balance sheet of the lender as well as confirmatory certificates in respect of the advances which the lender in turn had received. There was no material to establish that the assessee was engaged in a transaction for routing its own funds. The view which has been taken by the Tribunal is a possible view to take and there is no material on the record for this Court to hold that the view of the Tribunal suffers from any perversity. Hence the appeal will not give rise to any substantial question of law. (Emphasis Supplied)

The **Hon'ble Gauhati High Court** in the case of **Jalan Timbers v. CIT [1997] 90 Taxman 298** (Copy of the judgment is enclosed at **Paper Book - Volume 1, Page No. 104 to 106**) wherein based on evidences such as returns of the creditors and acceptance of such income-tax returns during the course of assessment, creditors have been held to be genuine. The relevant extract of the judgment is reproduced below:

"In the instant case, the amounts were shown in the income-tax return of the Appellant. Besides, the creditors had also shown in the returns about giving of the loan to the Appellant. Strangely, the ITO while making the assessment in respect of the three creditors above named accepted the returns. This itself will go to show that the amount received by the Appellant was at least prima facie genuine. As the ITO had accepted the returns of the three creditors it should go to mean that the amounts given by those creditors were also genuine."

**10.5** In instant case also, similar evidences as discussed in the case of above mentioned High Court judgments, such as tax returns, balance sheet, balance confirmation statement were available with the AO. Despite the same, the AO has made the addition on arbitrary grounds, without providing any cogent reasons for refuting the evidence available on record.

Here, reliance is placed on the decision of the **Hon 'ble Ahmedabad Tribunal** in the case of **Claris Lifesciences Ltd v. ACIT ([2008] 112 ITD 307)** wherein it has been held that where the explanation by the Appellant is prima facie reasonable it cannot be rejected on capricious and arbitrary grounds. The relevant part of the judgment is reproduced below for ready

reference.

*"Assessee furnished before Assessing Officer whatever evidence was available with it, which in our opinion was sufficient to reasonably discharge primary onus cast on the Appellant in terms of section 68. It was for the Assessing Officer to rebut the same on the basis of available record, instead Assessing Officer merely picked up non-filing of confirmations as a tool to discard other material and explanations of the Appellant. Rejection of the explanations of the Appellant is not based on objective considerations but by way of summary rejection. In our view, Appellant having given reasonably plausible explanations, which has not been found to be wrong or unsatisfactory on any objective consideration, we hold that cash credit in question cannot be added as unexplained cash credit under section 68 of the Act. Accordingly, this ground of Appellant is allowed."(Emphasis **Supplied**)*

The AO has observed that the creditworthiness of the party, which has advanced the sum, has not been proved / substantiated by the Appellant. The balance sheet of RCSPL has been duly filed during the course of assessment proceedings. On a perusal of the same, it is amply clear that the party advancing the money is a fiscally sound company, having reserves amounting to Rs. 49,52,26,086/- and revenue for the FY 2012-13 amounting to Rs. 43,65,438/- and as such, it cannot be said that the company has not proved the creditworthiness.

In this regard, reliance is placed on the decision of the **Hon'ble Delhi High Court** in the case of **Goodview Trading (P.) Ltd. [2017] 77 taxmann.com 204**. In the instant case, the High Court has decided the issue of section 68 in favour of the assessee, where the applicant companies had substantial means to invest in company issuing shares. In the instant case, RCSPL, which has advanced money pursuant to a JV agreement had substantial means to give an advance to the Appellant company. The relevant part of the judgment in the case of Goodview Trading (P.) Limited (supra) is reproduced below for ready reference:

*It is quite evident from the CIT (A)'s reasoning in paragraph 4.3, that the materials clearly pointed to the share applicants' possessing substantial means to invest in the assessee's company. The AO seized certain material to say that minimal or insubstantial amounts was paid as tax by such share applicants and did not carry out a deeper analysis or rather chose to ignore it. In these circumstances, the inferences drawn by the CIT (A) are not only factual but facially accurate. (Emphasis **Supplied**)*

**10.6** The A.O. has also observed that income as per the return of income filed by RCSPL is Rs. 30,5201-. The said income quoted in the assessment order by the learned A.O. is the taxable income. As evident from the balance sheet of RCSPL, the company is in the business of agriculture earning predominantly exempt income. Accordingly, it would be incorrect to ascertain the financial position of RCSPL merely on the basis of the return of income submitted. Further, to understand the issue of advance given by RCSPL has not been

challenged by the Assessing Officer during the course of assessment proceedings RCSPL. The Assessing Officer of RCSPL in the assessment order mentioned that RCSPL is engaged in the investment in the property. The assessment order u/s 143(3) has been passed on 26.02.2016. the A.O. of RCSPL stated that the appellant was having investment as on 01.04.2012 and 31.03.2013 at Rs. 50,05,12,5731- and Rs. 38,58,83,373/-.

The A.O. ought to have considered other evidences submitted by the Appellant, such as audited financial statements, confirmation received and the fact that the amount was received through the regular banking channels.

Reliance is placed on the decision of the **Hon'ble Delhi Court** in the case of **Divine Leasing and Finance ([2009] 299 ITR 268)**. In the instant case, where there were documentary evidences in the form of bank statements, Permanent Account Number, financial statements showing creditworthiness, the High Court has held that the assessee's case would not be negated merely because creditor / share applicant had not appeared before the Assessing Officer. The relevant extract of the judgment is reproduced below for your honour's ready reference:

"In this analysis, a distillation of the precedents yields the following propositions of law in the context of section 68 of the Income-tax Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Shares Application Forms, Share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the assessee; (5) the Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without more, against the assessee; (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation." (p. 453).

9. We are of the view that no substantial question of law arises in these appeals. Accordingly, these appeals are dismissed. **(Emphasis Supplied)**"

**10.7** The above referred judgment has been followed in another judgment of the **Delhi High Court** in the case of **CIT v. Dwarkadhish Investment (P.) Ltd. [2011] 330 ITR 298**.

Similar view has been taken by the **Bombay High Court** in the case of **CIT v. Orchid Industries (P.) Limited ([2017] 397 ITR 136)**. The relevant extract

is reproduced below for ready reference:

*"The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as P AN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case. **(Emphasis Supplied)***

*The appellant has not taken the loan from RCSPL. The appellant has also not taken any share capital from RCSPL. Here the appellant has entered into the joint venture agreement to develop the land available with the appellant. The availability of land and sale of agriculture produce has been established by the appellant during the course of assessment proceedings. The A.O. in the assessment order accepted that the appellant is engaged in the agricultural activity and owning the farm land at village chiklod. The appellant is owning 389 acre land which is substantial amount of land. The RCSPL company is engaged in the investment in the property as the same has been mentioned by the A.O. in the assessment order dated 26.02.2016. Therefore, it cannot be said that the investor i.e. RCSPL is not engaged in any business activity. The A.O. also in the assessment order confirmed that amount has been received through RTGS. Strictly speaking, both i.e. appellant and RCSPL has entered into the business agreement through joint venture. The agreement is a written agreement. The agreement is a written agreement. The appellant is in receipt of amount as a business transaction. The appellant has not taken the loan from RCSPL. The appellant has not borrowed the fund from RCSPL but has entered into the business agreement and it is falling within the measure of commercial expediency. Both the parties has entered into the joint venture to carry out the business. The appellant is having substantial amount of land and RCSPL was having sufficient fund for investment. Since, in the case of RCSPL, the order has been passed u/s 143(3) of the Act by the ITO, therefore, the identity cannot be doubted and RCSPL has transferred the fund to the appellant through R TGS, therefore, genuineness of the transaction cannot be doubted. There is a nexus between the investment and purpose of the business. On the facts and circumstances of the case, both parties came together to do the business and the money transaction is not falling within the purview of loan or cash credit. Therefore, the addition made by the A.O. amounting to Rs. 3,75,00,000/- is **Deleted**. Therefore, appeal on this ground is **Allowed**.*

10. Ld. DR placed a very strong reliance on the findings made by Ld. AO.

He submitted that the assessee has failed to bring RCSPL before the AO. Not only that, the statutory notices issued by Ld. AO u/s 133(6) also remained served. Further, the summon issued by the office of DDIT (Inv) was also not responded by RCSPL. Ld. DR submits that it is true that the assessee has submitted ITR and Balance-Sheet of RCSPL, but the non-compliances of statutory notices demonstrate that RCSPL is a paper company and do not have any actual / physical identity. Ld. DR went on arguing that the Ld. CIT(A) has mentioned at one place in his appeal-order "*The A.O. has not brought on record any evidence to refute the documentary evidence submitted by the appellant.*" Ld. DR submitted that this finding by Ld. CIT(A) is perverse in much as the Ld. AO has well attempted by means of statutory weapons of section 133(6) / 131 of the act and finding non-service / no-response from RCSPL, has come to a conclusion that the RCSPL is a paper company. This way, according to Ld. DR, the AO has categorically refuted the documentary evidences submitted by the assessee. With these submissions, Ld. DR prayed to uphold the addition made by Ld. AO.

11. On a careful consideration of the submissions of Ld. DR and the orders of lower authorities available on record, we note that the assessee has filed a copy of ITR and audited Balance-Sheet of RCSPL, which is a part of record of income-tax department itself. Further, the assessee has also filed a copy of the agreement executed with RCSPL in terms of which the advance of Rs. 3,75,00,000/- was received. It is further admitted by Ld. AO that the Balance-Sheet of RCSPL discloses the advance of Rs. 3,75,00,000/- given to the assessee. However, we note that the Ld. CIT(A) has at once place in Para No. 10.3 of his order mentioned "*No cogent reason has been stated in the impugned order which undermines the conclusive evidence submitted to corroborate the genuineness of the transaction undertaken such as JV agreement, **confirmation from party**, income-tax return and financial statements and the same has been rejected on capricious and arbitrary grounds.*" Here the Ld. CIT(A) has mentioned that the assessee has filed "A/c confirmation of RCSPL" but this fact is no coming from assessment-order.

Furthermore, at another place in Para No. 10.6 of his order, the Ld. CIT(A) has mentioned “Further, to understand the issue of advance given by RCSPL has not been challenged by the Assessing Officer during the course of assessment proceedings RCSPL. The Assessing Officer of RCSPL in the assessment order mentioned that RCSPL is engaged in the investment in the property. The assessment order u/s 143(3) has been passed on 26.02.2016, the A.O. of RCSPL stated that the appellant was having investment as on 01.04.2012 and 31.03.2013 at Rs. 50,05,12,5731- and Rs. 38,58,83,373/-.” As against this, the Ld. AO has mentioned “M/s Rajat Consumers & Services P Ltd. Kolkata has e-filed its ITR on 30.03.2015. Said company has shown income of Rs. 30,521/- for the AY 2013-14. As per balance sheet as on 31.03.2013, loans and advances of Rs. 11,71,53,969/- was shown including advances of Rs. 3,75,00,000/- given to the assessee. However, loan and advances as on 31.03.2012 was shown at Rs. 25,000/-.” Thus, there is a mis-match in the financial figures of RCSPL, which is the main basis to accept / reject the creditworthiness of RCSPL. Therefore, it is necessary to re-verify these material discrepancies in the orders of lower authorities. At this stage, finding no assistance from assessee, we are unable to rule out these discrepancies and ascertain the correct position. Therefore, in such circumstance, we are inclined to remit this ground to the file of Ld. CIT(A) who will take a call on these aspects and pass a reasoned order to settle the grievance of assessee involved in this ground. Needless to mention that the assessee shall be entitled to place before Ld. CIT(A) all evidences as may be in his possession for a proper adjudication of the issue involved in this ground. Thus, the Ground No. 2 is remanded back to Ld. CIT(A).

**Ground No. 3:**

12. This ground relates to the disallowance of interest expenditure of Rs. 4,65,031/- claimed by assessee u/s 36(1)(iii).

13. Ld. AO has made this disallowance by observing and holding thus:

“8. As per balance sheet as on 31.3.2013, the assessee has advanced an amount of Rs.6,34,28,797/- to various parties. As per written submission filed the assessee has stated that no interest was charged on amount of advance given to various parties. It is further noticed that the assessee company has taken secured and unsecured loan of Rs.41,94,728/- and Rs.3,79,48,770/- as on 31.03.2013 and paid interest on these loans. It is thus clear that the assessee has advanced interest free loan out of interest bearing funds and debited interest expenses. As per written submission filed on 19.02.2016 the assessee stated that there is no stipulation of interest with the parties to whom advance is given and therefore no interest is charged from them. It is also noticed that the assessee has also given advances to Shri Manmohan Agarwal Director of the company and not charged any interest on it. It is also noticed that assessee company has given advance of Rs.1,93,00,000/- to M/s. Seven Star Realcon Pvt. Ltd. and Rs.1,79,70,000/- to M/s. Sangam Associates for purchase of flats. Copy of agreement is also produced. In order to examined the issue summon u/s 131 were issued to M/s Seven Star Realcon Pvt. Ltd. and M/s. Sangam Associates. However, compliance of the summons was not done on the date of hearing 30.03.2016. Therefore, purpose of advancing loan above company/firm is not established. In view of this interest expenses claimed by the assessee amounting to Rs.4,65,031/- is being disallowed under section 36(1)(iii) of the Act and addition of Rs.4,65,031/- is made to the total income of the assessee.”

14. Ld. CIT(A) has deleted the disallowance by observing and holding thus:

**“11. Ground No. 5:-** Through this ground of appeal the appellant has challenged the disallowance of Rs. 4,65,031/-. The A.O. made the addition on account of disallowance of interest on notional basis. The appellant has given the loan and advance to the persons from own fund and interest free fund. It is accepted principle that if there is interest free fund available to the appellant sufficient to meet its investment and at the same time the appellant raised the loan, it can be presumed that the investment is from the interest free fund available. It is not the case that the appellant has diverted interest bearing borrowed funds for investment not earning income. Therefore, the addition made by the Assessing Officer amounting to Rs.4,65,031/- is deleted. Therefore the appeal on these grounds is allowed.”

15. With the able assistance of Ld. DR, we note that the Ld. AO has given adequate findings for making this disallowance. On the other hand, the Ld. CIT(A) has given very summary and cryptic order and given relief to the assessee. A bare reading to the paragraph of Ld. CIT(A) indicates that he has stated “It is accepted principle that if there is interest free fund available to the appellant sufficient to meet its investment and at the same time the

appellant raised the loan, it can be presumed that the investment is from the interest free fund available.” Thus, the Ld. CIT(A) has proceeded on presumption basis, whereas the Ld. AO has given concrete findings in his order. In this scenario, we are in agreement with the Ld. DR that the disallowance ought to be upheld. We therefore reverse the action of Ld. CIT(A) and uphold the disallowance. Thus, the Ground No. 3 is hereby dismissed.

**16. In the result, this appeal of revenue is partly allowed.**

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 20/12/2022.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 20.12.2022

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore

1.	Date of taking dictation	13.12.22
2.	Date of typing & draft order placed before the Dictating Member	13.12.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	13.12.22
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	