

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

***(Conducted through Virtual Court)***

**ITA No.571/Ind/2019  
Assessment Year: 2012-13**

The Income Tax Officer – 4(2), vs. M/s. Realworks Infrabuild Pvt. Ltd.,  
Indore. 5/5A, Navratan Baugh Road,  
Manormaganj, Indore.  
[PAN – AAFCR 2171 K]  
(Appellant) (Respondent)

Assessee by : Ms. Richa Parwal, CA  
Respondent by : Shri Ashish Porwal, Sr. DR

Date of hearing : 14.12.2022  
Date of pronouncement : 10. 01.2023

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the Revenue against the order dated 27.02.2019 passed by the CIT (A)-II, Indore for the Assessment Year 2012-13.

2. The Revenue has raised the following grounds of appeal:-

- “1. Whether on the facts and in the circumstances of the case Ld. CIT(A) was justified in deleting the addition made of Rs.2,94,75,000/- in respect of accommodative entries received by the assessee, even though the assessee failed to prove the genuineness of transactions and creditworthiness of the companies from whom entries have been obtained.
2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in holding that there was no evidence on records to prove that entries were sham or bogus even though there was a clear report from the Kolkata Investigation Wing for the same and also ignoring the settled law that onus to prove the genuineness of transactions and creditworthiness of the persons is cast upon the assessee and some of the company such as M/s. Regency Trust Limited, Kolkata were established penny stocks company and accommodation entry provider.

3. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has failed to apply the ratio of preponderance of probability laid down by the Hon'ble Supreme Court in the case of CIT vs. Sumati Dayal 214-ITR-801, as the same is squarely applicable to the facts of the case."*

3. The assessee company filed its return of income at Rs. nil on 31.03.2013. In this case the Department was in possession of information of the assessee's transaction with an entry provider Shri Narendra Kumar Jain, who being Director of various companies including one M/s. Cube Infrastructure, P. Ltd., Kolkata and admitted of giving accommodation entries in the garb of share application money. The extract of the accounts were available with the department which were seized during proceedings under Section 132 of the Income Tax Act, 1961 conducted at Kolkata. Upon receiving this information from the Investigation Wing, a notice under Section 148 of the Act was issued in the case on 27.03.2017 after obtaining statutory approval from competent authority. In response to the notice under Section 148 of the Act, the assessee e-filed return of income and declared the income of Rs.nil. Notices under Sections 143(2) and 142(1) were issued and subsequently along with questionnaire dated 22.11.2017. The Assessing Officer submitted para-wise reply with the evidences regarding affairs of the company. The Assessing Officer observed that the assessee during the present A.Y. acquired funds such as unsecured loans from M/s. Sunita Jain Sharecon P. Ltd. Rs.13,25,000/- and M/s .Regency Trust Limited, Kolkata Rs.26,00,000/- as well as share application money from M/s. Cuba Infrastructure P. Ltd., Kolkata Rs.2,55,50,000/-. The Assessing Officer made addition of Rs.13,25,000/- and Rs.26,00,000/- as unexplained credits from M/s. Sunita Jain Sharecon P. Ltd. & M/s Regency Trust Limited. The Assessing Officer also made addition in respect of unexplained credits from M/s. Cube Infrastructure P. Ltd. to the extent of Rs.2,55,50,000/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessee failed to establish that M/s. Sunita Jain Sharecon P. Ltd. is not Paper Company and the transaction was genuine. The Ld. DR

further submitted that in respect of addition of Rs.26,00,000/- that of M/s Regency Trust Limited, the assessee has not proved genuineness and credit worthiness. As regards addition in respect of M/s Cube Infrastructure P. Ltd., the assessee has not given details as relates to development of construction of the said land and, therefore, the Assessing Officer has rightly made the additions. The Ld. DR submitted that the CIT(A) erred in deleting the addition in respect of accommodation entries received by the assessee even though the assessee failed to prove the genuineness of the transactions and the creditworthiness of the companies from whom entries have been obtained. Ld. DR further submitted that there was no evidence on record to prove that the entries were sham or bogus even though there was a clear report from the Kolkata Investigation Wing for the same and also ignoring the settled law that onus to prove the genuineness of transactions and creditworthiness of the persons is cast upon the assessee to establish in case of M/s. Regency Trust Limited., Kolkata which was a penny stock company and accommodation entry provider.

6. The Ld. AR submitted that the assessee submitted copies of confirmation, copy of ITR & Bank statements to prove the genuineness, creditworthiness and identity of the parties related to these transactions during the assessment proceedings. Ld. AR further submitted that Shri Pawan Agrawal being a common Director of the Companies arranged for short term loan funds when the assessee was in dire need of funds to pay the instalments due to IDA. The Ld. AR submitted that no cash deposit was made in the account of the assessee company before advancing of loan and the company has duly filed return of income and made out the requirements of ROC and hence is a regular assessee. As regards the addition in respect of Ma/s Regency Trust Limited, Kolkata, the creditor company is registered at Kolkata and the Corporate Office is at Mumbai. The original assessment confirmation of loan was submitted by the assessee along with copy of acknowledgement, bank statement etc. As relates to M/s Cube Infrastructure P. Ltd., the allotment by the IDA is a non-recoverable allotment and is in parlance with the ownership of the land if all the conditions are met with by the allottee. Possession of the land is not given until 50% of the instalments are paid, hence any development, construction could be undertaken till then and, therefore, possession was not obtained until 2018, estimation of the then market condition, market feasibility of the project, nature of project, FSI produce cost was not determined. This agreement in 2011 was finalised

and, therefore, this addition was not justifiable. The Id. AR submitted that these are not share application transactions but the transaction related to developing of the land. The Ld. AR further submitted that the CIT(A) has taken cognisance and partly allowed the addition as such. Thus, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. In respect of M/s. Sunita Jain Sharecon P. Ltd., the CIT(A) has categorically mentioned that the details regarding the said transactions were there on the record and therefore the same if a genuine transaction related to unsecured loan or the amount in respect of development agreement. In respect of M/s. Regency Trust Limited also the CIT(A) has given finding that the assessee has explained all the details submitted before the Assessing Officer which made the transaction creditworthy and genuine. It is pertinent note that the Assessing Officer at no point of time held that the agreement related to development of land was not in consonance with the loan obtained from these three companies. In respect of advance taken from M/s Cube Infrastructure P. Ltd., was duly reflected in Profit & Loss account of the assessee along with confirmations given by the said party and the explanation of the funds available before M/s Cube Infrastructure P. Ltd., the documents submitted before the Assessing Officer clearly shows that this is genuine transaction and the parties who have given the advances has sufficient creditworthiness and, therefore, there is no need to interfere with the findings of the CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Order pronounced as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 on this 10<sup>th</sup> day of January, 2023.

*Sd/-*  
**(BHAGIRATH MAL BIYANI)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Indore, the 10<sup>th</sup> January, 2023**

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*Copies to:*

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*