

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.4974/Del/2018  
Assessment Year: 2014-15

ACPL Design Pvt. Ltd.,  
J-103, Ground Floor,  
South Extension-1,  
New Delhi – 110 049.

Vs. ITO,  
Ward-1(1),  
New Delhi.

PAN: AAHCA5958K

(Appellant)

(Respondent)

Assessee by	:	Shri Manoj Kumar, CA
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	13.02.2023
Date of Pronouncement	:	05.04.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 09.05.2018 of the CIT(A)-1, New Delhi, relating to Assessment Year 2014-15.

2. The Id. Assessee's representative submitted that the assessee does not want to press legal grounds No.1, 2 and 3. Therefore, the same are dismissed as 'not pressed. The remaining effective grounds No.4 and 5 read as follows:-

*"4. That the CIT(A) has erred in law and on facts in sustaining the addition u/s 68 of Rs.25,73,000.00 on account of unsecured loan made by AO on untenable and illegal grounds. Hence the addition as such may be deleted.*

*5. That the CIT(A) has erred in law and on facts in sustaining the addition of Rs.6,52,362.00 on account of foreign travel expense made by*

*AO on untenable and illegal grounds. Hence the addition as such may be deleted."*

3. Apropos grounds No.4 and 5, the Id. AR submitted that the AO made addition on the allegation of non-service of notice issued u/s 131 of the Act to the creditors ignoring that the creditors did file response to his notices u/s 133(6) of the Act. The Id. AR vehemently pointed out that merely because the bank statements and ITR of creditors could not be filed before the AO and response to notice u/s 133(6) of the Act were not complied with as per the AO, then it was the duty of the AO to issue show cause notice to the assessee to comply with the said defects. But, without any such exercise, the AO proceeded to make addition in the hands of the assessee on account of unsecured loan which is untenable and illegal. The Id. AR also submitted that the Id.CIT(A) was also not correct and justified in upholding the addition made by the AO on the similar grounds.

4. The Id. AR submitted that the assessee obtained unsecured loan from five creditors and the loan was repaid before initiation of scrutiny proceedings by the AO. Placing reliance on the judgement of the Hon'ble High Court of Gujarat dated 05.07.2012 in R/Tax Appeal No.306 of 2022 in the case of *PCIT vs. Ambe Tradecorp Private Limited*, the Id. Counsel submitted that when the assessee successfully established the identity and credit worthiness of the creditor along with genuineness of the transaction which was routed through banking channels, then, the amount of unsecured loan cannot be added in the hands of the assessee, particularly, when the assessee had repaid the amount of unsecured loan in the subsequent year squaring up the liability.

5. Replying to the above, the Id. Sr. DR strongly supported the action of the AO as well as the first appellate order and submitted that the AO did not receive proper response to his notice u/s 133(6) of the Act from one creditor Guru Kirpa Apparels and response on other four notices were incomplete. Therefore, the AO was right in making addition in the hands of the assessee. However, he did not controvert the factual position that the assessee has repaid the entire amount of unsecured loan of all five parties before initiation of scrutiny proceedings by the AO.

6. On careful consideration of the rival submissions, first of all, we respectfully note that the Hon'ble High Court of Gujarat, under identical facts and circumstances in the case of *PCIT vs. Ambe Tradecorp Private Ltd. (supra)*, held as follows:-

*"3.5 While the revenue has tried to put up a case that the transactions were in the nature of accommodation entries, this case has only presumptive and assumptive value not supported by any factual data. On the contrary, on the basis of the material before the authorities, the transactions were found to be genuine.*

*4. Learned advocate for the appellant attempted to emphasize that for the purpose of application of Section 68 of the Act, three ingredients were necessary. Firstly identity of the parties to the transaction of loan, second is the creditworthiness of such parties and thirdly the genuineness of the transaction. It was submitted in vain that neither of the ingredients were satisfied.*

*5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.*

*6. The Tribunal rightly recorded in para 29 of the judgment,*

*"Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld.CIT-A. "*

*7. For the reasons recorded above, no question of law muchless substantial questions arises in this appeal. It stands meritless and accordingly dismissed."*

7. In view of the above, when we logically analyze the factual position of the present case, then, we find that the AO initiated scrutiny assessment proceedings by issuing notice u/s 143(2) of the Act on 17.09.2015 and completed the assessment on 30.12.2016 by passing scrutiny assessment order u/s 143(3) of the Act. At the same time, from the copy of the bank statement filed by the assessee at pages 1-9 of the assessee's paper book, we clearly note that the assessee had repaid the entire amount of unsecured loan from the said five parties before initiation of scrutiny assessment proceedings by the AO. Therefore, respectfully following the proposition rendered by the Hon'ble High Court of Gujarat in the case of *Ambe Tradecorp Private Limited (supra)*, we hold that the AO was not correct and justified in making the addition in the hands of the assessee by holding the unsecured loan as unexplained. Therefore, ground No.4 of the assessee is allowed and the AO is directed to delete the addition.

8. Apropos ground No.5 of the assessee, the Id. Counsel of the assessee submitted that as the company is engaged in the business of providing architectural consultancy and providing new designs and solutions to its clients and, thus, it always tried to get new architectural ideas by visiting various historical and modern sculptures which also required foreign travels. The Id. AR submitted that both the directors of the company, for the said purpose, planned to visit UK and Switzerland due to their architectural and historical importance, therefore, foreign travel was for the purpose of business of the assessee and the entire expenses incurred by the assessee on foreign travel was to be allowed. The Id. AR submitted that the AO was

not correct and justified in disallowing 50% claim of the assessee on account of foreign travel expenses and the Id.CIT(A) was also not correct in upholding the disallowance. The Id. Counsel submitted that the assessee has submitted all relevant documentary evidences relating to foreign tour expenses which are also placed at pages 16-27 of the assessee's paper book and after considering the plausible explanation and documentary evidence of the assessee the entire claim of the assessee on foreign travel expenses may kindly be allowed.

9. Replying to the above, the Id. Sr. DR submitted that despite several opportunities the assessee could not file the details, purpose and documentary evidence explaining the business expediency of foreign tour expenses undertaken by the directors of the company Shri Kulmeet Singh Shangari and Smt. Jasreem Kaur to UK and Switzerland. Therefore, the AO as well as the Id.CIT(A) are right in making 50% disallowance of total claim by considering the element of personal benefit.

10. On careful consideration of the above rival submissions, first of all, we note that as noted by the AO in para 3 of the assessment order, the assessee company is engaged in the business of providing architectural consultancy solutions to its clients for all kinds of buildings and structures and also giving services relating to architecture. The AO disallowed 50% of claim placed by the assessee on account of foreign travel expenses and when the issue was carried to the first appellate authority, the Id. First appellate authority, agreeing to the allegation of the AO, upheld the addition. In our humble understanding, the AO as well as the Id.CIT(A) has allowed part claim of the assessee on account of foreign travel expenses which gives support to the contention of the Id. AR that the quantum of expenditure has not been

disputed and purpose of travel has also not been disputed by considering the documentary evidences filed by the assessee. However, the AO disallowed part claim of 50% on the allegation that the details, purpose and documentary evidence have not been filed by the assessee. In this regard, we are of the opinion that looking into the business activity undertaken by the assessee, i.e., providing services of architectural consultancy solutions for all kinds of business and structures and also giving advisory services relating to architecture, it is required to be updated as per the requirements of the clients. In such a situation, if the directors of architect company makes foreign travel to enrich and enhance their knowledge and ideas, then, the purpose of travel is self explained. So far as the documentary evidence is concerned, the Id. Sr. DR has not disputed that the documentary evidence relating to foreign tour expenses incurred by the assessee company available at pages 16-27 were also placed before the authorities below including the ITO, Ward 1(1). In such a situation the only issue remains is about the element of personal benefit in the in the foreign tour which cannot be denied especially when the travel has been made to the most short foreign tour destinations, i.e., UK and Switzerland. At the same time, we also note that the disallowance of 50% of total expenses is also excessive. Therefore, in our humble understanding, to cover up the element of personal benefit resulting into leakage of revenue, the disallowance of 30% of total claim of the assessee is sufficient. Therefore, ground No.5 of the assessee is partly allowed and disallowance of 50% is restricted to 30% of the total claim of the assessee on account of foreign travel expenses. Accordingly, ground No.5 of the assessee is partly allowed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 05.04.2023.

Sd/-

(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Dated: 05<sup>th</sup> April 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi