

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1959/MUM/2019
(Assessment Year: 2012-13)**

KBA Infrastructure Pvt. Ltd.,

31, Jai Hind Cottage, ShivajiRaje Marg,

Vile Parle (East) Mumbai - 400057

[PAN: AADCK8198B]

.....

Appellant

**Deputy Commissioner of Income-tax,
Ward-10(1)(2),**

Vs

2nd Floor, Room No. 20, Aayakar Bhavan,

M.K. Road, Mumbai - 400020

.....

Respondent

Appearance

For the Appellant/Assessee

: Ms. Rashmi Vyas

For the Respondent/Department

: Smt. Vranda U Matkari

Date

: 05.04.2023

Conclusion of hearing

: 27.04.2023

Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 26/02/2019, passed by the Ld. Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal of the Appellant against the Assessment Order, dated 30/03/2015, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 - "1 Natural Justice
 - 1.1 *The Learned Commissioner of Income-tax (Appeals) - 17,*

Mumbai ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

- (i) The same is framed in breach of the principles of natural justice; and*
- (ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

WITHOUT PREJUDICE TO THE ABOVE

2.1 The Ld. CIT (A) erred in confirming the addition made by the A.O. of Rs. 2,13,00,000/-, u/s. 68 of the Act, on account of alleged accommodation entry / alleged unsecured bogus loan.

2.2 While doing so, the Ld. CIT (A) erred in:

- (i) Basing his action only on surmises, suspicion and conjecture;*
- (iii) Taking into account irrelevant and extraneous considerations; and*
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.*

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

2.4 Without prejudice to the above, assuming but not admitting that some - - addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3.1 The Ld. CIT (A) erred in confirming the addition made by the A.O. of Rs. 1,47,575/-, on account of disallowance of interest expenditure with respect such alleged bogus unsecured loans.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4.1 The Ld. CIT (A) erred in confirming the addition made by the A.O. of Rs. 3,19,500/-, on account of alleged commission expenditure incurred for obtaining accommodation entry of unsecured loans.

4.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for”.

3. The relevant facts in brief are that the Appellant is a private limited company engaged in the business of building, construction, infrastructure and engineering. The Appellant filed its return of income for the Assessment Year 2012-13 on 30/09/2012 declaring total income of INR 1,27,56,455/-. The case of the Appellant was selected for scrutiny and assessment under Section 143(3) of the Act was framed on the Appellant vide Assessment Order, dated 30/03/2015 at total income of INR 3,45,23,530/- as against returned income of INR 1,27,56,455/- after making addition of INR 2,13,00,000/- on account of accommodation entry for bogus unsecured loan transaction from Mr. Praveen Kumar Jain, disallowance of interest of INR 1,47,575/- on the aforesaid bogus unsecured loan and addition of INR 3,19,500/- in respect of commission paid for obtaining the aforesaid accommodation entry.
4. Being aggrieved, the Appellant preferred appeal before CIT(A). The Appellant filed additional evidence before the CIT(A). A remand report was called for by the CIT(A) in respect of the additional evidence which was furnished by the Assessing Officer. Since the CIT(A) was not convinced with the submissions/evidence furnished by the Appellant, the CIT(A) dismissed the appeal preferred by the Appellant, vide order, dated 26/02/2019.
5. The Appellant has preferred the present appeal being aggrieved by the order, dated 26/02/2019, passed by the CIT(A) confirming the assessment framed on the Appellant by the Assessing Officer vide

Assessment Order dated 30/03/2015.

6. When the matter was taken up for hearing, the Ld. Authorised Representative for the Appellant submitted that the order impugned has been passed without granting the Appellant sufficient/adequate opportunity of being heard, and is, therefore, liable to be set aside. She submitted that the Appellant had, during the course of assessment proceedings filed various details and information and furnished the documents as directed by the Assessing Officer. The Assessing Officer did not, at any point in time during the assessment proceedings, indicate that there was any deficiency in the information/documents provided by the Appellant. Further, the Appellant was also not confronted with the material/information/statement on which reliance was placed by the Assessing Officer while framing the assessment. Therefore, the Appellant filed documentary evidences before the CIT(A) who called for a remand report from the Assessing Officer. However, without confronting the Appellant with the aforesaid remand report, the CIT(A) has, in paragraph 4.6 of the order impugned, recorded that the Appellant has in response to the Remand Report reiterated the earlier submission made by the Appellant. She submitted that the impugned order has been passed by the CIT(A) in violation of principle of natural justice.
7. In response the Ld. Departmental Representative placed on record a copy of communication dated 17/03/2023 received from the Assessing Officer a copy of which was also furnished to the Ld. Authorised Representative for the Appellant. On the basis of the aforesaid communication, the Ld. Departmental Representative submitted that the CIT(A) had, vide letter dated 09/02/2017, called

for a remand report in respect of additional evidence filed along with submissions, dated 25/01/2017, filed by the Appellant during the appellant proceedings before the CIT(A). The Assessing Officer submitted remand report, dated 31/01/2018, in response to the aforesaid letter dated 09/02/2017 which was taken into consideration by the CIT(A) and the main portion of the remand was reproduced by the CIT(A) in paragraph 4.6 of the order impugned. She further submitted that the CIT(A) has specifically recorded that the Appellant has, in response to the remand report, reiterated the earlier submissions. She, therefore, submitted that there was no violation of principle of natural justice as alleged by the Appellant.

8. Responding to the above submissions of the Ld. Departmental Representative, the Ld. Authorised Representative for the Appellant submitted that the Revenue has failed to show that the remand report was furnished to the Appellant and that there was discrepancy in the reference number as stated in paragraph 4.6 of the order impugned when compared to the communication dated 17/03/2023 filed by the Ld. Departmental Representative.
9. We have considered the rival submissions as noted hereinabove and perused the material on record. The Appellant had contended that the assessment order was passed without confronting the Appellant with the information/documents on which reliance was placed by the Assessing Officer and/or by the CIT(A). The Appellant is aggrieved by the fact that in paragraph 4.6 of the order impugned the CIT(A) has, without confronting the Appellant with the remand report, recorded that the Appellant had reiterated its submissions in response to the remand report. On perusal of the order passed by the CIT(A) it is not clear whether a copy of the remand report was furnished to the

Appellant. Therefore, keeping in view the facts and circumstances of the present case and in order to address the grievance of the Appellant regarding violation of principle of natural justice, we deem it appropriate to set aside the order passed by the CIT(A) with the directions to adjudicate the issue raised in appeal before CIT(A) afresh after giving the Appellant a reasonable opportunity of being heard. The CIT(A) is directed to confront the Appellant with the remand report received from the Assessing Officer in response to letter dated 09/02/2017 sent by the CIT(A) to the Assessing Officer for examination of additional evidence filed by the Appellant along with submissions dated 25/01/2017 before adjudicating upon the issue of admissibility or otherwise of the additional evidence furnished by the Appellant. Since we have not dealt with the merits of the matter, all rights and contentions are left open. With the aforesaid directions, Ground No. 1 raised by the Appellant is allowed for statistical purposes. The Ground No. 2, 3 and 4 raised by the Appellant on without prejudice basis are disposed off as being infructuous in nature.

10. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 27.04.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.04.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai