

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 59/GAU/2020
Assessment Year: 2015-2016**

***Anup Trade And Transport (P) Limited,..... Appellant
7102A, Neha Apartment,
S.J. Road, Guwahati-781001, Assam
[PAN:AACCA4363P]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-4, Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005, Assam***

Appearances by:

*Shri S.P. Bhati, FCA, appeared on behalf of the assessee
Shri N.T. Sherpa, JCIT, appeared on behalf of the Revenue*

Date of concluding the hearing : February 02, 2023

Date of pronouncing the order : May 01, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax

(Appeals), Guwahati-2, dated 31.01.2020 passed for Assessment Year 2015-16.

2. The assessee has taken four grounds of appeal. However, its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the addition of Rs.20,00,000/-, which was added by the ld. Assessing Officer with the aid of Section 68 of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed its return of income electronically on 30.09.2015 declaring total income of Rs.2,07,18,250/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer has observed that he had received information from ITO, Ward-4(3), Kolkata containing that M/s. Amtek Financial Consultants Pvt. Limited had advanced unsecured loans to the assessee during A.Y. 2015-16 and received interest on unsecured loans. The ITO, Ward-4(3), Kolkata further communicated to the ld. Assessing Officer of the assessee that during the course of regular assessment proceedings of M/s. Amtek Financial Consultants Pvt. Limited for A.Ys. 2012-13 and 2013-14, it came to the notice of the Department that it was a fake /shell company and whoever had taken loans from this company was actually enjoying

accommodation entries. On the strength of this information, the ld. Assessing Officer has confronted the assessee that assessee has received two loans from M/s. Amtek Financial Consultants Pvt. Limited and M/s. Associated Infraprojects Pvt. Limited. The total loan amount involved in both these transactions is of Rs.20,00,000/-. The ld. Assessing Officer further confronted the assessee that in the information transmitted by the ITO, Ward-4(3), Kolkata, it is also available that M/s. Amtek Financial Consultants Pvt. Limited was managed by one Shri Sajjan Kumar Garg, who has floated a large number of companies involving in providing accommodation entries.

4. In response to the above show-cause notice, the assessee submitted that it has received loans from these two companies. However, it is not ascertainable as to how ITO, Ward-4(3), Kolkata has transmitted the information to the ld. Assessing Officer of the assessee, because these companies are assessed to tax with ITO, Ward-13(1), Kolkata and the assessee has placed on record the assessment order passed upon the creditors in A.Y. 2015-16. Copy of the assessment order in case of M/s. Amtek Financial Consultants Pvt. Limited, Kolkata has been placed on record on page no. 24 of the paper book. This assessment order for A.Y. 2015-16 was brought to the notice of the ld. Assessing Officer. Apart

from this assessment order, the assessee has placed on record copies of the Bank statement vide which it is discernable that amounts have been advanced to the assessee through A/c. Payee cheque and on re-payment of the loan by the assessee during this very year, these were duly credited in the accounts of M/s. Amtek Financial Consultants Pvt. Limited. The Id. Counsel for the assessee for buttressing this statement took us through page no. 65 of the paper book. It is discernable that on 28.02.2015, a sum of Rs.10,00,000/- was remitted back to M/s. Amtek Financial Consultants Pvt. Limited through RTGS. The assessee has also provided the confirmation. It has repaid the loans to their creditors.

5. The Id. Assessing Officer has gone through the submissions of the assessee but did not accept them. He observed that statement of one Shri Sajjan Kumar Garg was recorded by the Investigation Wing and in that statement, he admitted that he has floated a large number of companies. A list of 29 companies has been referred by the Id. Assessing Officer and names of the assessee's creditors i.e. M/s. Associated Infraprojects Pvt. Limited and M/s. Amtek Financial Consultants Pvt. Limited are available at serial nos. 21 & 28. On the strength of the information given by the ITO, Ward-4(3), Kolkata as well as on the basis of statement of Shri

Sajjan Kumar Garg recorded by the Investigation Wing on 31.04.2014, he treated both these loan transactions as bogus and made an addition of Rs.20,00,000/-.

6. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

7. With the assistance of ld. Representatives, we have gone through the record carefully. The assessee has taken a loan of Rs.10,00,000/- from M/s. Amtek Financial Consultants Pvt. Limited on 17.11.2014 and Rs.10,00,000/- from M/s. Associated Infraprojects Pvt. Limited on 28.02.2015. The assessee has paid interest @ 15% on these loans. It has deducted the TDS and submitted relevant evidence showing the payment of interest. The ld. Counsel for the assessee in support of the case of assessee submitted before us that M/s. Amtek Financial Consultants Pvt. Limited is assessed to tax. Its assessment was framed under section 147 read with section 143(3) and copy of such assessment order is available at pages 24 & 25 of the paper book. Similarly he brought to our notice the report of one Shri Subroto Dutta, who had visited the premises of M/s. Amtek Financial Consultants Pvt. Limited and submitted a report that he was able to lay his hands on the address of this company at 31, Lalbaba Shayer Road, P.O. Belurmath. He met Mr. Abodh Jha, who was shown to be

one of the Directors of the company at this address. This report is dated 16.12.2016. Thereafter he brought to our notice the confirmation, Bank statement and submitted that the assessee is a genuine company, who has filed its return of more than Rs.2 crores and it has taken two loans but it has submitted complete documentation justifying the loans.

8. During the course of hearing, we have passed an Interim Order, which reads as under:-

“10.01.2023: The assessee in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Guwahati-2, Guwahati dated 31.01.2020 passed for Assessment Year 2015-16.

2. The assessee has filed its return of income electronically on 30.09.2015 declaring an income of Rs.2,07,18,250/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. During the course of scrutiny assessment, it came to the notice of the ld. Assessing Officer that the assessee had taken unsecured loan of Rs.20,00,000/- from two Companies, i.e. M/s. Amtek Financial Consultants Pvt. Limited and M/s. Associated Infraprojects Pvt. Limited (Rs.10 lakhs each). According to the information of the ld. Assessing Officer, both these companies are engaged in providing accommodation entries and, therefore, he conducted an inquiry. After enquiry, he made the addition and his conclusions met the approval of ld. 1st Appellate Authority.

3. Before us, ld. Counsel for the assessee contended that both the creditors have been assessed under section 143(3). Their assessments have been produced before the ld. Assessing Officer. The ld. Assessing Officer has not carried out any enquiry to ascertain their genuineness. He also submitted that ld. Assessing Officer has put reliance upon the statement of Shri Sajjan Kumar Garg, which was recorded by some other Officers during some other enquiry

and not during the assessment proceeding during the year. Therefore, this statement ought to have not been relied upon. He also pointed out that assessee has repaid the loan to one of the Company during that very year and to the other Company in the next year. In order to determine its genuineness, we deem it appropriate to direct the Directors of the assessee-company to file an affidavit demonstrating the fact as to how they came in contact with such accommodation entry providers and through whom these loans have been arranged. This affidavit be filed before the next date of hearing, i.e. 2nd February, 2023. The copy of the affidavit in advance be given to the ld. CIT(DR). Hearing is adjourned to 2nd February, 2023 as part heard”.

9. In compliance to this, ld. Counsel for the assessee has filed an affidavit of Shri Anup Kumar Jasrasaria, Director of M/s. Anup Trade And Transport Pvt. Limited. In Paragraph 4 of the affidavit, he deposed as under:-

“4. That due to our financial requirements, we had approached Mr. Ashok Kr. Mittal the company Amtek Financials Consultants Pvt. Limited of Kolkata for a short term loan. The loan of Rs.10,00,000/- was received by us on 17.11.2014. The said loan was repaid on 28.02.2015 along with interest thereon after deduction of income tax TDS thereon. Similarly the company had obtained a loan of Rs.10,00,000/- from Associated Infraprojects Pvt. Limited on 28.02.2015. Interest on the said loan after deduction of income tax TDS for the period upto 31.03.2015 amounting to Rs.11,835/- was duly paid by us on 31.03.2015. The said loan was repaid on 04.11.2016 along with interest thereon after deduction of income tax TDS thereon”.

10. An analysis of the Bank statement would suggest that on 17.11.2014, the assessee has received a sum of Rs.10,00,000/- from M/s. Amtek Financial Consultants Pvt. Limited. It repaid this amount on 28.02.2015. This

amount went to M/s. Associated Infraprojects Pvt. Limited, who had given the loan of Rs.10,00,000/- to the assessee on 28.02.2015. If assessee was in such a dire need of the money, then it has to demonstrate under what circumstances it was compelled to repaid this Rs.10,00,000/- to M/s. Amtek Financial Consultants Pvt. Limited. We find that in the accounts of M/s. Amtek Financial Consultants Pvt. Limited and M/s. Associated Infraprojects Pvt. Limited, there are *inter se* Bank transactions. On 18.02.2015, M/s. Associated Infraprojects Pvt. Limited received a sum of Rs.10,00,000/- from M/s. Amtek Financial Consultants Pvt. Limited. In the Bank statement of M/s. Associated Infraprojects Pvt. Limited, on 20.02.2015 the balance was Rs.6,811/-. Thereafter two cheques, two RTGS and N.F.D. transaction had taken place, whereby a sum of Rs.20,00,000/- has been credited, out of which Rs.10,00,000/- was given to the assessee on 28.02.2015. A close look to these statements of both these concerns would suggest that they are circulating the money amongst few companies without disclosing the real reasons. The income in A.Y. 2015-16 of M/s. Amtek Financial Consultants Pvt. Limited is only Rs.6,87,500/-. Though the assessment is under section 143(3) read with section 147 but it does not discuss the business undertaken by this concern. A small addition under section 14A has been made to the total income declared

by the assessee. On the strength of the documents submitted by the appellant, it can be inferred that it has proved the identity of its creditor in the case of M/s. Amtek Financial Consultants Pvt. Limited but the genuineness of the transaction could not be proved by the assessee. Even if the loan transactions are through Banking channel, but the material confronted by the ld. Assessing Officer is of such a nature, which caused a shadow on this arrangement of loans. We have directed the assessee to submit as to how it came in contact for availing the loan with these two creditors. The only disclosure made by the Director is that he met with one Shri Ashok Mittal. What is the relationship of Mr. Ashok Mittal with M/s. Amtek Financial Consultants Pvt. Limited, it is not discernable. The complete facts are not on the record. Apart from the above facts gathered by us, it is also to be observed that ld. Assessing Officer has treated the information transmitted by the ITO, Kolkata as a gospel truth without getting it cross verified. On the other hand, ld. CIT(Appeals) has not examined the issue analytically, though order of the ld. CIT(Appeals) is running into 29 pages, but from pages no. 12 to 28, he has verbatim reproduced the judgment of the Hon'ble Supreme Court in the case of Pr. CIT (Central)-1 -vs.- NRA Iron & Steel Pvt. Limited 2019 (3) TMI 323 (SC). How this judgment is applicable. It is relevant for the share application money. Here it is a loan transaction,

which according to the assessee, these loans have been repaid. Similarly in the first seven pages, the ld. CIT(Appeals) has just reproduced the assessment order. There is no cross verification of the evidence at the end of both the revenue authorities. Therefore, we deem it appropriate to set aside the orders of revenue authorities and restore this issue to the file of ld. Assessing Officer. The ld. Assessing Officer is directed to either confront the assessee with Shri Sajjan Kumar Garg or do not rely upon his statement while examining the loan transaction of the assessee because the statement was recorded by Investigation Wing. Its veracity has not been tested by any of the authorities on judicial platforms. If his statement is being relied upon, then according to the judgment of the Hon'ble Supreme Court, an opportunity to cross examination is being given to the assessee. Similarly the information given by the ITO, Ward-4(3), Kolkata is just an information for setting the machinery into motion, it cannot be treated as a gospel truth. The issue has to be examined, therefore, ld. Assessing Officer is directed to look into all these aspects afresh and re-adjudicate the issue after providing due opportunity of hearing to the assessee. It is needless to say that the observations made by us will not impair or injure the case of ld. Assessing Officer and will not cause any prejudice to the defence/explanation of the assessee.

11 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01.05.2023.

**Sd/-
(Manish Borad)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President**

Kolkata, the 1st day of May, 2023

*Copies to :(1) Anup Trade And Transport (P) Limited,
7102A, Neha Apartment,
S.J. Road, Guwahati-781001, Assam*

*(2) Deputy Commissioner of Income Tax,
Circle-4, Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005,
Assam*

*(3) Commissioner of Income Tax (Appeals),
Guwahati-2, Guwahati,*

*(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.