

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2725/Del/2017, A.Y. 2012-13

Income Tax Officer Ward 3(2), New Delhi	Vs.	M/s. Arjun Ispat India P. Ltd. Y-59, Loha Mandi, Naraina, New Delhi-110028
Appellant		Respondent

Assessee by	None
Revenue by	Sh. Girish Kohli, Sr. DR

Date of hearing:	27.06.2023
Date of Pronouncement:	10.07.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Revenue against the order dated 07.02.2017 of CIT(A)-1, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 247/15-16 arising out of an appeal before it against the order dated 25.03.2015 passed u/s 144 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-3(2), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. At the time of hearing non-appeared for the assessee. Ld. DR has pressed on record, report of service of the notice to the assessee on present address by e-

mail. Non-appeared for the assessee. Ld. DR was heard who supported the findings of Ld. AO and submitted that Ld. CIT(A) has fallen in error to allow assessee benefit on the basis of evidence which was not before Ld. AO.

4. It can be appreciated from the record that assessment order u/s 144 of the Act was passed upon the assessee making addition of Rs. 10,01,84,690/- on account of lack of proof regarding sundry creditors an addition of Rs. 24,00,000/- was made on account of lack of information regarding identity, creditworthiness and proof of nature of transaction on account of Rs. 24,00,000/- to be advanced received for sale of flat. Addition of Rs. 2,45,18,175/- was made as there was no evidence to show the sales tax was paid before the duty date of filing the return. Further, disallowance of Rs. 2,32,93,888/- was made for providing interest free loan to related parties. Ld. CIT(A) had partly allowed the appeal of assessee for which revenue is in appeal raising following grounds :

“1. The ld. CIT(A) erred in deleting addition of Rs. 1,84,690/- made by the AO being unconfirmed sundry creditors.

2. The Ld. CIT(A) erred in deleting addition of Rs. 24,00,000/- made u/s 68 of the Income Tax Act, 1961 being unexplained advances received despite the fact that assessee has failed to establish creditworthiness and the identity of the persons from whom the said sum was received.

3. The ld. CIT(A) erred in deleting disallowance of interest of Rs.2,32,93,888/- made by the AO.

4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”

5. Appreciating the matter on record, it can be observed that in regard to ground no. 1 Ld. CIT(A) has taken into consideration the fact that sundry creditors related to purchase of raw material which was expansion to AO during the course of assessment proceedings. The transactions were of the past

and as there was dispute with regard to quality and quantity the amounts were standing particularly with regard to that Rs. 10 crore liability standing to Jindal Saw Works account. The assessee had got before Ld. CIT(A) the fact that L/C limit was replies for making payment against purchase of 18,33,52,343/- . Ld. CIT(A) observed that the assessee had filed copy of sanction letter, copy of credit sanctioned by Oriental Bank of Commerce in the form of paper book.

6. In regard to ground no. 2 it can be observed that Ld. AO had observed that no evidence or agreement was filed to show any transaction being effected for sale of property while before ld. CIT(A) agreement to sale has been details of transaction of the sale of flat were provided.

7. Lastly, in regard to ground no. 3 it can be observed that Ld. CIT(A) has taken into consideration the fact that there were mutually accommodative loan transaction without any interest in the form of purchases by the assessee and loan by the assessee to M/s. Uttam Strips Ltd. Ld. CIT(A) has heavily relied the financial which were produced before him.

8. The order of Ld. CIT(A) does not indicate if all the material he had relied by him were part of the assessment record which Ld. AO had failed to take note of or that Ld. AO was given opportunity to file a remand report on the evidence brought on record for the first time during the appellate proceedings. The assessee is not present here also to satisfy by way of any paper book or other material that Ld. AO had fallen in error in not taking into account his evidence which has been duly appreciated by the Ld. First Appellate Authority.

9. In the light of aforesaid it will be appropriate to restore the issues on merit to the files of Ld. CIT(A) to take an additional evidence on record in accordance with law which includes an application under Rule 46A and calling remand report from the Ld. AO. Accordingly, the grounds raised are allowed for

statistical purposes and **the appeal of revenue is allowed for statistical purposes.**

Order pronounced in the open court on 10th July, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 10th .07.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI