

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.9322/Del/2019  
Assessment Year: 2009-10

M/s ACE Build Tech, Flat No. 257, Cycle Market, Jhandewalan Extension, New Delhi 110055 <b>PAN AAMFA 656I C</b>	vs.	The Addl. CIT, Range-1, Gurgaon
(Appellant)		(Respondent)

For Revenue :	Shri Gautam Jain, Adv. Ms. Monika Agarwal, Adv.
For Assessee :	Shri Kanav Bali Sr. DR

Date of Hearing :	21.06.2023
Date of Pronouncement :	07.07.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of CIT(A)-1 Gurgaon dated 03.09.2019 for AY 2009-10.

2. The grounds of assesse are as follows:-

*1 That the learned Commissioner of Income Tax (Appeals)-1, Gurgaon has erred both in law and on facts in confirming an addition of Rs. 53,00,000/-representing the alleged unexplained cash credit under section 68 of the Act.*

*1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the appellant had duly discharged the onus under section 68 of the Act in terms of identity of the creditors, creditworthiness of the creditors and genuineness of creditors and as such, addition made and confirmed is not in accordance with law and untenable.*

*1.2 That the conclusion of the learned Commissioner of Income Tax (Appeals) that submissions of the appellant are in contradiction to the facts recorded in the assessment order, is based on incorrect appreciation of facts on record and in any case, conclusions so arrived are misconceived, misplaced and untenable.*

*1.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the learned Assessing Officer in the remand report has not made any adverse observations vis-a-vis creditworthiness of the creditors then his independent examination without appreciating the evidence placed on record is absolutely misconceived, misplaced, illegal and hence unsustainable.*

*1.4 That the learned Commissioner of Income Tax (Appeals) has otherwise failed to appreciate that all the creditors were individuals, were duly identifiable and had confirmed the transactions and the entire transaction was through banking channels and their PAN numbers had duly placed on record and therefore, arbitrary approach adopted on account of alleged non-filing of return is fundamentally erroneous and could not be justifiably made a basis to sustain addition under section 68 of the Act.*

*2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in confirming an addition of Rs. 73,04,678/-representing the alleged difference in receipts as per Form 26AS and contract receipts as per books of accounts of the assessee firm.*

*2.1 That the learned Commissioner of Income Tax (Appeals) while upholding the addition has failed to appreciate that the reconciliation between the difference between Form 26AS and the books maintained by the appellant which were duly audited had duly been furnished in the course of assessment proceedings/appellate proceedings and therefore, arbitrary rejection of such reconciliation is also misplaced and could not be validly made a basis to sustain notional, hypothetical addition.*

*2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that purported difference allegedly was on account of WCT/VAT/Service Tax deducted by the party which are not reflected as income in the Profit & Loss Account maintained by the appellant and therefore, this fundamental accounting methodology -adopted by the appellant accepted over a period of number of years could not be disregarded and therefore, addition so made is not in accordance with law.*

*2.3 That the finding of the learned Commissioner of Income Tax (Appeals) that no satisfactory evidence was furnished in support of the explanation tendered by the appellant is also not correct and hence untenable.*

*3 That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.*

**Ground nos. 1 to 1.4 of assessee**

3. The Id. counsel of assessee submitted that the learned Commissioner of Income Tax (Appeals)-1, Gurgaon has erred both in law and on facts in confirming an addition of Rs. 53,00,000/-representing the alleged unexplained cash credit under section 68 of the Act as the appellant had duly discharged the onus under section 68 of the Act in terms of identity of the creditors, creditworthiness of the creditors and genuineness of creditors and as such, addition made and confirmed is not in accordance with law and untenable. He further submitted that the conclusion of the learned Commissioner of

Income Tax (Appeals) that submissions of the appellant are in contradiction to the facts recorded in the assessment order, is based on incorrect appreciation of facts on record and in any case, conclusions so arrived are misconceived, misplaced and untenable and thus the Id. CIT(A) has failed to appreciate that once the learned Assessing Officer in the remand report has not made any adverse observations vis-a-vis creditworthiness of the creditors then his independent examination without appreciating the evidence placed on record is absolutely misconceived, misplaced, illegal and hence unsustainable. He also contended that the learned Commissioner of Income Tax (Appeals) has otherwise failed to appreciate that all the creditors were individuals, were duly identifiable and had confirmed the transactions and the entire transaction was through banking channels and their PAN numbers had duly placed on record and therefore, arbitrary approach adopted on account of alleged non-filing of return is fundamentally erroneous and could not be justifiably made a basis to sustain addition under section 68 of the Act.

4. Drawing our attention towards paras 2.1 to 2.9 of written submissions/synopsis of assessee the Id. counsel submitted that the assessee has duly discharged its onus as per requirement of section 68 of the Act and despite this fact the Assessing Officer made addition and Id. CIT(A) confirmed the same without any justified basis therefore keeping in view various judgments of Hon'ble jurisdictional High Court of P&B & other Hon'ble High Courts and orders of coordinate benches of the Tribunal the addition is not sustainable.

5. Replying to the above, the Id. Senior DR supported the orders of the authorities below and submitted that the Id. CIT(A) admitted additional evidence of assessee, called remand report from the Assessing Officer and also allowed assessee to file its rejoinder to the remand report and thereafter drawn a sustainable conclusion based on various judgments and orders of coordinate benches that, it is thus a settled law that the onus to prove the creditworthiness the identity of the creditors and genuineness of transactions lies on the assessee and initial burden cast by section 68 of the Act is on assessee involves these elements to be cumulatively proved and in the present case the assessee has failed to discharge such onus therefore orders of the authorities below may kindly be upheld.

6. Placing rejoinder to the above, the Id. counsel again drew our attention towards pages 96 to 140 of assessee paper books relevant part of written submissions on the issue and submitted that the assessee submitted all sustainable and self speaking evidence before the authorities below and the Assessing Officer discarded the same without any examination and the Id. CIT(A) went on to consider the same in wrong

direction therefore orders of authorities below are not sustainable as despite having discharged onus as per requirement of section 68 of the Act by way of filing confirmations copies of ITRs, bank statements and other relevant documents the Id. CIT(A) without dislodging the same upheld the addition which is not sustainable. He again precisely reiterated the case laws mentioned in paras 2.8 to 2.10 of written synopsis and submitted that in view of principle laid down by Hon'ble Supreme Court in the case of Orrisa Corporation 159 ITR 78 (SC) which was referred by Hon'ble High Court of Gujarat in the case of DCIT vs. Rohini Builders reported as 256 ITR 360 (Guj.) wherein it was observed that when the assessee furnishes names and address of alleged creditors along with GIR/PAN numbers, the burden shift to the Department to establish the revenue case and in order to sustain addition the revenue has to pursue the enquiry to establish the lack of creditworthiness and failing which the additions cannot be held as sustainable.

7. The Id. counsel also submitted that the findings of Id. CIT(A) in para 4.9 and 4.10 are only basis for upholding the addition wherein the Id. CIT(A) noted failure of assessee before the Assessing Officer in filing documents but did not given his own findings on the voluminous self speaking documentary evidence filed by the assessee and admitted by him under rule 46A of the Rules. He also pointed out that even during remand proceedings the Assessing Officer submitted his reports/comments vide dated 24.02.2015 where he merely object to the wrong PAN numbers of two creditors and also mentioned that as per cheque clearance certificate issued by the bank and submitted by the assessee it is inferred that the assessee has received these amounts from the persons as contended by the assessee and the Assessing Officer, except said observation, have not made any adverse comment on the documentary evidence filed by the assessee. He vehemently contended that the assessee filed correct details including PAN numbers of Smt. Babita Singh and Smt Kavita Dhillon vide submissions dated 17.03.2016 before Id. CIT(A) and he did not point out any defect therein and also did not make any further verification. Therefore in view of judgment of Hon'ble High Court of Delhi in the case of MOD Creations (P) Ltd. vs. ITO 354 ITR 282 (Del) the onus had shifted on to the Assessing Officer or Id. CIT(A) to proof, if it disputed, the genuineness of loans extended to the assessee. He further submitted that as per judgment of Hon'ble High Court of Delhi in the case of CIT vs. Ganeshwari Metal (P) Ltd. 361 ITR 10 (Del) when the assessing officer sits back with the folded hands till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on presumption, then such addition based on such presumptions is not sustainable.

8. On careful consideration of above submissions, synopsis of assessee and paper book spread over 140 pages we proceed to adjudicate the grievance of assessee. First of all we find it appropriate to reproduce the relevant part of written submissions/synopsis of assessee which is as follows:-

2.1 It is submitted that during the instant assessment year appellant received loan of **Rs. 53,00,000/- from the following entities** through banking channel vide account payee cheque. The aforesaid loan received by the appellant is duly supported by the following evidences:

Sr. No.	Name of Party	Amount (In Rs.)	Evidence (pages of Paper Book)
1	<b>M/S SILVER STAR IMPEX (P) LTD.</b> Address: Old Rajinder Nagar New Delhi New Delhi – 110060 PAN No. <u>AAFCA3264N</u> Ward: 4(4), Delhi	20,00,000	i) Copy of acknowledgement of return of income for the financial year 2006-07 relevant to assessment year 2007-08 dated 21.10.2009 (96) ii) Copy of acknowledgement of return of income for the financial year 2007-08 relevant to assessment year 2008-09 dated 24.09.2008 (97) iii) Copy of acknowledgement of return of income for the financial year 2008-09 relevant to assessment year 2009-10 (98) iv) Copy of ledger account of Silver Star Impex Pvt. Ltd. in the books assessee company for the period 1.4.2008 to 31.2011 (99) v) Copy of confirmation of accounts for the period 1.4.2008 to 31.3.2009 (100) vi) Copy of bank statement of M/s Silver Star Impex (P) Ltd. (101)
2	<b>KAVITA DHILLON</b>	4,00,000	i) Copy of confirmation of accounts for the period
	Address: 317, Sector-23, Gurgaon PAN No AQSPD3854H. Bank: Oriental Bank of Commerce Account No. 5225011004055 Ward: 2(2), Gurgaon		1.4.2008 to 31.3.2009 (102) ii) Copy of ledger account of Kavita Dhillon for the period 1.4.2008 to 31.3.2010 (103) iii) Copy of cheque (104) iv) Copy of bank statement of assessee (105-106)
3	<b>ISHWAR SINGH JANGHU</b> Address: H. No. 317 Sector-23 Gurgaon Haryana PAN No. ABXPJ8209Q Bank: Oriental Bank of Commerce Account No. 52252010008170 Ward: 02	14,00,000	i) Copy of confirmation of accounts for the period 1.4.2008 to 31.3.2009 (107) ii) Copy of ledger account of I S Janghu for the period 1.4.2008 to 31.3.2011 (108) iii) Copy of acknowledgement of return of income for the financial year 2008-09 relevant to assessment year 2009-10 (109) iv) Copy of bank statement of Ishwar Singh Janghu (110) v) Copy of cheque (111-113) vi) Copy of bank statement of assessee in Corporation Bank (114-118)
4	<b>BABITA SINGH</b> Address: 317, Sector-23, Gurgaon PAN No. AZRPS6764K Bank: Oriental Bank of Commerce Account No. 52250110287 Ward- 1(3), Gurgaon	7,00,000	i) Copy of confirmation of accounts for the period 1.4.2008 to 31.3.2009 (119) ii) Copy of ledger account of Babita Singh for the period 1.4.2008 to 31.3.2010 (120) iii) Copy of ledger account of Babita Singh for the period 1.4.2008 to 31.3.2011 (121) vi) Copy of bank statement of assessee company (122-123) v) Copy of cheque (124)
5	<b>INDRA DEWAN</b> Address: R 658 II Floor New Rajinder Nagar New Delhi PAN No. AHSP04709L Account No. 00950100002842 Ward 42(1)	8,00,000	i) Copy of confirmation of accounts for the period of 1.4.2008 to 31.3.2009 (125) ii) Copy of acknowledgement of return of income for the financial year 2006-07 relevant to assessment year 2007-08 (126-134) iii) Copy of acknowledgement of return of income for the financial year 2009-10 relevant to assessment year 2010-11 (135-138) iv) Copy of bank statement of Indra Rani (139-140)
	<b>Total</b>	<b>53,00,000</b>	

## 2.2 i) M/S SILVER STAR IMPEX (P) LTD

Assessment Year	Opening Balance	Amount received	Date of receipt	Interest	TDS	Total	Repayment	Date of Repayment	Closing Balance	Evidence
2009-10	NIL	20,00,000	22.06.2008	-	-	20,00,000/-	-	-	20,00,000	Bank certificate (pages 2-3 of Paper Book)
2010-11	20,00,000	-	-	-	-	20,00,000/-	8,00,000/- 10,00,000/-	07.10.2009	2,00,000	
2011-12	2,00,000	-	-	-	-	-	-	-	2,00,000	

## ii) KAVITA DHILLON

Assessment Year	Opening Balance	Amount received	Date of receipt	Interest	TDS	Total	Repayment	Date of Repayment	Closing Balance	Evidence
2009-10	NIL	4,00,000	11.08.2008	-	-	4,00,000	-	-	4,00,000	Bank certificate (pages 2-3 of Paper Book)
2010-11	4,00,000	-	-	-	-	4,00,000	4,00,000	15.06.2009	NIL	

## iii) ISHWAR SINGH JANGHU

Assessment Year	Opening Balance	Amount received	Date of receipt	Interest	TDS	Total	Repayment	Date of Repayment	Closing Balance	Evidence
2009-10	NIL	14,00,000/-	01.08.2008	-	-	14,00,000	-	-	14,00,000/-	Bank certificate (pages 2-3 of Paper Book)
2010-11	14,00,000/-	-	-	-	-	14,00,000	4,00,000 <del>5,00,000</del>	23.06.2009 16.07.2009	5,00,000/-	
2011-12	5,00,000/-	-	-	-	-	5,00,000	2,50,000 2,50,000	03.04.2010 20.07.2010	NIL	

## iv) BABITA SINGH

Assessment Year	Opening Balance	Amount received	Date of receipt	Interest	TDS	Total	Repayment	Date of Repayment	Closing Balance	Evidence
2009-10	NIL	7,00,000/-	18.07.2008	-	-	7,00,000/-	-	-	7,00,000/-	Bank certificate (pages 2-3 of Paper Book)
2010-11	7,00,000/-	-	-	-	-	7,00,000/-	7,00,000/-	15.05.2009	NIL	

## v) INDIRA DEWAN

Assessment Year	Opening Balance	Amount received	Date of receipt	Interest	TDS	Total	Repayment	Date of Repayment	Closing Balance	Evidence
2009-10	NIL	3,00,000 3,00,000 2,00,000	23.12.2008	-	-	8,00,000	-	-	8,00,000	Bank certificate (pages 2-3 of Paper Book)
2010-11	8,00,000/-	-	-	-	-	-	-	-	8,00,000	
2011-12	8,00,000/-	-	-	-	-	-	-	-	8,00,000	

2.3 It is respectfully submitted that the learned Commissioner of Income Tax (Appeals) has upheld the addition by holding in **para 4.10 of the order** as under:

“4.10 This submission of the appellant was in contradiction to the facts recorded by the A.O. in the assessment order. As such, the appellant was asked to file copies of ITRs, filed by the creditors for the year under consideration. The appellant called to furnish the copies of ITRs nor any reply was furnished. Further, as mentioned above the appellant failed to furnish copies of bank statements of the creditors. In these circumstances the creditworthiness and the capacity of the creditors to advance the loan has not been established. The appellant contended that in view of the report of the A.O dated 24.02.2015 the addition on this account may be deleted. The A.O. in his report has not given any findings with regard to the creditworthiness of the creditors. As discussed above this issue was specifically examined by me during

the course of appellate proceedings and the appellant was asked to furnish evidences with regard to the creditworthiness of the creditors. The appellant failed to discharge the onus. It is a settled law that the mere receipts of the credit entries through banking channels and mere furnishing of PAN number of the creditors doesn't establish the genuineness of the credit entries. The appellant is also liable to establish the creditworthiness of the creditors and the genuineness of the transaction.

2.4 It is submitted in making the aforesaid observations, the learned Commissioner of Income Tax (Appeals) has not appreciated that in the **remand report dated 24.2.2015** the learned Assessing Officer had stated as under:

“The reply of the assessee and the documents furnished by him as been perused. As per documents filed by the assessee, he has furnished details regarding identity of contended creditors of unsecured loan. However, the PAN: AJCPS6834Q doesn't belong to Smt. Babita Singh and also the PAN: WBPLD8336K mentioned for Smt. Kavita Dhillion as furnished by the assessee is an invalid PAN as per ITD records. This point needs further verification from assessee. However, as per the Cheque clearance certificate issued by the bank, furnished by the assessee before your goodself, inferred that the assessee has received these amounts from the persons as contended by him”.

2.5 It is apparent from the above the learned Assessing Officer in the aforesaid remand Report has firstly admitted that identity of the creditors stands established.

2.6 It is further been admitted that amounts were received through banking channels and such sums were received from the respective creditors as is evident from the bank certificate placed at **pages 2 to 3 of Paper Book**. It is thus submitted once the identity of the creditors stands established and the amount has been admitted to have been received from each of the creditors in view of the bank certificate no adverse inference could be validly drawn so as to make an addition under Section 68 of the Act, more particularly, once the appellant had furnished their PAN numbers, income tax return, confirmation from each of the creditors where complete address was placed on record; and no enquiries were conducted at any stage to rebut the evidence placed on record, as would be evident from tabulation

Sr. No.	Name of creditors	Return of income	Bank statement of creditor	Pan No.	Certificate from bank	Bank statement of assessee
1	M/S Silver Star Impex (P) Ltd.	AY 2007-08 (Yes) AY 2008-09 (Yes) AY 2009-10 (Yes)	Ye (101)	AAHCS2798H	Yes	No
2	Kavita Dhillon	No	No	AQSPD3854N	Yes	Yes
3	Ishwar Singh Janghu	AY 2009-10 (Yes)	Yes (110)	ABXPJ8209Q	Yes	Yes
4	Babita Singh	No	No	AZRPS6764K	Yes	Yes
5	Indra Dewan	AY 2007-08 (Yes) AY 2010-11 (Yes)	Yes (139-140)	AHSP04709L	Yes	No

2.7 It is submitted the only adverse inference in the remand report was in respect of PAN of the two creditors namely Smt. Babita Singh and Smt. Kavita Dhillon in respect of which to the appellant had furnished vide reply dated 17.03.2016 wherein the correct PAN numbers are below mentioned. The particulars of creditors are as under:

Sr. No.	Name	Correct PAN Number	Incorrect PAN Number
i)	Babita Singh H.No. 317, Sector-23, Gurgaon	AZRPS6764K Ward 1(3) Gurgaon (page 13 of Paper Book)	AJCPS6824Q
ii)	Kavita Dhillon H.No. 317, Sector-23, Gurgaon	AQSPD3854N Ward 2(2), Gurgaon (page 14 of Paper Book)	WBPLD8336K

In the remaining part of submissions the assessee has mentioned the judgements of Hon'ble High Courts and coordinate benches of the Tribunal which would be consider at appropriate stage in the later part of this order.

9. At the very outset, from the orders of the authorities below, we note that the Assessing Officer made additions by observing that the assessee has just filed confirmation letter and no details regarding identity, filing of return and showing their capacity to advance unsecured loan to the assessee and sources have filed nor copies of the bank accounts have been filed and thus the assessee has failed to discharge the onus to prove identity, genuineness and creditworthiness of lenders. From relevant part of first appellate order, we further note that the Id. CIT(A) admitted additional evidence of assessee, called remand report from the Assessing Officer and also allowed assessee to file its rejoinder/reply to the remand report and thereafter, taking on record correct

details of PAN numbers and addresses of Smt. Babita Singh and Smt. Kavita Dhillon noted the observations and contention of the Assessing Officer in the assessment order as well as in the remand report and without any further detailed examination and verification of the documentary evidence filed by the assessee before him, available at pages 96 to 140 of assessee paper book, proceeded to confirm the addition only on the strength of factual analyses made by the Assessing Officer. However, the Id. CIT(A) has mentioned several case laws to support his conclusion but in the relevant part we are unable to see any deliberation which could show us that the Id. CIT(A) made any endeavour to get copies of bank statements and called the lenders by summoning u/s. 137 of the Act and then examined the entire evidence placed before him and thereafter dislodging the contention of the assessee confirmed the addition.

10. After having noted above analyses of orders of the authorities below now we proceed to evaluate the explanation, documentary evidence and submissions of assessee in the light of case laws and prepositions relied by the Id. counsel of assessee as well as by the Id. CIT(A). From the documents filed by the assessee at pages 96 to 140, at the very outset we note that the assessee submitted copy of confirmation of accounts, copy of ITR for AY 2008-09 & 2009-10, copy of ledger account of, copy of confirmation of account for the period 1.04.2008 to 31.03.2009 and copy of bank account of M/s. Silver Impacts P. Ltd. which clearly establishes identity of said lender and also shows that at the time of advancing loan of Rs. 20 lakh on 22.12.2008 there was sufficient balance in its bank account and we are unable to see any instance of cash deposit immediately before issuing cheque to the assessee company. The copy of ledger account shows that this company that the assessee repaid the part amount of loan of Rs. 18 lakh through banking channel on 05.10.2009 during subsequent AY 2010-11. The bank balance discernable from the copy of bank statement clearly reveals that the said lender did not made any deposit of cash to his bank account prior to providing loan to the assessee. We are not in agreement with the contention of the Id. Senior DR that the small income shown in the return of income raise doubt about its capacity and creditworthiness as it is not the case of the Assessing Officer that it was not having any other funds in his hands to provide unsecured loans to the assessee. Therefore, we clearly observe that the assessee substantiated identity, capacity and creditworthiness, to the extend unsecured loans to the assessee, pertaining to said lender/creditor.

11. Regarding creditors Smt. Kavita Dhillon and Smt. Babita Singh we note that the assessee has filed copy of confirmations, ledger accounts, copy of cheques of both the lender and copy bank statements showing that the amounts were received through bank. We also note that the Assessing Officer in the remand report objected that their

PAN numbers and addresses are not correct but on receipt of remand report, the assessee vide reply dated 17.03.2016 filed correct address and PAN numbers of both the said lenders and this fact has been noted by the Id. CIT(A) in para 4.5 and on being asked to submit copies of ITR and copies of bank statements the assessee, vide reply dated 22.09.2016 submitted that he is not having good terms with the said two creditors and therefore unable to produce copies of bank accounts which may be obtained from the respective banks and copies of therein returns were not filed by the assessee.

11.1 On these observations of Id. First Appellate Authority, we further note that despite having correct addresses and PAN numbers there was no effort by him to verify new details by way of any exercise at his own and or through Assessing Officer by issuing summons u/s. 131 of the Act or calling upon the assessee to produce both the lenders to dislodge the contention of assessee and to further verify their capacity and creditworthiness. When the assessee is submitting that he has not having good terms with the creditors therefore copies their bank accounts may be obtained from the respective banks and on submission of correct PAN numbers and addresses the Id. CIT(A) was very well capable to obtain copies of their ITRs from the Departmental portal and bank statements from the respective banks but we are unable to see any such required exercise by him from the impugned order. It is pertinent to took note of the fact that the assessee has submitted that the amounts due to Smt. Kavita Dhillon and Smt. Babita Singh were repaid during subsequent AY 2010-11 which also vivid from the copy of cheque clearance certificate available at pages 2 & 3 of assessee paper book. This factual position have not been controverted neither by the authorities below nor by the Id. Senior DR before us.

12. Regarding creditor Shri Ishwar Singh Janghu we note that the assessee has filed copies of confirmation of accounts, ledger accounts, acknowledgment of return of income for AY 2009-10, bank statement, cheque etc. but the Id. CIT(A) in para 4.9 & 4.10 merely noted the action & conclusion of the Assessing Officer in the assessment as well as remand report and thereafter noted that the issue was specifically examined by him and appellant was asked to furnish evidences with regard to creditworthiness of the creditors but failed to comply. On the other hand, from the documentary evidence filed by the assessee we not that the assessee received Rs. 14 lakh on 31.07.2008 through cheque and the amount of Rs. 9 lakh was repaid during AY 2010-11 and remaining Rs. 5 lakh was repaid during AY 2011-12 leaving the nil credit which again gets support & from the cheques clearance certificate (PB Page no. 2-3). The Id. counsel submitted that Shri Janghu is a senior Army Officer who retired as Brigadier and his capacity and creditworthiness cannot be doubted particularly, when the amounts have been repaid

during subsequent assessment years. From the assessment order, remand report and first appellate order we are unable to see any deliberations to dislodge said contentions of Id. counsel of assessee supported by sustainable documentary evidence. Thus, we are inclined to hold that the assessee discharged onus lay on him as per requirement of sec 68 of the Act and the onus was shifted on the Id. CIT(A) which was not discharged by any further exercise to verify the veracity of documentary evidence by calling the assessee and lenders by way of show cause notice or summons u/s. 131 of the Act. In such a situation we have no alternate but to hold that the addition is not sustainable in view of above noted factual analyses and in view of preposition rendered by Hon'ble Delhi High Court in the cases of CIT vs. Gangeshwari Metal P Ltd. (supra) and CIT vs. Fair Finvest P Ltd. (supra).

13. Regarding fifth and last creditor Smt. Indra Dewan from documents at pages 125 to 140 of paper book we note that the assessee filed copy confirmation of accounts, copy of acknowledgment of return of income for AY 2007-08 and 2010-11 and copy of her bank account and hence confirmation and factum of filing of return of income by this creditor cannot be doubted in absence of any further examination or verification of other credentials of this lender. It is also pertinent to mention that on receipt of said documentary evidences the Id. CIT(A) have not made any further exercise calling upon such lender directly through summon u/s. 131 of the Act or calling the assessee to produce her for examination. From the relevant of first appellate order we note that the Id. CIT(A) simply took on record documentary evidence filed by the assessee and thereafter without any further exercise dismiss the same at the threshold without pointing out any defect or discrepancy therein, merely raising doubt about the truthfulness of the said documentary evidence. Such conduct of Id. CIT(A) falls within the rigour of preposition rendered by Hon'ble High Court of Delhi in the case of CIT vs. Gangeshwari Metal P Ltd. (supra), wherein it was held that when the tax authority/Assessing Officer/CIT(A) after taking on record evidence submitted by the assessee without verifying the same proceeds to make addition u/s. 68 of the Act then such act of omission vitiate the addition.

14. Therefore, in view of above factual position and logical analyses of basis taken by the authorities below for making and confirming addition and also considering the submission and documentary evidence filed by the assessee, we are unable to agree with the conclusion drawn by the Id. CIT(A) in view of various judgments including judgment of Hon'ble Delhi High Court in the case of CIT vs. Ganeshwari Metal P Ltd. (surpa) and CIT vs Fair Finvest P. Ltd. (supra). In the first judgment the Hon'ble High Court of Delhi under identical facts and circumstances in para 9 held thus:-

*" as can be seen from the above extracts, two types of cases have been indicated. One in which the assessing officer carried out the exercise which is required in law and the other in which the assessing officer sites back folded hands till the assessee exhaust all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions.*

Therefore respectfully following the above proposition we are inclined to hold that at least the Id. CIT(A) ought to have done what was required to be done in the matter, if necessary, by invoking his powers u/s. 131 of the Act summoning the creditors. We clearly note that the Id. CIT(A) without having done such exercise to show that the documentary evidence submitted by the assessee was untrustworthy or lack creditability concluded that assessee has not discharge onus lay u/s. 68 of the Act this such baseless conclusion is not valid and sustainable in view of proposition rendered by Hon'ble High Court of Delhi (supra). Accordingly, we are inclined to hold that the addition made by the Assessing Officer and upheld by the Id. CIT(A) u/s. 68 of the Act is not sustainable and we thus direct the Assessing Officer to delete the same. Accordingly, grounds nos. 1 to 1.4 of assessee are allowed.

### **Ground no. 2 to 2.3 of assessee**

15. The Id. counsel of assessee submitted that the assessee is a contractor and during the course of assessment proceedings the Assessing Officer noted a difference of Rs. 73,04,678/- on account of mismatch in the contact receipts as per books of accounts and as per 26AS and this Assessing Officer alleged understatement of receipts from five entities and made addition on the basis of presumptions without any cogent positive and adverse material establishing actual understatement of receipts/turnover by the assessee. He further submitted that the assessee submitted all possible documentary evidences under its commend in the form of reconciliation statements, details of RA Bill booked, copy of TDS certificate in the form of 16A reflecting the TDS deducted on the amount payable towards work done inclusive of WCT and service tax along with confirmations but the Assessing Officer as well as Id. CIT(A) dismiss the same without pointing out any defect or discrepancy therein.

16. The Id. counsel also submitted that before the authorities below and specially before the Id. CIT(A) the assessee submitted detailed chart reflecting the gross receipts net work flow, WCT, VAT and service tax in order to substantiate that TDS has also been deducted on WCT/VAT/Service TAX payment made by the contractee in Form No. 26AS. However, in the books the assessee has accounted for the net receipts as WCT/VAT/Service Tax is not the income of the assessee which created difference between the receipts shown by the assessee and 26AS. He further submitted that the

assessee had also furnished the copies of the bills raised confirmed copies of accounts of the parties and the copies of certificate issued by the parties/contractors showing payment of WCT by them but the Id. CIT(A) without making any verification or examination proceeded to make addition to the receipts/turnover of the assessee which is not sustainable.

17. The Id. counsel thus submitted that the learned Commissioner of Income Tax (Appeals) while upholding the addition has failed to appreciate that the reconciliation between the difference between Form 26AS and the books maintained by the appellant, which were duly audited, had duly been submitted in the course of assessment proceedings & appellate proceedings and therefore, arbitrary rejection of such reconciliation is misplaced and could not be made a valid basis to sustain notional, hypothetical addition. In fact, he has also failed to appreciate that purported difference was on account of WCT/VAT/Service Tax deducted by the party which are correctly not reflected as income in the profit and loss account maintained by the appellant and therefore, this fundamental accounting methodology adopted by the appellant, accepted by the Department over the period of number of years, could not be disregarded and therefore, addition so made is not in accordance with law. The Id. counsel submitted that the coordinate bench of ITAT Delhi in the case of Jitender vs. ITO in ITA No. 9686/Del/2019 dated 23.03.2023 held that when the remand report clearly shows that the Assessing Officer, without pointing out any defect or discrepancy in the explanation and factual position submitted by the assessee, submits and states that the reconciliation of receipts furnish by the assessee of P&L account vis a vis 26AS is in order and despite that having seen such findings of the Assessing Officer in the remand report the Id. CIT(A) not accepting the remand report favourable to the assessee proceeds to confirm addition, then such action of Id. CIT(A) makes his findings erroneous, against the facts of the case and not sustainable.

18. Further placing reliance on the order of ITAT Kolkata Bench in the case of ITO Kolkata vs. M/s. Star Consortium in ITA No. 04/Kol/2020 dated 07.04.2021 the Id. counsel submitted that in para 6 the coordinate bench held that only because there was a mismatch between TDS certificate/26AS and turnover/receipts shown by the assessee in its P&L account cannot be a sole basis on which entire amount of difference between said two amounts could have been brought to tax therefore addition made by the Assessing Officer and sustained by the Id. CIT(A) may kindly be deleted particularly in view of factual remand report submitted by the Assessing Officer.

19. On careful consideration of rival submission from the assessment order we note that the Assessing Officer in the last para page 2 and top para at page 3 noted that the

contact receipt shown in the P&L account and as per Form 26AS are not same and there is difference between said two figures. The Assessing Officer show cause the assessee and assessee submitted details of difference pertaining to five entities/contractees. The Assessing Officer not agreeing with the reconciliation and detail filed by the assessee noted that the assessee has failed to explain with documentary evidence as to why impugned part of contract receipts were not included and shown in the books of accounts during the year though the same was reflected in Form no. 26AS and the Assessing Officer proceeded to make addition to the income of assessee by holding that the assessee could not reconcile contract receipts as per Form no 26AS with its books of accounts. The aggrieved the assessee carried the matter before the Id. CIT(A).

20. The Id. CIT(A) took on record documentary evidence and explanation of assessee and called remand report from the Assessing Officer. The Assessing Officer vide dated 24.06.2016 submitted remand report, for the sake of completeness, which is being reproduced below:-

*Addition of Rs. 73,04,678/- was made on account of difference in contract receipts in the books of accounts vis a vis 26AS.*

*The assessee is a contractor during the course of assessment proceedings the assessee was required to explain the discrepancy on account of receipts as per P&L account vis a vis 26AS as per details hereunder:-*

<i>Name of the party</i>	<i>Receipts as per 26AS (Rs.)</i>	<i>Receipts as per books (Rs.)</i>	<i>Difference (Rs.)</i>
<i>Regent Arcare Balprada</i>	<i>25,79,296/-</i>	<i>11,69,611/-</i>	<i>14,09685/-</i>
<i>Balprada Hotels and Hospitals</i>	<i>12,95,69,658/-</i>	<i>12,48,97,564/-</i>	<i>46,72,094/-</i>
<i>Ramtex Overseas Pvt Ltd</i>	<i>2,24,42,090/-</i>	<i>2,18,63,750/-</i>	<i>5,78,370/-</i>
<i>Rama Steel Tubes Ltd.</i>	<i>94,35,606/-</i>	<i>87,26,976/-</i>	<i>7,08,630/-</i>
<i>Hi Tech Pipes Ltd.</i>	<i>1,16,80,260/-</i>	<i>1,16,44,661/-</i>	<i>35,999/-</i>

*Total Difference*

*Rs. 73,04,678/-*

*In all these cases, the contract receipts shown in Form 26AS of the assessee firm is more than the contract receipts shown in the books of the assessee firm.*

*The AR of the assessee in the submissions has attributed this difference to the following:-*

*(i) Rama Steel Tubes Limited*

*Deduction of TDS 3,49,079/-  
on WCT Service Tax 3,59,553/-*

(ii) Rama Tax Overseas P Ltd	Deduction of TDS	2,92,518/-
	on WCT Service Tax	2,83,999/-
(iii) Hi Tech Pipes Ltd	Deduction of TDS	35,599/-
	on WCT on opening balance	
(iv) JMD Regent Arcade	Double deduction of TDS	14,09,685/-
(v) Balprada Hostels and Hospitals	TDS on WCT	46,72,094/-

The assessee was further asked to provide the documentary evidence to explain the discrepancy. In the absence of submission of documentary evidence the A. O has made an addition of Rs. 73,04,678/-.

Now during the course of remand / appellate proceedings the assessee has furnished the following evidence to substantiate the discrepancy as per 26AS vis a vis contract receipt.

Detailed chart reflecting the gross receipts net work flow, WCT and Service Tax in order to substantiate that TDS has been deducted also on WCT/VAT/Service Tax payment made by the contractee. In Form No. 26AS the gross receipts are shown. However, in the books the assessee has accounted for the net receipts as WCT/VAT/Service Tax is not the income of the assessee.

The assessee has also furnished the copies of the bills raised, confirmed copies of accounts of the parties. Further the copies of certificate issued by the parties for payment of WCT also got filed.

The reconciliation of receipts furnished by the assessee of P&L account vis a vis 26AS appears in order.

21. From the remand report we clearly observe that the Assessing Officer submitted remand report after allowing due opportunity of hearing to assessee and taking on record relevant documentary evidence including explanation and reconciliation of assessee and thereafter reported to the Id. CIT(A), that detailed chart reflecting the gross receipts net worth flow, WCT and service tax, in order to substantiate that TDS has been deducted and also on WCT/VAT/Service Tax payment have been made by the contactee. The Assessing Officer also mentioned that in Form no. 26AS gross receipts are shown and in the books of accounts the assessee has accounted for only net receipt as the WCT/VAT/Service Tax are not income of assessee. The Assessing Officer also mentioned that the assessee has also furnished copies of the bills raised, confirmed copy of accounts of parties and the copies of certificate issued by the parties certifying payment of WCT. In the conclusion part, the Assessing Officer clearly mentioned that the reconciliation of receipts furnished by the assessee of P&L account vis a vis 26AS appears in order.

22. However, not agreeing with the remand report of Assessing Officer the Id. CIT(A) in para 5.7 noted that apparently the contractee had made payment of WCT/VAT/Service Tax to the appellant who in turn would have paid it to the tax authorities and thus in view of next para of remand report the Assessing Officer reported that the parties have issued certificates or payments of WCT and these observations are contradictory. Per contra, from vigilant and careful reading of the relevant part of the remand report (supra) we note that the Assessing Officer in the paras below the list of five parties we note that in top and second para the Assessing Officer noted that the assessee was asked to explain the discrepancy but in absence of same the Assessing Officer made addition. In the subsequent para the Assessing Officer noted that the assessee has furnished following evidence to substantiate the discrepancy as per 26AS vis a vis contact receipts. In the next para the Assessing Officer noted in bold that the TDS has been deducted and also WCT/VAT/Service Tax payment made by the contactee and in subsequent para he also noted in the bold that the copies of certificate issue by the parties for payment of WCT also filed. Thus there is no contradiction in the factual remand report of the Assessing Officer. Therefore we decline to agree with the conclusion drawn by the Id. CIT(A) as the remand report clearly shows that the assessee successfully substantiated the cause of difference between the amounts shown by him in the P&L account and receipts as per 26AS by submitting explanation supported by self speaking documentary evidence and finally reported that the reconciliation of receipts furnish by the assessee of P&L account vis a vis 26AS appears in order but the Id. CIT(A) without considering the same dismiss the stand of assessee on the basis of baseless allegation of contradictions in the remand report, and hence conclusion drawn by the Id. CIT(A) for upholding the addition is not sustainable being devoid of merits and perverse.

23. In view of foregoing discussion, we reach to a fortified conclusion that only because there was mismatch between TDS certificate/26AS and the turnover/receipts shown by the assessee in its P&L account cannot be a sole basis for making addition in hands of assessee to bring the difference to tax. In the present case, the assessee during remand proceedings as well as before Id. CIT(A) successfully demonstrated, by way of sustainable explanation supported by documentary evidence including reconciliation statement and certificate issued by the contractee certifying the payments of WCT etc. by them, then it has to be held that the assessee has successfully established that the mismatch was occurred due to inclusion of WCT/VAT/Service Tax in the bills and factum of deduction of TDS on the total bill amount. The assessee also demonstrated that the WCT etc were paid directly by the contractees and assessee was given certificates by the contractees certifying the fact of payment of WCT etc. by them. Therefore we conclude that the Id. CIT(A) findings recorded by him are perverse

and thus he was not correct and justified in confirming the addition. We therefore, direct the Assessing Officer to delete the same. Accordingly, grounds no. 2 to 2.3 of assessee are allowed. The Id. counsel of assessee submitted that the assessee does not want to press ground no. 3 hence the same is dismissed as not pressed.

24. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 07.07.2023.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 07<sup>th</sup> July, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi