

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 902/Ind/2019**  
**Assessment Year: 2016-17**

ACIT (Central), Ujjain	<b><u>बनाम/</u></b> Vs.	M/s. Digiana Projects Private Limited, M-3, Sapna Chamber, 12/1, South Tukoganj, Indore
(Revenue / Appellant)		(Assessee / Respondent)
<b>PAN: AADCD5465A</b>		
Assessee by	Shri Sudhir Padliya, CA	
Revenue by	Shri P.K.Mishra, CIT DR	
Date of Hearing	05.07.2023	
Date of Pronouncement	12.07.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 16.07.2019 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 28.12.2018 passed by ACIT (Central), Ujjain ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2016-17, the revenue has filed this appeal on following grounds:

1. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 6,92,03,500/- made u/s 68 of the I.T. Act, while ignoring the findings in the "Remark" column of the table below para 4.1 of his own order, and thus, has drawn a conclusion extremely opposite to his own observations.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 6,92,03,500/- made u/s 68 of the I. T. Act, while ignoring the AO's objections against accepting the additional evidence, and also the AO's objections against accepting the additional evidence, and also the AO's remand report wherein he rebutted each and every additional evidence.
3. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 6,92,03,500/- made u/s 68 of the I.T. Act, without appreciating that the assessee has utterly failed to discharge his onus during the assessment stage and during the appellate stage to establish the identity and creditworthiness of the alleged creditors and genuineness of the transactions in respect of the claimed unsecured loans.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 30,00,000/- made u/s 69C of the I.T.Act, while ignoring the fact that from the seized document itself, it is evident that the amount under consideration was an expenditure, as it contains the wording "dena shesh", and the assessee failed to rebut the same despite availing ample time and repeated opportunities."

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee-company filed return of income of relevant AY 2016-17 at a total income of Rs. 86,61,933/- which was subjected to scrutiny wherein the AO made two additions, namely (i) addition u/s 68 of Rs. 6,92,03,500/- on account of unexplained unsecured loans, and (ii) addition u/s 69C of Rs. 30,00,000/- on account of unexplained expenditure. Aggrieved, the assessee filed appeal to CIT(A) and succeeded. Now, the revenue has come in this appeal assailing the order of CIT(A).

**GROUND NO. 1 to 3:**

4. In these grounds, the Revenue claims that the Ld. CIT(A) has erred in deleting the addition of Rs. 6,92,03,500/- made by the AO u/s 68 on account of unexplained unsecured loans.

5. Ld. DR for the Revenue drew out attention to the orders of lower-authorities and made following submissions:

- (i) It is submitted that during assessment-proceeding, the AO asked assessee to establish the identity, creditworthiness and genuineness of unsecured loans of Rs. 14,19,03,500/- taken by him out of which the assessee filed only confirmations without any supporting document for loans of Rs. 6,92,03,500/-. The assessee further submitted that the Department may call for directly from creditors but did not provide address of any of the creditors. In absence of address, the AO could not act at the submission of assessee. Therefore, the AO show caused the assessee as to why the unsecured loans should not be treated as unexplained cash-credits in terms of section 68 but the assessee did not file any reply. Hence, the AO rightly found that the assessee had failed to furnish required details/evidences to establish the identity and creditworthiness of the creditors and genuineness of transactions and accordingly made addition of Rs. 6,92,03,500/- treating the creditors as unexplained.
- (ii) It is submitted that the CIT(A), in para 4.1 of his order, mentioned that the AO could very well enforce the attendance of creditors. Ld. DR submitted that when the assessee has not provided address of any of the parties, how could CIT(A) expect the AO to enforce attendance of parties? Going further, Ld. DR submitted that the CIT(A) has given a table of 25 creditors from whom the assessee had taken impugned loans and from a cursory look of the table itself, one can easily find that it is only a few creditors in which the assessee has filed A/c Confirmation, ITR and Bank Statements. In majority of the creditors, the assessee has not filed either A/c Confirmation or ITR or Bank Statement. In fact, in the creditors listed at S.No. 11 and 12 of the Table, not none of the documents has been filed. Further in the last column of the table titled "Remarks", the CIT(A) has himself noted the deficiencies/adverse features with regard to the identity/creditworthiness/genuineness concerning

the creditors. Despite such adverse notings, the CIT(A) has concluded just below the Table that the identity and creditworthiness of the creditors as well as genuineness of transactions was also proved. Referring to such conclusion made by Ld. CIT(A) and emphasizing the Ground No. 1 re-produced in the beginning of this order, Ld. DR strongly contended that the conclusion drawn by CIT(A) is absolutely contrary to the deficiencies/adverse features noted by him in "Remarks" Column of the Table. Ld. DR submitted that the order of first-appeal suffers from a serious infirmity and perversity; the department is having a strong objection against the action of Ld. CIT(A).

6. Per contra, Ld. AR for the assessee made following submissions:
  - (i) It is submitted that the accounts of assessee were duly audited and the Tax Audit Report u/s 44AB of the Act in Form No. 3CD was filed by the assessee which was available with the AO (Copy also placed at page nos. 32 to 43 of the paper-book). Referring to page nos. 37 & 38, Ld. AR submitted that the auditors have given details of all loan creditors in clause no. 31(a) of the said report and the details so reported also include PAN data of those creditors. Ld. AR submitted that the AO could very well verify the status of creditors from PAN data available in said report.
  - (ii) It is further submitted that during first-appellate proceedings, the assessee filed additional evidences under Rule 46A of Income Tax Rules, 1962 and the CIT(A) called for remand-report from AO. Thereafter, the AO filed remand-report (copy available at page nos. 171 to 177 of the paper book). Further the assessee has also filed counter-reply to CIT(A) (copy available at page nos. 178 to 182). Ld. AR submitted that this way the assessee has filed all evidences to CIT(A) during appellate-proceeding so as to prove the identity and creditworthiness of creditors and genuineness of transactions.
  - (iii) Lastly, it is submitted that once the assessee has filed documents to CIT(A), the initial burden cast on assessee is successfully discharged. Therefore, Ld.

CIT(A) has rightly deleted the addition on being satisfied with the submission of assessee; his action must be upheld.

7. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents placed in the Paper-Book filed from assessee's side to which our attention has been drawn. After a careful consideration, we find that the assessee has filed additional evidences during first-appeal before CIT(A) in terms of Rule 46A on which the CIT(A) called remand-report from AO. Thereafter, the AO filed remand-report. But the CIT(A) has not uttered any voice on the remand-report in his appeal-order and this fact is clearly asserted by Ld. Representatives of both sides during hearing. That apart, on perusal of said remand-report as filed by assessee in his Paper-Book, we find that the AO made his reporting to CIT(A) on the impugned loan-creditors in a Table on Page No. 3 to 5 of remand-report and in the last column titled "Remark", the AO has reported the deficiencies/adverse features with regard to the identity/creditworthiness/genuineness. Interestingly, the CIT(A) has re-produced the very same Table verbatim in his order, including therein the "Remarks" column of deficiencies/adverse features as reported by AO, and yet concluded that the assessee has proved the identity and creditworthiness of the creditors and genuineness of the transaction. In such a scenario, we are very much satisfied with the submission of Ld. DR that the conclusion drawn by CIT(A) is infirm as well as perverse. Therefore, faced with this situation, we are persuaded to remit this issue to the file of CIT(A) for consideration afresh. Needless to mention that the CIT(A) shall consider the remand-report; give adequate opportunities to the AO as well as Assessee and take a considered decision by passing a speaking order on the submissions of both sides.

**GROUND NO. 4:**

8. In this ground, the revenue claims that the CIT(A) has erred in deleting the addition of Rs. 30,00,000/- made by AO u/s 69C on account of unexplained expenditure.

9. On hearing learned Representatives of both sides, we find that during a survey u/s 133A conducted upon assessee on 09.09.2015, a bunch of 41 pages inventorised as LPI-7 was impounded on the basis of which this addition has been made. In Para No. 4.1 of assessment-order, the AO has mentioned thus:

*“It is noticed from the LPI-7, found and impounded during the survey proceedings that, the handwritten page no. 41 and overleaf of that page relate to the business of the assessee, wherein names of various TV channels, name of various cities and various amounts are mentioned. Page No. 39 of LPI-7 is immediately succeeding handwritten page, wherein calculations of various amounts are there. It is therefore clear that the said page no. 39 relates to the assessee.”*

Thereafter the AO has re-produced only Page No. 39 and not Page No. 41. The AO has further noted that he confronted the assessee but the assessee did not file any explanation; therefore he computed unexplained expenditure of Rs. 30,00,000/- on the basis of Page-39 and made addition u/s 69C. During first-appeal, Ld. CIT(A) accepted assessee's submission that all papers grouped in LPI-7 were impounded from a common premise being used by several entities of assessee-group; that the Page No. 41 related to assessee but Page No. 39 did not belong to assessee. Accordingly, CIT(A) deleted addition. On a careful consideration, we firstly find that though the AO has treated both Page No. 41 and 39 related to assessee and has co-related the contents of Page No. 41 and 39 also, yet scanned only Page No. 39 in assessment-order and not Page No. 41. Thereafter, the CIT(A) has made a different, rather opposite conclusion, that Page No. 39 did not belong to assessee though Page No. 41 belonged. More interestingly, in a reply filed by assessee in response to a query raised by AO on Page No. 4 of the notice dated 29.08.2018 u/s 142(1) *qua* the documents impounded during survey, the assessee submitted that the documents mentioned at S.No. 16 to 27 (impugned LPI-7 is listed at S.No. 22) did not belong to assessee and related with other associates which other associates explained in their respective assessments u/s 153A and the necessary cognizance on the same was considered in their assessments completed u/s 143(3) read with section 153A. Thus,

there are different claims by assessee at different stages and there is no clarity. Being so, we are not in a position to make any conclusion, more so because the said Page No. 41 is neither re-produced in the orders of lower-authorities nor any assistance is coming from learned Representatives. Therefore, we feel it most appropriate to remit this issue also to Ld. CIT(A) who will adjudicate aptly after looking into the content of Page No. 41 as also whether or not the Page No. 41 and 39 have been considered in the assessments of other group members as claimed by assessee before AO. The CIT(A) will give adequate opportunity to the assessee to enable him to prove his stand adequately.

**10. Resultantly, all grounds of this appeal are allowed for statistical purposes as mentioned above.**

*Order pronounced in the open court on 12.07.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 12.07.2023.

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*