

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.4724/Del/2018
(ASSESSMENT YEAR 2009-10)**

**ITA No.4725/Del/2018
(ASSESSMENT YEAR 2010-11)**

M/s Taurus Agile Technology Corporation Private Ltd.7/1, 2 nd Floor Block No.41, Singh Sabha Road, Shakti Nagar, Delhi-110 007 PAN-AACCT 3803H (Appellant)	Vs.	ACIT, Circle-16(1) New Delhi (Respondent)
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Appellant by	None
Respondent by	Mr. Anuj Garg, Sr. DR

Date of Hearing	03/08/2023
Date of Pronouncement	08/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The both appeals filed by Assessee against the common order passed by the Learned Commissioner of Income Tax (Appeals)-33, New Delhi ["Ld. CIT(A)", for short], dated 09/03/2018 for Assessment Years 2009-10 and 2010-11.

2. The following grounds raised by assessee in both appeals:

ITA No.4724/Del/2018 for AY 2009-10

On the facts and circumstances of the case, the CIT (Appeal) has erred in confirming the addition of Rs.4,78,00,000/- as cash credit u/s 68 of the IT Act.

2. On the facts and circumstances of the case, the CIT (Appeal) has erred in confirming the addition in spite of the fact that the creditor, Ms Meghna Bhardwaj, had confirmed the credit.

3. The CIT (Appeal) has erred in confirming the addition even though Ms Meghna Bhardwaj is an Income Tax assessee and the sum of Rs.3,88,00,000/- was paid to the company from her NRO Account where the money had been transferred from her foreign account.

4. In the facts and circumstances of the case, the learned CIT (A) erred in ignoring the evidence placed before him to establish that Ms Meghna Bhardwaj is an NRI for nearly 20 years, filed returns of income in India itself for the relevant year for Rs.44,21,576/- (and not Rs 1,41,322/, as erroneously mentioned by the AO) and the cash flow of the family to establish credit worthiness of the persons.

5. The CIT (Appeal) has erred in confirming the addition of Rs.90,00,000/- which was paid to the company on behalf of Mr Meghna Bhardwaj.

6. The CIT (Appeal) has erred in not taking into account the facts on record for deciding the appeal.

7. The CIT (Appeal) has erred in not considering the fact and law on the point at issue inasmuch as the identity, capacity and genuineness of the transaction is fully established.

8. The appellant craves leave to amend, alter any ground or add a new ground which may be necessary.”

ITA No.4725/Del/2018 for AY 2010-11

“On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in confirming the addition of Rs 5,02,04,930/- (Rs.2,25,04.930/- from Ms Meghna Bhardwaj Rs.1,77,00,000/- from Ms Shivani Bhardwaj Rs.1,00,00,00/- from Ms Kantarani Gulati) as unexplained cash credit under Section 68 of the Income

Tax Act. The learned CIT (A) failed to appreciate the evidence on record and reproduced by him in his order, particularly para 7 of the said order and other documentary evidence like confirmation of the loans, bank statements etc. to establish credit worthiness of the persons and genuineness of the transactions.

2. The learned CIT (A) erred in law by failing to consider that the loan of Rs.1,00,00,000/- of Ms Kantarani Gulati has been repaid along with interest.

3. The learned CIT (A) erred in passing the order in violation of principles of natural justice, without granting any hearing to the appellant.

4. The learned CIT (a) erred in passing the order without following the principles of natural justice inasmuch as the appellant was not informed of any deficiency in the evidence already produced and did not ask for any further clarification or evidence or documents.

5. The learned CIT (A) erred in not considering the fact and law on the point at issue, inasmuch as the identity, capacity and genuineness of the transactions is fully established.

6. Appellant craves to add, alter or delete all or modify any or all the above grounds of appeal.

7. Appellant craves indulgence of the honourable Tribunal, for personal hearing before the matter is decided.”

2. None appeared for the assessee the notices sent to the registered address returned with the endorsement company not existed. Therefore, we constrained to decide the appeal after hearing the Ld. Departmental Representative and perusing the material.

ITA No. 4725/Del/2018 (A.Y 2010-11)

3. Brief facts of the case for A.Y 2010-11 are that, the assessee filed return declaring loss at Rs. 30,25,24,938/- an assessment order came to be passed

u/s 143(3) of the Act by making disallowance of loss or sale of capital asset of Rs. 10,61,174/- qua disallowance of claim interest on TDS Rs. 38,023/- and made addition of Rs. 5,02,04,930/- u/s 68 of the Act on account of unexplained cash credit. Aggrieved by the assessment order dated 30/03/2013, the assessee preferred an appeal before the CIT(A). The ld. CIT(A) vide order dated 09/03/2018 dismissed the Appeal filed by the assessee.

4. The Ld. Departmental Representative vehemently submitted that both the Lower Authorities committed no error in deciding the issues before them and by relying on the assessment order on CIT(A) prayed for dismissal of the present Appeal.

5. We have heard the Ld. Departmental Representative and perused the material available on record. The Ld. CIT(A) while dismissing the appeal filed by the assessee held as under:-

“ 8. Decision

8.1 From the facts of the case in the assessment order. I find that Appellant has accepted unsecured loans of Rs.2,25.04.930 from Mrs. Meghna Bhardwaj and Rs.62,00,000 from Ms. Shivani Bhardwaj. The Appellant has also accepted share application money of Rs.1.15,00,000/- from the above Ms. Shivani Bhardwaj. The Appellant has also taken loan of Rs.1 crore from Kanta Rani Gulati. During assessment proceedings, the Assessing Officer required that Appellant to file the necessary details to discharge initial onus u/s 68 with regard to the above two cash creditors. No details/material

were filed before the Assessing Officer till 12.03.2013. The Appeal No. 160/13-14/193/15-16 Assessing Officer on 12.03.2013 issued a summons to these cash creditors. The Assessing Officer simultaneously vide order sheet entry dated 18.03.2013 asked the Appellant to produce Mrs. Meghna Bhardwaj. In reply to the above summons/opportunity for personal appearance, the counsel of Mrs. Meghna Bhardwaj appeared before the Assessing Officer and explained that Mrs. Meghna Bhardwaj is out of country. A letter dated 18.03.2013 was also submitted by the counsel with the copies of the bank statements where she made a request for 10 days time to furnish the relevant papers to her AR. The Assessing Officer observed that the above letter of Mrs. Meghna Bhardwaj is signed in ink and such letter could have been received through courier. The AR of the above Mrs. Meghna Bhardwaj was required to furnish copy of the passport and air tickets to prove that she is not in India. The AR was asked to produce the said creditor on 28.03.2013. No compliance was made and, therefore, the Assessing Officer considered the loan of Rs.2.25.04.930 as unexplained cash credit. With regard to the unsecured loan of Rs.62.00.000/- and share application of money of Rs.1.15,00,000/- from Ms. Shivani Bhardwaj, there was no compliance except for filing confirmation on 08.03.2013. No compliance with a summons issued to Ms. Shivani Bhardwaj on 18.03.2013 was made. In the confirmation filed also there is no evidence of source of investment or her income tax particulars. The confirmation of Ms. Shivani Bhardwaj is on page 243 of the Assessment Record. In the absence of any documentary evidences to establish identity of the cash creditor her creditworthiness and proof of genuineness of the transaction. The Assessing Officer made the addition of the aggregate amount of

Rs.1.77,00,000/- u/s 68 of I.T. Act, 1961. With regard to loan amounting to Rs.1 crore from Kanta Rani Gulati, no details were furnished to explain the nature and source of the credit. Therefore, the Assessing Officer treated Rs.1 crore as unexplained cash credit.

8.2 During appeal proceedings, no new evidences have been furnished except for submission that the creditors are having PAN and are filing income tax returns. No proof in support of submission is filed in the absence of any further evidence filed me. I have no option but to uphold the action of Assessing Officer of treating the amount of Rs.5.02.04.930/- as unexplained cash credit within the meaning of Section 68 of I.T Act. Therefore, these grounds of Appeal are dismissed.”

6. It is found that during the assessment proceeding, the Assessing Officer required the assessee to file necessary details to discharge initial onus caused u/s 68 of the Act, with regard to cash transactions of unsecured loans and regarding shared applications money the assessee has not discharge the initial onus u/s 68 of the Act either before the A.O. or before the CIT(A). Thus, in the absence of any documentary evidence to establish identity of cash creditor, creditworthiness and proof of genuineness of the transaction, the A.O. rightly made the addition which has been confirmed by the CIT(A). In so far as, loan from Kanta Rani Gulati is concerned also the assessee has not furnished any details to explain the nature and source of the credit before the A.O. or before the CIT(A).

7. Considering the above facts and circumstances, we find no merit in the grounds of appeal of the assessee, accordingly the grounds of Appeal of the assessee are dismissed.

8. In the result, the Appeal filed by the assessee in ITA No. 4725/Del/2018 is dismissed.

ITA No. 4724/Del/2018 (A.Y. 2009-10)

9. Even in the present appeal the A.O. made the similar addition of unexplained cash credit of Rs. 4,78,00,000/- on the ground that the assessee has failed to discharge its onus caused u/s 68 of the Act. The Ld. CIT(A) while deciding the issue held as under:-

“In the above grounds, the common issue involved is addition of Rs.4,78,00,000/- made by the Assessing Officer w/s 68 of the Act. Going through the facts of the case, I find that the Appellant has accepted unsecured loan of Rs.4,78,00,000/- from one Mrs. Meghna Bhardwaj. During assessment proceedings, the copy of bank statements of Mrs. Meghna Bhardwaj was submitted. From that statement of Axis Bank, it was noticed that amount of Rs.3,88,00,000/- has been transferred from her bank account to the Appellant company account. Besides above, the amounts aggregating Rs.90,00,000/- were also received from the third parties on behalf of above Mrs. Meghna Bhardwaj and thus the total amount credited in her account stood at Rs.4,78,00,000/-. The notice u/s 133(6) was issued to Mrs. Bhardwaj and in reply to the notice Mrs. Bhardwaj, through her counsel Mr. Anuj Jain, filed the reply vide letter dated 12.11.2011. She enclosed with the reply copy

of the bank statement, copy of Income Tax Return. The Assessing Officer made the addition u/s 68 on the ground that a person having meagre income of Rs.1,41,322/- cannot be believed to have advanced the loan of Rs.4,78,00,000/-. The amount of Rs.3,88,00,000/- was transferred from personal bank account of the Appellant but there is no evidence to prove how the balance amount of Rs.90,00,000/- was deposited on behalf of the said Mrs. Bhardwaj to the Appellant company. Hence, the creditworthiness and the genuineness of the transactions remained unsatisfied. Before me during appellate proceedings also, no fresh evidences have been submitted in support of source of Rs.3,88,00,000/- transferred from the bank account of the Appellant and the remaining amount of a? by the Appellant is the identity of the loan creditor but since the transaction is in the nature of cash credit, the Appellant is under obligation to prove creditworthiness of the cash creditor and genuineness of the transaction, which remained unsubstantiated by the Appellant. Hence, these grounds of appeal are dismissed.”

10. Considering the fact that even in the year under consideration the assessee failed to establish the fact of availing unsecured loan of Rs. 4,78,00,000/- and not proved the identity of loan creditor thus the assessee has not complied obligation to prove the creditworthiness of cash creditor and failed to prove the genuineness of the transaction, therefore, we find no error or infirmity in the order of the CIT(A) in dismissing the appeal filed by the assessee, accordingly, the Grounds of Appeal of the assessee are dismissed.

11. In the result, the Appeal in ITA No. 4724/Del/2018 filed by the assessee is dismissed.

Order pronounced in open Court on 08th August, 2023

Sd/-

(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated: 08/08/2023

Pk/R.N, Sr ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI