

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. G. S. PANNU, PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No.8702/Del/2019
(Assessment Year : 2016-17)

Acumen Infrastructure Private Ltd. C/o. Hote Oyster, B/h IBP Pump, Near Big Bazar, Surat, Dumas Road, Piplod, Surat – 395 007 PAN No. AAFCA 2256 G (APPELLANT)	Vs.	The ACIT Circle – 1(2) Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Ms. Anubhaa Tah, Sr. D.R.

Date of hearing:	04.10.2023
Date of Pronouncement:	09.10.2023

PER CHANDRA MOHAN GARG, JM :

The captioned appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, New Delhi dated 06.09.2019 for Assessment Year 2016-17.

2. The assessee has raised following grounds of appeal :

- “1. On the facts and in the circumstances of the case as well as law on the subject the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.2,18,66,082/- on account of unsecured loan of Rs.1,75,51,113/- plus interest of Rs.43,14,969/- is disallowed and added u/s.68 of the income Tax Act, 1961.

2. *On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeal) has erred in confirming the action of the assessing officer in ignoring facts that the loan was paid through normal banking channels and no cash deposits were noticed before loan payments which clearly reveal genuineness and creditworthiness of the lender.*
3. *On the facts and in the circumstances of the case as well as law on the subject, the Ld. Commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in disallowing of interest without issuing final SCN, which is illegal.*
4. *On the facts and in the circumstances of the case as well as law on the subject, the Ld. Commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in ignoring facts that interest has already been considered for disallowance u/s.40(a)(ia) of the Act. But Ld. AO has erred by disallowing it again.*
5. *It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.”*

3. When the appeal was called for hearing neither the assessee nor any authorised representative or Counsel appeared nor any adjournment application has been filed despite due service of notice. Therefore, we proceed to decide the appeal *ex parte qua* assessee after hearing the arguments of Learned Sr. D.R. on behalf of the department.

4. **Ground Nos.1 and 2 of Assessee** : As per these grounds, the contentions of the assessee that the learned CIT(A) has erred in confirming the action of AO in making addition of Rs.2,18,66,082/- on account of unsecured loan of Rs.1,75,51,113/- plus interest of Rs.43,14,969/- and making addition u/s 68 of the Income Tax Act, 1961 (in short ‘the Act’) to the income of the assessee. It has also been contended by the assessee in these grounds that the learned CIT(A) has erred in confirming the action of the AO ignoring the facts

that the loan was received through normal banking channels and no cash deposits were noticed before transmission of amount as unsecured loan to the assessee, which established the creditworthiness of lenders and genuineness of transactions.

5. Replying to the said contentions of assessee raised by way of ground nos.1 and 2, the learned CIT-DR supporting the action of the AO submitted that the assessee has failed to discharge the onus of establishing creditworthiness of lender and genuineness of transactions. He thus submitted that after detailed verification and examination of documentary evidence filed by the assessee the AO rightly made addition on account of unsecured loans amounting to Rs.1,75,51,113/-. The learned CIT-DR also submitted that the AO was also right in making addition of Rs.43,14,969/- on account of interest claimed by assessee, which was not allowable as the assessee failed to establish genuineness of transaction of unsecured loan and hence the AO rightly dismissed the genuineness of claim of interest expenditure payment of interest by the assessee. Drawing our attention towards relevant para of first appellate order, the Learned CIT-DR submitted that the learned First Appellate Authority after considering the conclusion drawn by the AO in the assessment order, submissions of assessee filed during first appellate proceedings rightly upheld the additions made by AO. The learned Sr. DR also submitted that since the assessee has failed to discharge the onus of establishing creditworthiness of lenders/creditors and genuineness of transactions of unsecured loan viz-a-viz payment of interest thereon as per mandate of Section 68 of the Act, therefore, grounds of assessee being devoid of merits may kindly be dismissed.

6. On careful consideration of the submissions, first of all, we note that the Assessing Officer after allowing the due opportunity to the assessee made two additions viz., first on account of unexplained unsecured loans and second on account of interest expenditure claimed by the assessee by observing that since the source of unsecured loan is doubtful therefore, the incurring of interest expenditure also becomes not allowable. From the first appellate order, we note that the learned CIT(A) has upheld the addition with following observations and findings:

"In response to the above show cause notice dated 03/12/2018, the appellant uploaded its reply dated blank Dec. 2018, uploaded on 06/12/2018. From the financials, the AO found that the appellant has taken unsecured loans of Rs.1,75,51,113/- from P.R. Niryat Pvt Ltd. In response to the notice u/s 133(6). P.R Niryat Pvt Ltd has submitted ITR, Ledger account of M/s Acumen Infrastructure (P) Ltd, Bank statements and source of funds. On perusal of these documents, the AO noted that the source of funds in majority of cases has been from either 'Internal Transfer', 'unsecured Loans secured from party', 'Cash Deposit' or 'Siddhi Vinayak Logistic Ltd. The Director, for P.R. Niryat Pvt. Ltd. has further submitted that the ITR for AY 2016-17 is 'yet to be filed'. The AO has concluded that the appellant has failed to discharge the onus of proving the genuineness and creditworthiness of the loan creditors. The AO also noted that the credit balance of P R Niryat Pvt. Ltd has been shown to be Rs. 5,57,76,086/- as against the opening balance of Rs.3,39,10,004/-. During the year an amount of Rs.1,75,51,113/- was received by the appellant from M/s PR Niryat Pvt. Ltd. The AO also noted that the interest of Rs.43,14,969/- has been charged. Since, the source of funds is doubtful, the same has been added by the u/s 68 in the hand of the appellant company. Since the loan has been treated as bogus, interest of Rs.43,14,969/- has been also disallowed. Despite repeated opportunities the appellant company could not prove the credit worthiness of PR Niryat Pvt Ltd. In the case of CIT v Mihir Kanti Hazra [2015] 61 taxmann.com 315 (Calcutta) Hon'ble High Court of Calcutta has held that "It is now well settled that the creditworthiness of the alleged creditors and the source of the source are relevant enquiries." During appellate proceedings, the appellant company could not furnish any document to prove the creditworthiness of P R Niryat Pvt Ltd. Despite repeated opportunities, the appellant company could not prove the credit worthiness of the above lender. Decision of Hon'ble High Court of Calcutta in the case of CIT v Mihir Kanti Hazra(supra) is squarely applicable to the facts of the present case. Accordingly, the addition of Rs.1,75,51,113/- u/s 68 on account of unsecured loan from P.R. Niryat Pvt. Ltd is upheld. Since loan has been held as bogus, the interest of Rs.43,14,969/- cannot be allowed in the instant case. Accordingly, the addition of Rs.1,75,51,113/- u/s 68 on account of unsecured loan from P.R.

Niryat Pvt. Ltd and the disallowance of the interest of Rs.43,14,969/- are upheld in the instant case. Ground. No. 1(a), 1(b) & 1(c) are decided against the appellant.”

7. On careful consideration of the above submissions, contentions of the assessee raised before the authorities below as well as in the ground nos.1 & 2 and on evaluation of basis taken by the AO for making additions and conclusion drawn by the CIT(A) while upholding the additions, we note that the AO made additions in the hands of the assessee by observing that the assessee has failed to discharge the onus of establishing creditworthiness of lenders/creditors and genuineness of transactions. The learned CIT(A) noted that since the source of companies was doubtful, therefore, the same was rightly added by the AO u/s 68 of the Act. The learned CIT(A) while confirming the second part of addition also concluded that since the loans has been treated as bogus, the interest of Rs.43,19,969/- also rightly disallowed by the AO. The learned CIT(A) has right to relied on the judgment of Hon'ble High Court of Calcutta in the case of Mihir Kanti Hazra (supra), wherein it was held that *“it is now well settled that the creditworthiness of the alleged creditors and the source of the source are relevant enquiries.”* We unable to see any valid reason to interfere with the findings recorded by the Learned CIT(A) while confirming both the additions. Therefore, ground nos.1 & 2 of assessee being devoid of merits are dismissed.

8. **Ground Nos.3 & 4 of assessee:** In these grounds, the assessee has contended that the learned CIT(A) has erred in confirming the action of the AO in disallowing the interest without issuing final show-cause notice and ignoring the facts that interest has already been considered for disallowance u/s 40(a)(ia) of the Act, but the AO

had again made addition on this count which amounts to double addition and therefore, the addition may kindly be deleted.

9. Replying to the above, the learned Sr. D.R. supported the orders of the authorities below and submitted that neither the AO nor the learned CIT(A) has made any disallowance or addition u/s 40(a)(ia) of the Act, therefore, the ground nos.3 & 4 of assessee may kindly be dismissed being baseless and misconceived.

10. On careful consideration of submissions from careful reading of assessment and first appellate order, we note that authorities below has not made any disallowance/addition u/s 40(a)(ia) of the Act, therefore, ground nos.3 & 4 of assessee are dismissed.

11. **Ground nos.5 & 6 of the assessee** are general in nature which do not requires any specific adjudication.

12. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 09.10.2023

Sd/-

**(G. S. PANNU)
PRESIDENT**

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Date:- 09.10.2023

*Priiti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI