

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2807/Del/2019

[Assessment Years : 2015-16]

Telmos Electronics, Jindal Chowk, Model Town, Hisar, Haryana-125005. PAN-AACFT1673L	vs	ITO, Ward-5, Hisar.
APPELLANT		RESPONDENT

ITA No.2655/Del/2019

[Assessment Year: 2010-11]

Telmos Electronics, Jindal Chowk, Model Town, Hisar, Haryana-125005. PAN-AACFT1673L	vs	JCIT, Hisar.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Anuj Garg, Sr.DR	
Date of Hearing	17.10.2023	
Date of Pronouncement	31.10.2023	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee against the separate orders of Ld.CIT(A), Hisar both dated 31.12.2018 for the **assessment years 2015-16 & 2010-11**. The appeals are taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity and convenience.

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that no one has been attending the proceedings, the assessee has been seeking adjournment on one pretext or other. Therefore, looking to the conduct of the assessee, it can be gathered

that the assessee is not interested in effectively pursuing both these appeals. Therefore, the appeals are taken up for hearing and being decided on the basis of material available on records.

ITA No.2655/Del/2019 [Assessment Year : 2010-11]

3. First, we take assessee's appeal in ITA No.2655/Del/2019 wherein assessee has raised following grounds of appeal:-

1. *“That the orders of the authorities below CIT(A) Hisar and that of the Assessing Officer JCIT, Hisar are liable to be quashed to the extent being arbitrary, illegal, without jurisdiction and justification so far as impugned additions as being sustained are concerned.*
2. *That the Ld. CIT(A) Hisar grossly erred in sustaining the impugned order of the assessing officer below JCIT Hisar through which an arbitrary, estimated and illegal additions of Rs. 171495/- (Rs. 2205+Rs. 149440) u/s 40A(3) though covered under rule 6DD(k) of the Income Tax Act, 1961 was effected to the income returned on account of payment made to M/s Aluminum Trading Co., Delhi contrary to the law and facts of the case and without appreciating the contentions and evidence adduced on record before the A.O., as such the impugned additions is liable to be quashed. (Explained at para 2 of statement of facts).*
3. *That the Ld. CIT Hisar further erred in sustaining the addition on account of cash credits amounting to Rs. 825000/- advanced by different creditors duly credited in their respective accounts in the account book of the appellant firm. The impugned order of the A.O. JCIT, Hisar holding the above cash credits of 6 creditors being unqenuine without appreciating the cogent evidence and submission adduced as on record, in support of contentions deserves to be annulled being against law and facts of the case.*

Cash credits disallowed with amount of interest payable/ accrued and impugned additions affected and added wrongly to the income

returned u/s 68 of the Act, of the appellant assessee firm, in the case of each credits are being agitated herein below:

(Explained at Para 3 of Statement of Facts)

S.No.	Name of the Creditor	Amount advanced as loan	Interest accrued/assessed in individual creditors returns in A.Y.2010-11
3(i)	Krishan Kumar Verma	125000	13150
3(ii)	Krishan Kumar HUF	175000	13463
3(iii)	Seema Verma	150000	14967
3(iv)	Ramesh Chander	125000	9616
3(v)	Rajbir Singh	150000	14878
3(vi)	Smt. Raj Rani	100000	14878
		825000	73767

All the aforesaid additions of cash credits and disallowed amount of interest payable thereon and the impugned additions effected thereby deserves to be quashed being arbitrary and illegal.

4. That the authority(s) below CIT(A) Hisar and A.O. JCIT Hisar was absolutely wrong in sustaining double taxation of interest income one in the case of appellant assessee firm, after disallowing deduction specifically when the same stand already assessed and charged as income in the case of each creditors in their respective income tax returns during A.Y. 2010-11 and even thereafter without any action being taken by the department in the case of any of the creditors, for that reason also the effected disallowance of interest paid/ payable to respective creditors and additions made requires to be deleted.
5. That the authorities below CIT(A) Hisar/A.O. Hisar were also wrong in opinion that the appellant is liable for penal action under 271(1)(c) of the Act the observation being perverse and premature requires not to be acted upon since penalty proceeding are separate to assessment proceedings.
6. The orders of the authorities below are also liable to be quashed being conjectural and not being a speaking order.

On the facts and in the circumstances of the matter under this appeal it is prayed that the contentions and submissions of the appellant may kindly be accepted as prayed in the grounds of appeal and explained in the statement of facts annexed thereto. Necessary relief as prayed may please also be granted to the appellant firm without prejudice to their rights to raise any additional ground(s) of appeal and also to explain further the statement of facts before or at time of hearing of the appeal, any other consequential relief to which the appellant firm is found entitled may please also be granted.”

4. Facts in brief are that the assessee has electronically filed its return of income, declaring total income of INR 59,79,690/- on 29.09.2015. The case was selected for scrutiny assessment and the assessment was framed vide order dated 22.03.2013. The Assessing Officer (“AO”) while framing the assessment, noticed that the assessee had made payment in cash in violation of provision of section 40A(3) of the Income Tax Act, 1961 (“the Act”). Accordingly, he made addition of INR 1,71,495/-. Further, the AO noticed that the assessee had obtained unsecured loans. After considering the submissions placed on record, the AO made addition amounting to INR 8,25,000/- and he further made addition of INR 73,767/- as the interest on unsecured loans. Further, he made adhoc disallowance of INR 30,000/- out of the car and telephone expenses.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition made in respect of disallowance made u/s 40A(3) of the Act of the unsecured loans and interest thereon. However, the adhoc addition out of car and telephone expenses was deleted.

6. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

7. With regard to the impugned addition, the assessee has submitted submission in brief/Synopsis in this appeal. For the sake of clarity, relevant contents of the submission in brief/Synopsis are reproduced as under:-

“In continuation to the statement of facts annexed with the Grounds of appeal, the appellant assessee firm further adduces and explains as under:

1. That the appellant assessee firm having its principal place of business at Hisar is being assessed regularly under Income Tax since more than two decades presently having jurisdiction with DCIT Hisar under PAN No. AACFT1673L though assessed by the then JCIT Hisar Range- Hisar (Sh. R.P. Dhandra) during the A.Y 2010-11 since the case being selected under compulsory scrutiny.

(i) The firm was and is carrying on the business as a sub-contractor/ agent on labour and turnkey basis, of the execution, erection works and job works etc. as electrical contractors and also trading in certain electrical goods and materials. The contracts/sub-contracts used to be executed under various companies and government departments at different places.

(ii) All the three male partners of the firm/ out of four were qualified Chartered Engineer. The firm as usual right from its inception is maintaining day to day regular books of accounts in its normal course of business and the accounts used to be Audited statutorily by the registered Chartered Accountants who has reported in their Tax Audit Report of the even date the correctness of accounts which also as before stand accepted by the concerned A.O, JCIT Hisar Range-Hisar also for the assessment year 2010-2011.

(iii) *That the return of income for A.Y 2010-11 as filed was accompanied with the Tax Audit Report compiled by the registered Chartered Accountant vide Form 3CB-3CD with complete audited statements of accounts comprised of Trading Account, Works Executed Account, at various sites/places, Profit & Loss A/c, Balance Sheet, details of Secured and Unsecured Creditors etc. as find placed on record.*

The regularly day to day maintained audited books of accounts along with purchase & sales invoices, details of secured and unsecured creditors and relevant vouchers of expenses duly produced and perused by the concerned A.O who accepted the same as true and correct.

2. *The appellant assessee firm e-filed its return for the A.Y 2010-11 declaring a total income of Rs 59,79,690/- on 29.09.2010 and the assessment was completed under section 143(3) of the Act vide order and demand notice dated 22.03.2013 by the then A.O JCIT Hisar Range- Hisar, since the case was picked under selected scrutiny. However under certain wrong observation and misapplication of law and facts, the returned income was wrongly, illegally and notionally enhanced to Rs. 70,79,950/- after holding wrongly and arbitrarily certain genuine cash credits to be ungenuine, wrongly and arbitrary, after affecting, adhoc additions by disallowing of certain allowable revenue expenditure u/s 40 A(3) etc. The disallowance and additions are being discussed hereinbelow:*

In as much as the said impugned order was passed by the then JCIT without jurisdiction and valid authority to assess the appellant assessee firm for the assessment year 2010-11. The jurisdiction ground was raised through additional ground explained below.

Additional Ground of Appeal 1(A)

3. *On additional Ground 1A, vis-a vis lack of jurisdiction:*

The appellant assessee through application dated 11-05-2022, prayed for admission of an additional jurisdictional legal ground in appeal which due to bonafide omission left to be raised in the ground of appeal though raised before worthy CIT (A), raised earlier and also find mention in the order as well, which was deemed necessary to be raised since goes to the roots of the matter jurisdiction and affecting its merit. The additional grounds in the case read as under:

"That the order of the Assessing Officer JCIT, Hisar was void-ab-initio, without jurisdiction, for want of mandatory permissions of CIT, Hisar Range for selecting the case under scrutiny and framing assessment contrary to the norms prescribed for scrutiny assessment for the A.Y 2010-11, by the concerned authority as apparent from the assessment order, for that reason the impugned order deserves to be, and annulled." A reference is made to the following case laws relevant to the point at issue: In support of the contentions the following case law is referred;

West Bengal State Electricity Board vs. DCIT 278 ITR 218 (Cal.)

Held: Where it is stated that no jurisdiction can be conferred by default or by agreement and decision without jurisdiction is nullity.

Karan Singh vs. Chaman Paswan AIR 1954 SC (340)

Held: Defects of jurisdiction can be peculiarly or territorial and incurable if applied.

4 *On Ground no 2 of Appeal: Regarding Disallowance of Rs. 171495/- under section 40A(3) of the Act:*

(4.1). The nature of the business as stated above of the appellant assessee firm was that of execution and erection work as sub-contractor/ agent of different projects of various coys at different sites, including erection of electrical substations. During A.Y 2010-11

certain works were executed as a sub-contractor/agent of the co."Areva T & D India Ltd." and during the course of execution certain material of particular specification was purchased by the appellant assessee firm to be used in the execution of subcontract work of the principal company as an agent against cash payment.

The material required for the work was of particular technical specification and was not commonly available and frequently saleable in the market, rather rarely available with very few suppliers like "M/s Aluminum Trading Co., Delhi" from whom the required goods were obtained for being used in the execution of works contracts, against cash payments, under the compelling circumstances since the said firm insisted on cash payments only for supplying the said product of particular specification at their own terms and conditions as such in order to execute the work in time, the same was purchased against cash payments because no other firm for supply without cash payment was available at that moment and accordingly the payments were made through cash detailed as under:

Rs. 22,055/- on 01.09.2009 invoice No.326 Book No.7, ie. Rs. 106609/- on 11.01.2010, and Rs. 42831/-on 19.01.2010 and the payments were made to the concerned selling dealers while executing the work of principal Co."Areva T & D India Ltd. (kirori)" as a sub-contractor/ agent for executing the work of the principal coy.

(Copies invoices) Paper Book Page No. 33-36

(4.2) Payments were made to M/s Aluminium Trading Company under the compelling and unavoidable circumstances in order to execute the work of the principal Co. "Areva T & D India Ltd." in time and that too in order to avoid undue hardships, and the circumstances were duly explained at length from technical angle by the partner of the firm Sh. Ravi Gupta who is qualified Chartered Electrical Engineer looking after the work & who has also explained

the circumstances under which the cash payments were made to M/s Aluminium Trading Co. Delhi, which was an authorized dealer of "Jindal Aluminum Ltd." and the material of particular specification at that moment was available with him who in turn insisted on cash payments for supply of such goods since the same was neither readily/available nor saleable frequently in the open market.

Also the confirmed copies of accounts of M/s Aluminum Trading Co. along with its confirmation letter proving the identity of the payee firm were duly furnished along with an affidavit of Sh. Ravi Gupta (Partner firm)narrating the facts, in support of the contentions.

Paper Book Page No.37, 37(i), 38, 40 & 41

On Affidavit:

Mehta Parekh & Coy vs. CIT: (1956) 30 ITR 181 SC; HELD:

If ITO fails to cross examine the deponent, the Affidavit becomes unchallengeable, accordingly any notional addition of Rs.171495/- u/s 40A (3) is quite unsustainable and liable to be quashed on all force. In short at substance the payments were made keeping in view the business expediency & its overall profitability and was made by the appellant as sub-contractor/ agent of the company in order to avoid genuine hardship and to execute the work in time, as such the payment deserves to be allowed as allowable business expenditure under section 40A (3) Rule 6DD(k) which the provision deserves to be liberally construed.

A reference is made to the Delhi High Court judgment in the case;

R.C. Goyal vs. Commissioner of Income Tax 92013) 259 CTR (Del) 15

It was held that the court having regards to the peculiar facts and circumstances, the Tribunal and lower authorities adopted an unduly and narrow technical interpretation of Rule 6DD (k), the benefit of which assessee clearly was entitled to and conclude it

assessee engage in executing catering contracts for Railway in trains and used to source food articles etc. from another small concern who insisted on cash payment, assessee case was covered under section 40A (3) was called for.

Anoopam teleservices vs. ITO 2014 (268) CTR (Guj.)

Held: Assessee was compelled to make cash payments on account of peculiar situation on insistence upon by the principal and genuineness & identity of the payee not being in dispute disallowance u/s 40 A (3) was not sustainable relied on. Relied on (2013) 261 CTR (P & H) 422 (2013) 350 ITR 227 (P & H) On Affidavit: On Ground No3

5. *As regards Additions of Rs. 825000/- after holding certain genuine cash credits being ungenune:*

That the A.O. below was further wrong and misdirected himself in holding certain genuine cash credits amounting to Rs. 825000/- in account of certain creditors detailed hereinbelow and also as find mention in sub paras 3(i)-3(vi) of the ground of appeal, being ungenune without appreciating the evidence adduced on record and appreciating the facts, that the appellant assessee discharged its onus by explaining (i) complete identity of the said creditors, (ii) the evidence that of being existing income tax assessee on record being assessed regularly since last many years under respective PAN(s) and (iii) all the deposits stand made through account payee's banker cheques by the concerned creditors to the appellant assessee firm and all were the man of means, having capacity to advance sums.

In as much as all the creditors through, Affidavits duly sworn in and attested, affirmed the factum of deposits made with the appellant assessee firm and also admitted that the amounts deposited belongs to them as deposited out of past savings and sources duly explained. All the creditors except one Smt. Raj Rani were cross examined in person, by the concerned A.O and furthered crossed by

the counsel, Sh. S.P. Jain Advocate Hisar and all the creditors invariably stated and confirmed that the amount deposited with the assessee firm M/s Telmos Electronics were paid by them individually through account payee cheques, and throughout though confirmed and that the amounts advanced belong to them and also adduced evidence as being existing income tax assessee on record being assessed regularly since past years and also have returned interest income from the deposits as received from the assessee's firms as their income in their individual returns duly accepted by the income tax department/concerned AO's in their respective individual cases having jurisdiction over them.

*Person wise additions are being agitated in brief herein below:-
(Grounds No.3 of appeal)*

5.1. That the A.O. below erred in effecting an impugned addition of Rs. 125000/- in account of Sh. Krishan Kumar S/o Ballu Ram by holding the credit not being genuine and the creditor was not a man of means having capacity to advance contrary to the facts and evidence adduced on record, the said sum of Rs. 125000/- duly advanced to the appellant firm, in as much as not relying on his savings and relevant source of deposit and his capacity to advance the said sum, as such the additions being bad in law deserves to be deleted.

Paper book Page No.44-49

That the 5.2 A.O. below further erred in effecting an impugned addition of Rs. 175000/- in account of Krishan Kumar HUF by holding the credit not being genuine and the creditor was not a man of means having capacity to advance the said sum of Rs. 175000/- duly advanced to the appellant firm, in as much as not relying on his saving and relevant source of deposit, as such the additions being bad in law also deserves to be deleted.

Paper book Page No.62-66

5.3 That the A.O. below was also wrong in effecting an impugned addition of Rs. 150000/- in account of Smt. Seema Verma D/o Sh. Laxman, by holding the credit not being genuine and the creditor was not a lady of means, having capacity to advance the said sum of Rs. 150000/- duly advanced to the appellant firm by the said creditor, in as much as not relying on her saving and relevant source of deposit and by misappreciating the evidence adduced on record, as such the additions being bad in law further deserves to be deleted.

Paper book Page No74-79.

5.4 That the A.O. below was again wrong in effecting an impugned addition of Rs.125000/- in account of Sh. Ramesh Chander S/o Sahaj Ram by holding the credit not being genuine and the creditor was not a man of means having capacity to advance contrary to the facts and evidence adduced on record, the said sum of Rs. 125000/- duly advanced to the appellant firm, in as much as not relying on his saving and relevant source of deposit, as such the additions being bad in law deserves to be deleted.

P.B P No.50-55

5.5 That the A.O. below further erred in effecting an impugned and arbitrary addition of Rs. 150000/- in account of Sh. Rajbir Singh S/o Deva singh by holding the credit not being genuine and the creditor was not a man of means having capacity to advance the said sum of Rs. 150000/- duly advanced to the appellant firm, in as much as not relying on his saving and relevant source of deposit, as such the additions being bad in law deserves to be deleted being contrary to the facts and evidence adduced on record.

PB P No.56-61

5.5. Though the said lady (Smt. Raj Rani W/o Sh. Madan Lal) was unable to be present personally to depose due to sufficient and reasonable circumstances being out of station to Delhi to care her old

ailing mother. Neither any commission was appointed inspite of verbal request nor further waited for her return but the A.O. proceeded with the assessment and held wrongly and notionally, the credits being ungenune by misappreciating of evidence adduced on record by the appellant firm and Adhoc and impugned addition of Rs.100000/- was affected to the income returned u/s 68 of the Act, being unsustainable, vague and illegal requires to be deleted. Since the identity, capacity and genuineness of the said creditor in account of the said lady was duly proved on solemn affirmation through an affidavit which were not even relied upon and addition of Rs.100000/- was wrongly made which requires to be quashed.

PB P No.68-73

6. (On ground No. 5 of appeal)

That the A.O. below was further wrong in assuming that the said creditors were related to the firm/its partners, particularly all the creditors were of different cast and creed and in no way related to the appellant assessee, being under employment in the past or present cannot be deemed as relation, as such finding being perverse beyond any cognizance. (2014) 267 CTR 396 Raj.

7. On Disallowance of interest of Rs. 73767/- as interest accrued/paid on aforesaid credits

(On ground No. 6 of appeal)

That the A.O. below was further wrong in disallowing the accrued interest paid/payable in account of the above said creditors on their respective credits by merely holding the credits not to being genuine, though contrary to facts, accordingly, no interest on such unsecured loans amounting to Rs.73767/- is liable to be allowed, as such the disallowances detailed as under and the impugned additions are again bad in law, deserves to be deleted.

- (i) Interest of Rs. 13150/- disallowed wrongly in account of Krishan Kumar
- (ii) (Individual). Interest of Rs. 13463/- disallowed wrongly in account of Krishan Kumar HUF.
- (iii) Interest of Rs. 14967/- disallowed wrongly in account of Seema D/o Laxman.
- (iv) Interest of Rs. 9616/- disallowed wrongly in account of Ramesh Chander.
- (v) Interest of Rs. 14878/- disallowed wrongly in account of Rajbir Singh.
- (vi) Interest of Rs. 14878/- disallowed wrongly in account of Raj Rani.

On Ground No. 7 of Appeal:

8 *Regarding concealment of income vis-à-vis Penalty u/s 271(1)(c) of the Act)*

That finally the A.O. below JCIT Hisar range Hisar was absolutely wrong in opining that so far as the impugned and estimated additions made as agitated in Para 3(i) to 3(vi) of the grounds of Appeal that inaccurate particulars of income have been furnished by the appellant assessee while the appellant assessee never furnished as such or concealed any particulars of income, accordingly, the observations and opinion of the A.O. being perverse, requires not to be acted upon.

In short and substance:-

In instant case of the appellant assessee all the respective creditors in their statements on oath(Affidavits) and cross examination by the AO admitted also that the amounts were advanced to the appellant assessee firm belongs to them, advanced through account payee cheques, being assessed & to income tax, as such payment and identity disclosed and have discharged the onus of their part vis-à-

vis their identity and capacity to advance money and proved the genuineness of the transactions. It was duly evident on record that all the creditors were of rural background, residing in their respective villages in their family houses doing certain petty cottage job works in different fields and usually keeping their savings at home, and not frequently depositing in their savings in banks which is more or less traditional. The sum of Rs. 1 or 2 lacs is quite petty and meager in this fast growing economy of the country.

Apart from this all were existing income tax assessee on records being assessed regularly since many year before and after that of the deposits and even till date being assessed with respective AO's and have also been returning their annual interest income from the amount credited, with various firms including the assessee firm. If the AO below was doubting their capacity, identity and source, he could well refer their individual respective cases to the AO having Jurisdiction but facts on the records are quite contrary and otherwise. The addition in all the aforesaid credits have wrongly been made under S 68 of the Act by the AO on mere suspicion contrary to the facts particularly in case the assessee/ the appellant assessee firm has discharged its burden to prove the said cash credits. In as much as law may not permit double taxation on in the hands of creditor and other in the return of the appellant assessee firm.

Your kind attention is drawn to the facts that payments as advanced these banking channel by creditors and each being existing income tax assessee on record, vis-a-vis source of deposit were invariably accepted and not doubted by the assessing officer below as apparent from the order itself.

Apart from this the Revenue could not prove that the money received by the appellant assessee firm from creditors have come from its own sources. No evidence regarding this has been brought on records by the AO, as such the additions affected merely for sake of

additions cannot be sustained on suspicion however strong it may be.

Judgement cited as legal submission are being annexed separately for your kind perusal and esteemed consideration as Annexure 'A'."

8. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the submissions are merely bald assertions. The assessee had not filed any material in support of the contention.

9. We have heard Ld. Sr.DR for the Revenue and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has considered the submissions of the assessee regarding grounds of appeal raised before him.

10. **Ground No.1 & 6** raised by the assessee are general in nature, need no separate adjudication.

11. **Ground No.2** raised by the assessee relates to confirming the impugned addition of Rs.1,71,495/- by invoking the provision of section 40A(3) of the Act.

12. Apropos to Ground No.2, the contention of the assessee is stated in the written synopsis is that the nature of the business of the assessee firm was for execution, erection works and job works as sub-contractor/agent of different projects. It is stated that the expenses were incurred owing to business expediency. It is stated that the seller insisted for cash payment for supply of such goods. The assessee has also placed reliance on various case laws.

13. We have heard Ld. Sr.DR for the Revenue and perused the material available on record. We find that the assessee has not placed any material to suggest that the seller of the material insisted for cash payments. In the absence of such evidence, we do not find any infirmity into the order of Ld.CIT(A), the same is hereby, affirmed. Ground No.2 raised by the assessee is therefore, rejected.

14. **Ground No.3** raised by the assessee relates to addition made on account of cash credits amounting to INR 8,25,000/- and Ground No.4 relates as interest thereon amounting to INR 73,767/-.

15. Regarding these grounds, the submissions of the assessee are that authorities below failed to appreciate the facts in right perspective. The assessee had provided the details related to each of the parties from whom the amount was received, details were provided to the lower authorities. It is stated that all the creditors have confirmed the deposits and the amount was paid through account payee cheque and interest was also paid by them. Therefore, the lower authorities were not justified in confirming the impugned addition. We find that Ld.CIT(A) has stated in the impugned order that the creditors are the employers of the assessee who got nominal salary of INR 2,500 to 5,000/- from the assessee firm out of which the monthly expenditure would be more than the income as creditors themselves admitted in the statement of facts. The assessee has not rebutted this finding of Ld.CIT(A). We therefore, do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby affirmed. Ground No.3 raised by the assessee is accordingly, dismissed.

16. **Ground No.5** raised by the assessee is premature, hence dismissed.

17. Now, coming to the additional ground as submitted by way of written submissions. The additional ground raised by the assessee is reproduced as under:-

1A. "That the order of the Assessing Officer, JCIT, Hisar was void-ab-initio, without jurisdiction, for want of mandatory permissions of CIT, Hisar Range for selecting the case under scrutiny and framing assessment contrary to the norms prescribed for scrutiny assessment for the A.Y.2010-11, by the concerned authority as apparent from the assessment order, for that reason the impugned order deserves to be, and annulled."

18. It is stated that the assessment order was *void-ab-initio* without jurisdiction for want of mandatory approval from CIT, Hisar Range.

19. Ld. Sr. DR submitted that this ground was not raised before Ld.CIT(A) and has been raised just for the sake of arguments. Therefore, same deserves to be dismissed.

20. We have considered the submissions of the assessee and the contention of the Ld.Sr.DR. Undisputedly, this ground was not raised before Ld.CIT(A) therefore, this ground being legal in nature, can be admitted at appellate stage and it goes to the root of the jurisdiction of the authorities who passed the impugned assessment order. Therefore, considering the submissions of the assessee, we deem it proper to restore this ground to Ld.CIT(A) to consider and decide the same. This additional ground raised by the assessee is accordingly, allowed for statistical purposes.

21. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No.2807/Del/2019 [Assessment Year : 2015-16]

22. Now, we take assessee's appeal in ITA No.2807/Del/2019 wherein assessee has raised following grounds of appeal:-

1. *That the orders of the authorities below CIT(A) Hisar and that of the Assessing Officer JCIT, Hisar are liable to be quashed to the extent being arbitrary, illegal, without jurisdiction and justification so far as impugned additions as being sustained are concerned.*
- 1.1. *That during A.Y. 2010-11 six cash credits amounting to Rs. 8,25,000 were disallowed and amount added to the income u/s 68 of the Income Tax Act, 1961 by the then A.O. JCIT, Hisar and the order was sustained by the Ld. CIT(A), Hisar. Being aggrieved of the order, an appeal was preferred before the Hon'ble ITAI, New Delhi which is to be heard and decided. Because of said additions, the authorities below CIT(A) Hisar and A.O. I.T.O. Ward-5 grossly erred in disallowing interest, accrued/payable in account of the creditors during A.Y. 2015-16 detailed herein below:- since matter being subjudice this appeal is being preferred.*

S.No.	Name of the Creditor	Amount advanced as loan	Interest accrued/assessed in individual creditors returns in A.Y.2015-16
1(i)	Krishan Kumar Verma	125000	79794
1(ii)	Krishan Kumar HUF	175000	52909
1(iii)	Seema Verma	150000	61332
1(iv)	Ramesh Chander	125000	18129
1(v)	Rajbir Singh	150000	33740
1(vi)	Smt. Raj Rani	100000	53084
		825000	298988

- 1.2. *That the CIT(A), Hisar was absolutely wrong in sustaining the impugned order of the assessing officer ITO, ward-5, Hisar who grossly erred in affecting an arbitrary, estimated and impugned additions of Rs. 298988/- to the income returned after disallowing interest accrued/payable to the respective creditors on their deposits made during A.Y. 2010-11 and even thereafter, without any opportunity being afforded to show cause. The details of interest disallowed stand referred ibid at para No. 1.1.*

2. *That the authority(s) below CIT(A) Hisar and A.O. ITO ward-5, Hisar were absolutely wrong in sustaining double taxation of interest income, the deduction being disallowed on account of interest payable on the cash credits one in the case of appellant assessee firm, specifically when the same stand already assessed and charged as income in the case of each creditors in their respective income tax returns during A.Y. 2015-16 even without any action being initiated or taken by the Deptt. in the respective cases of any of the creditors. For that reason also the effected disallowances of the interest paid /payable to respective creditors on their credits in the firm and additions effected thereby requires to be deleted since law may not permit double taxation.*
3. *That the authorities below CIT(A) Hisar/A.O. Hisar were also wrong in opinion that the appellant is liable for penal action under 271(1)(c) of the Act the observation being perverse and premature requires not to be acted upon since penalty proceeding are separate to assessment proceedings.*
6. *The orders of the authorities below are also liable to be quashed being conjectural and not being a speaking order.*

On the facts and in the circumstances of the matter under this appeal it is prayed that the contentions and submissions of the appellant may kindly be accepted as prayed in the grounds of appeal and explained in the statement of facts annexed thereto. Necessary relief as prayed may please also be granted to the appellant firm without prejudice to their rights to raise any additional ground(s) of appeal and also to explain further the statement of facts before or at time of hearing of the appeal, any other consequential relief to which the appellant firm is found entitled may please also be granted.”

23. Facts in brief are that the assessee e-filed return of income, declaring an income of INR 24,69,820/- on 29.09.2015. The case of the assessee was taken up for scrutiny assessment. During the course of assessment

proceedings, the AO noticed that the assessee had made payment of interest to various parties. The AO on the basis that these unsecured loans were disallowed and the addition was made therefore, on such loan, the interest expenditure is not admissible. Hence, he made a disallowance of expenditure and made addition of INR 2,98,978/- in this regard. Further, he made addition in respect of interest on refund of INR 36,668/- and also made addition of INR 63,332/- on account of the expenditure which was not found verifiable.

24. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, he sustained the additions made on account of interest paid to sundry creditors.

25. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

26. **Ground Nos. 1, 4 & 5** raised by the assessee are general in nature, need no separate adjudication.

27. **Ground No.3** raised by the assessee is premature, hence dismissed.

28. The effective ground raised in this appeal is **Ground Nos. 1.1 to 2** relate to the addition of INR 2,98,978/- in respect of the interest paid to the creditors.

29. Facts are identical as were in ITA No.2655/Del/2019 for the Assessment Year 2010-11. We have decided the issue against the assessee by observing as under:-

15. *“Regarding these grounds, the submissions of the assessee are that authorities below failed to appreciate the facts in right perspective. The*

assessee had provided the details related to each of the parties from whom the amount was received, details were provided to the lower authorities. It is stated that all the creditors have confirmed the deposits and the amount was paid through account payee cheque and interest was also paid by them. Therefore, the lower authorities were not justified in confirming the impugned addition. We find that Ld.CIT(A) has stated in the impugned order that the creditors are the employers of the assessee who got nominal salary of INR 2,500 to 5,000/- from the assessee firm out of which the monthly expenditure would be more than the income. As creditors, it is admitted in the statement of facts. The assessee has not rebutted this finding of Ld.CIT(A). We therefore, do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby affirmed. Ground No.3 raised by the assessee is accordingly, dismissed.”

29.1. Therefore, taking the consistent view, Ground Nos. 1.1 to 2 raised by the assessee are dismissed.

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

31. In the final result, appeal of the assessee in **ITA No.2655/Del/2019 [Assessment Year 2015-16]** is partly allowed for statistical purposes and appeal of the assessee in **ITA No.2807/Del/2019 [Assessment Year 2015-16]** is dismissed.

Order pronounced in the open Court on 31st October, 2023.

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI