

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No:- 4858/Del/2017
(Assessment Year: 2013-14)**

Asstt. Commissioner of Income Tax, Central Circle-1, New Delhi.	of	Vs.	M/s Gaurisuta Infrastructure Pvt. Ltd., Office No. 37, C- Block, DDA Market, Surajmal Vihar, Delhi-110092
PAN No: AAECG6312L			
APPELLANT			RESPONDENT

Revenue by : Shri Waseem Arshad, CIT(DR)
Assessee by : None.

Date of Hearing : 02.01.2024
Date of Pronouncement : 02.01.2024


ORDER

PER N.K. BILLAIYA, AM

This appeal by the Revenue is preferred against the order of the CIT(A)-23, New Delhi, dated 26.05.2017, pertaining to A.Y. 2013-14.

2. The solitary grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 14,29,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Act.

3. None appeared on behalf of the assessee inspite of several notices. The DR was asked to serve the notice through the officer and inspite of the service of notice through DR, the assessee chose not to respond. Finally ITO, ward 10(1), New Delhi sent a report in respect of proof of service. The said report is read as under:


OFFICE OF THE
INCOME TAX OFFICER, WARD- 10(1)
ROOM NO-G-11, CENTRAL REVENUE BUILDING
LP ESTATE, NEW DELHI-110002

7/09/22
MOC
02/3/23

F.No. ITO/W-10(1)/2022-23/ 318 Date: 03.03.2023

To,
✓ The Assistant Registrar,
ITAT, 10th & 11th Floor, Loknaya Bhawan,
Khan Market, New Delhi-110003.

Respected Sir,

Subject: Service of Notice issued by the Hon'ble C Bench of ITAT against the ITA No. 4858/Del/2017 filed against the order u/s 254(2) of the IT Act for the A.Y(s) 2013-14 in the case of Gaurisuta Infrastructure P. Ltd., (PAN: AAFCG6312L)-reg.

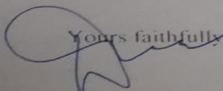
Kindly refer to the subject cited above.

2. In this connection, kindly find enclosed herewith proof of service(in original), as per details given herein under as desired:-

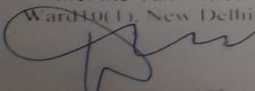
Details of notice served	Notice of hearing on 07.03.2023 for the A.Y 2013-14 before Hon'ble ITAT Delhi Bench 'C' in ITA 4858/DEL/2017 in the case of ACIL, Central Circle-1, Delhi versus M/s Gaurisuta Infrastructure P. Ltd.(PAN:-AAFCG6312L.)
Documents enclosed	a) Affidixure order dated 01.03.2023(in original) b) Copy of Notice of Hearing issued on 14.12.2022 by Hon'ble ITAT Delhi Bench 'C' in ITA 4858/DEL/2017 for 07.03.2023 c) Printout of Affidixure by the officials at the premise.
Service effected by	Sh. Mohit, Inspector-9319486635 Sh. Nitish Kumar,Sr. T.A- 9664566114

3. Submitted for further necessary action and record purposes.

Encl: as above.

Yours faithfully,

(Deepak kumar)
Income Tax Officer
Ward10(1), New Delhi

Copy to: The Income Tax Officer, C-Bench, ITAT, New Delhi.


Income Tax Officer
Ward10(1), New Delhi



OFFICE OF THE
INCOME TAX OFFICER, WARD- 10(1)
ROOM NO-G-11, CENTRAL REVENUE BUILDING
I.P ESTATE, NEW DELHI-110002

AFFIXTURE ORDER

Whereas I, Deepak Kumar, Income Tax Officer, Ward-10(1), New Delhi, I am satisfied that notice of hearing dated 31.01.2023 for the A.Y. 2013-14 before Hon'ble ITAT, Delhi verse M/s Gaurisuta Infrastructure P. Ltd. (PAN: AAECG6312L), 37, C-Block, DDA Market, Surajmal Vihar, Delhi-110092 cannot be served in ordinary way. I, therefore, authorize Sh. Mohit, Inspector alongwith Sh. Nitish Kumar, Sr. TA, in the presence of 2 witnesses, to effect the service of hearing notice for appearing before Hon'ble ITAT, Delhi Bench 'C' on 07.03.2023 (10:30 AM) through affixture under rule 20 of the CPC, 1908 on the conspicuous part at the address available in the records of department.

A copy of this notice is placed on the notice board of this office.

Dated: 01.03.2023



(Deepak kumar)
Income Tax Officer
Ward10(1), New Delhi
DEEPAK KUMAR
Income Tax Officer
Ward-10(1), New Delhi

Contact details of Sh. Mohit, Inspector: 9319486635
Contact details of Sh. Nitish Kumar, Sr. TA: 9664566114

Name and Contact details of Witness 1:- शान्ति 9540282819

Name and Contact details of Witness 2:- Pink Kumar 9582717829

As directed, the above notice has been served through affixture on the conspicuous place of the assessee at the last known address where the assessee known to have resided by Sh. Nitish Kumar, Sr. T.A in my presence & two witnesses.

Nitish Kumar
(NITISH KUMAR, Sr.TA)

Mohit
(Mohit, Inspector)

4. We decided to proceed it ex-parte. The DR was heard at length. The case records were carefully perused. The quarrel is in respect of the addition of Rs. 14.29 crores on account of unexplained share application money treated as cash credit u/s 68 of the Act.

5. The underlying facts as emanating from the assessment order show that the assessee has shown share application money pending allotment at Rs. 443,48,98,930/-. For ascertaining the credit-worthiness of the parties from whom the assessee company has received share application money and the genuineness of the transaction. The AO issued notice u/s 133(6) of the Act. The details of notices issued and the response is tabulated below:

S.No.	Name & Address of Entity/Concern	Amount (In ₹)	Notice u/s. 133(6) dated	Status of Reply/ Remarks of Postal Authorities	Assessee asked to produced the concern
1	M/s. Bloms Texent Pvt. Ltd. (Formerly known as Kabir Enterprises Pvt. Ltd.) A-85, First Floor, Office No.-2, St. No. 15, Madhu Vihar, Delhi - 110092	50,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
2	M/s. Leisure Buildcon Pvt. Ltd. 27, Kilkori Village, Opp: Thapar Business Centre, Sunligh Colony, New Delhi - 110014	50,00,000	29.02.2016	No such M/s	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.

				PAN: AAECG632L A.Y. 2013-14	
3	M/s. Ivaksha Properties Pvt. Ltd. Ram Kumar, Shop No. 7, Diamond Park Building, Disilva Nagar, Dahisar West, New Rustamji Park, Mumbai (Maharashtra) - 400068	84,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
4	M/s. Shravni Infrastructure Ram Kumar, Shop No. 7, Diamond Park Building, Disilva Nagar, Dahisar West, New Rustamji Park, Mumbai (Maharashtra) - 400068	1,50,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
5	M/s. Rayan Garments Pvt. Ltd. B-76, Gali No. 4/3, Rama Garden, Karawal Nagar, Delhi - 110094	1,40,00,000	29.02.2016	Returned unserved	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
6	M/s. Sadbhavana Properties Pvt. Ltd. 004, Building No.41, Eka Nagar, Kandivali (West), Mumbai - 400067	4,00,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
7	M/s. SPB Propcorn Pvt. Ltd. 27, Kilkori Village, Opp: Thapar Business Centre, Sunligh Colony, New Delhi - 110014	50,00,000	29.02.2016	No such M/s	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before

PAN: AAECG612L
A.Y. 2013-14

8	M/s. Technicare Biomed India Pvt. Ltd. 27, Kilkori Village, Opp: Thapar Business Centre, Sunligh Colony, New Delhi - 110014	40,00,000	29.02.2016	No such M/s	18.03.2016. The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
9	M/s. ZARF Infra Development Pvt. Ltd. 4132/307, A-1, 3rd Floor, Naya Bazar, Delhi - 110006	1,45,00,000	29.02.2016	No such firm on this number	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
10	M/s. Zoom Building Materials Pvt. Ltd. 4132/307, A-1, 3rd Floor, Naya Bazar, Delhi - 110006	1,00,00,000	29.02.2016	No such firm on this number	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
11	M/s. Green Value Agro Farm Pvt. Ltd. 119, M J Shopping Centre, 3 Veer Savarkar Block, Shakarpur, Delhi - 110092	30,00,000	29.02.2016	No such firm at such address	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
12	M/s. Trade Link Trading Pvt. Ltd. (Formerly known as Ram Rahim Trading Co. Ltd.) 304, M J Shopping Centre, 3 Veer Savarkar Block, Shakarpur, Delhi -	70,00,000	29.02.2016	No such firm at such address	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.

				PAN: AAECG432L A.Y. 2013-14	
13	M/s. S. A. Corrugators Pvt. Ltd. 413, Aditya Tower, Laxmi Nagar District Centre, Delhi - 110092	20,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
14	M/s. Vendure Agents Pvt. Ltd. 132, 2nd Floor, Cotton Street, Butra Bazar, Kolkata (West Bengal) - 700007	50,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
15	M/s. Function Distributors Pvt. Ltd. 3A, 2nd floor, Manglore Lane, Dalhousie Square, Kolkata (West Bengal) - 700001	50,00,000	29.02.2016	No reply received till date	The assessee was asked to produce the party vide letter ACIT/CC-1/2015-16/1568 dated 14.03.2016 for compliance on or before 18.03.2016.
TOTAL		14,29,00,000			

6. In spite of several opportunities the assessee could not furnish documentary evidences to discharge the initial burden cast upon it by the provision of section 68 of the Act. The AO concluded by holding that first, the investors were not found to be existent and secondly, During the course

of assessment proceedings, the assessee is required to produce the main directors / controlling persons with supportive documentary evidence. However, the assessee failed to discharge the onus cast upon it. The AO made addition of Rs. 14.29 crores.

7. The assessee challenged the addition before the CIT(A) and reiterated its claim of having discharged the initial burden cast upon it. After considering the facts and submissions, the CIT(A) observed that the AO is factually incorrect as the replies from the impugned 15 parties were duly received in his office much before the assessment was made. The CIT(A) further observed that though the AO has mentioned that field inquiries were conducted but no evidence has been brought on record and the CIT(A) went on to delete the impugned addition.

8. We have given a thoughtful consideration to the findings of the CIT(A). It is a settled proposition of law that powers of CIT(A) are co-terminus to that of the AO. This means what the AO can do the CIT(A) can also do. If the CIT(A) was of the opinion that the AO has not made any field inquiry then nothing prevented CIT(A) to conduct the field inquiry on his own. Further, when the AO has categorically mentioned that he has not received any reply from the impugned 15 parties then the CIT(A) ought to

have verified from the assessment records whether any such reply was received or not. It appears that the CIT(A) has simply believed in the submission of the assessee and deleted the addition.

9. In the interest of justice and fair play we deem it fit to restore the issue to the files of the CIT(A). The CIT(A) is directed to make necessary inquiries in respect of the 15 parties under dispute and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

10. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the Open Court on 02.01.2024

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 02/01/2024.

Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	02.01.24
Date on which the typed draft is placed before the dictating Member	02.01.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	