

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

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

ITA No. 877/DEL/2019 [A.Y. 2010-11]

Xebec Hospitality Pvt Ltd
B-292, Chandra Kant Complex
Shop Nos. 2 & 3, Near Metro Pillar 161
New Ashok Nagar, New Delhi

Vs.

The I.T.O
Ward 27(4)
New Delhi

PAN - AAACX 0720 F

(Applicant)

(Respondent)

Assessee By : Ms. Chinu Bhasin , CA

Department By : Shri P.N. Barnwal, CIT-DR

Date of Hearing : 09.01.2024

Date of Pronouncement : 11.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 23, New Delhi dated 30.12.2018 pertaining to A.Y. 2010-11.

2. The grievances of the assessee read as under:

1. That on the facts & in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong and bad in law.
2. That on the facts & in the circumstances of the case and in law, the Ld. CIT(A)/AO erred in initiating reassessment proceedings under section 147 of the Act
3. 2.1. without providing an opportunity of being heard, thereby violating the principles of natural justice.
4. 2.2. without any tangible evidence to show that escapement of income from tax has occurred.
5. 2.3. without appreciating that an order under Section 147 of the Act cannot be passed merely due to a change of opinion.
3. That on the facts & in the circumstances of the case and in law ,the Ld. CIT (A)/ Assessing Officer (AO) erred in refusing to admit additional evidence under Rule Rule 46A of the Income Tax Rules, 1961 without appreciating the fact that the Appellant was prevented by sufficient cause from filing the evidence before the Ld. AO.
4. 3.1. in doing so, the Ld. CIT(A) erred in ignoring crucial irrefutable documentary evidence submitted by the Appellant which substantiates the genuineness, creditworthiness and identity of the lenders
5. That on the facts & in the circumstances of the case and in law ,the Ld. CIT (A)/ Assessing Officer (AO) erred in making an addition of Rs. 19,15,00,000/- with respect to the unsecured loans received from three parties and treating the same as

unexplained cash credit u/ s 68 of the Act.

6. That on the facts & in the circumstances of the case and in law, the Ld. CIT (A) Assessing Officer erred in initiating penalty under Section 271(1)(c) of the Act. That the above grounds of appeal are without prejudice to each other

That Appellant reserves its right to add, amend or withdraw any grounds of appeal, either before or at the time of hearing of this appeal.”

3. The first challenge is in respect of reopening of the assessment.
4. Briefly stated, the facts of the case are that original assessment was completed u/s 153A of the Income-tax Act, 1961 [the Act, for short] vide order dated 22.02.2013 at an income of Rs. 35,732/-. During the course of assessment proceedings for A.Y 2012-13, the Assessing Officer noticed that during the F.Y. 2009-10, relevant to A.Y 2010-11, the assessee has taken the unsecured loans amounting to Rs. 42.55 crores from the following five parties:

1. Cornet Agencies Pvt Ltd
2. Elegant Commodities Pvt Ltd
3. Era Housing and Developers (I) Ltd
4. Evergreen Dealers Pvt Ltd
5. Spaark Buildwell Pvt Ltd

5. The Assessing Officer further found that the loans were non interest bearing and therefore, to verify the genuineness, the Assessing Officer issued notice u/s 133(6) of the Act to all the five parties. Notices issued in the names of Cornet Agencies Pvt Ltd, Elegant Commodities Pvt Ltd and Evergreen Dealers Pvt Ltd were returned back unserved

6. During the course of assessment proceedings, the assessee was confronted with the above fact. The assessee furnished replies from the above three companies with changed name and a new address.

7. The Assessing Officer deputed an Income Tax Inspector of the Ward to conduct field enquiries and the Inspector submitted his report stating that no such companies existed at the given address.

8. The Assessing Officer asked the assessee to produce the directors of the three companies. But the assessee could not produce the directors. The Assessing Officer was convinced that the assessee failed to establish the identities, genuineness of the transactions and credit worthiness of the loan providers and added an amount of Rs. 19.15 crores.

9. The assessee carried the matter before the ld. CIT(A) and sought permission to produce additional evidences which was declined by the ld. CIT(A) on the remand report of the Assessing Officer who stated that ample opportunities were given during the course of assessment proceedings itself.

10. Before us, the ld. counsel for the assessee drew our attention to the questionnaire received during the proceedings u/s 153A of the Act and pointed out that specific query was raised regarding unsecured loans and to which, a specific reply was filed. Thereafter, the Assessing Officer chose not to make any further enquiry and it was presumed that the Assessing Officer is satisfied with the reply.

11. Reopening the assessment for the same facts is nothing but change of opinion which is not accepted for issue of notice u/s 148 of the Act. We do not find any force in this submission of the ld. counsel for the assessee in as much as the proceedings were u/s 153A of the Act and the Assessing Officer could have proceeded against the assessee only on the basis of incriminating material found at the time of search and since no incriminating material was found, no addition

was made on this issue. Therefore, the reopening cannot be said to be bad in law.

12. Coming to the challenge on the merits of the case, after hearing the rival contentions, we have carefully perused the orders of the authorities below. We find that the assessee has furnished the confirmations and the Income-tax details of the loan providers alongwith their financial statements.

13. The entire addition has been made because the assessee could not produce the directors of the three companies. We fail to understand that when the PAN details were available with the Assessing Officer, nothing prevented him to issue summons u/s 131 of the Act and exercising all the powers conferred upon him by provisions of the Act to force attendance of the Directors, if their attendance was so important to decide the issue.

14. We find that the assessee has also furnished evidences in respect of source of three money lender companies. It appears that all the evidences of the assessee were dismissed by the Assessing Officer/ld. CIT(A) on the ground that sufficient opportunities were given during the course of assessment proceedings.

15. Be that as it may, since the documentary evidences are very much available, we restore the issue to the file of the Assessing Officer. The Assessing Officer is directed to examine the documentary evidences furnished by the assessee and also the evidences of source of lender companies and decide the issue afresh.

16. The Assessing Officer is further directed to force attendance of the directors if he is of the opinion that their attendance is necessary for deciding the impugned issue. Needless to mention, the Assessing Officer shall give reasonable and adequate opportunity of being heard to the assessee.

17. In the result, the appeal of the assessee in ITA No. 877/DEL/2019 is allowed for statistical purposes.

The order is pronounced in the open court on 11.01.2024.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 11th JANURARY, 2024

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
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