

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

**BEFORE,
SHRI G.S.PANNU, VICE PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.9663/De1/2019
(ASSESSMENT YEAR 2015-16)**

Utsav Hospitality & Clubs Pvt. Ltd. 115-Ansal Bhawan,16 Kasturba Gandhi Marg New Delhi-110 001 PAN-AAACU 9690D	Vs.	Asst.CIT Circle-27(1) New Delhi
(Appellant)		(Respondent)

Appellant by	S/Sh. R. S. Singhvi, Adv & Sh. Satyajeet Goel, Adv
Respondent by	Sh. Amit Katoch, Sr. DR & Sh. Kanv Bali, Sr. DR

Date of Hearing	03/05/2024
Date of Pronouncement	26/07/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-9 New Delhi ["Ld. CIT(A)", for short], dated 21/10/2019 for Assessment Year 2015-16.

2. Grounds taken in this appeal are as under:

"1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals)-9, New Delhi [briefly "the CIT(A)"] has erred in sustaining the addition of Rs.1,02,45,152/- made under section 68 of the Income tax Act, 1961 ("the Act").

1.1 That on the facts and circumstances of the case and in law, the CIT(A) in upholding the addition u/s 68 did not appreciate that source of the source of the transaction of Rs.1,02,45,152/- could not

have been ignored, for it was due to the exigencies of real estate business that the developer company provide funds to associate companies to acquire land, which is then pooled to develop residential cum commercial project. As such, there was nothing sham or illegal for Bestower Realtors Pvt. Ltd. to receive funds (advance) from Ansal API Ltd. or its group companies.

1.2 That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that not only the genuineness and creditworthiness of transaction between the Appellant and Bestower Realtors Pvt. Ltd. was proved but even the genuineness and creditworthiness of receipt of advance in the hands of Bestower Realtors Pvt. Ltd. was also proved.

1.3 Without prejudice, on the facts and circumstances of the case and in law, since the receipt of advance in the hands of Bestower Realtors Pvt. Ltd. has been accepted, therefore, source of advance from Bestower Realtors Pvt. Ltd. to the Appellant could not have been held to be sham or not proved.

2 That on the facts and circumstances of the case and in law, the CTT(A) has erred in upholding the disallowance of Rs.42,61,218/- made under section 36(1)(ii) of the Act, allegedly for the reason that there was no business expediency for advance to Capital Club (P) Ltd.

2.1 That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that amount of Rs.2,66,55,705/- and Rs.2,28,953/- due from Capital Club (P). Ltd and Ansal API respectively were not on account of any advance, rather, the same represented regular business transactions and no interest thereon was chargeable.

2.2 That on facts and circumstances of the case and in law, the CIT(A) has erred in holding that apparently interest was not charged on the "advance" to Capital Club (P) Ltd. Actually, interest was charged on the advance of Rs.1,86,24,616/- due from Capital Club (P) Ltd.

2.3 Without prejudice, on the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate that the law laid down by Hon'ble Supreme Court in Hero Cycles P. Ltd. v. CIT [2015] 379 ITR 347 is squarely applicable, hence no disallowance under section 36(1)(iii) was called for.

3. That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.”

3. Brief facts of the case are that, return of income was filed by the assessee declaring NIL income, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Income Tax Act, 1961 ('Act' for short) have been issued. The representative of the Assessee participated in the assessment proceedings, an assessment order u/s 143(3) of the Act came to be passed on 10/11/2017 by making various additions by assessing the income of the assessee at Rs. 1,73,80,260/- as against the 'NIL' income declared by the assessee.

4. Aggrieved by the assessment order dated 10/11/2017, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 21/10/2019 sustained the addition made u/s 68 of the Act of Rs. 1,02,45,152/- and also sustained the disallowance of Rs. 42,61,218/- u/s 36(1)(iii) of the Act and deleted the rest of the additions. Aggrieved by the order of the CIT(A) in sustaining the above said additions, the assessee preferred the present appeal on the grounds mentioned above.

5. The Ground No 1 is regarding addition u/s 68 of the Act amounting to Rs. 1,02,45,152/- made in respect of the amount received from M/s Bestower Realtors Pvt. Ltd.

6. During the course of the assessment proceedings, the assessee had been show caused by the A.O. as to why the amount of Rs. 1,02,45,152/- received from M/s Bestower Realtors Pvt. Ltd. should not be added back to the income

of the assessee as the balance sheet of the aforesaid company does not show its worth to advance the said amount. In response to the show cause notice, the Assessee submitted the reply. After perusal of the reply filed by the Assessee, the Ld. A.O. found the reply of the assessee was not satisfactory as the Assessee failed to prove with cogent evidence regarding the creditworthiness of M/s Bestower Realtors Pvt. Ltd., accordingly, the A.O. made the addition u/s 68 of the Act.

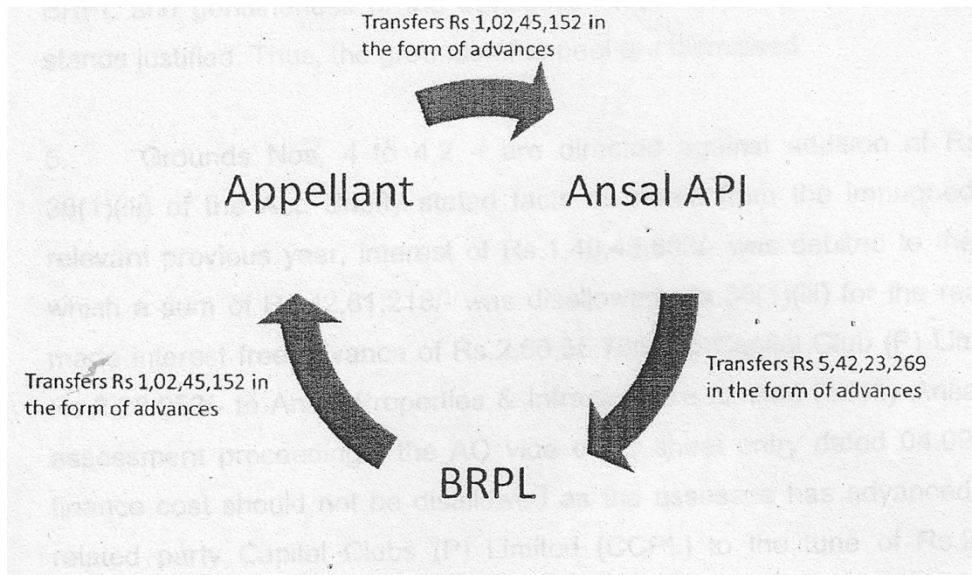
7. The Ld. CIT(A) affirmed the addition made by the A.O. in following manners:-

“4.2 I have considered the submission of the Appellant and observation made by the AO. As discussed above, appellant has received a loan of Rs.1,02,45,152/- from Bestower Realtors Private Limited ("BRPL"). In the assessment proceedings, AO doubted the creditworthiness and capacity of BRPL and genuineness of transaction. In assessment proceedings, the Appellant submitted copy of MOU dated 31.03.2015, copy of audited financial statement of BRPL, ITR & assessment order of BRPL, Development Agreement between BRPL and Ansal Properties & Infrastructure Limited, Bank Statement showing loan received and its further investment in accordance with MOU.

In the course of hearing before me, it was submitted by the appellant that BRPL is an associate concern of the assessee, and is a under common control of Ansal Properties & Infrastructure Private Limited ("Ansal API"). It was contended by the appellant had entered into a development agreement with Ansal API. For this purpose, the

appellant had obtained an advance from BRPL, which in turn had obtained the funds, by the way of advances, from Ansal API. This arrangement, in appellant's submission, was to bypass the regulatory requirements of respective land authorities, and to set up commercial/residential projects. Therewith, on placing reliance on such documents, the appellant claimed to discharge the onus u/s 68 of the Act, thus contending relief from the addition so made by the AO.

On considering bulk of the documents and contentions placed, it is first essential to understand the mode of channelizing the funds, which is depicted in the chart below:



From the above cycle, as also the appellants submissions (PB Pg No C-D), it appears that the appellant company has round routed the funds, which initially originated from Ansal API, which was transferred to the appellant through an intermediary being BRPL. That being said, the intermediary BRPL, in its standalone capacity, does not possess any credit worthiness on its own. This fact has been assented to by the appellant in its own submissions (PB Pg No C-D), as also from the financial statements of BRPL, by placing a

specific emphasis on PB Pg No 28 and 29. As a matter of fact, the Balance Sheet of BRPL (PB Pg No 25) more than clearly exhibits the lack of credit worthiness of lender company, since the sole source of receipt is advance is advances only. BRPL no revenue nor any tangible or intangible asset. Rather, apart from there being an advance to the appellant company, there is no major asset at all. Rather, the closing balance of "Cash and Bank" itself is Rs 26,979/-, thereby highlighting the sheer absence of any credit worthiness.

4.3 On the aspect of genuineness of the transaction, the appellant has contended that the transactions intended to bypass the legal stipulations laid down by the respective land authorities. Therefore, the appellant itself has accepted of the entire mode of transaction to be a 1 of 1 sham transaction. More so, the appellant has admitted for the transaction being an illegal mode to escape the clutches of regulatory provisions and hence, by no possible mode can the transaction be justified on the aspect of genuineness.

From the above observations, it can be observed that BRPL was a conduit company, formed out to create a façade before various regulatory authorities, with no credit worthiness or existence of its own. Therefore, in no manner can there be a justification of credit worthiness of BRPL and genuineness of the transaction therewith and thus, the addition u/s 68 of the Act stands justified. Thus, the grounds of appeal are dismissed.”

8. The Ld. Counsel for the assessee submitted that the assessee Company and M/s Bestower Realtors Pvt. Ltd. are part of Ansal Group and the inter company advance of Rs. 1,02,45,152/- was made for the purpose of purchase

of land and development of Ansal township as per MOU dated 31/03/2015, there is no dispute regarding the identity and the genuineness of M/s Bestower Realtors Pvt. Ltd. which is a group concerned and the amount so advance was received by it from Ansal Properties and Infrastructure Pvt. Ltd. The receipt of funds and corresponding payment are supported from balance sheet and the bank statement. Further submitted that, all the transactions were between Group companies as per business and commercial expediency and the source of source having been explained, there is no case for unexplained credit. The Ld. Counsel also submitted that the advance of Rs. 1,02,45,152/- so received by the assessee has been subsequently repaid. Thus, invoking Section 68 of the Act without appreciating the facts, therefore submitted that the addition made by the A.O. which was sustained by the CIT(A) deserves to be deleted.

9. On the other hand, the Ld. Departmental Representative relying on the findings and the conclusion of the Lower Authorities, sought for dismissal of the Ground No. 1.

10. We have heard both the parties and perused the material available on record and gave our thoughtful consideration. The assessee company received amount of Rs. 1,02,45,152/- from M/s Bestower Realtors Pvt. Ltd. The addition u/s 68 of the Act made by the A.O. on the ground that the said Company i.e. M/s Bestower Realtors Pvt. Ltd. does not have creditworthiness to advance such amount. The Ld. CIT(A) upheld the addition on the ground that there is a channelizing the funds within the Ansal Group and as such the

transaction is not genuine. It is the case of the assessee that the M/s Bestower Realtors Pvt. Ltd. and the Company are part of Ansal Group and an inter company advance of Rs. 1,02,45,152/- was made for the purpose of purchase of land and development of township, to substantiate the said claim, the assessee produced a MOU dated 31/03/2015 at Page No. 25 to 28 of the Paper Book. The Ld. A.O has not doubted the identity and genuineness of M/s Bestower Realtors Pvt. Ltd. which is a group concerned and the amount was received by the said Company from Ansal properties and Infrastructure Pvt. Ltd. The assessee has also produced paper book containing the balance sheet and bank statement to substantiate the receipt of fund and corresponding payment, thus, the transaction were between Group Companies as per business and commercial expediency. Since the assessee having been proved the source of source of the amount received, the Revenue authorities cannot made the addition on account of unexplained credit. Further considering the fact that, the assessee has subsequently repaid the advance Rs. 1,02,45,152/- so received from M/s Bestower Realtors Pvt. Ltd. as per the ledger account placed at Page No. 23-24 of the Paper Book, invocation of Section 68 of the Act cannot be sustained. Thus, we find merit in the Ground No. 1 of the assessee, accordingly, the Ground No. 1 of the assessee is allowed and the subject addition is hereby deleted.

11. Ground No. 2 is regarding disallowance of interest of Rs. 42,61,218/- u/s 36(1) (iii) of the Act. During the assessment proceedings it was noticed by

the A.O. that the assessee company had advanced interest free loan of Rs. 2,66,55,705/- to M/s Capital Club (P) Ltd. ('CCPL' for short) and Rs. 2,28,953/- to Ansal Properties and Infrastructure Ltd., while the assessee was incurring finance cost of Rs. 1,40,45,803/-. The assessee was show caused as to why the finance cost should not be disallowed as the Assessee has advanced interest free loan to its related party i.e. Capital Club (P) Ltd. and Ansal Properties and Infrastructure Ltd. considering the fact that the assessee company has incurred finance cost of Rs. 1,40,45,803/-, as an interest rate of Rs. 15.85% per annum. The A.O. made the disallowance by computing the interest at 15.85% per annum, on the amount of Rs. 2,66,55,705/- received from M/s Capital Club Pvt. Ltd. and made consequential disallowance u/s 36(1) (iii) of the Act.

12. In the Appeal, the ld. CIT(A) while confirming the said addition made by the A.O. held as under:-

“On considering the submissions of the appellant and the documents submitted vide its paper book, I place my concurrence to the findings and observation of the AO, since the appellant has out rightly failed in drawing out any evidence proving that it has indeed granted the advances as part its business expediencies. The appellant has barely contended that the advances were towards business transactions, without drawing as to how and for what benefit were the same granted to Capital Clubs (P) Limited. Therefore, these hollow submissions of the appellant is eligible to be ignored.

Further on, with respect to the contention of the appellant as to there being interest charged on the advances to Capital Clubs (P) Limited, I place my reliance on the ledger of the party, as enclosed in PB Pg

No 15-24, wherewith, it appears that no interest was charged on the advances made by the appellant to such company. Hence, even this contention of the appellant deserves to be rejected in toto.

Lastly, on the contention of the appellant as to the loan been taken towards the construction of a hotel in Ajmer and that the interest cost ought to be allocated towards such construction only. I do not find any merit in the same. This is because the fund, as available with the appellant, is a common pool of both owned and borrowed sources. To distinguish between the funds utilized from owned and those used from borrowed sources, is impossible, since the funds, once receipt, are inseperable and hence, equally allocable towards all the sources of the utilization. Therefore, it is curious to observe that on one hand, the appellant is indebted towards discharging interest obligations, while the appellant has granted interest free advances to its related concerns. A prudent applicant would have naturally used more of its owned sources, rather than opting for a borrowing, since that would have naturally reduced the interest obligations and thus the cost. That not being the case of the appellant, the disallowance u/s 36(1)(iii) is obviously called for. Accordingly, the addition gets confirmed even on this ground. Even otherwise, it is another important aspect to note that the appellant has not brought out any evidence to show that the funds obtained for Yes Bank was utilized for the construction of any hotel and thus, even this contention of the appellant stands rejected.

In view of the discussion made above, the grounds of appeal of the appellant stands rejected and hence, the addition of Rs.42,61,218/- is upheld.”

13. The Ld. Counsel for the assessee submitted that outstanding balance of Rs. 2,66,55,705/- from M/s Capital Club Pvt. Ltd. is in the nature of trade receivables and as such there is no case of any charging of interest or disallowance u/s 36(1)(iii) of the Act. The Ld. Counsel further submitted that the assessee company took over the management and the operation of MAPLE/Town and Country Club from M/s Capital Club Pvt. Ltd. vide Lease and License Agreement dated 01/04/2013 and pursuant to the said agreement, the assessee was entitled to recover the membership fees to extent

of Rs. 2,31,12,172/- collected by M/s CCPL from the members of the Club on behalf of the Assessee as well as other expenses/charges/taxes incurred while running is club. In support of the said contention, the Ld. Assessee's Representative relied on the ledger account placed at paper book Page No. 47 to 63. Further submitted that, the corresponding receipt of the amount has already been disclosed as trading receipt in the profit and loss account placed at paper book Page No. 17. Therefore, the amount so received is not in nature of loan or advance, but rather trading transactions as per the Lease and License Agreement. Out of total receivables of Rs. 2,66,55,705/- as on 31/03/2015 and the substantial amount of Rs. 2,31,12,172/- is on account of membership fees recoverable which in turn has been shown as income by the assessee company. The receivable of Rs. 2,66,55,705/- does not represent any actual out flow of funds of the assessee and the same is only arising out of trading transaction from takeover of operations of the Club. Since the A.O. has not established any nexus between borrowed funds and receivables there is no basis for disallowance. The Ld. Counsel also submitted that other than the above trade receivables, the assessee company had also advance independent loan to M/s CCPL on which interest is being charged and as such the allegation of non-charging of interest is factually incorrect without any basis. To substantiate the said claim the assessee produced the financial statement containing details of loan to CCPL and the details of interest paid thereon. Thus, submitted that the amount of Rs. 2,66,55,705/- appearing under the head 'short term capital loan advance' is actually in the nature of trade

receivable , therefore, the disallowance of interest u/s 36(1)(iii) of the Act deserves to be reversed.

14. Per contra, the Ld. Departmental Representative relied on the order of the Lower Authorities.

15. We have heard both the parties and perused the material available on record. As per Note No. 19 of the balance sheet of the Assessee, the outstanding balance was Rs. 2,66,55,705/- from M/s CCPL which is in the nature of trade receivables. It is found that the assessee took over management and operation of Maple Town and Country Club from M/s CCPL vide Lease and License Agreement dated 01/04/2013. As per the agreement, the assessee was entitled to recover the membership fees to an extent of Rs. 2,31,12,172/- collected by M/s CCPL from the members of the Club on behalf of the assessee as well as other expenses/charges/taxes incurred while running the club. As per the profit and loss account, the corresponding receipt of the amount has already been disclosed as trading receipt. On verifying the above details, the amount so receivable is not in the nature of loan or advance but rather trading transactions as per the Lease and License Agreement. It is the case of the assessee that out of the total receivables of Rs. 2,66,55,705/- as on 31/03/2015, the substantial amount of Rs. 2,31,12,172/- was on account of membership fee recoverable which in turn has been shown as income by the assessee Company, thus, the receivables of Rs. 2,66,55,705/- does not represent any actual out flow of funds of the assessee which is arising out

trading transaction from takeover of operation of Club. In the absence of establishing any nexus between borrowed funds and receivables, in our opinion, the disallowance made by the A.O. which has been confirmed by the CIT(A) is found to be erroneous.

16. It is further observed that apart from the above trade receivables the Assessee Company had advanced independent loan to M/s CCPL on which interest has been charged and as such the allegation of non charging of interest is found to be incorrect. The said fact has been corroborated with the Note No. 19 and Note No. 22 of the Audited Financial Statement containing details of loan of Rs. 1,86,24,616/- to M/s CCPL and interest income of Rs. 27,10,363/-. Considering the fact that the amount of Rs. 2,66,55,705/- as appearing under the head 'short term loan advance' is actually in the nature of trade receivables, thus, there is no case of any loan or advance, therefore the disallowance of interest u/s 36(1)(iii) of the Act is not warranted, accordingly, we find merit in Ground No. 2 and the disallowance of interest made u/s 36(1)(iii) of the Act is hereby deleted and the Ground No. 2 of the assessee is allowed.

17. In the result, Appeal filed by the assessee is allowed.

Order pronounced in open Court on 26th July, 2024

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 26/07/2024

Pk/R. N, Sr ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI