

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE DR. MANISH BORAD, HON’BLE ACCOUNTANT MEMBER  
AND SHRISONJOY SARMA, HON’BLE JUDICIALMEMBER**

**ITA No. 2542/KOL/2019  
Assessment Year: 2012-13**

ACIT, Kolkata, Aayakar Bhawan, 3r Floor, P-7, Square, West Bengal – 700069	Circle-10(2), Bhawan, 3r Chowringhee	vs	M/s. Skyscraper Projects Pvt. Ltd. 53B, Townshend Road, Kolkata-700025. {PAN: AAJCS 1656 G}
(Appellant)		(Respondent)	

**Present for:**

Assessee by : Shri Anuj Musaddi, AR  
Revenue by : Shri P.P. Barman, Additional CIT, Sr. DR

Date of Hearing : 08.07.2024

Date of Pronouncement: 23.09.2024

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal of the revenue for the assessment year 2012-13 is directed against the order dated 19.08.2019 passed by the ld. Commissioner of Income-tax (Appeals)-4Kolkata, [hereinafter referred to as ‘the ld. CIT(A)’].

2. At the outset, the Ld. DR stated that there is a delay of 25 days in filing the appeal on the part of the revenue. We after considering submission made by Ld. DR on this aspects, we find that there is sufficient reason behind delay in filing the appeal on the part of

revenue and after considering the same, we condone such delay in filing the appeal by revenue.

3. Brief facts of the case are that assessee filed its return of income for the assessment year disclosing total income of Rs. 3,66,69,260/-. The case of the assessee was selected for scrutiny followed by notice issued u/s 143(2) as well as u/s 142(1) of the Act. In response to the notices, ld. AR of the assessee appeared time to time before the AO and to furnish various details in the course of hearing. During the course of assessment proceedings, ld. assessing officer asked to furnish the details of sundry creditors as on 31.03.2012. However, the details furnished by assessee in response to the notice were inadequate besides that assessee could not file the details of major expenses incurred during the assessment year in question. In this regard, the ld. AO was asked the assessee to explain the same. In response to the query made by the ld. AO, assessee company filed a reply requested to estimate the net profit of the assessee at 8% as done in earlier years i.e. A.Y. 2010-11 & 2011-12. The ld. AO after considering the submission of the assessee computed the net profit of the assessee @ 8% on the total turnover by rejecting the profit & loss account as disclosed in ITR filed by the assessee. The ld. AO assessed the income of the assessee from the business of civil construction @ 8% of total turnover of Rs. 44,87,35,982/- which come to Rs. 3,58,98,878/- and the income of Rs. 15,64,145/- shown by assessee (other than receipts of civil construction business) have been considered separately in computation of income. The ld. AO while framing the assessment order also notices that during the relevant previous year, assessee has shown long term borrowings and short term borrowings of Rs.

78,20,363/- and Rs. 4,34,79,851/- respectively as on 31.03.2012. The ld. AO during the assessment proceedings asked to furnish complete details with regard to borrowings/unsecured loan with necessary evidence but the assessee has failed to do so. Therefore, the amount of loan taken by the assessee during the year of Rs. 3,18,44,538/- ( $78,20,263 + 4,34,79,841 - 54,63,606 - 1,39,91,970$ ) where the sums of Rs. 54,63,606/- and Rs. 1,39,91,970/- are the amount of long term borrowing and short term borrowing shown on 31.03.2011 in the balance sheet of the assessee. Therefore, the amount of loan of Rs. 3,18,44,538/- taken by the assessee during the relevant previous year was treated as unexplained cash credit and added back to the total income of the assessee. The ld. AO also while computation of income also added liability u/s 43B of Rs. 2,23,11,140/- in the hands of assessee.

4. Dissatisfied with the above order, assessee went into appeal where the appeal of the assessee was allowed.

5. Aggrieved by the above order revenue is in appeal before this Tribunal raising two grounds of appeal. Ground no. 1 is in relation to deletion of addition on account of sales & service tax u/s 43B of the Act of Rs. 2,23,11,140/- whereas the assessee made these additions had been maintained in the computation of income. The ld. DR stated that above deletion is incorrect and unjust therefore needed to be set aside.

6. Ld. Counsel for the assessee though strongly submitted that when the income of the assessee has been estimated after rejecting the book results and net profit estimated @ 8% of the turnover, no other addition/disallowance can be made. He also submitted that

similar type of addition u/s. 43B of the Act have made in the preceding year for non-payment of VAT/service tax before the due date of filing of return of income but the assessee has subsequently paid the same but Ld. AO has not allowed the deduction of the same.

7. On the other hand, ld. DR supported the orders of the lower authorities.

8. We have heard the rival submissions and perused material placed before us. We notice that addition u/s. 43B of the Act at Rs.2,23,11,140/- has been deleted by Ld. CIT(A) solely on the ground that income of the assessee has been estimated after rejecting the books results and, therefore, no other addition can be made. We fail to find any merit in the said finding of the Ld. CIT(A) for the reason that in the instant case the income has been estimated by applying 8% net profit rate on the gross turnover and, therefore, only items of P&L Account have been considered to be rejected and profit estimated. So far as the items of Balance sheet are concerned, where the assessee takes unsecured loans and also make investments which are not having any connection with the P&L Account, all those transactions are always under the scanner of examination by the Ld. AO. Under the given facts and circumstances, admittedly, there is VAT/service tax liability standing in the books which has not been paid before the due date of filing of income tax return and, therefore, section 43B of the Act is applicable. During the course of hearing, ld. Counsel for the assessee was fair enough in admitting that though the alleged sum of VAT/service tax has been added in the hands of the assessee but the same has been paid subsequently. He has

further prayed before us that similar additions were made in the preceding year but Ld. AO had not given deduction of the said sum against the income for the year. We, therefore, under the given facts and circumstances of the case are of the considered view that the matter needs to be restored to the file of the Ld. AO who shall verify the claim of the assessee in respect of VAT/service tax liability paid during the year which have already suffered tax on account of addition made u/s. 43B of the Act in the preceding year. Similarly, assessee would also be entitled to claim deduction of the service tax/VAT liability outstanding at the year end for the instant year against the income of the subsequent year if such sum is paid. Needless to say that assessee should be given adequate opportunity of being heard and assessee to also avoid adjournments unless otherwise required for reasonable cause. This ground of appeal of the revenue is allowed for statistical purposes.

9. Ground no. 2 raised by the revenue regarding deletion of Rs. 3,18,44,538/- on account of unexplained cash credit due to the lack of identity, genuineness of transaction and creditworthiness of the creditors. The ld. CIT(A) while deleting the addition of Rs. 3,18,44,538/- without looking into the fact that the creditors income was low which cannot commensurate with the returned income. Therefore, view taken by the ld. CIT(A) liable to be set aside sustaining the addition made by the AO.

10. On the other hand, ld. AR stated that while passing the above order, the ld. CIT(A) duly called a remand report from the AO on the issue and also furnished his report in following manner:

*"In the instant case, an addition of Rs. 3, 18,44,538/- was made on account of unsecured loan at the time of assessment made u/s. 143(3) of the Income Tax Act for the assessment year 2012-13. During the course of assessment proceedings, it observed that the long term borrowings and short term borrowings of the assessee company at the end of the relevant assessment year stands at Rs. 78,20,363/- and Rs.4,34,79,851/- respectively. The corresponding amounts in respect of the immediate preceding assessment year 2011-12 i.e. as on respectively.*

*Accordingly, it was concluded during the assessment proceedings that the new loan taken by the assessee company during the relevant previous year comes to Rs.3, 18,44, 538/- (Rs. 78,20,363/- + Rs.4,34,79,85 1/-) – (Rs. 54,63,606/- + Rs. 1,39,91,970/-) and the assessee was requested to furnish the necessary evidences in respect of the said loans. However, despite being given ample opportunity, the assessee had failed to furnish the necessary evidences, i.e. loan confirmation, bank statements of the loan creditors, source of fund etc. in respect of the said loan taken during the relevant year. As such, the entire amount of Rs.3, 18,44, 538/- was treated as unexplained cash credit and added back to the total income of the assessee.*

*Now, during the appellate proceedings, the assessee has submitted before your good self that this loan was taken from its associated concerns. In the interest of justice, your good self has directed the undersigned to give an opportunity to the assessee to produce the evidence before the undersigned and to verify the identity, capacity and genuineness of the transactions and submit a report in this regard. In this context, I would like to submit the factual findings of the case, which is as under:-*

*As directed, during remand proceeding, to verify the identity, genuineness of transaction and creditworthiness of the creditors, the assessee was asked to submit the details of long term and short term borrowings as appeared in the balance sheet for the year ending on 31/03/2012. In response to the same, the assessee has furnished the details, on perusal of which, it is evident that the short term borrowing are actually unsecured loans and advances, which was taken by the assessee from three parties, which are given as under:*

Sl No	Name of party	Opening balance	Taken during the year	Payment during the yearq	Closing balance
1	Jonbro Construction Pvt. Ltd.	18,55,000/-	93,25,000/-	60,25,000/-	14,45,000/-
2	Online Builders Pvt. Ltd.	1,21,60,000/-	5,61,05,000/-	2,71,32,269/-	4,11,32,731/-
3	Om Prakash Pandey	13,24,880/-	63,75,000/-	41,30,000/-	9,02,120/-
	Total	89,62,120/-	7,18,05,000/-	3,72,87,269/-	4,34,79,851/-

*It was also stated before the undersigned that the said unsecured loans were also taken by the assessee from its' associated concern and the same were taken for its business exigency which are free of interest. Accordingly, to verify the identity, capacity and genuineness of the transactions, notice u/s. 133(6) of the Income Tax Act, were issued to the creditors from whom the assessee had taken unsecured loans and advances, asking them to submit the evidence of transactions made with the assessee along with the proof of identity and their capacity. All the replies along with supporting evidences viz. I.T. return acknowledgment, loan confirmation, bank statements etc., have been received from the said parties, from which it is evident that, the loans were taken by the assessee either from its group companies or from its director. It is also observed from the replies received from the said creditors that all the loans were made through banking channel. However on verification of copies of the return of Income it appears that the Income disclosed by the above mentioned parties are not given by them to the assessee as commensurate with the loans/advances given by them to the assessee as elaborated in the following table:*

Sl. No.	Name of party	Returned Income	Loan/Advance given to the assessee
1	Jonbro Construction Pvt. Ltd.	4,80,030/-	93,25,000/-
2	Online Builders Pvt. Ltd.	55,81,620/-	5,61,05,000/-
3	Omprakash Pandey	22,22,975/-	63,75,000/-

*From the above fact, it can be safely concluded that the creditworthiness of the above said creditors are doubtful and the capacity of the creditors to provide such huge amount of loan to the assessee cannot be fully substantiated by the documents which were provided by the loan creditors in response to notice issued u/s 133(6) of the Act.*

*On perusal of the details filed by the assessee regarding the long term borrowing, it is found that the said borrowings are basically secured loans which were taken by the assessee from different scheduled banks and financial institution for purchase of its fixed assets, details of which is as under:*

<i>Loan taken from</i>	<i>Opening Balance</i>	<i>Taken during the year</i>	<i>Interest charged</i>	<i>Payment during the year</i>	<i>Closing Balance</i>
<i>HDFC Bank</i>	11,65,173.34		90,804.10	6,70,836.00	5,85,141.44
	3,86,871.92		21,928.08	4,08,800.00	
	11,10,262.90		95,533.04	5,97,240.00	6,08,556.03
	7,05,877.38		53,631.60	6,09,960.00	1,49,548.98
	3,91,139.81		31,428.19	4,22,568.00	
		11,00,000.00	90,587.74	3,69,500.00	8,21,087.74
		21,17,816.00	1,37,133.08	5,65,200.00	16,89,749.08
		28,00,000.00	41,129.70	1,82,320.00	26,58,809.70
	4,64,613.70		31,360.63	2,64,108.00	2,31,866.33
<i>Reliance Capital Ltd.</i>	23,219.68		420.32	23,640.00	
	2,93,036.79		29,205.03	1,18,404.00	2,03,837.82
	2,28,344.02		18,485.35	1,98,276.00	48,553.37
<i>GBR Motor</i>	8,400.00			8,400.00	
<i>ICICI Bank</i>	6,86,667.00		67,596.90	3,13,167.00	4,41,096.90
<i>ICICI Bank (OD account)</i>					3,82,016.09
<i>Total</i>	54,63,606.63	60,17,816.00	7,09,243.76	47,52,419.00	78,20,263.48

*In support of its claim, the assessee had also submitted the amortization schedule/re-payment schedule of the said long term borrowings. It is observed from the said schedules that barring three loans, all the loans were old and partially repaid by the assessee during the year under consideration. Thus, it can be concluded from the details filed by the assessee during remand proceedings that these loans are secured loans which were taken by the assessee company from different scheduled banks and financial institution for purchase of fixed assets.”*

11. He further contended that the assessee has two types of loans namely unsecured loan or secured loan. In respect of unsecured loan, assessee has taken loan from Jonbro Construction Pvt. Ltd., Online Builders Pvt. Ltd. and Omprakash Pandey who is the director of the present assessee-company. Secured loan has been taken from HDFC Bank, Reliance Capital Ltd., GBR Motor, ICICI Bank, ICICI Bank (OD account). While making the additions, the ld. AO simply

took the difference between opening and closing balance of secured and unsecured loan and added to the income of the assessee without bothering about creditworthiness, identity and genuineness of the transaction. The ld. AR stated that most of the secured loans which were from established financial institutions. Therefore, their identity, creditworthiness and genuineness of the transaction cannot be questioned. This clearly shows that the additions have been made in haste manner and without basis. However, the ld. CIT(A) rightly delete the addition made by the AO. Similarly, in respect of unsecured loan Jonbro Construction Pvt. Ltd., Online Builders Pvt. Ltd. and Omprakash Pandey who is happened to be a director of the assessee company. The other two entities are group companies of the assessee. The ld. AO while framing the assessment accepted the fact that companies are group companies or director himself who have given loan to the present assessee during the year under consideration. The only objection of the AO in the remand report is that the returned income of Johnbro Construction Pvt. Ltd., Online Builders Pvt. Ltd. is not commensurate with the returned income of the assessee. However, the alleged view taken by AO was brushed aside by the ld. CIT(A) since the identity, creditworthiness and genuineness of the transaction has been duly proved. The ld. AO in his remand proceedings did not consider the aspect of the fact that the loan transactions have vital movement in terms of receipt and payments. But the Ld. AO while making addition only taking into consideration the difference between the opening and closing balance of secured and unsecured loan. Therefore, the ld. CIT(A) after analyzing above fact rightly deleted the addition as made in the case of assessee.

12. We after hearing the rival submissions of the parties and perusing the material available on record. The ld. CIT(A) find that identity, creditworthiness and genuineness of the transaction has been proved regarding secured and unsecured loan which were from financial institutions like HDFC Bank, ICICI Bank etc stating that their identity, creditworthiness and genuineness of the transaction cannot be denied. Moreover, from the fact that it is also come to our notice that the alleged unsecured loan obtained from the assessee from their group of companies and director of the assessee company. In the remand report also the objection of ld. AO was that returned income of creditors was the liability income as reflected in their return which cannot be grant for making addition. On this issue, we rely upon the judgment of Hon'ble Delhi High Court in the case of CIT vs Vrindavan Farms Pvt. Ltd. etc. No. 71 of 2015 dated 12<sup>th</sup> August, 2015 (Del) in which it was held as under:

*“The sole basis for the revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.”*

13. Considering the same, we find that income was low declared by creditors is not a grant to make impugned addition against the assessee-company, the ld. CIT(A) has rightly deleted the alleged addition made in the case of assessee. We, therefore, do not find any infirmity in the order passed by ld. CIT(A) accordingly ground taken by the revenue is dismissed.

14. Ground no. 3 is general and consequential in nature, therefore need not required to be adjudicated. In terms of the above, appeal of the revenue is dismissed.

15. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 23.09.2024

Sd/-

Sd/-

**(Dr. MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata, Dated: 23.09.2024

JD, Sr. P.S.

Copy to:

1. The Appellant: ACIT, Circle-10(2), Kolkata.
2. The Respondent: M/s. Skyscraper Projects Pvt. Ltd.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata