

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

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA Nos.1753 & 1754/DEL/2022
(Assessment Years : 2015-16 & 2016-17)**

DCIT, Central Circle-30,
New Delhi

vs.

M/s Sarena Pvt. Ltd.,
15, Harcharan Bagh,
Vasant Kunj,
New Delhi – 110 030.
(PAN : AAACS2945R)
(RESPONDENT)

(APPELLANT)

**CO Nos.52 & 53/DEL/2023
(in ITA Nos.1753 & 1754/DEL/2022)
(Assessment Years : 2015-16 & 2016-17)**

M/s Sarena Pvt. Ltd.,
15, Harcharan Bagh,
Vasant Kunj,
New Delhi – 110 030.

vs. DCIT, Central Circle 30,
New Delhi.

(PAN : AAACS2945R)
(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri D.P. Bansal, CA
Shri Ambareesha Agarwal, CA
REVENUE BY : Shri Vivek K. Upadhyay, Sr. DR.

Date of Hearing : 28.08.2024
Date of Order : 22.10.2024

ORDER**PER S.RIFAUR RAHMAN,AM:**

1. These appeals are filed by the Revenue against the order of Id. Commissioner of Income-tax Appeals-30, New Delhi (hereinafter referred to 'Ld. CIT (A)') both dated 31.05.2022 and assessee has also filed cross objections for AYs 2015-16 & 2016-17.
2. Since the issues are common and appeals are inter-connected, the same are being disposed off by this common order. We are taking ITA No.1753/Del/2022 for Assessment year 2015-16 as lead case.
3. Brief facts of the case are, assessee filed its return of income on 29.09.2015 declaring an income of Rs.99,15,010/- which was processed under section 143 (1) of the Income-tax Act, 1961 (for short 'the Act') on 25.07.2016 at the returned income. Subsequently, the case of the assessee was reopened by issue of notice u/s 147 of the Act and the Assessing Officer has recorded the reasons to believe based on the information received from Assistant Director of Income-tax (Inv.), New Delhi that the assessee has received accommodation entry to the extent of Rs.3.11 crores during the year from the companies controlled by Pradeep Kumar Jindal group. The Investigation Wing forwarded the above information based on the statements recorded during the search and survey operation carried out in

the case of Pradeep Kumar Jindal. The Assessing Officer recorded that as per the statement recorded by Pradeep Kumar Jindal during search and post-search investigation wherein he has stated and explained entire modus operandi of providing accommodation entries to various beneficiaries and Investigation Wing has forwarded list of all the entities controlled by Pradeep Kumar Jindal. Based on the above information, the Assessing Officer formed an opinion that assessee has received accommodation entries amounting to Rs.3.11 crores from the shell companies of Pradeep Kumar Jindal and he has reason to believe that income to tune of Rs.3.11 crores has escaped assessment. Based on the above information, Assessing Officer issued notices u/s 133 to the following parties from whom assessee has received Rs.2.65 crores :-

S.No.	Name of the Lender	Amount Received During the year
1.	Delta Leasing & Finance Ltd.	30,00,000
2.	Focus Industrial Resources Ltd.	11,00,000
3.	Focus Industrial Resources Ltd.	21,00,000
4.	Focus Industrial Resources Ltd.	14,00,000
5.	Jarcanda Capital Ltd.	25,00,000
6.	Jarcanda Capital Ltd.	30,00,000
7.	Jarcanda Capital Ltd.	20,00,000
8.	Jar Metal Industrial Pvt. Ltd.	50,00,000
9.	Jar Metal Industrial Pvt. Ltd.	24,00,000
10.	Pawansut Holdings Ltd.	38,45,000

11.	Pawansut Holdings Ltd.	1,55,000
	Total	2,65,00,000

4. The Assessing Officer based on the information collected by him treated the above amount received as unsecured loan from the above mentioned parties as unexplained cash credit and observed that assessee has failed to prove identity, creditworthiness and genuineness of the transaction and proceeded to add Rs.2.65 crores u/s 68 of the Act. Considering the above addition, the Assessing Officer observed that assessee must have paid commission @ 2% on the above said amount to the aforesaid companies for providing accommodation entries and added Rs.5,30,000/- u/s 69C of the Act.
5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A) and submitted detailed submissions before him and raised several grounds. Ld. CIT(A) after considering the detailed submissions of the assessee has dismissed the jurisdictional issue which was raised by the assessee on reopening of the assessment, however deleted the addition made by the Assessing Officer u/s 68 of the Act on merits. For the sake of clarity, the same is reproduced below :-

“10. Ground Nos.8, 9, 10, 11 & 13 : In these grounds, the appellant challenged the addition made by the Assessing Officer

amounting to Rs.2,65,00,000/- u/s 68 on account of unexplained cash credits received from below mentioned companies :-

S.No.	Name of the Lender	Amount Received During the year
1.	Jar Metal Industries Ltd.	74,00,000/-
2.	Delta Leasing & Finance Ltd.	30,00,000/-
3.	Focus Industrial Resources Ltd.	46,00,000/-
4.	Pawansut Holdings Ltd.	40,00,000/-
5.	Jarcanda Capital Ltd.	75,00,000/-
	Total	2,65,00,000/-

10.1 The Assessing Officer in his Assessment Order has noted that the above mentioned companies are managed and controlled by Shri Pradeep Kumar Jindal and are engaged in providing accommodation entries. The Assessing Officer has also analyzed the financial status of these companies and concluded that the credit worthiness of these companies are doubtful as the major sources of funds of these companies are share capital, share premium and bogus borrowing received from various companies and that they produce little or no independent economic value. The Assessing Officer has further noted that the appellant failed to produce the Directors of the companies and that none of these companies attended the office of Assessing Officer in response to notice u/s. 131 of the Act. Accordingly, the Assessing Officer has held that the cash credits to the extent of Rs.2,65,00,000/- received by the appellant were unexplained in terms of the provisions of Section 68.

10.2 The appellant in his submission has stated that the Assessing Officer has solely relied on the statements of third persons namely Shri Pradeep Kumar Jindal and his associates and that their statements have not been provided to the appellant nor any opportunity of cross-examination of these persons were provided. The appellant further submitted that Shri Pradeep Kumar Jindal and his group of companies were searched u/s. 132 along with Shri Sajan Kumar Jain and the

statements of Shri Pradeep Kumar Jindal were recorded in the matters connected with Shri Sajan Kumar Jain.

10.3 The appellant further quoted the decision of Hon'ble High Court of Delhi in the case of PCIT (Central)-3 vs Sajan Kumar Jain etc. Dated 12 February, 2021 (ITA 28/2021 & CM APPD5524/2021) wherein the Hon'ble Court has held as under:

“...it is an admitted fact before us that mere basis of un-confronted statement of Sh. Pradeep Kumar Jindal recorded u/s. 132(4) of the Act in his own separate search action and on the basis of un-confronted material for the said search u/s. 132(4), which in our considered opinion, cannot be made as a sole basis for making the additions....”

“the Revenue Authorities have not provided the statement of Sh. Pradeep Kumar Jindal to the assessee and also did not provide the opportunity of cross-examination of Sh. Pradeep Kumar Jindal, on which basis the addition has been made.....”

“..... That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions.....”

10.4 Relying on the above decision, the appellant has stated that the addition in its case was solely based on the statements of Shri Pradeep Kumar Jindal in the case of Mr. Sajan Kumar Jain. It was also stated that Shri Pradeep Kumar Jindal and other persons also did not name the appellant company in their statements. Accordingly, the appellant stressed that even the statements relied upon by the Assessing Officer did not incriminate the appellant, neither any material was found or seized which could be held against the appellant. He has also relied upon the decision of Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt. Ltd. [2019] 418 ITR 315 (SC).

“Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s. Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/- is directed to be deleted.

4. The ITAT by its judgment dated 16th May 2014 relied on the self same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgements of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.

5. In these circumstances, the Review Petitions are dismissed. ”

10.5 On the merit of the case, the appellant has submitted that the companies which have extended unsecured loan to the appellant company had sufficient credit worthiness and have been engaged in the business of lending on interest and that they were not paper companies. The appellant has emphasized that these companies confirmed the transactions in response to notice u/s. 133(6) before the Assessing Officer and further submitted that these companies have been earning substantial interest on loan which is evident from their audited profit and loss account submitted before AO. The appellant

submitted that it has received unsecured loan from these companies on interest and was also duly deducting TDS as applicable on the payment of interest and that its transactions with these companies were real business transactions and cannot be treated as accommodation. The appellant has further informed that the Assessing Officer had initiated proceeding u/s. 147 on the basis of same statements and reasons in A.Y. 2013-14 and 2014-15. The Assessing Officer in his order u/s. 143(3) r.w.s. 147 for the A.Y. 2013-14 dated 14.03.2022 and A.Y. 2014-15 also dated 14.03.2022 accepted unsecured loan received from these companies as explained.

10.6 The observations of Assessing Officer in the Assessment Order and the submission of the appellant have been carefully examined in view of various judicial precedents on the matter. It has been noted that the Assessing Officer re-opened the case under appeal on the basis of statements of Shri Pradeep Kumar Jindal and the dummy Directors of the front companies in which it was admitted that these companies were providing bogus entries by accepting cash. Details of front companies managed and controlled by Shri Pradeep Kumar Jindal have been analyzed by the Assessing Officer along with their bank statements and financial statements and he has found that credit entries to the extent of Rs.2,65,00,000/- have been received by the appellant company in the form of unsecured loan, which are of the nature of accommodation entries.

10.7 It has been noted that Shri Pradeep Kumar Jindal has admitted to providing accommodation entries to various beneficiaries through various companies which have also given unsecured loan to the appellant. The AO made independent enquiries from the concerned companies and their Directors u/s 133(6) and 131 of the Act. The Assessing Officer has noted at para-7 of his order that all the companies responded to notices u/s. 133(6) dated 11.12.2020 issued by him and filed their replies alongwith information as required u/s 133(6) of the Act. The Assessing Officer has also noted in para-7.3 of the order that the appellant was provided opportunity to produce various Directors of the lending companies vide notice u/s. 142(1) of the Income Tax Act dated 19.02.2021 which were not produced. Hence, to enquire the transactions further, the Assessing Officer issued summons u/s. 131 of the Income Tax Act to the Directors of

the company namely Ms. Mamta Jindal, Shri Ajit Aggarwal and Sh. Rahul for personal appearance as well as for the submission of statements of bank account, copy of loan agreement and sources of loan. In para-7.5 of the order the AO observed that the reply was received from both the parties in respect of their companies, however, the Directors did not attend the office of the Assessing Officer personally one Director though filed reply but sought adjournment / more time for personal appearance. The Assessing Officer did not point out any mistake in the replies filed by the Directors called by him neither has provided them further opportunity for personal appearance.

10.8 The appellant has submitted Assessment Year wise profit & loss accounts of these companies on the basis of details filed by the lender companies. The same is reproduced in the written submission of the appellant at page 24-25 of this order. On perusal of the P&L account, it is noted that these companies are earning interest income on loan which are offered to tax. It is also a matter of record that the appellant has been paying interest on the borrowed money, which is close to market rate and TDS was also duly deducted. The appellant has re-paid the amount borrowed in the subsequent years. The Assessing Officer did not comment on the payment of interest by the appellant to these companies also deduction of TDS thereon. Assessment Orders passed by the Assessing Officer in A.Ys. 2013-14 & 2014-15 u/s. 143(3) r.w.s. 147 alongwith reasons recorded u/s 147 have been perused. The credit entries received from these companies have been accepted by the Assessing Officer as explained in the above mentioned years in similar circumstances.

10.9 In view of the above facts and judicial precedents, I find that the lending companies participated in the re-assessment proceedings and submitted confirmations and their financial statements in response to notices u/s 133(6) and 131 of the Act. The AO accepted the explanations received from these companies and appellant in the similar re-assessment proceedings in A.Y. 2013-14 and 2014-15 but rejected in A.Y. 2015-16 and A.Y. 2016-17 without assigning any specific reasons. I am therefore of the opinion that the addition made by the Assessing Officer u/s 68 amounting to Rs.2,65,00,000/- cannot be sustained. Accordingly, these grounds of appeal are allowed.”

6. Further, he has deleted the addition of unexplained commission made by the Assessing Officer u/s 69C of the Act considering the fact that he has deleted the proposed addition u/s 68 of the Act.
7. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO u/s. 68 of the I.T. Act amounting to Rs.2,65,00,000/- despite the fact that the addition was made as per the provision of the I.T. Act.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO u/s. 69C of the I.T. Act amounting to Rs.5,30,000/- despite the fact that the addition was made as per the provisions of the I.T. Act.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) has placed reliance upon the decision of the Hon'ble Delhi High Court in the case of PCIT(Central)-3 vs. Anand Kumar Jain (HUF) ITA 23/2021 & CM Appl. 5385/2021, wherein the Revenue has filed SLP in Hon'ble Supreme Court.

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) has ignored the facts that after proper investigation in the case of Shri Pradeep Kumar Jindal, it was established that Shri Pradeep Kumar Jindal was found to provide accommodation entries of share capital / premium, share forfeiture, exempt long term capital gain/loss, short term capital gain/loss, advance against property, unsecured loans, transfer of company, bogus sale, bogus purchase etc. Therefore, the transaction of the assessee with the entities controlled by Shri Pradeep Kumar Jindal is doubtful.

5. Whether the order of Ld. CIT (A) is erroneous and is not tenable on facts and in law.”
8. At the time of hearing, ld. DR for the Revenue brought to our notice pages 2 to 10 of the assessment order and submitted that assessee has received accommodation entries from various companies controlled by Pradeep Kumar Jindal and also substantiated by the statement recorded u/s 132 of the Act by Pradeep Kumar Jindal. He supported the findings of the Assessing Officer and submitted that all these companies were controlled by Pradeep Kumar Jindal and who has accepted that these companies are utilised to provide accommodation entries to various beneficiaries. Further, he brought to our notice pages 70 to 76 of the first appellate order who has deleted the addition on merits. He opposed the above findings and submitted that the Assessing Officer has carried out proper investigation and Pradeep Kumar Jindal is involved in providing accommodation entries and it is substantiated by the statement recorded u/s 132 of the Act. Further, Assessing Officer also made proper verification by issue of notice u/s 133 (6) of the Act that the addition made based on the independent finding of the Assessing Officer and unsatisfactory submissions made by the assessee before him.
9. On the other hand, ld. AR for the assessee submitted that the Assessing Officer has made addition of unsecured loan received by the assessee and

also declared in the books of account of the assessee. Further, assessee has already submitted all the relevant evidences before the Assessing Officer to substantiate the genuineness of the transaction. He submitted that all these informations are already declared in the books of account and Assessing Officer has made the addition u/s 68 of the Act which is unexplained cash credit. He wondered that when all the informations are already explained in the books of account, the addition cannot be made u/s 68 of the Act. He supported the findings of the Id. CIT (A).

10. Considered the rival submissions and material placed on record. We observed that Id. CIT (A) has gone through the assessment order and the detailed submissions of the assessee and it is noticed that various companies who have lent unsecured loan to the assessee had sufficient creditworthiness and have been engaged in the business of lending on interest. All the companies have responded to the notices issued u/s 133 (6) of the Act before the Assessing Officer and substantiated before him that they are earning substantial interest on loan which is evident from the audited profit & loss account submitted before the Assessing Officer. The assessee also recorded the abovesaid unsecured loan in its books of account and paid interest by duly deducting TDS as applicable on the payment of interest. Ld. CIT(A) observed that the above terms of lending unsecured loan to the assessee is

real business transactions and cannot be treated as accommodation entries. Further, he observed that assessee also submitted year-wise profit & loss account of the of the abovesaid companies i.e. lender companies before the authorities and further assessee has demonstrated that assessee has paid the relevant interest on the borrowed money which is close to the market rate and also duly deducted TDS. It is also observed by the Id. CIT (A) that the assessee has repaid abovesaid borrowed loan in subsequent years. The Assessing Officer has conveniently ignored all these facts. It is also brought to our notice that all the above transactions were duly recorded in the books of account and there is no undisclosed cash credit involved in these transactions even though Assessing Officer proceeded to disallow the same u/s 68 of the Act. After considering the overall facts on record, we do not see any reason to disturb the finding of the Id. CIT (A). Accordingly, ground no.1 raised by the Revenue is dismissed.

11. Further, with regard to ground no.2 which is disallowance of commission u/s 69C of the Act, since we have already dismissed ground no.1 raised by the Revenue which is relating to section 68 of the Act and the basis of addition u/s 69C made by the Assessing Officer, considering the above facts on record, we dismiss ground no.2 raised by the Revenue.

12. With regard to ground nos.3 & 4 raised by the Revenue, since the issue raised in ground nos.1 & 2 are on merit, there is no relevance giving separate findings on ground nos.3 & 4. Ground Nos.5, 6 & 7 are general in nature, accordingly all these grounds are dismissed as such.
13. In the result, the appeal filed by the Revenue for AY 2015-16 is dismissed.
14. Since, the facts in other AY i.e. 2016-17 is exactly similar, our above findings in AY 2015-16 are applicable *mutatis mutandis* in AY i.e. 2016-17. Accordingly, the appeal being ITA No.1754/DDN/2022 for AY 2016-17 filed by the Revenue is dismissed.
15. With regard to cross objections filed by the assessee, since we have dismissed the appeals filed by the Revenue, the cross objections filed by the assessee have become infructuous. Accordingly, both the cross objections filed by the assessee are dismissed.
16. To sum up : both the appeals filed by the Revenue and both the cross objections filed by the assessee are dismissed.

Order pronounced in the open court on this 22nd day of October, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 22.10.2024

TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-30, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI