

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 948/Del/2024
(Assessment Year: 2021-22)**

DCIT,
Central Circle-28,
New Delhi

(Appellant)

PAN:AAACU17986A

Vs. Uppal Housing Pvt. Ltd,
1st Floor, East Tower, NBCC
Place, Pragati Vihar, Lodhi
Road, New Delhi
(Respondent)

Assessee by :

Shri Salil Agarwal, Sr. Adv
Shri Shailesh Gupta, CA

Revenue by:

Shri N. G. Joseph Gangte, CIT DR

Date of Hearing

22/10/2024

Date of pronouncement

26/11/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.948/Del/2024 for AY 2021-22, arises out of the order of the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/91/2023- 24/1059016853(1) dated 22.12.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.09.2022 by the Assessing Officer, DCIT, Central Circle-29, New Delhi (hereinafter referred to as 'Id. AO').

2. Though the revenue had raised several grounds before us, the only effective issue to be decided in this appeal is as to whether the Id CIT(A) was justified in deleting the addition made in the sum of Rs 31,22,50,000/-

on account of bogus unsecured loans in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of real estate. The return of income was filed by the assessee company on 14.3.2022 declaring total income of Rs Nil. A search and seizure action u/s 132 of the Act was carried out on 14.10.2020 in the case of Shri Manoj Kumar Singh , his associates and various transacting parties. During the course of search proceedings, it was established that Shri Manoj Kumar Singh entered into unaccounted cash transactions with the various persons / entities. Search operation u/s 132 of the Act was also carried out on 14.10.2020 at the office premises of the assessee. During the course of search proceedings, incriminating documents were found and seized. The Id AO observed during the course of assessment proceedings that assessee has shown unsecured loans received from M/s Dreamland Buildshoppe Pvt Ltd as under:-

Opening Balance	-	35,66,77,042
Less: Repaid	-	42,06,02,042
Add: Fresh loans recd	-	31,22,50,000
Closing Balance	-	24,83,25,000

4. Notice u/s 133(6) of the Act stood issued to this lender on 30.7.2022 . In response thereto, a reply has been filed by the said lender company on 31.8.2022 . The Id AO carried out physical enquiry for Asst Year 2021-22 with the said lender company by deputing the Inspector of the office. As per the Inspector Report submitted, it was observed that even after a gap of three years, the premises i.e. A-21, 4th Floor, Green Park, New Delhi - 110016 was again found locked. This in turn means that the said premise is being used for providing address confirmations only for the paper

companies run by various entities and not carrying out real business activities.

5. The assessee submitted the bank statements for the period 1.4.2020 to 31.3.2021, confirmation from the lender company, ledger account of the lender company as appearing in the books of the assessee company for the period 1.4.2015 to 31.3.2021, financials of the lender company and ITR of the lender company. As stated in earlier paragraph, notice u/s 133(6) of the Act issued by the Id AO were duly served and replied directly by the lender company by furnishing the requisite details. The lender company was claimed to be engaged in the business of real estate as that of the assessee company. The Id AO observed from the financials of the lender company that there was no tangible or intangible assets reflected thereon in the financials and the said company does not have any operational income from any stated business during the year. The assessee was asked to produce the director of the lender company on 26.9.2022 along with documentary evidences with respect to the unsecured loan received during the year. In response thereto, Shri Sunil Srivastava (Director of lender company) appeared before the Id AO on 26.9.2022 and a statement stood recorded from him on oath u/s 131 of the Act. The Id AO observed that Shri Sunil Srivastava is also General Manager (Coordination) in the assessee company. This fact was confirmed in his statement recorded on oath u/s 131 of the Act that he is drawing salary income from assessee company. Interestingly, Shri Sunil Srivastava did not mention any salary income from lender company where he is the Director. He also admitted that since incorporation, the lender company did not carry out any real estate business activity from the year 2008, The Id AO observed that even after 14 years of its incorporation, it is beyond reasonable comprehension that the lender company is still exploring business opportunities and meanwhile conveniently providing unsecured loan entries through bank to

the assessee company and its related entities. Shri Sunil Srivastava however confirmed that the lender company had provided unsecured loan of Rs 31,22,50,000/- during the year to the assessee company. The Id AO observed that Shri Sunil Srivastava in his statement had stated that administrative decisions of lender company are being taken by Shri Manish Uppal (Director of assessee company). Shri Sunil Srivastava also stated in his statement that there was no loan agreement , no internal discussion papers before deciding to granting loan, no workings done for the same etc . Hence the Id AO observed that the nature and purpose of granting loan to the assessee company could not be proved by Shri Sunil Srivastava.

6. The assessee in response to the show cause notice issued by the Id AO replied by stating that the unsecured loans were received from the lender company through regular banking channels. Further the lender company received a sum of Rs 25 crores from Uppal Hotels Pvt Ltd on 1.1.2021 and the said sum was given by lender company to the assessee company on 7.1.2021. It was stated that Uppal Projects Pvt Ltd and Uppal Hotels Pvt Ltd are regular income tax assesses and the funds received from them are genuine in the hands of lender company. The assessee furnished the ITR and audited balance sheet of Uppal Projects Pvt Ltd and Uppal Hotels Pvt Ltd before the Id AO proving the source of source of lender company also. It was also stated that there is a running account maintained by the assessee company with the lender company and that the amounts received in the earlier years were accepted as genuine by the Id AO. It was submitted that all the documents to prove the three ingredients of section 68 of the Act viz. identity of the lender, genuineness of transactions and creditworthiness of the lender company were already furnished before the Id AO.

7. The Id AO however reiterated the earlier observations and concluded that the three ingredients of section 68 of the Act does not stand proved and hence the amount received was deemed to be treated as income of the assessee for the year under consideration.

8. The Id CIT(A) however appreciated the entire contentions of the assessee and deleted the addition by observing as under:-

"8. Ground Nos. 1 to 4: In these grounds of appeal, the appellant challenged the addition made by the Assessing Officer u/s. 68 amounting to Rs.31,22,50,000/- on account of unsecured loan observed in the Assessment Order that during the year under consideration, the appellant has received Rs.31,22,50,000/- as unsecured loan cash credits from M/s. Dreamland Buildshoppe Pvt. Ltd. (M/s Dreamland). The Assessing Officer has further observed that addition on account unsecured loans received from the creditor same company was a matter of dispute in AY 2017-18 which was deleted by the Ld. CIT(A) on the ground that the unsecured loan added in the year did not pertain to the year under consideration but no adverse was made with respect to the finding of the AO in the order that M/s Dreamland was a paper company and that it had no creditworthiness of its own. Further, Department has filed appeal against the order of Ld. CIT(A) with respect to fresh loan received by the appellant from M/s Dreamland in AY 2017-18 Before Hon'ble ITAT. One of the ground for making addition by the AO in A.Y. 2017-18 was that the company was not found to be existing at the given address Physical enquiries were made by the AO through Inspector during the impugned assessment proceedings for the as well and it was found that the company was not available at the given address. The Inspector's report has been reproduced by the Assessing Officer in para-5.4 The AO further observed that the said company has also not shown any income in its Income Tax Return and has no credible assets available in the books to justify the quantum of loans given by it. The Assessing Officer has further noted that the appellant has shown only interest income in its Income Tax Return in A.Y. 2019-20(Rs.69,16.187/-), 2020-21 (Rs. 10,26,370/-) and has shown loss of Rs.33,807/ in the A.Y. 2021-22. The statement of Director of the creditor company Shri Sunil Srivastava who is also General Manager (Co-ordination) in the assessee company was recorded during the assessment proceedings and it was noted that the creditor company M/s. Dreamland was incorporated in the year 2008 with an objective to carry out real estate business but no such activity has been carried out by it so far. The company is controlled by Mr Manish Uppal and it is being used for routing of funds. It has no business activity of its own. Assessing Officer has held that the creditor company is a shell company which has been used by the assessee company to bring in its unaccounted income in the books in the

form of unsecured loan. Therefore, credits received from it are unexplained in terms of section 68 of the Act.

8.1 The appellant in its written submission has submitted that it has received unsecured loan from M/s. Dreamland Buildshoppe Pvt. Ltd. as per the following detail:-

<i>Particulars</i>	<i>Opening</i>	<i>Debit</i>	<i>Credit</i>	<i>Closing</i>
<i>M/s. Dreamland Buildshoppe Pvt. Ltd</i>	<i>35,66,77,042</i>	<i>42,06,02,042</i>	<i>31,22,50,000</i>	<i>24,83,25,000</i>

The appellant further submitted that during the year under consideration, it has repaid loan of Rs. 42,06,02,042/- to M/s. Dreamland and received fresh loan of Rs. 31,22,50,000/-. In the preceding years as well the appellant took loans from the creditor company and repaid and submitted ledger account of M/s. Dreamland in its books from 01.04.2015 till 31.02.2021 and stated that all the years were assessed u/s 153A or 143(3) without any adverse remarks on credits except in AY 2017-18 as discussed above which was also deleted by the first appellant authority.

8.2 The appellant submitted bank statement of M/s. Dreamland Buildshoppe Pvt. Ltd and explained that the source and unsecured loan is the funds received from Uppal Hotel Pvt. Ltd, Uppal Projects Pvt. Ltd and M/s Darbhanga Estate Pvt. Ltd as under:-

<i>Date</i>	<i>Received from</i>		<i>Given to</i>	
	<i>Name</i>	<i>Amount</i>	<i>Name</i>	<i>Amount</i>
<i>01/12/2020</i>	<i>Uppal Hotels Pvt. Ltd</i>	<i>18 lacs</i>	<i>Uppal Housing Pvt. Ltd</i>	<i>18 lacs</i>
<i>01/12/2020</i>	<i>Uppal Projects Pvt. Ltd</i>	<i>5 crores</i>	<i>Uppal Housing Pvt. Ltd</i>	<i>5 crores</i>
<i>07/01/2021</i>	<i>Uppal Hotels Pvt. Ltd</i>	<i>25 crores</i>	<i>Uppal Housing Pvt. Ltd</i>	<i>25 crores</i>
<i>12/01/2021</i>	<i>Uppal Hotels Pvt Ltd</i>	<i>7 lacs</i>	<i>Uppal Housing Pvt. Ltd</i>	<i>6.50 lacs</i>
<i>03/03/2021</i>	<i>Darbhanga Estate Pvt. Ltd</i>	<i>98 lacs</i>	<i>Uppal Housing Pvt. Ltd</i>	<i>08 lacs</i>

It has further submitted that M/s Uppal Projects Pvt Ltd., M/s Uppal Hotels Pvt. Ltd. and M/s Darbhanga Estate Pvt. Ltd. are group companies, assessed to of funds in their books have not income tax and that the availability been doubted by the Assessing Officer Therefore, funds received by M/s. Dreamland Buildshoppe Pvt. Ltd from these companies and subsequently lent to the assessee company, cannot be considered unexplained. The appellant further stressed that no material was found during the course of search on the assessee company to substantiate the finding of the Assessing Officer that the amount received by it from M/s. Dreamland Buildshoppe Pvt. Ltd. is not genuine, further there is no statement or evidence to allege that the unsecured loan received is any form of accommodation entry, routed through cash deposit or the layering of unaccounted income. The Director of the creditor company M/s. Dreamland Buildshoppe Pvt. Ltd. attended the assessment proceedings

and has recorded his statement in which he had confirmed unsecured loan given by M/s. Dreamland Buildshoppe Pvt. Ltd. to the assessee company. Accordingly, the appellant submitted that the test of Section 68 viz identity creditworthiness of the creditor and the genuineness of transaction has been fully satisfied.

8..3 The observations of the Assessing Officer and the written submission of the appellant have been carefully perused. It is observed that the appellant has regular transactions receipt and repayment loans) with M/s Dreamland Buildshoppe Pvt. Ltd. The appellant has also submitted the bank statement of M/s. Dreamland Buildshoppe Pvt. Ltd. for the relevant period to explain the immediate source of funds in the books of the creditor company. It has been claimed that the creditor company is a Uppal Group company which has received funds from other Uppal Group companies viz. Uppal-Hotel Pvt. Ltd, Uppal Projects Pvt. Ltd And Darbhanga Estate RutasLtd. and extended unsecured loan to the appellant company. The immediate source of funds received by the appellant as per the bank statement has thus been explained.

8.4 From the assessment order, it is further observed that the identity of the creditor company cannot be questioned as it has replied all notices filed ITRS, Director of the company attended the office and gave statements confirming the transactions. Further, Shri Sunil Srivastava, Director of the creditor company, in response to Question No.8, has categorically stated that M/s. Dreamland Buildshoppe Pvt. Ltd. received funds Uppal Group of companies for exploring real estate business and these funds have been given to the assessee company for time being. He has further stated that M/s. Dreamland Buildshoppe Pvt. Ltd has its physical address at A-21, 4th Floor, Green Park, New Delhi but all the 'administrative decisions relating to M/s. Dreamland Buildshoppe Pvt. Ltd. Is taken by Shri Manish Uppal from the office of the assessee's company ie. first floor, East Tower, NBCC Place, Lodhi Road, New Delhi-110003, the premise which was covered in the search operation u/s. 132 of the Act. Therefore, it is an admitted fact that M/s Dreamland is controlled by Mr Manish Uppal through his employee and operates from the premise of appellant but these facts on their own do not make the loan in question unexplained. The immediate trail of source in the books of creditor has been submitted by the appellant alongwith confirmations of accounts, their audited statements and statement of bank A/e. The source of funds in the books of M/s Uppal Hotels Pvt. Ltd and Uppal Projects or other group companies have not been doubted by the Assessing Officer. There is also no doubt on the creditworthiness of the group companies which have given funds to M/s Dreamland, another group company. In these circumstances, the unsecured loans given by M/s Dreamland to the appellant from the loans received from other group companies cannot held to be unexplained/ non genuine. The case laws relied upon by the AO are not applicable in this case as facts are entirely different. Accordingly,

addition made by the AO u/s 68 of the Act amounting to Rs31,22,50,000/ is deleted."

9. Admittedly, the assessee is having running account with the lender company. The ledger account of the lender for the period 1.4.2015 to 31.3.2021 is part of the record. No adverse inferences were drawn with regard to unsecured loans received from the very same lender company in the scrutiny assessments completed u/s 153A or 143(3) of the Act except in Asst Year 2017-18, where an addition was made u/s 68 of the Act which stood deleted by Id CIT(A). On further appeal by the revenue to this Tribunal for Asst Year 2017-18 , the same was dismissed by the Tribunal in ITA No. 1703/Del/2022 dated 4.1.2024 on merits of the addition u/s 68 of the Act. From the documents placed on record by the assessee before the lower authorities and also before us, it is evident that the assessee company in the instant case had duly proved the source of source of lender company by stating that the funds had been received by the lender company from the group companies of assessee (i.e Uppal Projects Pvt Ltd and Uppal Hotels Pvt Ltd) . These details are given in tabular form in Page 34 of the order of Id CIT(A) which is part of reproduction supra. Hence the creditworthiness of the lender company cannot be doubted.

10. The monies have been received in regular banking channels and duly reflected in the balance sheet of the lender company. The lender company had also furnished confirmation before the Id AO directly in response to notice u/s 133(6) of the Act along with other requisite details that were called for by the Id AO. Even the statement of Director of lender company i.e Shri Sunil Srivastava appeared before the Id AO on 26.9.2022 and a statement on oath was recorded from him wherein he had duly confirmed all the loan transactions with the assessee company. Hence the genuineness of transactions could not be doubted at all.

11. The notice issued u/s 133(6) of the Act behind the back of the assessee stood directly served on the lender company and the same was also duly responded by the lender company directly before the Id AO by furnishing the requisite details. Hence the identity of the lender company cannot be doubted at all.

12. Further the assessee was also subjected to search u/s 132 of the Act and nothing incriminating was found during the course of search to support the allegations of the Id AO. Hence nothing was found to substantiate the allegations of the Id AO to allege that the unsecured loan received by the assessee was in the nature of accommodation entry from the lender company. It is not in dispute that the assessee company is having running account with the lender company which is evident from the ledger account for the period 1.4.2015 to 31.3.2021 containing loans received in various years (which stood accepted by the revenue u/s 143(3) of the Act except AY 2017-18 as detailed supra) and loans being repaid in various years by the assessee company. Source of source of funds of the lender company is also proved by the assessee in the instant case. Hence there is absolutely no case for the revenue to justify an addition u/s 68 of the Act in the facts and circumstances of the instant case. Hence we do not find any infirmity in the order of the Id CIT(A). Accordingly, the grounds raised by the revenue are dismissed.

13. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 26/11/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 26/11/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi