

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER,**

**ITA No:- 5543/Del/2019  
(Assessment Year- 2014-15)**

Bhasin Infotech & Infrastructure Ltd., 28, Raja Garden Chowk, New Delhi-110015.	Vs.	Commissioner of Income Tax (Appeals)-23, New Delhi.
<b>PAN No:</b> AACCB9344D		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Salil Kapoor, Adv.,  
Shri Shivam Yadav, Adv. .  
Shri Vikas Jain, Adv. &  
Ms. Shrawani , Adv.  
**Revenue by** : Shri Yogesh Nayyar, Dr. DR

**Date of Hearing** : 10.12.2024  
**Date of Pronouncement** : 10.12.2024

**ORDER**

**PER BENCH:**

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeal)-23, New Delhi, vide order dated 11.01.2019. Assessment was framed by the ACIT, Central

Circle-2, New Delhi, for the Assessment Year 2014-15, under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide its order dated 30.12.2016.

2. At the outset, the Ld. Counsel for the assessee stated that this is a penalty appeal and penalty levied by the CIT(A) on the enhancement of income in regard to the following two items:

- (i) *M/s Hirise Hospitality Pvt. Ltd. on account of unexplained loan u/s 68 of the Act. – 8,00,00,000/-*
- (ii) *Mitjilanchal investment and finance Pvt.Ltd. on account of unexplained loan u/s 68 of the Act. – 1,25,00,000/-*

The Ld. Counsel for the assessee pointed out that the Tribunal, in the quantum appeal in ITA No. 1700/Del/2019 vide order dated 31.03.2022, set aside these two addition. He drew our attention to paragraph nos. 12 and 12.1 of the Tribunal's order, which read as under:

*“12. Hence, we do not see any reason to disturb the finding of the Ld. CIT(A) in respect of transaction with M/s. Mithilanchal Investment & Finance Pvt. Ltd. (supra). For remaining party, it is the case of the assessee that there were certain litigation between Hirise Hospitality Pvt.Ltd. and the assessee. The FIR was also registered on 09.03.2019. A letter dated 11.01.2019 was also addressed for cancellation of space/unit allotted to Hirise Hospitality Pvt.Ltd. Ld.CIT(A) had enhanced the income related to transaction with this party namely Hirise Hospitality Pvt.Ltd. by observing as under:-*

<b>S.No.</b>	<b>Name</b>	<b>Amount (Rs.)</b>	<b>Remarks</b>
1.	M/s. Hirise Hospitality Private Limited.	8 crore	<p>i) As per the table in para 4 of the assessment order, figure of Rs. 760,00,000/- is shown. However, a perusal of ledger account filed during course of the appellate proceedings shows that total of Rs. 8 crores were received by way of nine entries. As per the ledger account, seven credit entries of Rs. 50 lakh each have been shown on 13.05.2013; credit entries of Rs. 25 lakhs and Rs. 4,25,00,000/- have been shown on 15.05.2013. It is also seen that actually re-payment of Rs. 40 lakhs have been shown by four entries of Rs. 10 lakhs each. Description of one of the entry shows that the repayment was actually to M/s. Mist Avenue Private Limited (and not to the said party). As such the provisions of section 68 apply in terms of credit entries. Therefore, entire credit of Rs. 8 crores is considered for the addition by way of enhancement.</p> <p>ii) In the letter dated 16.12.2016, addressed to the appellant, it has been mentioned that notice under section 133(6) of the Income Tax Act, 1961 was issued to this party but no response has been received. Summons, under section 131(1A) had been issued to this party for personal deposition. The letter further asked the appellant to produce the said party alongwith copies of statement of the bank account and other documents (of the said party) mentioned therein. However, neither the party was produced, nor any copy of the bank statement of the paid party was produced, nor any copy of other requisitioned documents was produced. During the present appellate proceedings, also, the appellant failed to produce this party.</p> <p>iii) During the present appellate</p>

			<p><i>proceedings, in spite of various opportunities, the appellant did not claim that any copy of bank account or profit and loss account/ Income Tax Return of this company was ever filed before the AO. The appellant submitted a photocopy of letter dated 20.12.2016 addressed to the AO, in which it has been claimed that a) necessary evidence of dispute with this' party were being produced. b) a copy of balance sheet of this party as downloaded from MCA (Ministry of Company Affairs) was enclosed. c) a copy of bank statement evidencing receipt of the said payment was enclosed.(it seems that the letter was talking above the statement of the bank account of the appellant). However, during the present appellate proceedings, the appellant did not furnish any of the documents mentioned at a), b) or c), above. Of course, a photocopy of bank statement of the appellant has been submitted which evidence receipt of only Rs. 10 lakhs (it will be discussed below).</i></p> <p><i>iv) During the present appellate proceedings, the appellant produced the following: a) a simple (unauthenticated) photocopy of ledger account of this party (which does not have address of the party) in the books of the appellant which is purportedly confirmed by the director/authorised signatory of this party. This being a simple photocopy does not have any evidentiary value. It is also noted the description of the party in the ledger a/c is "Hirise Hospitality Pvt. Ltd. (Ahmadabad)" whereas the letter dated 27.12.2016 (discussed at sub-para (c), below) mentioned address of this party as that of Kolkata. b) a simple (unauthenticated) photocopy of bank statement of the appellant</i></p>
--	--	--	---

			<p><i>which has one entry (dated 19.09.2013 for Rs. 10 lakhs) with description, 'RTGS/HIRISE HOSPITALITY PVT LTD'. However, description of other entries (which are claimed to be showing receipt of money from this party) do not contain any reference to the name of this party. c) a simple (unauthenticated) photocopy of a letter dated 27.12.2016. This letter was purportedly signed by authorised signatory and addressed to "Bhasin Motors Ltd., New Delhi", confirming balance as on 31.03.2014. This being a simple photocopy does not have any evidentiary value. Moreover, it is not understood, how this letter has been addressed to the appellant (instead of the AO). It is apparent that this letter was obtained by the appellant. Therefore, appellant could have easily produced this party either before the AO or at least before the undersigned. Interestingly, it is also noted that the signature on the purported confirmation of ledger account and confirmation letter, which are supposed to be signed by the same person are actually differing. Signature on the confirmation on the ledger account Sd/- Signature on the letter confirming balance on 31.03.2014 Sd/-</i></p> <p><i>v) Certainly, from the above documents {which have been produced as a result of various opportunities afforded to the appellant to produce any document to prove that before AO, it had discharged the onus of proving identity &amp; creditworthiness of this party as well as genuineness of the transactions}, the onus of proving identity &amp; creditworthiness of this party as well as genuineness of the transactions cannot be said to have been discharged. Therefore, it is</i></p>
--	--	--	--

			<i>held that the appellant failed to discharge the onus of proving identity &amp; creditworthiness of this party as well as genuineness of these transactions.</i>
--	--	--	--

12.1 It is seen that Ld.CIT(A) enhanced income on the ground that the assessee failed to discharge its onus for proving identity and creditworthiness of this party as well as the genuineness of the transaction. The assessee has filed certain documents that goes to demonstrate that there were ongoing litigation between the parties. Therefore, looking to the facts and circumstances of the present case, we are of the considered view that this transaction needs further verification at the end of the AO. We therefore, set aside the order of Ld.CIT(A) and restore this issue to the assessing authority for decision afresh. The AO is hereby directed to carry out requisite inquiry to ascertain the true facts about the transaction and decide the issue afresh giving adequate opportunity to the assessee of representing case effectively. Thus, ground related to this transaction is allowed for statistical purposes.”

3. In view of the above, the Ld. Counsel for the assessee stated that the Assessing Officer, while giving effect to the order of the Tribunal, passed a consequential order vide dated 13.03.2024, which was placed on record, and he drew our attention to the computation part as recorded in para 8, as under:

“ 8. Consequently, in order to give effect to the aforementioned order of Ld. ITAT as mentioned above, the income of the assessee is computed as under:

<b>Particulars</b>		<b>Amount (in Rs.)</b>
Assessed Income U/s 250 of the IT Act dated 08/05/2019		10,09,76,470
Less:- Relief allowed by the Hon'ble ITAT vide ITA No. 1700/Del/2019 dated 31.03.2022:		
i. Amul Agarwal on account of unexplained loan u/s 68	10,00,000/-	9,62,50,000

<i>of the Act.</i>		
<i>ii. Sudhir Kumar on account of unexplained loan u/s 68 of the Act.</i>	27,50,000/-	
<i>iii. M/s Hirise Hospitality Pvt. Ltd. on account of unexplained loan u/s 68 of the Act. – 8,00,00,000/-</i>	8,00,00,000/-	
<i>iv. Mitjilanchal investment and finance Pvt.Ltd. on account of unexplained loan u/s 68 of the Act. – 1,25,00,000/-</i>	1,25,00,000/-	
<i>Total income</i>		47,26,470

*Revised Assessed Income is Rs. 47,26,470/- under normal provision and book profit u/s 115JB of the Act amounting to (Rs. 2,99,600/-) after giving effect to order of Hon'ble ITAT. As the Income on book profit is higher than the Income on normal profit therefore, tax will be charged as per the MAT provision.”*

In view of the above factual situation, that the Assessing Officer has computed the total income as Rs. 47,26,470/-, and no addition was made on account of the enhanced income by the CIT(A), as noted above us.

4. When these facts were confronted to the Ld. Sr. DR, he could not contradict to the above facts and did not deny the factual aspects.

5. After considering the rival contentions and going through the entirety of the facts, we are of the view that the enhanced income,

as enhanced by CIT(A) on account of (i) M/s Hirise Hospitality Pvt. Ltd. on account of unexplained loan u/s 68 of the Act. – 8,00,00,000/- (ii) Mitjilanchal investment and finance Pvt.Ltd. on account of unexplained loan u/s 68 of the Act. – 1,25,00,000/-, has not been added by the Assessing Officer in the appeal giving effect to the order. We noted that the penalty levied by the CIT(A) on these two items will not survive because the Assessing Officer has already deleted these additions while giving effect to the order of the Tribunal. Hence, we delete the penalty and allow the appeal of assessee.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 10.12.2024

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

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

Dated: 10/12/2024.  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	10.12.2024
Date on which the typed draft is placed before the dictating Member	10/12/2024
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	