

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

**BEFORE SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2746/DEL/2023
(Assessment Year: 2020-21)**

DCIT, Central Circle 3,
Delhi.

vs.

BG Technologies Pvt. Ltd.,
A – 7/3, Shivaji Apartments,
Sector 14, Rohini,
Delhi – 110 085.

(PAN : AACCN2518B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
REVENUE BY : Ms. Amisha S. Gupta, CIT DR

Date of Hearing : 22.10.2024
Date of Order : 20.12.2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal is filed by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as “Id. CIT(A)”) dated 29.07.2023 for the Assessment year 2020-21.
2. Brief facts of the case are, original return u/s 139 of the Income Tax Act, 1961 (in Short ‘Act’ was e-filed by the assessee on 21.01.2021 vide acknowledgement no. 222597031210121 declaring total income at Rs.4,21,40,950/- for the financial year 2019-20 relevant to assessment

year 2020-21. A search and seizure proceedings u/s 132 of the Act was conducted in the case of assessee and others on 11.02.2021. A notice u/s 153A of the Act dated 19.11.2021 has been issued and duly served to the assessee for furnishing the return of income. In response to the notice u/s 153A, the assessee filed return of income on 03.12.2021 declaring total income at Rs. 4,21,40,950/-. Thereafter, the assessment was completed at an income of Rs.6,48,00,950/- after making addition of Rs.2,20,00,000/- which was received from M/s Bell Indus Fibercom (P) Ltd. and it was added as unexplained cash credit u/s 68 of the Act and further addition of Rs.6,60,000/- was made for commission paid for receiving accommodation entries and, added as unexplained expenditure u/s 69C of the Act.

3. Aggrieved, the assessee preferred an appeal before the ld. CIT(A). After considering the submissions made by the assessee, the ld. CIT(A) deleted the aforesaid addition made in the assessment order dated 11.04.2022 u/s 153A of the Act.
4. Aggrieved, the Revenue is in appeal before us and has raised the following grounds of appeal:-

“1 That the ld. CIT(A) has erred on facts and in law in deleting the disallowance of Rs. 2,20,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act’ 1961

2 The ld. CIT(A) has erred on facts and in law in deleting the disallowance of Rs. 6,60,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961.”

5. At the time of hearing, ld. DR for the Revenue brought to our notice relevant facts of the case from the assessment order and heavily relied on the order of the Assessing Officer. He prayed that the order of the Ld. CIT(A) may be set-aside.
6. On the other hand, ld.AR of the assessee reiterated the submissions made before the Ld. CIT(A). The ld. AR further submitted that the addition made of Rs. 2,20,00,000/- u/s 68 of the Act representing sums received by the assessee company as business advance from M/s Bell Indus Fibercom (P) Ltd. and erroneously held as unexplained cash credit u/s 68 of the Act is not in accordance with law on the following contentions:
 - a) *That complete details of M/s Bell Indus Fibercom (P) Ltd. and sum received as business advance from M/s Bell Indus Fibercom (P) Ltd.*
 - b) *That transaction was through banking channel only;*
 - c) *That pages 117-121 of Annexure A-1 in the shape of memorandum of understanding dated 15.6.2019 between appellant company and M/s Bell Indus Fibercom (P) Ltd. was seized from 201-206, 2nd Floor, VSSM Plot No. 18, Sector-3, Rohini, New Delhi-110 085 as a result of search u/s 132(1) of the Act and in such circumstances in absence of any contrary evidence no adverse inference can be drawn against the appellant. This is in view of section 292C of the Act;*
 - d) *That no evidence against the appellant that the appellant had paid cash;*
 - e) *That evidence on record in respect of the sums received as business advance from M/s Bell Indus Fibercom (P) Ltd. which remains unrebutted is tabulated hereunder:*

Sr. No.	Name of Party	Amount (Rs.)																																																
i)	<p>M/s. Bell Indus Fibrecom (P) Ltd. Address: H. No.-3/12, S/F, Asaf Ali Road, New Delhi -110002 PAN No. AAACB2764K Bank: The Lakshmi Vilas Bank Ltd. Account No. 0609360000004749 Branch: E-1/5, Sector-7, Rohini, New Delhi Date of Incorporation: 12.3.1996 Date of filing of return of income: 31.2.2020 Auditor of the Company: DPA & Co. Chartered Accountants 61-A, Master Block, Shakarpur, Delhi – 110 092 Date of payment</p>	2,20,00,000																																																
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<p><i>for the financial year 1.4.2019 to 31.3.2020 (91)</i></p> <p><i>ii) Copy of bank statement of The Lakshmi Villas Bank Ltd. of M/s Bell Indus Fibrecom (P) Ltd. (93-94)</i></p> <p><i>iii) Copy of PAN Card AAACB2764K of M/s Bell Indus Fibrecom (P) Ltd.(90)</i></p> <p><i>iv) Copy of ledger account of M/s. Bell Indus Fibrecom (P). Ltd. in the books of appellant company (92).</i></p> <p><i>v) Copy of certificate of Incorporation alongwith memorandum of association and articles of association of M/s. Bell Indus Fibrecom (P) Ltd (95-109)</i></p> <p><i>vi) Copy of acknowledgement of return of income alongwith computation of income and audited financial statement for the financial year 2019-20 relevant to assessment year 2020-21 in the case of M/s. Bell Indus Fibrecom Pvt. Ltd. (1118-146).</i></p> <p><i>vii) Copy of statement of Sh. Raju Malik, Director of lender company i.e. M/s. Bell Indus Fibrecom (P) Ltd. was recorded on 23.3.2022 u/s 131 of the Act (147-150) wherein it has been stated that the company had invested amount through own funds and completely denied the receipt of any cash in lieu of any transactions with the appellant company.</i></p> <p><i>viii) Copy of statement of Sh. Joginder Pal Gupta recorded on 21.3.2022 u/s 131 of the Act (147-150)</i></p> <p>APPELLANT COMPANY</p> <p><i>i) Copy of acknowledgement of return of income alongwith computation of income and audited financial statement of appellant company for the financial year 2009-10 relevant to assessment year 2020-21 (1-39)</i></p> <p><i>ii) Copy of bank statement of appellant company maintained with Union Bank of India (79-82)</i></p> <p><i>iii) Copy of bank statement of appellant company maintained with HDFC Bank Ltd. (83-86)</i></p>	
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7. The ld. AR also contended that they have provided each and every detail before the Revenue Authorities based on which the remission has been given by the ld. CIT(A).

8. Considered the rival submissions and material placed on record. We are of the considered view that assessee has placed on record the evidences in the shape of addresses, PAN details and net worth of M/s Bell Indus Fibercom (P) Ltd.. confirmation of account, bank statement of M/s Bell Indus Fibercom (P) Ltd., ledger account of M/s Bell Indus Fibercom (P) Ltd. in the books of assessee company, certificate of incorporation,

memorandum of association and articles of association of M/s Bell Indus Fibercom (P) Ltd., acknowledgement of return of income and audited financial statement, bank statement of assessee company. A tabular chart of M/s Bell Indus Fibercom (P) Ltd. containing name, address, PAN No. income tax jurisdiction of Assessing Officer, particulars of income declared alongwith date of filing of return of income and date of amount received through banking channels is as under:

Address	Details of income tax jurisdiction of assessing officer with PAN No. of	Particulars of income declared alongwith date of filing of return of income	Date of amount received through banking channels	Amount (Rs.)
H.No. 3/12, S/F/ Asaf Ali Road, New Delhi – 110 002	DLC-CC-045-22	29,64,990 31.12.2020	25.6.2019	50,00,000
			25.6.2019	23,00,000
			25.6.2019	45,00,000
			25.6.2019	25,00,000
			25.6.2019	57,00,000
			26.6.2019	20,00,000
				2,20,00,000

9. The Assessing Officer did not doubt the genuineness of the aforesaid documentary evidences which clearly prove that entity is existing and registered with Registrar of Companies as well as assessed to income tax. The fact that the genuineness of the transaction is also evident from the confirmation, ledger account in the books of account of the assessee, bank statements, audited financial statements establishing the genuineness of the transactions. The AO has made addition u/s 68 in respect of the receipt of money treated as business advance by the

assessee. The Assessing Officer in the order of assessment has held at page 127 of order as under:

“It is amply clear from the above discussion that in this case, the assessee had not discharged its initial onus u/s 68 of the Act, with regard to credit which was claimed as alleged loan from above referred to paper company whereas it is proved beyond doubt from investigation that the alleged loan were actually accommodation entries from paper companies controlled by entry operators and assessee was one of the several beneficiaries. In view of these facts, it is held that such receipts remained unexplained credit in the books of accounts of the assessee in the form of alleged loan is deemed to be income of the assessee u/s 68 of the Act and amount was wrongly disclosed as loan from paper companies engaged in business of providing entries. For aforesaid reasons, Rs. 2,20,00,000/- is deemed to be the income of the assessee for the year under consideration u/s 68 of the Act. Further, the assessee has paid commission/charges to receive such accommodation entries from entry providers. Generally for taking accommodation entry commission/charges @ 3 to 5 % has been charged by the entry operator. During the year under consideration the assessee has received a total entry amounting to Rs. 2,20,00,000/- and paid commission/charges @ 3%, the amount paid by the assessee comes to Rs. 6,60,000/-. The same is added to the income of the assessee u/s 68 of the Act as unexplained cash credits.

10. It is also noted that M/s Bell Indus Fibercom (P) Ltd. is also examined independently as stated in para 26 at pages 12-18 of CIT(A)'s order. We have examined the order of the ld. CIT(A). The learned CIT(A) deleted the addition by observing as under:

“21 I have considered the facts of the issue and submissions of the appellant. The issue involved relates to addition made out of business advance of Rs. 2,20,00,000/- from M/s Bell Indus Fibrecom (P) Ltd.

22 *The appellant has placed on record following evidences on record in respect of aforesaid business advance:*

- i) Addresses, PAN Nos and networth of M/s Bell Indus Fibercom (P) Ltd..*
- ii) Confirmation of account,*
- iii) Bank statement of M/s Bell Indus Fibercom (P) Ltd.*
- iv) Ledger account of M/s Bell Indus Fibercom (P) Ltd. in the books of assessee company,*
- v) Certificate of incorporation,*
- vi) Memorandum of association and articles of association of M/s Bell Indus Fibercom (P) Ltd.,*
- vi) Acknowledgement of return of income and audited financial statement,*
- vii) Bank statement of assessee company.*

.....

27 *In the aforesaid circumstances, the initial burden of the appellant as to identity, creditworthiness of the M.s Bell Indus Fibercom (P) Ltd. and genuineness of the transaction stands duly established. Once statement of Sh. Raju Malik, Director of M/s Bell Indus Fibercom (P) Ltd. has been recorded on 23.03.2022 u/s 131 of the Act thus in absence of any further adverse material brought on record by the AO, the addition is not in accordance with law. Sh. Raju Malik, Director M/s Bell Indus Fibercom (P) Ltd. Has not only confirmed the transactions but also provided the source of the said transaction inn as much as the sums were remitted out of their bank accounts and duly recorded in its books of accounts.*

28. *After the appellant having discharged his onus of furnishing the details regarding the transaction, it was incumbent upon the Assessing Officer to prove that either the identity is not established or the creditor does not have the creditworthiness or the or the transaction is not a genuine transaction. Apparently in this case, there nothing on record to establish that the transaction was not a genuine transaction or the creditor did not have the creditworthiness to pay to the appellant.*

29. *The assessment in this case was made pursuant search and the Assessing Officer as well as the investing officer had all the powers to fully examined the transaction and bring on record the*

relevant material facts establishing the invocation of section 68 of the Act.

30. *The creditor is a company and filling his returned with the ROC as well as Income-tax. Therefore, its identity is well established. The director of the company was summoned and his statement recorded. From the fact that the Director of the creditor company appeared before the Assessing Officer and deposed before the Assessing Officer establishes that the person behind the company was not a person of no means. It also indicates that the director was in the knowhow of the affairs of the company and was not a dummy director. These facts established beyond doubt the identity of the creditor. Even otherwise, it is not the case of the Assessing Officer that the director of the company is dummy director and the identity of creditor is not established.*

31. *From the annual account of the creditor, it has been reproduced above, it is seen that the creditor company had disclosed to total receipt of Rs.3,93,67,517/- and Rs.4,08,44,685/- for the F.Y 2018-19 respectively. The creditor company has disclosed a net profit of Rs. 17,94,872/- and Rs.28,67,622/- for the F.Y 2018-19 and 2019-20 respectively. Shell companies by its nature of activities do not disclose such high receipts and income. From further analysis of the balance sheet, it is seen that the creditor has disclosed reserve and surplus of Rs. 36,79,34,564/- and Rs. 37,02,18,938/- for the F.Y 2018-19 and 2019-20 respectively. On the basis of balance sheet and profit and loss account of the creditor company, it is held that the creditor had creditworthiness to give advance of Rs. 2.20Crores to the appellant.*

32. *Further, there was a MoU between the appellant and the creditor regarding advance. The contents of such MOU has not been proved to be wrong or incorrect in any manner.*

33. *It is not the case of the Assessing Officer that the appellant has given cash/unaccounted money to the creditor for taking loan. it is also not the case of the assessing Officer that the creditor had any bogus entries in his accounts. The fundamental premise on which the Assessing officer rests his case is that there were credits in the accounts of the creditor from suspicious sources. However, such a suspicion has not been taken to the logical end by*

examining the transaction in detail. Presumption and suspicion may be the starting point for making investigation but not the end of investigation.

34. *It is therefore held that the creditor had the creditworthiness of giving advance.*

35. *The third limb is regarding genuineness of the transaction. Firstly, it is not the case of Assessing Officer that the transaction is not a genuine transaction. Additionally, there was MoU between the parties to the transaction; the transaction was through banking channel; the transaction is reflected in the books of appellant as well as the creditor; the director of the creditor under statement under oath has confirmed the transaction; there is no evidence or argument to establish that the statement of the director was incorrect; there was any round tripping of funds; and there was any cash deposit in any account and the same cash travelled back to the appellant. Therefore, it is held that the transaction was a genuine transaction of business advance.*

36 *The Hon'ble Gujarat High Court in the case of DCIT v. Rohini Builders reported in 256 ITR 360 has held that once assessee had discharged the initial onus by proving identity of creditors by filing complete addresses, income tax details and also proved capacity of creditors where transactions is through banking channels and no addition is tenable. The Hon'ble Court has held as under:*

.....

37 *Also Hon'ble Delhi High Court in the case MOD Creations (P) Ltd. v. ITO reported in 354 ITR 182 has held as under:*

....

38 *The Hon'ble Delhi High Court in the case of CIT v. Diamond Products Ltd. reported in 177 Taxman 131 has held as under:*

....

39 Further Hon'ble Delhi High Court in its decision in Income Tax Appeal No. 1324/2008 dated 23.12.2011 in the case of CIT v. Kamdhenu Steel and Alloys Ltd. reported in 361 ITR 220 becomes applicable. In the said case, Their Lordships after examining all the precedents held that the initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. It was held that in order to discharge this burden, the assessee is required to prove:

- a) The identity of shareholder;
- b) The genuineness of transaction; and
- c) The creditworthiness of shareholders

40 The Hon'ble Court further held as under:

.....

41 Further it was specifically observed in respect of ITA No. 972 of 2009 in the said judgment as under:

.....

42 The Hon'ble Delhi High Court in its decision in Income Tax Appeal No. 386/2022 dated 10.10.2022 the case of Pr. CIT v. Satkar Infrastructure (P) Ltd. has stated as under:

....

43 Also the Hon'ble Delhi High Court in its decision in Income Tax Appeal No. 335/2012 dated 11.1.2017 the case of Pr. CIT v. N.C. Cables Ltd. reported in [2017] 391 ITR 11. The Hon'ble Court has stated as under:

.....

44 Further, the Hon'ble Delhi High Court in its decision in Income Tax Appeal No. 377/2016 dated 21.11.2016 in the case of Pr. CIT v. Goodview Trading (P) Ltd. has held as under:

.....

45 Further Hon'ble Delhi High Court in the case of CIT v. Kinetic Capital Finance Ltd. reported in 354 ITR 296 has held as under:

....

46 The Hon'ble Calcutta High Court in the case of IT v. Dataware (P) Ld. in ITA No. 263/2011 GA No. 2856/2011 (Cal) dated 21.9.2011 has held as under:

.....

47 In view of the facts discussed above and judicial pronouncements, the impugned addition is liable to be deleted.

48 Consequently, the addition u/s 68 of the Act of Rs.2,20,00,000/- is deleted. Grounds 11, 12, 13 and 14 are allowed."

11. In our considered view, the ld. CIT(A) has rightly deleted the addition made in this regard. We do not see any reason to disturb the findings of ld. CIT(A), accordingly Ground No.1 of the appeal of the Revenue is dismissed.
12. Ground 2 raised by the Revenue relate to disallowance of Rs. 6,60,000/- u/s 68 of the Act. The ld. CIT(A) deleted the disallowance by observing as under

"48 The Ground No. 15 to 15.2 of Grounds of Appeal is regard that addition made of Rs. 6,60,000/- representing alleged commission paid for received aforesaid alleged accommodation entries and held as unexplained cash credit u/s 68 read with section 115BBE of the Act.

49 I have considered the facts of the issue and submissions of the appellant. During the course of appellate proceedings, the appellant argued that addition made by the learned Assessing Officer is not tenable as it is unsupported by any material and, in view of the judgement of Apex Court in the case of Maharaja BipinsinghDeo v. State of Orissa reported in 76 ITR 690. It was thus prayed that, the addition made may kindly be deleted.

50 The facts of the case and reply of the appellant is considered. In the decision in respect of Ground no. 11, 12, 13 and 14, the addition is Rs. 2,20,00,000/- is deleted, therefore, the addition of Rs. 6,60,000/- is also deleted. Ground 15 to 15.2 are allowed.”

13. Having regard to the above, the ld. CIT(A) in his order has deleted the addition made in this regard and we do not see any reason to disturb the same. Accordingly, ground no.2 of the appeal of the revenue is dismissed.
14. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 20th day of December, 2024.

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

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

**Dated: 20.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-23, New Delhi..
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**