

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

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.410/DEL/2020
(Assessment Year : 2015-16)**

Rani Sati Surajgarhia Infrastructure Ltd.,
KGF-002, Pearl Gatewal tower,
Sector 44,
Noida – 201 301 (Uttar Pradesh).

vs.

DCIT,
Central Circle 1,
Noida.

(PAN : AADCR5998Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Sr. Advocaee
Shri Sahilesh Gupta, Advocate
Shri Madhur Aggarwal, Advocate

REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 21.04.2025

Date of Order : 23.05.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-IV, Kanpur[“Ld. PCIT”, for short] dated 06.11.2019 for the Assessment Year 2015-16.
2. Brief facts of the case are, assessee filed its return of income declaring total income of Rs.1,78,000/-. The case was selected for limited scrutiny through CASS. Accordingly, notices under section 143(2) and 142(1) of

the Income-tax Act, 1961 (for short 'the Act') along with questionnaire were issued and served on the assessee. In response, Director of the assessee company appeared from time to time and submitted the relevant information as called for. Ld. AR of the assessee was asked to submit the relevant details and justification on the issues, viz., (a) unsecured loans from persons who have not filed return of income, form 3CD; and (b) mis-match in sales turnover reported in audit report and ITR. The AO observed from the audited financials of the company that assessee has taken unsecured loan of Rs.1,02,92,932/- and Rs.4,90,000/-. When the assessee was asked to submit the relevant details, no compliance was made in this regard. Due to abovesaid non-compliance, a show-cause notice u/s 144 was issued for not making any compliance and why additions relating to unsecured loans taken from Kamdhenu Buildcon Pvt. Ltd. (in short 'Kamdhenu') and loan from Shri Amit Mittal, Director of the company be disallowed. In response, assessee has submitted only ITR and financial statements. Not convinced with the submissions made by the assessee, AO disallowed the unsecured loans taken from Kamdhenu and Shri Amit Mittal. Accordingly, he made addition of Rs.1,07,82,932/- u/s 68 of the Act.

3. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A)-4, Kanpur and raised several grounds of appeal. It was

submitted that assessee has filed confirmation, ITR copies, Balance Sheet and Profit & Loss Account of the lenders to establish three vital ingredients of cash credits, i.e. identity, creditworthiness and genuineness of the transaction. After considering the detailed submissions, Id. CIT (A) observed that the AO has issued notice u/s 133(6) of the Act seeking information from the creditors, however it remains uncomplished with. He submitted that the bank statements were not filed by the creditors, viz., Kamdhenu and Shri Amit Mittal, before the AO. He observed that the lenders have not complied with the notices issued u/s 133(6) of the Act and further he observed that the bank statement of the lender, Kamdhenu, was submitted in appeal proceedings but same cannot be accepted as evidence as no application under Rule 46A of the Income-tax Rules, 1962 (for short 'the Rules') was submitted by the assessee. Considering the totality of the facts and circumstances of the case, he dismissed the appeal filed by the assessee by relying on various decisions to come to the conclusion that assessee has miserably failed to submit vital ingredients specified u/s 68 of the Act.

4. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1 That on the facts and circumstances of the case and in law the order passed by the learned Commissioner of Income Tax (A) in confirming the addition of Rs.1,07,82,932/- is arbitrary, against law and facts on record.

2 That the learned Commissioner of Income Tax (Appeals) grossly erred in holding that no application under rule 46A of Income Tax Rule have been filed in respect of documents which forms part of document filed during the course assessment proceeding before Id AO and as such impugned order is illegal and hence liable to be quashed.

3 That the learned Commissioner of Income Tax (Appeals) while sustaining the above addition has arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.”

5. At the time of hearing, Id. AR of the assessee brought to our notice page 2 of the assessment order wherein the assessment was selected for limited scrutiny and submitted that the AO has asked the assessee to submit information relating to unsecured loan from Kamdhenu and Shri Amit Mittal. In this regard, he brought to our notice page 17 of the paper book which is the confirmation letter submitted by Shri Amit Mittal and he submitted that various transactions were carried on during the year through banking channel only and also there were high value transactions recorded during the year. He submitted that it is a running account maintained by the assessee with the Director for the purpose of business only during the year, transactions recorded were amounting to Rs.4,33,75,000/-. He submitted that AO has proceeded to make addition of outstanding amount of Rs.4,90,000/- only, therefore, Shri Amit Mittal is only a Director of the company and there is no requirement to file

identity and creditworthiness of the same. With regard to genuineness, he submitted that confirmation of accounts submitted by the assessee clearly shows that it is a business transaction carried on for the purpose of business and prayed that the addition made by the AO may be deleted.

6. With regard to loan outstanding of Kamdhenu, he brought to our notice page 5 of the paper book and submitted that assessee has submitted before the AO that assessee has taken an unsecured loan of Rs.1 crore and explained the transaction that Kamdhenu has commercial property at Noida having market value at Rs.10 crores approx. and it was also submitted that Kamdhenu has given unsecured loan out of its surplus funds available in the bank. He also brought to our notice confirmation submitted by them. Further he brought to our notice page 29 of the paper book which is confirmation submitted by Kamdhenu of the abovesaid transactions which matches with the confirmation letter submitted by the assessee. Further he brought to our notice bank statement of Kamdhenu and submitted that they have given unsecured loan to the assessee and source of the same also brought on record that they have closed the term deposit prematurely for the purpose of transfer of the abovesaid fund to the assessee. He submitted that the abovesaid informations were duly submitted before the Id. CIT (A) and he brought to our notice the relevant letter submitted before Id. CIT (A) along with bank statement explaining

the abovesaid transactions. He prayed that both these transactions are only business transactions.

7. On the other hand, Id. DR of the Revenue relied on the findings of the lower authorities.
8. Considered the rival submissions and material available on record. We observed that during assessment proceedings, AO has asked information from the assessee relating to unsecured loan received from Kamdhenu and Shri Amit Mittal. We observed that assessee has not submitted the relevant information before the AO, however assessee has filed all the relevant information before the Id. CIT (A). It is also fact on record that assessee has no doubt filed the information before the Id. CIT (A), however not followed the due procedure to file the same as additional evidences under Rule 46 of the Rules. In our considered view, the abovesaid fact was also confirmed by the Id. CIT (A) in his own order. However, he failed to give one more opportunity to the assessee to rectify the procedural defects in filing the additional evidences before him. Since Id. CIT (A) has failed to give one more opportunity to the assessee, in our considered view, the detailed evidences filed by the assessee before us clearly indicate that assessee has submitted confirmation letters from both the parties which are placed on record. With regard to the transactions of the Director of the company, assessee has filed the

confirmations detailing various transactions carried on with the assessee as a running account in its books of account. It clearly indicates that assessee has given funds to the Director to carry on business activities involving Rs.4,38,65,000/- and the Director has lent the money to the assessee company and also assessee has repaid the same during the year and the final outstanding balance at the end was of Rs.4,90,000/- and the same was added by the AO as unsecured loan. Since Shri Amit Mittal is a Director of the company, there is no requirement for the assessee company to submit identity and creditworthiness of the Director and with regard to genuineness of the transaction, we observed that it is a running account maintained by the assessee to meet out the short term requirement for the purpose of business. Therefore, the genuineness has already been proved in this regard.

9. Coming to the unsecured loan received from Kamdhenu, we observed that assessee has submitted confirmation letter and also bank statement indicating the transfer of funds through banking channel, it also explained the source of source for the same. We observed that Kamdhenu has closed term deposit prematurely to transfer the abovesaid funds to the assessee. It clearly shows that it has surplus funds available with them which were transferred to the assessee as unsecured loan and these documents clearly show that vital ingredients of section 68 of the Act are

already proved by the assessee by bringing on abovesaid documents which were in fact filed before the ld. CIT (A) who has not appreciated the same. Therefore, we are inclined to delete both the additions made by the AO and accordingly, grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 23rd day of May, 2025.

Sd/-

sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 23.05.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**