

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6404/Del/2017 : Asstt. Year : 2014-15

DCIT, Circle-7(1), New Delhi	Vs	Delhi Art Gallery Pvt. Ltd., 11, Hauz Khas Village, New Delhi-110016
(APPELLANT)		(RESPONDENT)
PAN No. AABCD8460F		

Assessee by : Sh. Rajat Jain, CA

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 11.10.2021

Date of Pronouncement: 13.10.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-3, dated 24.07.2017.

2. Following grounds have been raised by the revenue:

"1. Ld. Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.8,48,00,000/- made by the AO on account of unexplained credit u/s 68 of the Income Tax Act, 1961.

2. Ld. Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.12,59,870/- made by the AO on account of disallowance of interest expenses."

3. The assessee company was engaged in the business of trading of paintings and other art works.

4. The revenue has raised an appeal regarding the deletion of Rs.8,48,00,000/- made by the Assessing Officer u/s 68 of the Act on account of unexplained unsecured loans from 9 parties. The addition has made by the Assessing Officer owing to non-production of principle officer of the 9 entities who have lend the monies to the assessee.

5. Before the Assessing Officer, the assessee has submitted the following details to prove the genuineness of the loan:

- a) Company Master Details - Printout from Ministry of Corporate Affairs
- b) Copy of detail of PAIM of the company
- c) Income Tax Return Acknowledgement
- d) Copy of confirmation containing all the details of amount invested.
- e) Copies of Audited Accounts
- f) Copy of Bank statement reflecting the relevant transaction

6. Rebutting the above submission, the Assessing Officer made addition of these amounts holding as under:

*"3.16 On examining the banks statement of such entities the creditworthiness of the creditors is not proved as such entities, from the nature of the transactions reflected, **seems to be entry** operator providers. Neither of the entities were NBFC, further in the business world there is hardly any activity, where matching credit and debit match each other in banks statement.*

*The plea of the assessee that they are in finance business is not substantiated by any proof, as even in finance related activities, there are lots of credits entries and debit entries regarding interest and TDS which is not in the present case. In case such corresponding credit and debits are removed the **creditors does not have the required credit worthiness**. It was only on examination of the directors that truth would have come out as they could have thrown light on the nature of transaction.”*

7. The Assessing Officer further held that the assessee has failed to prove creditworthiness of the parties and has failed to produce the Directors so as to identify the real person controlling the legal operations of the legal entities. Placing reliance on various judicial pronouncements namely, M/s Nova Promoters & Finlease Pvt. Ltd. M/s Neelkanth Ispat Udhog (P) Ltd., N.R. Portfolio Pvt. Ltd. and Sanraj Engineering Co. The AO held that the onus is on the assessee to prove undisputably regarding the sources of the credits.

8. During the proceedings before the First Appellate Authority in accordance with the sub-Section (4) of Section 250, the Id. CIT(A) issued summons u/s 131 to the Principle Officers of the loan parties. The complete details are as under:

<i>Name of the Company</i>	<i>Address as per Master Data</i>	<i>Address as per Summons</i>
<i>Strum Infra Development Pvt. Ltd.</i>	<i>C-17, Ground Floor, Guru Nanak Pura, Laxmi Nagar, Delhi-110092</i>	<i>4132/307, A-1, 3rd Floor, Naya Bazar, Delhi-110006</i>
<i>Shilpkar Build Tech Pvt. Ltd.</i>	<i>C-17, Ground Floor, Guru Nanak Pura, Laxmi Nagar, Delhi-110092</i>	<i>4132/307, A-1, 3rd Floor, Naya Bazar, Delhi-110006</i>
<i>Shri Entertainment Pvt. Ltd.</i>	<i>Flat No. C-283, 2nd Floor, Pocket-II, DDA Janta Flats, Jasola, New Delhi-110025</i>	<i>Cabin No. 5, Plot No. 150, Kilo Krai BDC Complex, Maharani Bagh, New Delhi-110025</i>
<i>Noida Tourism Pvt. Ltd.</i>	<i>EXTN., PL-853, T.NO.1036, Main Jaitpur Road, New Delhi-110044</i>	<i>BDC Complex, Maharani Bagh, New Delhi-110025</i>
<i>Nimisha Marketing Services Pvt. Ltd</i>	<i>& H.NO.3/12, 3rd Floor, Asaf Ali Road, Near Delite Cinema Hall, Delhi-110002</i>	<i>Cabin No. 5, Plot No. 150, Kilo Krai Bdc Complex, Maharani Bagh, New Delhi-110025</i>
<i>NCR Buildtece Private Limited</i>	<i>H.NO.3/12, 3rd Floor, Asaf Ali Road, Near Delite Cinema Hall, Delhi-110002</i>	<i>CABIN NO. 5, PLOT NO. 150, KILO KRAI BDC COMPLEX, MAHARANI BAGH, NEW DELHI-110025</i>
<i>L.T. Buildwell Pvt. Ltd.</i>	<i>32/1, GALI NO.8, GROUND FLOOR, BHIKHAM SINGH COLONY, DELHI-110032</i>	<i>A-38, F-14, STREET NO.2, MADHU VIHAR, NEW DELHI-110092</i>
<i>Jeevan Anand Multi Services Private Limited</i>	<i>H.NO.3/12, 3rd FLOOR, ASAF ALI ROAD, NEAR DELITE CINEMA HALL, DELHI-110002</i>	<i>CABIN NO. 5, PLOT NO. 150, KILO KRAI BDC COMPLEX, MAHARANI BAGH, NEW DELHI-110025</i>

In the case of

- I. M/s Nimisha Marketing & Services Pvt. Ltd.*
- II. M/s Shri Entertainment Pvt. Ltd.*
- III. M/s Jeevan Anand Multi Services Pvt. Ltd.*

Shri. Joginder Pal Gupta attended the proceedings in pursuance to the summons under section 131 of the Act. The director stated that the company at no.1 has given the loan of Rs.1 crore to the assessee on 25.03.2014 & 27.03.2014. The company had filed the Return of Income regularly and submitted the copy of order under section 143(3) of the Act. The company had the opening balance of reserves and surplus of Rs.2,45,06,491/- as on 01.04.2013. The company is doing the marketing/trading in the cloth. The loan is repaid back in the current financial year.

(2) Shri Entertainment Pvt. Ltd.- The director stated that the company has given the loan of Rs.50 lakhs to the assessee. The company regularly files the return of income and the turnover during the year is Rs.1,54,38,245/- (contracts income). The company had opening balance of reserves of Rs.04.02.02,55 as on 01.04.2013. The loan has been repaid back in the current financial year.

(3) M/s Jeevan Anand Multi Services Pvt. Ltd.- The company has given the loan of Rs.50 lakhs and received the quarterly interest. The company files the regular Return of Income. The opening balance of the reserves as on 01.04.2013 was Rs.1,96,42,072/-. The loan has been repaid back in the current financial year.

(4) *M/s Shilpkar Buildtech Pvt. Ltd.- Shri Joginder Pal Gupta has POA from Sh. Vinod Kumar who was out of station. The company has given the loan of Rs.75 lakhs on 18th May, 2013. The interest on quarterly basis has been regularly received. The company files the Return of Income regularly. The company had opening balance of Reserves as on 01.04.2013 of Rs.6,62,33,930/-. The company is engaged in real estate business and received the revenue receipts of Rs.1,06,13,161/-. The loan is repaid back in the current financial year. The director stated that the companies do the genuine business and confirmed that the details regarding the creditworthiness were filed before the Assessing Officer through the authorized representative.*

(5) *Sh. Raju Malik director of M/s NCR Buildtech Pvt. Ltd. attended the proceedings on 14.07.2017. The company is doing the contract jobs for the govt. The company has given the loan of Rs.1 crore to the assessee and the interest has regularly received on the loan amount. The loan is repaid back in the current financial year. The return of income is filed regularly. The opening balance of the reserves as on 01.04.2013 is Rs.2,11,26,556/-. Sh. Raju Mlik is ex-director in the following companies:*

1. *M/s Noida Golden Tourism Pvt. Ltd.*
2. *M/s Capital Infratech Pvt. Ltd.*

The company at no.1 has given the loan of Rs.1 crore which is repaid in the current financial year. The opening balance of reserves on 01.04.2013 is Rs.3,84,84,484/-. The company

provides the tourism related services. The company at serial no.2 has given the loan of Rs.60 lakhs. The company regularly files the Return of Income and receives the commission income. The opening balance of the reserves as on 01.04.2013 is Rs.2,36,62,106/-. The loan is repaid back during the current financial year and the interest was received on regular basis. He confirmed that the confirmations bank statement etc. were filed before the Assessing Officer through the AR and stated that the companies have extended the loan on the commercial basis.

(6) Sh. Vinod Gupta who is a financial consultant for the following companies attended on 17.07.2017:-

- 1. M/s Strum Infra Development Pvt. Ltd.*
- 2. M/s L. T. Buildwell Pvt. Ltd.*

The company at serial no.1 has given the loan of Rs.2.13 crore on different dates as given in the confirmation. The interest has been received annually and the IDS has been deducted from the interest income. The return of income has been regularly filed. The company do the contract work for the development of the real estate. The revenue of Rs.67,21,412/- was earned in the concerned financial year. The opening balance of the reserves as on 01.04.2013 was Rs.5,67,24,847/- and the financial consultant confirmed having given the loan as a commercial transaction.

M/s R.T. Buildwell Pvt. Ltd: The company has extended the loan of Rs.1 crore in the financial year. The company has received the interest on yearly basis. The company regularly files the return of income. The company has opening balance of the

reserves of Rs.97,90,97,481/- as on 01.04.2013. The company is doing the business of the development/contract work for the private construction. The consultant stated that the company is almost 10 years old and confirmed the transaction to be genuine and extended on the commercial basis.

9. The Id. CIT(A) held that the creditworthiness and the genuineness of transactions has been established from the fact that all the companies are having the opening balance of the reserves and surplus as on 1st April, 2013. The bank statement filed during the assessment as well as appellate proceedings show that there are no cash deposits and the loans have been advanced from the reserves which are available with the companies as on 31.03.2013.

10. The loans have been repaid by the 7 companies out of the 9 companies and the interest has been regularly paid by the assessee to the respective companies after deducting the requisite tax at source as applicable by the respective provisions of the Act. The Id. CIT(A) has also noted the presence of Mrs. Sarojini Xess posted as Deputy Commissioner of Income Tax, Circle 7(1), New Delhi on 19.07.2017 along with the assessment records and was duly apprised that the directors/authorized representatives were summoned by the Id. CIT(A) u/s 131 of the Act and their identity, creditworthiness/genuineness was examined in detail.

11. From the submissions and the evidences adduced by the Directors, it was held that the companies that have advanced the loans to the assessee have the requisite capacity to lend. The position of funds with the lending companies is as under:

S. No.	Name	Reserve and surplus	F.Y. 2012-13	F.Y. 2013-14
1	Strum Infra Development Pvt. Ltd.	-do-	78,885,155.00	107,739,430
2	LT Buildwell Private Ltd.	-do-	9790,97,481.00	9791,00,309.04
3	NCR Buildtech Pvt. Ltd.	-do-	21,649,199	21,66,745
4	Capital Infratech Pvt. Ltd.	-do-	23,662,106	23,663,814
5	Noida Golden Tourism Pvt. Ltd.	-do-	34,484,484	38,496,308
6	Shri Entertainment Pvt. Ltd.	-do-	40,202,555	40,743,369
7	Jeevan Anand Multi Services Pvt. Ltd.	-do-	19,642,072	19,643,720
8	Shilpkar Buildtech Pvt. Ltd.	-do-	66,233 930.00	53,130,035.00
9	Nimisha Marketing & Services Pvt. Ltd.	-do-	24 506,491	24,509,419

12. The facts of the case state that the lenders have the requisite funds with them in the preceding year to the year under consideration, the Id. CIT(A) held that the addition under section 68 of the Act, is not called for.

13. Having heard the arguments of both the parties. We find that the assessee has given the new addresses and requested the Assessing Officer to send the summons u/s 131 to the new address which the AO failed to do. Having failed to issue the summons and making the enquiries at the new address despite having the information provided to the AO by the assessee, the Assessing Officer made the addition, holding that the Directors of the companies have failed to attend for recording of the statement. The Id. CIT(A) issued summons which have been duly complied by the Principle Officer of the loan parties and

duly recorded the statement. The facts of recording of the statement and the compliance made has also been conveyed to the Assessing Officer who has not objected to the proceedings before the Id. CIT(A).

14. Hence, in view of the undisputed facts on the record with regard to proving of the identity, creditworthiness, genuineness of the loan parties, the statement recorded by the Id. CIT(A), the turnover of the companies & the profits earned thereof, the position of the reserves & surplus available with the lenders, we hereby decline to interfere with the well reasoned order of the Id. CIT(A).

15. Accordingly, the interest of Rs.12,59,870/- disallowed by the Assessing Officer on account of interest expenses claimed by the assessee is also directed to be deleted.

16. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 13/10/2021.

Sd/-

(Suchitra Kamble)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 13/10/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR