

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH. N.K.SAINI, ACCOUNTANT MEMBER**

**I.T.A .Nos.-4688-4690/Del/2012
(ASSESSMENT YEARS-2004-05, 2006-07 & 2009-10)**

ACIT, Central Circle-12, Room No.-330, ARA Centre, Jhandewalan Extn., New Delhi. (APPELLANT)	vs	R.P.G.Credit & Capital Ltd., 209, Katra Peran, Tilak Bazar, Khari Baoli, New Delhi-110006 PAN-AAACR4703J (RESPONDENT)
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Appellant by	Sh. K.P.Ganguli, Adv.
Respondent by	Sh.Gunjan Prashad, CIT DR

Date of Hearing	27.05.2015
Date of Pronouncement	07.08.2015

ORDER

PER DIVA SINGH, JM

These are three appeals filed by the Revenue assailing the correctness of the separate orders dated 29.06.2012 of CIT(A)-XXXI, New Delhi pertaining to 2004-05, 2006-07 & 2009-10 assessment years on various grounds. All these appeals are being decided by a common order as it was the common stand of the parties before the Bench that the arguments advanced in ITA No.-4688/Del/2012 due to similarity in facts and law would apply *mutatis mutandis* to the remaining two appeals also.

ITA No.-4688/Del/2012 (A.Y.2004-05)

2. Accordingly in view of the above common stand, we would be referring to the facts from **ITA No.-4688/Del/2012**. The relevant facts of the case are that search and seizure operation u/s 132 was carried out on Sh.Mukesh Garg on 20.01.2010 at 292, Katra Peran, Tilak Bazar, Khari Baoli, Delhi. The case was centralized to Central Circle-12, New Delhi by an order passed u/s 127 of the Income Tax Act, 1961 vide F.No.-CIT-V/Centralization/2011-12/1472 dated 14/10/2011 of the Commissioner of Income Tax-V, Delhi. In view thereof,

notice u/s 153C of Income Tax Act, 1961 dated 14/10/2011 was issued requiring the assessee to file the return of income for the Assessment Year 2004-05. As a result thereof return was filed by the assessee on 18/11/2011 declaring total income of Rs.33,24,420/-.

2.1. Notices u/s 143(2) & 142(1) along with a questionnaire etc. were issued to the assessee on 18.11.2011 and in response to the same, the assessee represented by his Authorized Representative was required to provide the details in regard to its income derived mainly from interest income. The AO considering the books of accounts produced on behalf of the assessee which as per record were examined on a test check basis required the assessee to furnish the information in regard to fresh unsecured loans in the following format:-

S.No.	Name and Address	Opening Balance	Addition during the year	Interest with rate, if not paid given the reason	Total	Repayment with amount of TDS	Closing Balance	PAN with Ward /Circle	Whether it is sister concerns or specified persons u/s 40A(2)(b)
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2.2. Considering the details filed, the AO observed that the assessee had only provided the figure of loan taken; the amount of interest paid; and PANs of the parties. However further supporting evidence of confirmations of loans taken from the parties as required by him were found to be not filed. Accordingly he concluded that the genuineness of the transactions was not proved.

2.3. The assessee in the course of the assessment proceedings was further required by him to explain the sources of funds allegedly contributed by the lenders of the money. In the absence of the necessary documentary evidence, it was concluded that the funds received by the assessee were just accommodation entries and addition u/s 68 was made.

2.4. In support of the said conclusion, he relied upon various decisions which laid down the proposition that on the failure of the assessee to explain by way of supporting evidence the introduction of funds in its books of accounts whether by way of unsecured loans or otherwise then addition u/s 68 was maintainable. Reference to these decisions is not being made as the legal position on the said propositions of laws in regard thereto is well-settled and is not under dispute.

The Assessing Officer in view of assessee's failure to substantiate its claim in respect to the following persons, held that the assessee had failed to furnish supporting evidence in respect of the genuineness of the transactions and creditworthiness of the lenders from whom unsecured loans were raised during the year:-

S.No.	Name of Party/ Person	Opening balance	Addition during the year	Interest paid on loan taken during the year
1.	Neelu Garg	0	500000	0
2.	Vinay Garg	0	2500000	12500
5.	Anjali Garg	0	2000000	0
6.	Rajiv garg	0	1600000	0
7.	Umesh Garg	0	1800000	0
Total			8400000	12500

2.5. The specific finding on fact of the AO is extracted hereunder for ready-reference:-

11. "From the detailed discussion as above and facts and circumstances of the case, it is crystal clear that the assessee company routed back its own undisclosed income to the books of accounts. The assessee company has failed to furnish any information in respect unsecured loans to prove the genuineness of transaction, identity and creditworthiness of the entities/companies making investments. Thus onus casted upon the assessee company does not stand discharged. In view of the above discussion, I am satisfied that the amount of increase of Rs.84,00,000/- is unaccounted income of the assessee company, therefore, the same is added to the income of the assessee company for the assessment year under consideration and income is computed accordingly. For the reasons discussed above, penalty proceedings for furnishing inaccurate particulars of income and concealing the particulars of income are initiated under section 271(1)(c) of the Act separately."

(Addition made Rs.84,00,000/-)

2.6. Apart from the above, the AO disallowed the assessee's claim of having paid interest expenditure of Rs.12,500/- to Sh. Vinay Garg on the ground that the assessee could not establish the genuineness of the loan.

3. As a result of the above additions, the returned income of Rs.33,24,420/- was assessed at an income of Rs.1,17,36,920/-.

ITA No.-4689/Del/2012 (A.Y.2006-07)

4. A perusal of the facts in ITA No.-4689/Del/2012 (A.Y.2006-07) shows that the assessee declared an income of Rs.36,54,466/- and the AO in a similar manner required the assessee to provide the necessary information in regard to

its claim. Considering the evidence filed, the AO questioned the creditworthiness of the following lenders who as per assessee's claim had advanced unsecured loans to the assessee:-

S.No.	Name of Party/ Person	Opening balance	Addition during the year	Interest paid on loan taken during the year
1.	Sidhi Makhija	0	1000000	24000
2.	Meenu Makhija	0	1000000	24000
3.	Babul Lal Makhija	0	1500000	36000
4.	Vidhi Makhija	0	1500000	36000
	Total		5000000	120000

4.1. Herein also, considering an identical explanation and reasoning, addition of Rs.50,00,000/- was made. Similarly, rejecting assessee's claim of having incurred expenditure on interest paid amounting to Rs.1,20,000/- addition of the said amount was made holding that the genuineness was not established.

ITA No.-4690/Del/2012 (A.Y.-2009-10)

5. Similarly a perusal of facts in ITA No.-4690/Del/2012 (A.Y.-2009-10) shows that the assessee in response to notice u/s 153C declared an income of Rs.1,05,74,340/- on account of identical reasoning and facts the AO rejected the assessee's explanation of receiving unsecured loans from Sh.Harsh Maheshwari amounting to Rs.12,00,000/- and made the addition of the said amount in the hands of the assessee.

6. Aggrieved by these actions, the assessee went in appeal before the CIT(A) in each of the years.

7. In appeal before the First Appellate Authority reverting to the facts as found recorded in 2004-05 assessment year in ITA No.-4688/Del/2012, it is seen that various arguments on facts and law in support of its claim on merit were advanced by the assessee before the CIT(A). These are found addressed in para 3.1.7 to para 3.1.17 of the impugned order. These arguments on facts are not being addressed and infact do not warrant a discussion in the present proceedings for reasons elaborated in the later part of this order. For the purposes of the present proceedings it is imperative to observe that without prejudice to the main arguments advanced on merits, the assessee on facts, also

made an application seeking permission to file additional evidence under Rule 46A of the I.T. Rules 1962 dated 30.04.2012.

7.1. The CIT(A) on record is found to have forwarded the additional evidence to the AO for her comments.

7.2. The record shows as per page 10 of the impugned order the AO objected to the admission of additional evidence vide his letter dated 06.06.2012. The said fact was confronted to the assessee who filed a re-joinder dated 11.06.2012 to the Remand Report dated 06.06.2012 of the AO.

7.3. The contents of the re-joinder have been addressed by the CIT(A) in para 3.1.20. A perusal of the same shows that the assessee submitted that on none of the dates when the hearing took place the AO as per the order sheet required the assessee to submit the confirmations of unsecured loans. Further the admission of fresh evidences notwithstanding the objections of the AO on opportunity was also canvassed on the alternate ground that the additional evidence had got a *“strong bearing in respect of the appellate proceedings as such may be admitted”*. In these circumstances it was requested that the AO may be directed to verify the claim of the assessee as *“she repeatedly says that the matters remain unverified”*. Attention was invited to the fact that the first opportunity provided to the assessee as per the Assessing Officer’s own version for producing the documents was vide notice dated 02.12.2011 and as a result thereof the case came up for hearing only on 07.12.2011; 12.12.2011; 16.12.2011; 20.12.2011; 22.12.2011 & 26.12.2011 and nowhere in the order sheet of the file it was stated had it been mentioned that the assessee did not submit the confirmations of unsecured loans.

7.4. Considering these submission advanced by way of a re-joinder, the CIT(A) again called for a report from the AO requiring the AO to verify the genuineness of the loans. In response to the said directions the AO as per record issued notices u/s 133(6) to the persons/parties wherein considering the reply furnished by the respective parties the AO found that the loans taken by the assessee were found to be verified.

7.5. As a result of this admission of the AO in the second Remand Report, the addition of Rs.84 lakhs was deleted by the CIT(A) alongwith the interest of Rs.12,500/- paid to Sh. Vinay Garg disallowed by the AO.

8. The Revenue is aggrieved by the said decision and consequently is before the Tribunal on 5 different grounds out of which Ground No.-1 & 5 were stated to be general; Ground No.-4 was stated to be consequential to the findings in Ground No.-2 & 3.

9. The effective grounds it was submitted were Ground Nos.-2 and 3. Vide Ground No.-2 the impugned order is assailed on the ground of admission of fresh evidence under Rule 46A of the Income Tax Rules 1963 on facts where *ample opportunities were provided by the AO to furnish the documents/information during the assessment proceedings.*

10. Vide Ground No.-3, the impugned order is assailed on the ground that it *ignores the comments of the Assessing Officer in Remand Report dated 04-06/06/2012.*

11. In the said background, Ld. CIT DR has placed reliance upon the assessment order. On considering the impugned order, it is seen that the Remand Report dated 04-06/06.2012 is found addressed in para 3.1.19. It is further seen that considering the objections of the AO the CIT(A) after admitting the fresh evidences remanded the evidences once again to the AO requiring the said authority to consider the evidence on merit. Thereafter upon considering the same the AO filed as per record another Remand Report. These facts are found addressed in para 3.1.21 and 3.1.22 of the impugned order. Considering this Remand Report dated 22.06.2012 filed in pursuance to the directions given to re-consider the issue on merits, the CIT(A) granted relief. In the said factual background, the Ld. CIT DR was unable to point out any infirmity either in procedure followed or on conclusion arrived at on these facts in the order.

12. On going through the remaining two appeals it was stated by him that herein also the evidences were verified by the AO in the second remand proceedings. However for the record, he stated it may be considered that he has relied upon the assessment orders in each of the appeals. The maintainability of the said position was questioned on facts as to how the AO having given up the issue in the remand proceedings can justify the filing of appeals raising the grounds on same facts without bringing any new fact or argument to show that the conclusion in the remand proceedings overlooked a relevant fact etc. In the absence of any such efforts to point out perversity in the order the Ld. CIT DR was required to address why costs should not be imposed upon the Assessing

Officer for having filed a frivolous appeal in all these three assessment years. The Ld. CIT DR stated that as per the departmental procedures, the Grounds raised by the AO are subjected to checks and balances and the fault cannot be said to lie only at end of the AO. In these circumstances, it was his earnest request that the costs may not be imposed and the department would take adequate care in future to ensure that appeals are not frivolously filed where issues on facts have been given up by the AO in the Remand proceedings.

13. The ld.AR in the face of the stand of the department relied upon the impugned order. It was stated by him that though paper books have been filed by the assessee in each of these appeals however in the face of the arguments of the Ld. CIT DR he would rely for the record on these evidences on record in the Paper Book and not elaborate further but heavy reliance is place upon the findings in the impugned order.

14. We have heard the rival submissions and perused the material available on record. On a careful consideration of the grounds raised, we find that the Ground No.-2 raised by the department on admission of additional evidence considering the objections of the assessee to the first Remand Report dated 06.06.2012 in page 10 para 3.1.19 and para 3.1.20 and para 3.1.21 has rightly on facts been rejected. Admittedly, as per the non-rebutted evidence on record, the effective hearing in the assessment proceedings started on 07.12.2011 leading to the passing of the assessment order on 29.12.2011. Thus in the absence of any evidence to the contrary the finding of the CIT(A) under challenge that *"adequate and real opportunities was lacking during the assessment proceedings"* is upheld. The Ground No.-2 of the Revenue accordingly is dismissed.

15. Considering the grievance posed by the Revenue in Ground No.-3, we find on facts that since the claim has been given up in the second Remand Report by the AO himself, the AO cannot claim to be aggrieved by the findings arrived at relying upon his own Remand Report. It is seen from a reading of para 3.1.21 to para 3.1.22 of the impugned order which are reproduced in the later part of this paragraph that the Ld.CIT(A) has accepted the assessee's claim based on the strength of the second Remand Report dated 22.06.2012. Reference to this material document i.e. Remand Report dated 22.06.2012 in the grounds raised is curiously missing. This omission appears to be deliberated and leads us to

conclude that the Revenue has consciously indulged in engaging in meritless litigation. Once the A.O. in the Remand Report dated 22.06.2012 had already communicated that the enquiries made after issuing notices u/s 133(6) to the parties/persons who had confirmed the assessee's version and the AO concluded that the loans taken stood verified. No further legitimate grievance can then be said to remain for examination by the AO. In the said factual position, it is not possible for the AO to still have a grievance as he himself reports that having examined he is satisfied by the claim put forth. This factual position is borne out from the following paras reproduced from the impugned order:-

3.1.21. *"The date of first appearance of the Counsel and passing of order by the AO as **mentioned above suggests that adequate and real opportunities was lacking during the assessment proceedings.** I called for a report from the AO on the rejoinder submitted by the appellant **Now, the A.O. has submitted another comments/ Remand Report dated 22.062012 stating as under :-***

*(i) **Vide letter dated 02.12.2011, the assessee was asked to furnish the details of unsecured loans appearing in the balance sheet alongwith confirmed copy of account from the books of accounts of the other parties and also prove the identity creditworthiness, PAN, copy of balance sheet, Audit Report, bank statement of the respective lenders.***

*(ii) **"As submitted earlier, to verify the genuineness of loans (which disallowed in assessment order and are subject matter in appeal), notice u/s 133(6) were issued to the persons/parties. In view of the reply furnished by the respective parties (lenders) in response to notice u/s 133(6) issued during remand proceedings, loans taken by the assessee appear to be verified."***

(Emphasis provided)

15.1. In these facts, the issue was decided by the CIT(A) in the following manner:-

"I am of the view that the time period from start of assessment till its completion was short and the appellant was prevented by sufficient and reasonable cause from producing the required details before the AO. Hence in the interest of justice the additional evidence is liable to be admitted. The procedure prescribed in Rule 46A has been followed and the AO was given opportunity to comment on admission as well as merit of the case.

3.1.22. I have considered the order of the Assessing Officer, submissions made by the Authorised Representatives of the appellant, application under Rule 46A of the appellant, the remand report and the comments of the AO and find that

(i) Confirmed copies of Accounts of Creditors were submitted. Further, Accounts of the company were subject to Tax Audit u/s 44AB of the I.T.Act, 1961 and the appellant had submitted Tax Audit Report alongwith form 3CA/3CD, for the relevant Assessment Year. The Tax Audit Report contained the statement of full particulars of the creditors such as names, PAN of Depositors, amounts received/ paid during the Financial Year/ interest credited and TDS deducted A statement of creditors giving all the requisite particulars was also submitted.

(ii) Having considered the facts of the case I have come to the conclusion that the appellant had discharged his onus in respect of the cash credits standing in various names. The allegation of the AO that such deposit from the creditors flow from the appellant is also without any evidence and no nexus has been established to show this as accommodation entry .

(iii) Importantly, the AO in her comment in the remand report dated 22.06.2012 stated that the verification of loans was carried out by her and they appeared verified.

3.1.23. In view of above findings, the addition of Rs.84,00,000/- made by the Assessing Officer on account of unsecured loans u/s 68 is here by deleted.

The appellant thus gets the relief of Rs.84,00,000/-.

(Emphasis provided)

Ground no.-2

3.2.1. This is regarding disallowance of interest of Rs.12,500/- paid to Sh.Vinay Garg, Since the unsecured loan of Rs.25,00,000/- standing in the name of Sh.Vinay Garg is accepted thus, the interest paid to the creditors is liable to be allowed.”

15.2. Accordingly in the context of the above peculiar facts and circumstances, we find that the appeals filed by the Revenue have been filed carelessly and frivolously and deserve to be rejected. As observed, we had required the Ld. CIT DR to address why costs should not be imposed upon the Revenue for having indulged in meritless litigation and wasting the time of all concerned. In the context of the same, we find that the Co-ordinate Bench in its order dated 29.10.2014 in ITA No.1454/Del/2012 in the **DCIT, Circle-21(1), New Delhi vs Pawan Kumar Kansal** was pleased to hold as under:-

5. “In the Remand Report the contentions of the assessee that the AO was not justified **in rejecting the books of accounts was accepted by the AO.** The AO also accepted the contention that he has not been able to point out any discrepancy in the books of accounts and stock record produced by the assessee before him. Thus, in our view, the First Appellate Authority had no other option but to reject the action of AO in rejecting the books of accounts. Hence ground no.1 of the Revenue is dismissed.”

(Emphasis provided)

15.2.1. A perusal of the said order infact shows that in each of the grounds raised by the Revenue the issue had been given up by the AO in the remand

proceedings, the departmental appeal was dismissed by the Co-ordinate Bench with the following observations:-

11. "Before parting, we express our serious concern at the type of appeals being filed by the Revenue. During the remand proceedings the AO accepted each and every contention of the assessee or was unable to dislodge the contentions of the assessee and when the Ld.CIT(A) bases his order on the remand report of the AO, the AO disputes the findings of the Ld.CIT(A) and files this appeal. A Senior Officer in the rank of Commissioner of Income Tax approves filing of such frivolous appeals. Such a callous approach is to be deprecated. We award costs of Rs.10,000/- to the assessee in this matter."

(Emphasis provided)

15.3. In order to address the issue of levying costs on the Revenue, we deem it appropriate to refer to salient facts on record. A careful reading of the grounds shows that in the Ground No.-3 reference is made only to the First Remand Report. It appears that while framing the Grounds the concerned Assessing Officer and the Ld. Senior Commissioner made an attempt to justify the filing of the appeals by referring to the fact that the relief was granted on the basis of the Remand Report dated 06.06.2012 thereby consciously ignoring making reference to the Remand Report dated 22.06.2012 wherein the AO accepts that *"In view of the reply furnished by respective parties (lenders) in response to notice issues u/s 133(6) issued during remand proceedings loans taken by the assessee appear to be verified"*. We are pained to address the serious damage done by this deliberate, mischievous and selective reference to facts by such responsible persons which grievously damages the public faith and belief in the honest fair play of the tax administration. The conscious and selective reference to facts demonstrates that at the very stage of filing of the appeal its fate and conclusion was known for which specific purpose the facts were attempted to be obfuscated. The filing of present appeal with complete knowledge of its fate by the Revenue only reflects the mischievous adamancy to attempt to mislead the Tribunal and waste the time of the Court and the officers concerned. The present appeal as a part of a search cannot be a case of non-application of mind where the grounds presumably proposed by the AO have been approved carelessly. To our minds the present appeal is a prime example of meritless litigation for reasons best known to the few departmental officers having powers of directing authorization for filing appeals. This over confidence of the concerned Departmental officers

in filing an appeal completely devoid of merit prima facie shows that these officers endowed with the onerous task of handling Department's actions in litigation matters have willfully and deliberately failed to exercise their powers mindfully as required of them as per law and thereby abused government machinery to initiate a litigation which entails financial costs and tarnishes the image of the Department and also strains the government resources. This obduracy and adamancy of the concerned officers in filing a meritless appeal only because officially they are entitled/empowered to do so, strikes a blow to the blind faith reposed in them by the tax administration in always acting fairly as evident from the orders passed in the Remand proceedings and the order of the CIT(A) in the present appeals. However only because of the conduct of few Departmental officers who appear to be unconcerned or rather mock the sincere efforts made by CBDT with impunity unmindful of the consequences to the system by their sense of entitlement the reputation of the tax administration suffers, this needs to be addressed at the earliest. The entitlement of always believed to be acting in good faith cannot be abused by irresponsibly setting in motion the entire justice delivery system where admittedly there was no grievance to the AO. The Assessing Officer including all the officers in the tax administration are functionaries of "the State" exist for "the State" and perform the functions of "the State". For this specific purpose they are entrusted with vast powers to discharge "the State functions". In the discharge of their onerous duties and responsibilities these officers are armed with wide and sweeping powers. The officers who have authorized the filing of the appeals and have filed the appeals have made a travesty of justice. Mocking at the system by filing the appeals and highlighting the apathy of the Department by issuing specific instructions from time to time that necessary due diligence and caution is not being exercised while granting authorization for filing appeals and to pursue litigation only in deserving cases. Filing of an appeal by an Assessing Officer is a right which is vested by the statute in the "State" herein the tax department i.e. the Assessing Officer as and when he is aggrieved by the order of the First Appellate Authority can file an appeal before the ITAT. However, where as in the present case, admittedly the Assessing Officer, consciously and carefully after due and proper enquiry carried out by issuance of notices u/s 133(6) to the

concerned persons/parties and considering the material comes to the conclusion that he is satisfied by the claim of the assessee on verification, then in such a situation the filing of the present appeals cannot be justified and can only be termed as a farce. We are aware that the tax administration has put in place robust checks and balances to ensure that the filing of appeals is not done carelessly and as per the procedures set in place the grounds to be raised by the Assessing Officer have to be duly approved by a Senior Commissioner of Income Tax. The evidence that the said exercise in the facts of the present case has been done is on record. The said exercise in the facts of the present appeals has been reduced to a mere ritual cannot be ignored. Thus in the face of the above precedent where costs of Rs.10,000/- have been awarded to the assessee by the Co-ordinate Bench having giving our serious consideration to the same in the facts of the present case where the Revenue has indulged in frivolous meritless litigation, we desist from awarding costs considering the statement of the Ld. CIT DR that due care shall be taken in future. It is our earnest hope and endeavour that having invited the attention of the Chairman, CBDT to this grave assault on the trust and reputation of fair play enjoyed by the tax administration the malaise is immediately addressed. We have taken cognizance of the fact that the present cases are group of appeals in a search case, however where the issue is given up by the AO in the remand proceedings in such an eventuality the mischievous manner of filing the appeals needs careful attention as the Revenue in the appeals before the ITAT cannot be allowed to waste the time of all concerned where the issue for all intents and purposes has been given up by him.

16. In the result, the appeals of the Revenue are dismissed.

The order is pronounced in the open court on 07th of August, 2015.

Sd/-

(N.K.SAINI)
ACCOUNTANT MEMBER
 Dated: 07/08/2015
Amit Kumar

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI