

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)
(Through Video Conference)
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No:- 3764/Del/2018
(Assessment Year: 2015-16)

DCIT, Central Circle, Noida.	Vs.	YPT Entertainment House P. Ltd., Patiala.
APPELLANT		RESPONDENT
PAN NO.- AAACY2718C		

C.O. No:- 147/Del/2018
(Arising Out of ITA No.- 3764/Del/2018)
(Assessment Year: 2015-16)

YPT Entertainment House P. Ltd., Patiala.	Vs.	DCIT, Central Circle, Noida.
APPELLANT		RESPONDENT
PAN NO.- AAACY2718C		

Assessee By : Shri Ashish Goel, CA
Revenue By : Shri Jaspreet Singh Minhas, CIT(DR)

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue and Cross Objection by Assessee are filed against the impugned order of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur, ["Ld. CIT(A)", for short], dated 07.02.2018 for Assessment Year 2015-16. The grounds of appeal by Revenue and Cross Objection by Assessee are as under:

ITA No.- 3764/Del/2018

- "1. *Whether in the facts and circumstances of the case, the Ld CIT(A) was erred in law & failed to appreciate the merit of the case that loans is not properly explained by the assessee and the bank statement doesn't show financial strength of the nature that such person could have made deposits/investment in the form of unsecured.*
2. *The Ld CIT (A) failed to appreciate that when the account of the assessee company and the transaction are doubted by the A.O. then to prove the genuineness of such transactions; the assessee has to go some steps further of its own to prove the genuineness of the transactions by direct and corroborative evidence and must establish the capacity to invest / advance such funds by such persons.*
3. *The Hon'ble Apex court in the case of **Roshan De Hatti Vs CIT (SC) 107 ITR 938** held that in case of credits in the name of third parties, it is the duty of the assessee to prove identity or credits, capacity of creditor to advance money and genuineness of transaction. In the instant case capacity of creditor could not be proved. Mere filing of confirmation (**CIT Vs Korlav Trading co. Ltd (Cal) 232 ITR 820**) or transaction through cheques (**CIT Vs Precision Finance P Ltd (Cal) 208 ITR 465**) is not enough to prove the genuineness of cash credit and it can be assessed.*
4. *Whether in the facts and circumstances of the case, the Ld CIT(A) was erred in law & failed to admit the additional evidences without affording reasonable opportunity to the AO as provided in the rule 46A of the income tax Rule 1962 & deleted the additions of Rs. 21,16,182/-difference of gross receipt as per ITR and form 26AS.*
5. *The Ld CIT(A) erred in not appreciating the fact that any taxes or levies collected or collectible by the Assessee on the behalf of the government is in the nature of deemed revenue receipt in the hands of assessee till it is paid to the government.*
6. *That the order of the Ld CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the AO be restored.*

7. *That the appellant craves leave to add or amend any one or more of ground of appeal as stated above as and when needed for doing so may arise."*

Cross Objection No.- 147/Del/2018

- "1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C are bad in law and without jurisdiction in the absence of any incriminating material belonging to the assessee being found during the course of the search.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that proceedings initiated under Section 153C and the assessment framed under Section 153C is bad and liable to be quashed in the absence of any satisfaction being recorded by the AO of the searched person that the incriminating material belonging to the assessee was found during the course of the search.*
4. *That the respondent craves leave to add, amend or alter any of the grounds of appeal.*

(B) We first take up the appeal filed by Revenue. At the outset, it was brought to our notice at the time of hearing by Learned Commissioner of Income Tax (Departmental Representative) ["Ld. CIT(DR)", for short] the tax effect in the Departmental Appeal is below Rs. 50,00,000/-. He also drew our attention to calculation of tax effect as per computation made by the assessee's side, showing tax effect at Rs. 45,78,467/-.

(B.1) The Ld. AR of the assessee submitted, that vide CBDT Circular No. 17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect for filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. He also

submitted, that in a subsequent clarification issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. In view of the foregoing, it was contended by Ld. AR for assessee, that this appeal is not maintainable. Learned Commissioner of Income Tax (Departmental Representative) [“Ld. CIT(DR)”, for short] agreed with this contention of the Ld. AR for assessee, and did not press the appeal. Therefore, this appeal is dismissed being not pressed; and also being not maintainable, having regard to aforesaid CBDT Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

(C) Now we take up the Cross Objection filed by the assessee. AT the time of hearing before us, Ld. CIT(DR) for Revenue submitted that the Cross Objection filed by the assessee would become infructuous if Revenue’s appeal was dismissed. The Ld. AR for Assessee agreed with the submission of the Ld. CIT(DR). Both sides were in agreement, at the time of hearing before us; that the assessee’s Cross Objection deserved to be dismissed (being infructuous), if Revenue’s appeal was dismissed. In view of the foregoing, and as we have already dismissed Revenue’s appeal; we hereby dismiss assessee’s Cross Objection, being infructuous.

(D) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961 seeking restoration of the appeal if it is found that appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018. We further

clarify that the assessee will also be at liberty to approach Income Tax Appellate Tribunal for restoration of Cross Objection in accordance with law, if Revenue's appeal is restored.

(E) In the result, the appeal by Revenue and the Cross Objection filed by the Assessee; both are dismissed. Our decision was orally pronounced in the Open Court in the presence of representatives of both sides, after conclusion of hearing on 1st September, 2021. Now, this written order is signed today on 02/09/2021.

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 02/09/2021
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	