

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**AHMEDABAD – BENCH ‘D’**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 2484/Ahd/2015**

**निर्धारण वर्ष/Assessment Year: 2010-11**

The ACIT, Cir.1(1)(2) Ahmedabad.	Vs	M/s.Krish Immigration & Tours P.Ltd. 302-307, Madhav Complex R.C. Dutt Road, Alkapuri Vadodara 390 005. PAN : AADCK 5942 P
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Revenue by :	Shri O.P. Vaishnav, CIT-DR
Assessee by :	Shri K.P. Singh, AR

सुनवाई की तारीख/Date of Hearing : 10/01/2019

घोषणा की तारीख /Date of Pronouncement : 29/ 01/2019

**ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER :** Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-1, Vadodara dated 15.6.2015 passed for the Asstt.Year 2010-11.

2. The grounds of appeal taken by the Revenue read as under:

“1. On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was correct by deleting the addition of Rs.35233234/- made on Foreign Remittance from LTC College London (U.K.) terming as loan remitted through banking channel by ignoring as "commission" or as "against invoice" which is reflected in the account statements of the banks ?

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*2. On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was correct by deleting the addition of Rs,13419000/- made on unexplained cash credit by accepting assessee explanation as agricultural income of Shri Haresh M Shah who is the director of the company by ignoring the real fact that no agricultural income was shown by Shri Haresh M Shah in his individual return of income ?*

3. Brief facts of the case are that the assessee at the relevant time was engaged in the business of providing tours and immigration facilities. It has filed its return of income electronically on 14.10.2010 declaring total income at Rs.22,83,786/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee-company has purchased immovable property amounting to Rs.5,51,74,160/- (including stamp duty charges). The purchase of the immovable property and other additions in the block of assets including motor car, furniture and computers were balanced through unsecured loans and sundry creditors. The AO thereafter took note of details of unsecured loans and sundry creditors which were reflected in the accounts. For the purpose of present appeal, we are concerned with the amount of Rs.4.65 crores appeared against name of LTC College, London ("LTCC" for short). Similarly, the AO found cash deposits of Rs.1.43 crores in two bank accounts maintained with the HDFC and Kotak Mahindra. The AO had made analysis of the accounts appearing against the name of "LTCC". He found that from the details available with the bank, these were remittances from the "LTCC" under the head "commission". Hence, he treated it as income of the assessee and made addition of Rs.4,65,53,146/-. Similarly, he noticed unexplained cash credit in the above two bank accounts and made an

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addition of Rs.1.43 crores. Apart from these additions, he also made addition of Rs.1.36 crores under the head “bogus unsecured loans”. In this way, the ld.AO has made addition of Rs.7,44,53,146/- to the total income of the assessee. Since out of bogus unsecured loans, the ld.CIT(A) has confirmed a major amount of Rs.1.20 crores, no issue was challenged by the Revenue, therefore, we are not concerned with that item. Our inquiry in the present appeal will be confined to two additions made by the AO on account of unsecured loans and unexplained cash credit. These additions have been partly deleted by the CIT(A), and these two deletions are being challenged by the Revenue in its ground nos.1 and 2. First we take deletion of Rs.3,52,33,234/-.

4. It is pertinent to observe that allegation against the assessee was that it had received Rs.4,56,53,146/- crores from “LTCC”. However, on further verification, it revealed that actual amount was Rs.4,18,45,447/- and not Rs.4,65,53,146/-. Difference of Rs.47,07,699/- was stated to be the liability of the assessee, and not a unsecured loan. The ld.CIT(A) while deciding the appeal, has observed that the AO would verify whether the amount of Rs.47,07,699/- is a liability, and if it is a liability, then it is to be deleted. Thus, the amount which required to be explained by the assessee comes out to Rs.4,18,45,447/-. The ld.CIT(A) while deleting this addition partly has made an elaborate discussion. He made reference about two remand reports submitted by the AO dated 26.3.2015 and 11.6.2015. The discussion made by the ld.CIT(A) is worth to note on this issue, which reads as under:

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“12.3 As mentioned in earlier paragraphs of this appeal order that the copy of submission dated 04/06/2014 along with its annexure and also the additional evidences as filed as per letter dated 12/06/2014 of the appellant were forwarded to the AO vide this office letter dated 13/06/2014 and he was requested to furnish his remand report on this issue also after making verification. Accordingly, the AO has sent his remand report dated 26/03/2015 through forwarding letter of the Addl. CIT. In such remand report dated 26/03/2015, the AO has mentioned that the appellant during the course of remand proceedings had filed the photocopy of confirmation from LTC College, London. As per the AO a letter was written to the HDFC Bank, R.C. Dutt Road, Baroda on 21/10/2014 in respect of amount of Rs. 4,18,45,447/-, mentioning the details of cheques deposited in the bank account of the appellant company during FY 2009-10. As per the AO the HDFC Bank vide letter dated 28/11/2014 has confirmed the LTC College, London 15-17, Great Portland Street, London as remitter. In other words, the HDFC Bank, Baroda has confirmed that the LTC College, London is a remitter. Thus, as per the AO it is obvious that the fund has been transferred into account of the appellant through banking channel. However, the HDFC Bank Ltd. Alkapuri, Baroda in its letter dated 28/11/2014 has confirmed the LTC College, London as remitter only in respect of amount of Rs. 2,59,58,905/- and therefore the AO vide this another office letter dated 22/05/2015 was requested to give his findings in respect of remaining amount of Rs. 2,05,41,095/- (i.e. Rs. 4,65,00,000 - Rs. 2,59,58,905). The AO vide his another remand report dated 11/06/2015 has mentioned that with regard to unsecured loan as claimed by the appellant from the LTC College, London of Rs. 4,18,45,447/-, the appellant has filed another confirmation from the LTC College, London in respect of amount of loan of Rs. 3,52,33,234/- only. It is further submitted by the AO vide his remand report dated 11/06/2015 that out of total amount confirmed by the LTC College, London, Rs. 2,59,58,905/- are deposited in the bank account maintained with HDFC Bank and Rs. 92,74,328/- are deposited in the bank account maintained with Kotak Mahindra Bank. Thus, as per the AO the appellant could not file confirmation regarding rest of the amounts of Rs. 66,12,213/-. Thus, as per the findings of the AO the LTC College, London has filed confirmation in respect of loan of Rs. 3,52,33,234/- and in respect of remaining amount of Rs. 66,12,213/- no any confirmation is filed by the LTC College, London. The total of Rs. 3,52,33,234/- and Rs. 66,12,213/- comes to Rs. 4,18,45,447/-. With regard to another amount of Rs. 47,07,699/- (i.e. 4,65,53,146 - Rs. 4,18,45,447), the AO in his remand report dated 11/06/2015 has reproduced the reply of the appellant and as per which the total foreign remittance in the case of appellant was Rs. 4,18,45,447/- only whereas the appellant has shown the liability of Rs. 4.65 crores. Thus, as per this reply of the appellant as reproduced by the AO in his remand report dated 11/06/2015, there was only foreign remittance to the extent of Rs. 4,18,45,447/- and this

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amount of Rs. 47,07,699/- was not part of this foreign remittance. It means that this particular amount of Rs. 47,07,699/- was the part of the amount of Rs. 2,31,82,416/- which was rather payable by the appellant to the LTC College, London and this amount was credited to the account of LTC College, London in the ledger account of books of account of the appellant. Out of this credit amount of Rs. 2,31,82,416/- as payable, a sum of Rs. 1,84,74,717/- was remitted/paid by the appellant to the LTC College London and a sum of Rs. 47,07,699/- (i.e. Rs. 2,31,82,416 - Rs. 1,84,74,717) remained to be payable to LTC College, London. Thus, this amount of Rs. 47,07,699/- was not part of any loan amount remitted by the LTC College, London to the appellant. Considering these facts, the AO is directed to verify from the relevant books of accounts and records etc. of the appellant and on verification if it is found by him that this amount of Rs. 47,07,699/- was never remitted by LTC College, London to it and in fact it was rather required to be paid by the appellant to this party because of its liability then he is directed to delete this addition of Rs. 47,07,699/- as this amount cannot be treated as income of the appellant.

12.4 As regards the remaining amount of Rs. 4,18,45,447/- (i.e. Rs. 4,65,53,146 - Rs. 47,07,699), the AO in his remand report dated 11/06/2015 has stated that the appellant has filed another confirmation from the LTC College, London in respect of an amount of Rs. 3,52,33,234/- only. As per the AO in respect of remaining amount of Rs. 66,12,213/- (i.e. Rs 4,18,45,447 - Rs 3,52,33,234), the appellant could not file confirmation. The AO has enclosed a paper book with his remand report dated 11/06/2015 and which also consists a copy of confirmation dated 26/05/2015 from LTC College, London and wherein it is confirmed by the LTC College, London that it has given the amount of Rs. 3,52,33,234/- as loan to M/s. Krish Immigration & Tours Pvt Ltd. i.e. the appellant and outstanding balance as on 31/03/2010 is Rs. 3,52,33,234/-. It is further clarified by the LTC College, London in such loan confirmation dated 26/05/2015 that the earlier loan confirmation of GBP 61399.836 may be rectified accordingly and it wishes to regret the mistake made by its Accounts Department. In other words, the LTC College London in its earlier confirmation dated 12/03/2014 had shown the amount of loan of Rs. 4,18,45,447/- given to the appellant and had also shown the closing loan balance as on 31/03/2010 at Rs. 4,18,45,447/-. However, this LTC College, London in its second confirmation dated 26/05/2015 has clarified that the loan amount given to the appellant was only Rs. 3,52,33,234/- and not Rs. 4,18,45,447/-. As stated earlier that the AO has mentioned in his remand report dated 11/06/2015 that the appellant has filed confirmation from the LTC College, London only for Rs. 3,52,33,234/- and for remaining amount of Rs. 66,12,213/- no any loan confirmation could be filed. The AO has further mentioned in this remand report dated 11/06/2015 that out of this total amount of Rs. 3,52,33,234/- as confirmed by LTC College,

*London, an amount of Rs. 2,59,58,905/- is deposited in the HDFC Bank and amount of Rs. 92,74,328/- is deposited in the Kotak Mahindra Bank. Thus, the AO in his remand report dated 11/06/2015 has confirmed that the LTC College, London is the remitter of total amount of Rs. 3,52,33,234/- (i.e. Rs. 2,59,58,905 and Rs. 92,74,328) and these funds have been transferred by LTC College, London to the appellant through banking channel only. Thus, the AO has not raised any doubt so far as identity of LTC College, London and genuineness of transaction of remittance of above amount of Rs. 3,52,33,234/- are concerned. Rather, the AO has confirmed that as per letter of the HDFC Bank and Kotak Mahindra Bank, the LTC College, London is a remitter and the fund has been received by the appellant from this party through banking channel. It may be mentioned that subsequently the AO vide his another letter no. BRD/CIR./1(1)(2)/Remand/Krish/15-16/ dated 10/04/2015 has forwarded the copy of annual report of London Training College dated 16/04/2014 which was submitted by the appellant to him during the course of remand proceedings. This letter dated 10/04/2015 of the AO was earlier received through forwarding letter dated 17/04/2015 of Addl. CIT, Range-1(1), Vadodara. In this letter dated 17/04/2015, the Addl. CIT, Range-1(1), Baroda has stated that in the previous remand report, the AO has submitted the confirmation from LTC College, London and the details of cheque deposited in the Assessee's account of HDFC bank and the confirmation of the HDFC bank, thereby proving the creditworthiness and the identity of the creditor. Considering all these findings of the AO and Addl. CIT, Range-1(1), Vadodara has given in his remand report dated 11/06/2015, it is held that the appellant has not been able to explain the source of amounts of Rs. 66,12,213/- which was earlier shown by it as part of amount of Rs. 4,18,45,447/- being foreign remittance received as loan from LTC College, London. In view of this, the amount of Rs. 66,12,213/- is treated as unexplained cash credit u/s 68 of the IT Act and the same is added to the total income of the appellant. As regards another remaining amount of Rs. 3,52,33,234/-, it is held that the same cannot be treated as income of the appellant in view of the detailed discussion as made in preceding paragraphs of this appeal order. Further, this amount of Rs. 3,52,33,234/- can also not be treated as unexplained cash credit in view of the fact that the evidences filed by the appellant to the AO during the course of remand proceedings have not been controverted and no materials contrary to such evidences are brought on record. In view of this, the addition of Rs. 3,52,33,234/- is hereby deleted."*

5. Before recording any finding on this issue, we deem it appropriate to take note of the facts relating to second issue also. Brief facts of the case are that on perusal of two bank statements i.e HDFC Bank and

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Kotak Mahindra Bank, the Id.AO observed that a sum of Rs.1.43 crores was deposited in these two accounts in cash. He further observed that Rs.58 lakhs were deposited in HDFC Bank and Rs.85.50 lakhs deposited in Kotak Mahindra Bank. He confronted the assessee to explain source of above deposits. Assessee contended that these deposits were made out of the withdrawals from these banks, and the assessee has submitted reconciliation. But the Id.AO was not satisfied. On appeal, the Id.CIT(A) has further analysed and correlated how each deposit is conciled with the available cash withdrawn from the bank accounts. The Id.CIT(A) has called for remand report from the AO, thereafter reproduced the reconciliation statement on page no.34 to 36 of the impugned order. Thereafter, the Id.CIT(A) made lucid analysis of these details and deleted the addition to the extent of Rs.1,34,19,000/-. The Id.CIT(A) has confirmed the addition at Rs.8,81,000/- out of Rs.1.43 crores. The finding recorded by the Id.CIT(A) on this issue reads as under :

*“15.5 Thus, the undisputed fact is that the appellant has filed reconciliation of cash entry with cash book and also the copy of cash book to the AO during the course of remand proceedings and in cash book there is narration explaining each and every entry with regard to deposit of cash amount of Rs. 1,34,19,000/-. Even there is narration explaining most of the entries regarding cash deposits of Rs. 1,34,19,000/- in banks reconciliation of cash entry with cash book also. The AO has not given any adverse findings in his remand report dated 11/06/2015 as a result of verification of reconciliation of cash entry and cash book of the appellant company which was filed to him to explain the sources of cash deposited in the bank accounts. It may be mentioned that the AO was requested twice i.e. vide letter dated 13/06/2014 and vide letter dated 22/05/2015 to furnish his remand report by calling for relevant details/ documents from the appellant and by giving his findings with regard to sources of amounts of Rs. 85 lacs and Rs. 58 lacs which were deposited in cash in*

*HDFC Bank account and in Kotak Mahindra Bank account. Accordingly, the AO has furnished his remand report dated 26/03/2015 and 11/06/2015 and in these two remand reports on any adverse findings with regard to sources of above amounts of Rs. 85 lacs and Rs. 58 lacs as deposited in cash in the bank accounts are given. Rather the AO in his remand report dated 26/03/2015 has mentioned that the appellant had also filed date-wise details of cash withdrawals and cash deposits in both the above bank accounts. The AO in his another remand report dated 11/06/2015 has mentioned that with regard to difference of Rs. 49.79 lacs during the course of remand proceedings, the appellant had filed copy of cash book of the company to explain the sources of amounts of cash deposited in the bank accounts and also filed detailed reconciliation cash entries in the bank account with the cash book. In absence of any adverse findings in the remand report, it is held that the sources of cash deposits to the extent of Rs. 1,34,19,000/- as shown as per reconciliation of cash entry with cash book and as per cash book are explained. This is in view of the fact that the total addition of Rs. 1,43,00,000/- has been made by the AO in the assessment order on the ground that sources of these amounts as deposited in cash were not explained. But the total amount as shown by the appellant as per the reconciliation of the cash entry with cash book is coming to Rs. 1,34,19,000/- only and therefore this addition of Rs. 1,34,19,000/- is hereby deleted by treating the same as explained. As regards remaining addition of Rs. 8,81,000/-, the same is confirmed for want of any explanation/evidence. Thus, the ground of appeal no. 3 of the appellant is partly allowed."*

6. With the assistance of ld.representatives, we have gone through the record carefully. Section 68 of the Income Tax Act contemplates that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year.

7. A perusal of the record would indicate that with regard to remittance from "LTCC", the ld.AO harboured a belief that it was a



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commission received from this college, and it deserves to be treated as income of the assessee. However, when further details were submitted before the Id.CIT(A) and remand report has been called for, then it revealed that no services were rendered by the assessee to this concern. These were purely unsecured loans. Commission was only a nomenclature provided in the invoice. It was explained to us during the course of hearing that an arrangement was explored under which students from India would be sent for further study to "LTCC". However, that has not materialized in these years and for creating infrastructure unsecured loans were given by the "LTCC". It is also pertinent to note that before the AO, complete details were not submitted by the assessee, and he got certain details from the bank. However, in the appellate proceedings, the assessee has submitted confirmation and other supporting evidences. The Id.CIT(A) has called for a remand report which was submitted to it vide letter dated 27.3.2015. This remand report is dated 26.3.2015. But, the Id.CIT(A) was of the view that the AO failed to clarify certain aspects. Therefore, a further show cause notice was issued by the Id.CIT(A) for submitting a fresh remand report. The issues on which clarification was required by the Id.CIT(A) have been reproduced in the impugned order at page nos.13 to 16. The Id.CIT(A) has based his order on two remand reports. In the remand reports, the AO has admitted that "LTCC" is remitting the money through banking channel and the college has given confirmation. Doubts have not been raised. When we have confronted this aspect to the Id.DR, then he was unable to rebut the finding of the Id.CIT(A), rather conceded that this finding has been recorded on the basis of remand report given by the AO under the tutelage of additional CIT.

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8. Similarly, as far as the issue agitated in the second ground of appeal is concerned, we find that the Id.CIT(A) has deleted this addition after reproducing reconciliation of cash entry with cashbook. The assessee has demonstrated as to how it has deposited the cash in the bank account, and how this cash was available with the assessee in the cash book. This was also not rebutted in the remand report by the AO. The Id.CIT(A) in the finding extracted (supra) on both the issues has based its finding on remand reports. Revenue has not raised any plea that any additional evidence was entertained by the Id.CIT(A) in violation of Rule 46 of the Income Tax Rules. We have duly extracted grounds of appeal taken by the Revenue. Taking into consideration, the detailed order of the Id.CIT(A) on both the issues, we do not find any reasons to interfere in it. Hence, appeal of the Revenue is dismissed.

9. In the result, appeal of the Revenue is dismissed.

**Pronounced in the Open Court on 29<sup>th</sup> January, 2019.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**