

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No. 6378/Del/2016

Asstt. Year : 2013-14

AND

ITA No. 2155/Del/2019

Asstt. Year : 2013-14

Oracle Farms LLP,
Formerly M/s Oracle Farms Pvt. Ltd.
E-20, Lajpat Nagar-III,
New Delhi – 110 024
(PAN: AAAC079394N)

VS. DCIT, CC-16,
NEW DELHI

(Appellant)

(Respondent)

Appellant by : Sh. Anil Jain, Adv.

Respondent by : Ms. Baljeet Kaur, CIT(DR)

Date of Hearing	08.05.2025
Date of Pronouncement	25.06.2025

ORDER

PER SHAMIM YAHYA, AM:

These appeals filed by the assessee are directed against the respective orders of the Ld. CIT(A)-XXVI, New Delhi dated 24.10.2016 and 07.01.2019 relating to quantum as well as

penalty appeals for the assessment year 2012-13. First we deal with the quantum appeal, wherein following grounds have been raised:-

- 1(i) That on the facts and circumstances of the case, CIT(A) was not justified in disregarding the fact that at the time of passing of assessment order the appellant company was not in existence having been converted into LLP and as such there is no legal basis for assessment in respect of non-existent entity.
- (ii) That the issue under consideration was purely of legal nature, the CIT(A) should have adjudicated the legal ground which goes to the root of issue of jurisdiction.
- (iii) That certificate for conversion of appellant company into LLP was issued by Registrar of Companies, Ministry of Corporate Affairs and as such the same was in public domain and even otherwise this fact is corroborated from record and as such CIT(A) should not have disregarded the same on technical grounds.
- (iv) That the powers of CIT(A) are co-terminus with that of AO and in the interest of justice, CIT(A) should have admitted the certificate of conversion of company into LLP and adjudicated the legal ground.
- 2(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs. 30 corers u/s. 68 in respect of trade advance received from M/s Saisudhir Infrastructure Ltd.

- (ii) That the deposit being through banking channels in respect of a listed company and as such there is no dispute about identity, genuineness and sourced of advance received.
- (iii) That the appellant has fully discharged the onus in respect of receipt of advance and Assessing Officer has wrongly and incorrectly invoked the provision of section 68 of the Act.
- (iv) That the whole basis of addition was on technical ground without proper appreciation of facts, proper opportunity and in disregard to decision of Supreme Court in the case of Orissa Corpn. (P) Ltd. 159 ITR 78 (SC).

2. At the time of hearing, Ld. Counsel for assessee has filed a Paper Book containing pages 1-71 consisting of Application under Rule 29 & 30; confirmation of accounts from FY 1.4.23 to 31.3.24; confirmation of accounts from F.Y. 1.4.14 to 31.3.16; confirmation of accounts from F.Y. 1.4.12 to 31.3.13; bank statement of Oracle Farms Pvt. Ltd.; Certificate of incorporation of Oracle Farms Pvt. Ltd; copy of ITR of Saisudhir Infrastructure Ltd. For A.Y. 2013-14; Balance sheet of Saisudhir Infrastructure Ltd. for 31.3.2013; Bank statement of Saisudhir Infrastructure Ltd.; letter dated 4.1.2012 for enquiry and dated 25.4.12 for advance paid; letters for completion of project and change of name-certificate of incorporation. The contents of the said Application filed

under Rule 29 of the ITAT Rules, 1963 for production of additional evidences before the ITAT are reproduced as under:-

- 1. The captioned appeal is against order passed by CIT(A)-XXVI, New Delhi dated 24/10/2016.*
- 2. The only issue on merits under consideration is addition of Rs. 30 crores u/s 68 in respect of business advance received from M/s. Saisudhir Infrastructure Ltd.. The assessing officer has considered the addition on the ground that appellant assessee was not able to furnish relevant documents in support of the transaction with M/s. Saisudhir Infrastructure Ltd.. The CIT(A) also concurred with reasoning in the assessment and upheld the addition.*
- 3. In this connection, it is relevant to note that there is no case of any adverse information or material to justify allegation of unexplained credit and the addition is solely on technical ground of non-furnishing of confirmation and relevant documents. It may be appreciated that M/s. Saisudhir Infrastructure Ltd. is well recognized infrastructure company having huge net worth and accumulated profits and the business advance under consideration was received by the appellant company through bank channel and as such there is no case of any unexplained credit in terms of provisions of section 68 of the Act.*
- 4. The factual position to this effect is supported from following documents:*
 - a. Confirmation of account from the M/s. Saisudhir Infrastructure Ltd.*
 - b. ITR Acknowledgment alongwith complete ITR form for AY 2013-14*
 - c. Audited Balance Sheet and Profit & Loss a/c for FY 2012-13*
 - d. Complete list of Sub-contractors containing name of the appellant assessee alongwith Sub-ledger a/c in the books of M/s. Saisudhir Infrastructure Ltd.*

- e. Bank Statement of M/s. Saisudhir Infrastructure Ltd.*
- f. Proposal letter from M/s. Saisudhir Infrastructure Ltd to appellant assessee dated 04.01.2012*
- g. Various letters sent by M/s. Saisudhir Infrastructure Ltd to appellant assessee regarding payment of Rs. 30 crores.*

5. Further, these documents are utmost crucial and have direct bearing to the issue of addition u/s 68 of the Act. It may be appreciated that factum of receipt of advance from M/s. Saisudhir Infrastructure Ltd. is not in dispute and the document as referred above only buttress the fact already on record. The appellant could not produce these documents before lower authorities as no communication could be established with the said party M/s. Saisudhir Infrastructure Ltd. owing to circumstances beyond control of the appellant assessee. Moreover, the appellant is not raising any additional ground or making any fresh claim and the additional documents are only in supports of ground already raised in the memo of appeal.

6. It is pertinent to mention that due to some ongoing litigation in which M/s. Saisudhir Infrastructure Ltd. was involved, the Directors of the said company were unavailable at the time of assessment and first appellate proceedings and as such the confirmation and other relevant documents could not be procured and produced earlier. However, the appellant assessee, after lot of efforts, is able to obtain these documents which not only establish the identity of the party but also the purpose and genuineness of the business advance of Rs. 30 crores as appearing in the Balance Sheet of the appellant.

7. As these documents have direct impact on the validity of addition u/s 68 and are very much relevant for proper adjudication of issue and in the interest of justice, the same may kindly be admitted and taken into consideration while deciding the Ground No..... raised in the memo of appeal in accordance with Rule 29 of the ITAT Rules, 1963.

In this regard, reference may be made to following case laws:

i. CIT v. Text Hundred India (P.) Ltd. [2013] 351 ITR 57 (Delhi) Section 254 of the Income-tax Act, 1961, read with rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Powers of - Assessment year 2004-05 - Whether under rule 29 Tribunal has discretion to admit additional evidence in interest of justice once Tribunal affirms opinion that doing so would be necessary for proper adjudication of matter; this can be done even when application is filed by one of parties to appeal and it need not to be a suo motu action of Tribunal - Held yes - Whether once it is found that party intending to lead evidence before Tribunal for first time was prevented by sufficient cause to lead such an evidence; that said evidence would have material bearing on issue which needed to be decided by Tribunal; and that ends of justice demand admission of such an evidence, Tribunal can pass an order to that effect - Held, yes - Whether, however, this rule would not apply where with existing evidence on record appellate court can pronounce a satisfactory judgment - Held, yes

ii. Sikander Publishing (P.) Ltd. v. DCIT [2004] 2 SOT 294 (Delhi) Section 254 of the Income-tax Act, 1961, read with rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Powers of - Assessment years 1997-98 and 1998-99 - Assessee-company claimed that 'A' and 'T' advanced secured loan to company out of their income earned abroad - They filed copy of their personal bank accounts, passport, etc. - Assessing Officer asked assessee to file evidence about source and creditworthiness of said persons - Since it could not be done, Assessing Officer treated entire amount as unexplained cash credit - On appeal, Commissioner (Appeals) upheld said order - On second appeal, assessee moved application for admitting additional evidence consisting of confirmations from American Express Bank (Luxembourg) in respect of funds remitted to Citibank India accounts of two depositors and balance sheet and profit and loss account as on 31-3-1998 - Whether additional evidence was essential for just disposal of matter and required admission for proper adjudication of issue involved - Held, yes

iii. *Jagbir Singh v. ITO* [1987] 23 ITD 15 (Delhi ITAT)

Section 253 of the Income-tax Act, 1961, read with rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Power to admit additional evidence - There was a cash credit in books of assessee which was added in total income of the assessee under section 68 - In respect of said cash credit additional evidence could not be adduced by assessee before Commissioner because of non-co-operation by party - Later assessee produced the additional evidence - Whether said additional evidence produced by assessee should be admitted on record in interests of justice under rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Held, yes

In the instant case, the additional evidence produced by the assessee consisted of (i) accounts of various parties including P with G, (ii) copies of vouchers of sales of P on various dates. These evidences were relevant. There was no rebuttal of the assessee's deposition on affidavit that these documents were handed over by P to the assessee after the receipt by the assessee of the impugned order of the Commissioner (Appeals). The Commissioner (Appeals) had recognised the fact that P could not be produced before the ITO due to disturbances in Punjab. Further, the Commissioner (Appeals), himself wanted the assessee to reconcile the contradiction in the account of P in the books of G as per ITO's report. The assessee had obtained adjournment for the purpose but had expressed his inability thereafter as P refused to co-operate. This was also testified by him on affidavit. Due to all these facts and circumstances therefore, the additional evidence should be admitted on the record in the interests of justice under rule 29 aforesaid.

Thus, the matter was to be remanded to the Commissioner in regard of this cash credit for deciding it afresh in accordance with law after giving an opportunity of hearing to both the sides.

iv. *CIT v. Shri Ram Enterprises* [2008] 304 ITR 375 (Allahabad)

Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1990-91 - Assessee-firm, dealing in purchase and sale of supari and kattha, filed its return of income - During course of assessment proceedings, Assessing Officer found that assessee had raised certain funds which were invested in FDRs - Assessee could not prove source of said funds and, therefore, Assessing Officer treated those funds as unexplained credits under section 68 - Tribunal, however, deleted entire additions made by Assessing Officer - On instant reference, it was seen that Tribunal had accepted assessee's explanation regarding amounts deposited as well as source and genuineness of deposits - Further, as regards question whether under rule 29 of Income-tax (Appellate Tribunal) Rules, 1963, Tribunal could have admitted additional evidence in terms of letter filed by assessee, it was noted that while permitting said letter to be brought on record Tribunal had recorded finding that letter was nothing but facts which were already on record either in case of assessee or in case of depositors and, therefore, strictly speaking it was not an additional evidence but was an additional information for which sufficient reasons had been given - Whether aforesaid finding recorded by Tribunal was a pure finding of fact based on appreciation of evidence and material on record which did not require any interference - Held, yes

v. UOP LLC v. Addl. DIT [2007] 108 ITD 186 (Delhi ITAT) Section 254 of the Income-tax Act, 1961, read with rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Powers of - Assessment year 2001-02 - Whether in terms of rule 29 there is a complete bar for revenue to produce any additional evidence suo motu before Tribunal and it can be permitted to do so only if Tribunal requires such evidence and, accordingly, directs revenue to produce same - Held, no - Whether as per rule 29 Tribunal has power to allow additional evidence, not only if it requires such evidence to enable it to pronounce judgment but also 'for any other substantial cause - Held, yes - Whether once additional evidence is taken into consideration, it has to be read as part of record and before drawing any inference, on basis of contents of that document admitted as additional evidence, an opportunity has to be

given to other side to explain or rebut same - Held, yes - In appeal filed by assessee against order of Commissioner (Appeals) revenue filed an application under rule 29 seeking admission of additional evidence in connection with main issue - Whether since additional evidence sought to be produced by revenue was quite relevant to decide main issue and same was not in possession or power at relevant time when matter came to be decided by lower authorities but came into possession of revenue after filing of appeal by assessee, additional evidence sought to be produced by revenue deserved to be admitted under rule 29 - Held, yes

vi. Mascon Global Ltd. v. ACIT [2010] 133 TTJ 257 (Chennai) (TM) These are rules of procedure and in a fit case and depending on the circumstances it would be open to the Tribunal to admit additional evidence when it is produced in the Court and an oral application is made. There is no hard and fast rule in this behalf and it should be left to the discretion of the Bench. The Accountant Member exercised such discretion properly. Rule 29 permits the Tribunal to admit the additional evidence for any substantial cause. Apparently the Accountant Member had admitted the additional evidence on this ground which could not be disagreed with. The intention behind the rule is that substantial justice should be done and the interest of the justice should be the overriding consideration. Therefore, there was no error in the Accountant Member admitting the additional evidence and sending it to the Commissioner for examination and decision. [Para 10]

vii. Contitech India (P.) Ltd. v. DCIT [2014] 35 ITRT 526 (Delhi - Trib.)

Section 92C of the Income-tax Act, 1961 read with rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 - Transfer pricing - Computation of arm's length price (Comparables and adjustments) - Assessment year 2008-09 - Assessee was a wholly owned subsidiary of foreign company - Assessee availed technical, marketing and administrative support services and paid corporate charges/service fee to its

associated enterprises - TPO noticed that assessee had not been able to show that any service had actually been passed to it, except partly in case of Operations and Supply Chain Management and had restricted payment of service fee to 5 per cent of total payment claimed by assessee - Assessee filed summary of invoices and prayed for its admission as they were not available before TPO under rule 29 of ITAT Rules - Whether since details now produced had an important bearing for resolving transfer pricing dispute, additional evidence needed to be verified by TPO/ Assessing Officer, and, thus, transfer pricing dispute of payment of corporate charges was to be restored to TPO for de novo consideration - Held, yes [Para 4.5] [Matter remanded]

In the light of facts and legal position submitted above, the additional evidences so filed alongwith this application may kindly be admitted.”

2.1 In view of above, Ld. AR for the assessee submitted that the additional evidences submitted under Rule 29 may please be admitted by remitting back the issues in dispute to the file of the Assessing officer for fresh adjudication, in accordance with law, after giving adequate opportunity of being heard to the assessee.

3. Ld. DR relied upon the orders of the authorities below.

4. After hearing both the sides and perusing the records, we find considerable cogency in the contention of the Assessee for admission of additional evidences under Rule 29 of the ITAT Rules, 1963. Therefore, we deem it fit and proper to admit the aforesaid additional evidences filed by the assessee before us, and in the interest of justice, remit back the matter to the file of the Assessing Officer with the directions to consider the aforesaid contention of the Ld. AR and decide the issues in dispute,

afresh, in accordance with law, after giving adequate opportunity of being heard to the assessee, after considering all the additional evidences filed by the Assessee u/R 29 of the ITAT Rules, 1963. Resultantly, the quantum ITA No. 6378/Del/2016 (AY 2013-14) is allowed for statistical purposes.

5. Since the issues raised in the quantum appeal have been remitted back to the file of the AO for fresh consideration, as aforesaid thus, the penalty appeal being ITA 2155/Del/2019 (AY 2012-13) also stand allowed for statistical purposes on the similar lines.

6. In the result, both the Assessee's appeals are allowed for statistical purposes.

Order pronounced on 25.06.2025.

Sd/-

Sd/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBhatnagar

Copy forwarded to: -

1. Appellant
2. Respondent
3. DIT
4. CIT (A)
5. DR, ITAT

By Order,

Assistant Registrar, ITAT,
Delhi Benches