

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3039/M/2016
Assessment Year: 2011-12**

ACIT 3(1)(2), Room No.607, 6 th Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s. Green Habitats Pvt. Ltd., 514, Dalamal Towers, 211, Free Press Journal Marg, Nariman Point, Mumbai - 21 PAN: AACCG 6559P
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Chetan A. Karia, A.R.
Revenue by : Shri V. Vidhyadhar, D.R.

Date of Hearing : 16.04.2018
Date of Pronouncement : 12.06.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 28.01.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The grounds raised by the Revenue are as under:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the AO u/s.68 amounting to Rs.85,09,977/- by disallowing the sundry creditors?

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the onus lies on the assessee to prove the genuineness of the creditors and the assessee has failed to file any confirmation from the creditor without any justification in spite

of sufficient time and opportunity provided by the assessing officer?

3. The appellant prays that the order of CIT (A) on the above ground be set aside and that of Assessing Officer be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may necessary.”

3. The only issue raised by the Revenue is against the deletion of addition to the tune of Rs.85,09,977/- as made by the AO on account of sundry creditors under section 68 of the Act. The Revenue has also challenged that Ld. CIT(A) has failed to appreciate that onus was on the assessee to prove the genuineness of the creditors.

4. The facts in brief are that the AO observed that assessee has shown sundry creditors of Rs.85,09,977/- and he asked the assessee to file the details of the creditors along with confirmations. The assessee filed the details in respect of the creditors vide letter dated 16.12.2013 but failed to file confirmations from the sundry creditors. The AO thereafter again issued a show cause notice on the assessee but despite that also the assessee could not file the confirmations. The assessee also submitted that these creditors were on account of advances received from the customers and no revenue was recognized in respect of these advances. Finally, the AO held that the amount of such creditors Rs.85,09,977/- was not verifiable and therefore added the same to the income of the assessee.

5. In the appellate proceedings the Ld. CIT(A) deleted the additions after considering the submissions and contentions

raised by the assessee during the appellate proceedings by observing and holding as under:

5.1.5 In the instant case the assessing officer has not rejected the books of accounts of the appellant, not challenged the contention that sundry creditors were customers who had made bookings with the appellant and the amounts reflecting in the list of sundry creditors represented booking advance received by the appellant. He has also not rejected the evidence of bank receipt for all the advances or the bank statement of the appellant reflecting those receipts. Since the names, addresses and amounts of each of the customers was made available to the assessing officer, he could have directly made further enquiries from those customers but has not done so. Therefore, in the instant case, I cannot see any reason attributed by the assessing officer to have rejected the explanation offered by the appellant merely on the ground that the appellant did not submit confirmations from the said customers, without rejecting proof of payment through banking channels or without making any effort to obtain confirmations from them despite the facts that all names and addresses were submitted by the appellant during the course of assessment proceedings. It is seen that the details were submitted by the appellant vide letter dated 16/12/2013 while the assessing officer has passed order under section 143 (3) on 26/03/2014. There was ample time for the assessing officer to make further investigation and direct enquiries himself.

5.1.6 During the course of appeal proceedings, the appellant of sale agreements in respect of all the parties in the list of sundry creditors mentioned in letter dated 16/12/2013 filed before the assessing officer to corroborate its contentions. Although, not material in deciding the issue, these copies of registered sale deeds further support and substantiate the contention of the appellant regarding the genuineness of the transactions. Similarly, in respect of audit fees paid to BSR & Co, it is seen from the ledger account and bank statement of appellant that the same have been paid. As observed above, copies of bank statements were also submitted to the assessing officer at the time of assessment proceeding but he has made no comments on the same.

5.1.7 Under the circumstances and in view of the ratios of various judgements cited above, I do not find merit in the conclusion of the assessing officer and find the addition unjustified. Therefore, addition

of Rs. 85,09,977/- under section 68 is deleted and this ground of appeal is allowed.”

6. The Ld. D.R. submitted before us that the first appellate authority has erred on facts and law by deleting the addition as made by the AO on account of non verification of the sundry credits of Rs.85,09,977/-. The Ld. D.R. contended that despite the repeated opportunities the assessee has not filed any confirmations from the said creditors and therefore under these circumstances the AO had no option but to add the same to the income of the assessee for the want of verification as to genuineness and creditworthiness. The Ld. CIT(A) deleted the same merely on the ground that assessee has filed all the necessary details in respect of the sundry creditors before the AO and AO has failed to carry out any further verification. Under these circumstances order passed by the first appellate authority is bad in law and has to be reversed.

7. The Ld. A.R., on the other hand, submitted that the first appellate authority has passed the order deleting the addition on account of sundry creditors after taking into account the contentions and submissions of the assessee as made before the AO also during the course of assessment proceedings. The Ld. A.R. submitted that the assessee has filed all the details qua the said creditors before the AO but AO without doing any further verification/investigation to verify the genuineness on said creditors added the same to the income of the assessee by just holding that the assessee has failed to produce the confirmations from the said creditors. The Ld. A.R. further submitted that the first appellate authority has

passed very detailed and well reasoned order which needs to be affirmed.

8. We have heard the rival submissions of both the parties and perused the material on record. As is apparent from the records before us, the AO has added the sundry creditors merely on the ground that assessee has not filed the confirmations despite the fact that the assessee filed all the necessary details before the AO. In the appellate proceedings also the Ld. A.R. reiterated his arguments and filed the necessary details in respect of the sundry creditors. The Ld. CIT(A), after considering all the legal aspects as well as examining the matter factually, deleted the said addition by passing a very reasoned and comprehensive order. In our opinion, the Ld. CIT(A) has taken into account all the aspects of the matter and we are of the considered view that the order of Ld. CIT(A) being well reasoned needs to be upheld. Accordingly, we uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

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

Order pronounced in the open court on 12.06.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 12.06.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.