

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'A', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6663/Del/2018
Assessment Year: 2013-14**

M/s. Ultimate Investofin Ltd., D-26, DSIIDC Complex, Kirti Nagar, New Delhi. PAN – AABCS 1872N (Appellant)	vs.	ACIT, Central Circle-29 New Delhi. (Respondent)
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Appellant by	S/Sh. Ved Jain & Miss Umang Luthra, Adv. S/Sh. Ashish Goel, & Santosh Gupta, CA
Respondent by	Sh. Sanjay Goyal, CIT/DR

Date of Hearing	14.03.2019
Date of Pronouncement	15.03.2019

ORDER

Per L.P. Sahu, AM:

This is an appeal filed by the assessee against the order dated 20.08.2018 passed by the CIT(A) for the assessment year 2013-14 on the following grounds :

- 1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on 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 order passed by the learned AO u/s 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*

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 the assessment framed under Section 153A are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*

4. *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 assessment order passed by the AO is barred by limitation having been passed beyond the statutory period prescribed in the Act.*

5. *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 AO has erred in making the assessment without proper service of statutory notices.*

6. *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 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*

7. *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 assessment order passed by the learned AO is bad in law as the same has been passed without application of his own mind.*

8. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming an addition of Rs. 46,68,700/- made by the AO on account of Trade Payable u/s 68 of the Act.*

(ii) *That the above addition has been confirmed despite the same being made arbitrarily rejecting the explanation given by the assessee.*

9. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the Ld. AO rejecting the explanation and evidences brought in record by the assessee to*

prove the identity and creditworthiness of the investors as well as the genuineness of the transactions.

(ii) That the addition has been confirmed without pointing out any defect in the evidences filed by the assessee.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the addition made by the AO are on the basis of extraneous considerations grossly indulging into conjectures and surmises.

11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO despite the fact that the above addition was made on the basis of the material collected at the back of the assessee without giving it an opportunity to rebut the same.

12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the order was passed relying on the inspector's report which was never confronted to the assessee.

13. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the AO has passed the order relying on the statement recorded without giving assessee proper opportunity to cross examine the same.

2. The only issue involved in this appeal is addition of Rs.46,68,700/- made by the AO on account of the trade payable.

3. The brief facts of the case are that the assessee filed its return of income originally on 30.09.2013 declaring a total income of Rs.82,44,890/-. Thereafter, a search took place on 10.12.2015. Based on this search operation, the Assessing Officer issued notice under section 153A and completed the assessment by

making an addition of Rs.46,68,700/- being the trade payables as per the balance sheet as on 31.03.2013. The assessee carried the matter in appeal before the Id. CIT(A), who after considering the submissions of the assessee and the order of Assessing Officer confirmed the action of the Assessing Officer vide impugned order. Aggrieved, the assessee is in appeal before the Tribunal.

4. During the course of hearing, the Id. AR of the assessee submitted that the additions made by the AO are not sustainable both on facts and law. It was submitted that the assessee duly filed its return of income on 30.09.2013. Nothing incriminating was found during the course of the search as is evident from the assessment order. The Assessing Officer has made addition of Rs.46,68,700/- which was trade payable as per the balance sheet as on 31.03.2013. Our attention was invited to the assessment order to point out that the observation made and discussion in the assessment order are not related to this addition of Rs.46,68,700/-. The Assessing Officer has gone with the presumption that this amount is share capital. On the contrary these are trade payables to various parties in respect of the transactions carried out during the year. Our attention was further invited to the audited balance sheet where this amount is being shown under the head trade payables. The details of the same was also filed before the Assessing Officer with complete address and PAN of each of the traders whom these amounts were payable. Copy of the same is placed at paper book page 83. Further, confirmations of creditors with ITRs were also filed with the Assessing Officer, which are also placed at the paper book pages 84 to 103. On the basis of this it was contended by the Ld. AR that additions are untenable and need to be deleted.

5. On the other hand, the Ld. DR relied upon the orders passed by the authorities below and submitted that the ld. authorities below are justified in making and sustaining the impugned addition.

6. We have considered the rival submissions and perused the entire material available on record including the orders passed by the authorities below. Ongoing through the same, we note that this addition of Rs.46,68,700/- has been made by the Assessing Officer under the impression that this is share capital/unsecured loans though he has mentioned, in the assessment order, the same as trade payables. During the course of the assessment proceedings, the assessee company has submitted details of these trade payables with address and PAN. The assessee company also submitted the confirmations and ITRs creditors. The AO thereafter has not carried out any investigation or verification before making the impugned addition nor has the Assessing Officer pointed out any error or mistake in the documents submitted by the assessee. Besides, a perusal of the assessment order shows that there is no discussion of any name of the creditor or amount of each of the creditors. The total figure has been added by the Assessing Officer simpliciter. The CIT(A) has also confirmed the addition without even considering the facts and contention of the assessee. After examination of the facts and documents placed in the paper book, we, therefore, are of the view that the Assessing Officer has made the addition without appreciating the facts and evidences adduced by the assessee. Similarly, the CIT(A) has totally ignored the facts and in a mechanical way confirmed the order passed by the AO. The assessee having submitted the details and explanation with evidences in support of impugned

trade payables, it was incumbent upon the Assessing Officer to verify the same in case he was not satisfied therewith. However, instead of examining the facts and the explanations offered by the assessee, the AO has in an arbitrary manner made the addition, particularly when these amounts are appearing in the audited balance sheet and being shown as trade payables. It appears that the Assessing Officer while passing the impugned assessment order was impressed with the issue of share capital/unsecured loans involved in other group cases of the assessee, whereas the issue involved in this case pertained to the trade payables as explained by the assessee. In presence of all these facts, we deem it appropriate to remit the case back to the file of the Assessing Officer for passing the assessment order afresh after examining the claim of assessee regarding impugned trade payables in the light of evidences filed before the authorities below which also form part of paper book before us. The assessee is directed to adduce all the material before the Assessing Officer in support of its claim. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, the appeal of the assessee deserves to be allowed for statistical purposes.

7. In the result the appeal assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th March, 2019.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 19.03.2019

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