

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No: 4213/Del/2017  
(Assessment Year: 2012-13)**

Mahamedha Urban Co-operative Bank Ltd., Ghaziabad.	Vs	DCIT, ] Circle-1, Ghaziabad.
<b>PAN No: AAAAM4437E</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : None  
**Revenue by** : Ms. Rakhi Vimal, Sr. DR

**ORDER**

**Per Anadee Nath Misshra, AM**

**(A)** This appeal by Assessee is filed against the order of the Learned Commissioner of Income Tax (Appeals), Ghaziabad ["Ld. CIT(A)" for short], dated 31.03.2017, for Assessment Year ("A.Y.", for short) 2012-13, on the following grounds:

*"1. The Ld' CIT (A), Ghaziabad has erred by not giving the proper opportunity to plead the case before it and by passing ex-parte order, the order is not tenable as it is not based on natural ground realities and justice.*

*2. The Ld' CIT (A), Ghaziabad has also erred by not adjourning the hearing of the case despite requesting twice i.e. on 28/03/2017 & 30/03/2017 on the genuine ground that the counsel was out of station for some urgent work and was to return back in the first week of the following month of hearing, which is against*

*the principle of due natural justice.*

3. *That the Ld' CIT (A), Ghaziabad and the Ld' Dy. Commissioner of income Tax, Circle - 1, Ghaziabad have erred in law and on facts in making the addition of Rs. 1,15,00,000/- u/s 68 of Income Tax Act, 1961 in share capital only by making a reference of RBI Inspection Report, despite and ignoring the facts that the assessee had submitted all the evidence to prove their credit worthiness. After providing all the related documents the Ld' Assessing Officer neither raised any query for the same nor objected on any submitted documents. It is also worthwhile to mention here that the RBI Inspector had no role to justify the credit worthiness of the shareholder. They have only to give the report on financial discipline of the Bank according to rules and regulations of the RBI.*

4. *That the learned Dy. Commissioner of Income Tax, Circle - 1, Ghaziabad has erred in law and on facts in making the addition of Rs. 29,50,000/- u/s 68 of income Tax Act, 1961 in share capital made by three companies despite and ignoring the facts that the assessee had submitted all the evidence to prove their credit worthiness. After providing all the related documents the Ld' Assessing Officer didn't raise any query for the same.*

5. *That the learned Dy. Commissioner of Income Tax, Circle -1, Ghaziabad has erred in law and on facts in making the addition of Rs. 2,17,95,629/- for disallowing the expenditure u/s 37 by making a reference of RBI Inspection Report, despite and ignoring the facts that the assessee has maintained its books of account properly and get them audited. Even the Ld' Assessing Officer didn't reject the books of account.*

*It is also worthwhile to mention here that the Ld' Assessing Officer misunderstood the remarks of RBI Inspector for non declaring the loans of Rs. 9.61 Crs as NPA and not making the provisions of Rs. 5.69 Crs. on the same and treating it as diversion of the fund. Even the Ld' Assessing Officer ignored their comments about declaring more profit by such provision of Rs. 5.69 Crs.*

*The Ld' Assessing Officer also ignored the fact that if the Assessee declared the loans of Rs. 9.61 Crs as NPA than a total interest of Rs. 1.25 crs was also to be reversed in addition to making the provision of Rs. 5.69 crs and due to which the declared profit would be reduced by Rs. 1.25 Crs.*

*The Ld' Assessing Officer has also erred by taking the above bases for disallowing the expenditure without pointing out any deficiencies in the books of account.*

6. *Any additional ground, if any, may be submitted with your kind permission.*

*It is, therefore, prayed that the above additions may kindly be deleted and the appeal of the appellant assessee may be allowed on merits of the case."*

(B) When this appeal came up for hearing before us on 02.12.2019, there was nobody present from assessee's side. It was found from perusal of records that a letter dated 21.11.2019 of MRS & CO., Chartered Accountants was filed for seeking adjournment of hearing fixed on 02.12.2019 on the ground that "...council of the case undersigned is out of town for some personal reasons.". The aforesaid letter dated 22.11.2019 is reproduced below for ease of ready reference:

"



**MRS & CO.**  
Chartered Accountants  
An ISO Certified Co.

F-1/299, Sector - 4, Vaishali, Ghaziabad, UP  
0120-4260152, 9999622662, 9971622662,  
mail - camrsandco@gmail.com, info@camrs.in

BAC-E  
Ser  
22/11/19

256  
22/11/19

To,  
The Registrar,  
Income Tax Appellate tribunal,  
Lok Nayak Bhawan, Khan Market,  
New Delhi-110003.

Subject:- Request for Adjournment

Ref:- Appeal No 4213/Del/17/2012-13/Bench E of M/s Mahamedha Urban Co-operative Bank Limited,  
Ghaziabad.

Dear Sir,

Above referred appeal has been fixed on 02.12.2019 on which council of the case undersigned is out of town for some personal reason. Kindly Adjourn the case for the next hearing.

Thanking You

For MRS & Co  
Chartered Accountants

CA Ram Kumar Dhiman  
Partner



Date:- 21/11/2019  
Place :- Ghaziabad

"

**(B.1)** We have further found from perusal of record that there is no Authorization from assessee's side in favour of CA Ram Kumar Dhiman or in favour of MRS & CO, Chartered Accountants to appear in Income Tax Appellate Tribunal ("ITAT", for short) in connection with the present appeal. In the absence of any Authorization from the assessee's side, the letter seeking adjournment lacks legitimacy. Moreover, as nobody was present at the time of hearing before us from assessee's side, we had no assistance at the time of hearing, in fully understanding and in obtaining clarity regarding reason stated for seeking adjournment, vaguely worded as "...some personal reason". In cumulative consideration of these facts and circumstances, we proceed to decide this appeal in accordance with Rule 24 of Income Tax (Appellate Tribunal) Rules, 1963.

**(C)** Vide Assessment Order passed under Section 143(3) of the I.T. Act, income of the assessee was assessed at Rs. 5,53,11,095/- as against returned income of Rs. 1,90,65,466/-. The relevant portion of the Assessment Order is reproduced as under:

"3. The assessee, Mahamedha Urban Co-operative Bank Ltd. is a Co-operative Bank which has been registered under the Co-operative Societies Act, 1965 and possess license for functioning as Bank from RBI and doing the following activities. Accepting the deposits from the members/public, Granting the secured and unsecured loans including bills/cheques discounting, investing the funds according to the norms of the RBI and Co-operative Society Act, 1-885, The registered office of the bank is situated at Nai Basti, Ghaziabad and the bank is operating: from six branches:

S.No.	Branches	Address	Date of opening
1.	Ghaziabad Branch	Main Branch, 36, Nai Basti, Ghaziabad	01.03.2001
2.	Noida Branch	J-89, Sector-41, Noida	29.08.2003
3.	Raj Nagar Branch (Ex-counter)	Ec. Raj Nagar, Ghaziabad	25.09.2007
4.	Surajpur Branch (Ex-counter)	Surajpur, Greater Noida	15.05.2008
5.	Hapur Branch	Opp, Bus Stand, Hapur	08.04.2009
6.	Dadri (Ex-counter) -	Opp, Bhagwati Nursing Home, Railway Road, Dadri, U.P	13.12.2009

*The assessee vide ordersheet entry dated 06.01.2016 has been asked to produce Audit Report of RBI for F.Y. 2011-12. The date for compliance was fixed for 07.01.2015. On the given date neither anybody appeared nor any written reply, regarding Audit Report, was received in this office. However, on 08.01,2015, the AR produced a letter from RBI which was addressed to the assessee bank. The AR cited the prior approval condition of RBI in sharing the report before any Authority or Court. In order to get the Audit Report, a notice u/s 133(6) was issued to The Dy. General Manager, Reserve Bank of India, Lucknow, on 23,01,2015.*

4. *The RBI report titled "Statutory Inspection of Mahamedha Urban Co-operative Bank Limited, Ghaziabad U/s 35 of Banking **regulation** Act, 1935rVtfith Reference to Financial Position as on March 31, 2012. Loans received on 23,02,2015". Based on the findings of the RBI report, especially regarding introduction of paid up share capital where source of the contribution was not ascertainable and regarding diversion of funds through bad loans which turned into Non-Performing Assets, show cause notice U/s 142(4) was issued on 05.03.2015 which is being reproduced below:-*

Queries:-

*The statutory notice U/s 143(2) was issued on 13/08/2013 which was properly served upon you, Your are, required to furnish the replies of following queries on or before 12/03/2015 at 11:30 am.*

1. *Your attention is drawn to the para no. 21. Of the confidential RBI Report of Statutory Inspection of Mahamedha Urban Co-operative Bank Limited, Ghaziabad, the relevant portion of the paragraph is being reproduced below:-*

***Paid-Up Share Capital***

*2.1The paid-up share capital (at book value) of the bank stood at Rs. 535.65 lakh as on the date of present inspection, position an increase of Rs. 126.76 lack (31.00%) from Rs. 408.89 lakh since the date of last inspection, i.e. March 31, 2011. The bank had raised Rs. 303.43 lakh of fresh share money during the year under review. During the yer 34 members contributed more than Rs. 1.00 lakh each. The major individual contributors during the year included Sunita Bhati, wife of Raj Singh Bhati, Chairman of the bank (Rs. 45.00 Lakh) ; Anita Bhati, Director (Rs. 35.00 Lakh); Raj Singh Bhati, Chairman (Rs. 30.00 Lakh); Udaiveer Singh, Director (Rs. 15.00 Lakh) etc. The source of the contribution was not ascertainable. The bank was charging 10% share money from the borrower as against the norm of 2.5% & 5% from the secured and unsecured borrowers respectively. The bank had not prepared the share certificates of the members ice February 11,2007, further, 47 Share certificates issued during January 2, 2002 and April 5, 2002 had not been handed over / dispatched to the members. Share certificate bearing number from 5301 to 7200 issued between July 4, 2005 and February, 11 2007 prepared with signature of only one Director (signature of the Secretary and Chairman not appended) are also yet to be delivered to the respective members. The Board in its meeting dated November, 29, 2011 passed resolution for enhancing the authorized capital of the bank to Rs. 15.00 crore from Rs. 5,00 crore as*

*hitherto. The fee for the nominal membership was also increased from Rs. 2.00 to Rs. 100.00 in the same meeting. The decisions of the board were registered with registrar on November 1, 2011.*

*Following investments in the form of Share capital have been cited where the source of the contribution was not ascertainable. These are*

- 1. Sunita Bhati - (Rs. 45,00,000/-)*
- 2. Anita Bhati - (Rs. 35,00,000/-)*
- 3. Raj Singh Bhati - (Rs. 30,00,000/-)*
- 4. Udai Veer Singh - (Rs. 15,00,000/-)*

*To further cloud the genuineness of these transactions, the report mentions following other facts:-*

- i. The bank was charging 10% Share money from the borrowers as against the norm of 2.5% and 5% from the secured and unsecured borrowers respectively.*
- ii. **The bank has not prepared the share certificate of the members since Feb-11-2007 and further 47 Share Certificate issued during Jan 2, 2002 and April 05, 2002 had not been handed over /dispatched to the members. Similarly, share certificates bearding number 5301 to 7300 were prepaid with signature of only one Director and are also yet to be developed to the respective member.***

*From the above facts, it is clear that the transactions of receipt of Share money between 01.04.2011 and 31.03.2012 are not genuine. In this respect, you are requested to show-cause why this amount of Share money received from above mentioned four 'alleged' investors could not be added back in our income of the year U/s 68 of the I.T. Act, 1961 for want of genuineness of transaction and creditworthiness.*

- 2. Your attention is drawn to the para 5.6 of the above mentioned report of the Reserve Bank of India which clearly states that the total amount or diversions in loan account was found to the Rs. 9,61.04 Lacs and over and above this amount additional provisions of Rs. 569.51 Lac has been suggested as provision for BDDR. It means Rs. 1530.55 Lacs of the funds of the Bank has been diverted. This finding of the RBI report along with other serious diversion / book fudging instances which have also been noted by the RBI investigating team clearly establishes, on the basis of factual audit / investigation of the working of the Bank, that the above mentioned amount of Rs. 1530.55 lacs has been diverted which if interpreted with respect to the provision of the Income-tax Act, 1961, renders the cost of obtaining these funds of Rs. 1530.55 Lacs as nor – business expenditure and hence should be disallowed U/s 37 of the Income Tax Act, 1961.*

*The Bank has deposits of Rs. 138,06,37,294,7/- during the year and direct the indirect expenses on these deposits in Rs. 19,60,08,132/-. If we take this proportion, the cost of diverted fund of Rs. 15,30,55,000/- comes to Rs. 2,17,95,628,5/-. You are requested to show-cause why this proportionate cost of fund should not be disallowed for being an expenses not related to business.*

The AR of the assessee submitted written submissions, in response to above quoted show cause notice, on 16.03.2015. The contents of this written reply are being quoted as under:-

"With due respect we are submitting the following:-

1. Your notice is based on the inspection report of the RBI Inspectors. In this respect we have to state that:-

- a. They have to inspect at the Bank whether the norms of RBI is adhering or not.
- b. Whether the proper records/registers are being maintained properly or not according to guidelines of the RBI and other regularity authorities.
- c. Whether proper classifications of Assets (Granted Loans) has been done according to IRAC norms.
- d. They have to verify only that whether share capital received by the Bank is under RBI norms or not.
- e. They have only to verify the nature of expenses incurred whether they are under the budget or not or there is abnormal variance.
- f. Whether proper financial ratios as prescribed by the RBI are adhering or not.
- g. Whether the bank invested its fund in approved securities or not.

The copy of B.R. Act, 1949 u/s 35 of the R.B.I. Act, 1949 is enclosed herewith as annexure-I for your kind perusal.

2. We have already given the source of funds of the following share holders:-

- a. Mrs. Sunita Bhati (Rs. 45.00 Lacs)
- b. Mrs. Anita Bhati (Rs. 35.00 Lacs)
- c. Shri Raj Singh Bhati (Rs. 45.00 Lacs, wrongly mentioned Rs. 30.00 Lacs at RBI Report)
- d. Shri Udai Veer Singh (Rs. 5.00 Lacs, wrongly mentioned Rs. 15.00 Lacs at RBI Report)

We are hereby again submitting the source of Income with supports as annexure-II for your kind verification. All the above four shareholders have good worth and sources of fund.

The complete ledger of Share Capital for the year 2011-12 is hereby annexed as Annexure-III.

All the share certificates has already been dispatched to the members.

3. The RBI Inspector reported on Page 9 at point 6 that :-

**"The Bank had not classified its assets properly. The total divergence in loan account was at Rs. 961.04 Lacs and additional provisions suggested by the IO for BDDR (Bad and Doubtful Debt Reserve) was Rs. 569.51 Lacs."**

and reported as page no.14 of Annex-V to the Inspector Report that :-

**"Statement showing the details of NPA's where there is divergence in Asset Classification and provisioning requirements between the assessments made by the Bank and IO as on date of inspection."**

**In this respect it is to state that they have reported only that the assessee had not classified the Assets i.e. Loans and Advance given as at 31<sup>st</sup> March, 2012, according to RBI Prudential Norms. According to Prudential Norms i.e. INCOME RECOGNITION, ASSETS CLASSIFICATION AND PROVISIONING, the Bank has to classified the Assets as under :-**

- i. Standard Assets (No default in repayment or default in repayment less than three months)
- ii. Sub Standard Assets (Default in repayment or default in repayment more than three months)
- iii. Doubtful Assets ( Sub Standard Assets of more than a month)
- iv. Loss Assets (Doubtful Assets having no security or loss assets)

After classification of the Assets the Bank has to make the provision for Bad and Doubtful i.e. BDDR with specified % i.e. 10%, 20%, 30%, 50% and 100% and no interest income has to be booked on such Loan Account.

**It is worthwhile to mention here that if the bank classified the loan accounts of Rs. 961.04 Crs as Sub-Standard as reported by the RBI Inspectors, the Bank has to short booked its interest income by more than Rs. 1.25 Crs which resulted the reduction of taxable income atleast by Rs. 1.25 Crs.**

The RBI Inspector reported only that the Bank has divergence in classification of the Assets not diversion of the fund. They only reported that the Bank has not properly classified the Loan Assets of Rs. 961.04 Lacs according to RBI IRAC Norms and a total provision for Bad and Doubtful Debts Reserve of Rs. 569.51 Lacs on the above said amount of Rs. 961.04 Lacs has to be made to reduce the profits of the Bank. They had also stated that the Bank is showing overstated profit. Rs. 569.51 lacs of provision of BDDR was part of Rs. 961.04 Lacs of loans and advances to which has been declared NPA.

According to their view the Bank has made short provisions for BDDR to inflated the profit, as the Bank has booked interest on the above loan accounts of Rs. 961.04 Lacs and not make the provision of BDDR by Rs. 569.51 Lacs.

No where the RBI Inspectors mentioned at the report that the Books of Account maintained by the Bank was not proper, so questioning of disallowance of expenditure 2.17 crs could not be arisen. All the expenses incurred by the Bank were business related and should be allowed."

The reply of Ld. AR was carefully considered but does not carry any force for following reasons:-

i) Regarding the query no. 1 of show cause dated 05.03.2015, the Ld. AR has mentioned that source of funds of Mrs. Sunita Bhati, Mrs. Anita Bhati, Sh. Raj Singh Bhati and Sh. Uday Vir Singh (Rs.5 lacs as per the submissions of the Ld. AR) has already been provided. However, the paragraph no. 2.1 of the RBI report does not question the worth of individuals rather it gives findings that the contribution which is allegedly shown in the names of these four persons is not ascertainable implying that the income from undisclosed sources has been routed through the names of these four persons. There are further findings in the same paragraph of the report which clearly establish that the introduction of share capital is not genuine. The findings are-

(i) the bank was charging 10% share money from the borrowers as against the norms of 2.5% and 5% from the secured and unsecured borrowers respectively.

(ii) the bank had not prepared share certificates of the members since Feb, 2007

(iii) 47 share certificates issued during January 2002 and April, 2005, 2002 had not been handed over/dispatched to the members.

(iv) Share certificates from Sl. No. 5301 to 7200 were issued with signature of only one director and signatures of the Secretary and Chairman were not appended.

7. Based on above reasoning and factual findings, it becomes clear that the share capital introduced is not genuine and is liable to be added back U/s 68 of the I.T. Act, 1961. The amount of Rs.1,15,00,000/- is being added U/s 68 of the I.T. Act, 1961 in the income of the assessee for the year. The amount of share capital from Sh. Uday Vir Singh is taken at Rs.5 lacs treating the 15 lacs figure quoted in RBI report as typing mistake. Initiate penalty proceedings separately U/s 271(1)(c) for furnishing inaccurate particulars.

(Addition: 1,15,00,000/-)

8. On 06.01.2015, the AR submitted a list of 8 investor of share capital for Rs.4 lacs and above during the F.Y. 2011-12. He also submitted evidences for identity, genuineness and creditworthiness of these alleged investors. However, for following cases either the proof was not submitted or it was not able to pass the test of identity, genuineness and creditworthiness-

i. in the case of Mr. Bhule- The investment of Rs.5,50,000/- was made but the person is filing return of below taxable limit, for example the copies ITR for A.Y. 2006-07 and 2007-08 were submitted which showed income of Rs.1,50,000/- and Rs.1,51,400/- respectively. The creditworthiness of the persons of such low means is not established.

ii. In the case of Pushpanjali Buildwell Pvt. Ltd.- No evidence of creditworthiness of this alleged investor was produced and hence the investment can not be treated as genuine. The amount of alleged investment during the year is Rs.4,80,000/-.

K. SINGH

ii. in the case of Gain Infrastructure Pvt. Ltd.:- This company has allegedly invested an amount of Rs.19,20,000/- during the year but no evidence of genuineness including that of creditworthiness was furnished and hence this amount of investment is also liable to be added back U/s 68 of the I.T. Act, 1961.

As per reasons discussed above at point 8.1, 8.2 and 8.3, the amount of Rs.29,50,000/- is being added in the income of assessee for the A.Y. 2012-13 U/s 68 of the I.T. Act, 1961. Initiate penalty proceedings separately U/s 271(1)(c) for furnishing inaccurate particulars.

(Addition: 29,50,000/-)

9. The assessess's reply regarding query no. 2 of the show cause dated 05.03.2015 was considered. But the contention of the assessee is not acceptable for following reasons:-

i. As per section 37 of the I.T. Act, 1961, the assessee can claim expenses which are expended wholly and exclusively for the purpose of business or profession only. The assessee is in the business of banking which is governed by the rules and regulations of Reserve Bank of India. As long as the activities of the assessee are within the purview of the rules, laws, bylaws and regulations of the length, the activities of the assessee can be turned as business. It should be understood that the business of the assessee is banking i.e. accepting deposits and lending loans but as per the rules of RBI and other Government Authorities. Any expenditure which is made by violating the laws and guidelines can not be treated as genuine business expenditure and can not be allowed U/s 37 of the I.T. Act, 1961. The report of the RBI, which is on record, found out, at many places, discrepancies and violations in loan disbursement. At many other places, the assessee bank had been found out guilty of cooking the books. The para 5.6 of the report is being quoted below:-

*" 5.6 Divergence- The bank had not classified its assets properly. Total amount of divergence in loan accounts was at Rs.961.04 lakh and additional provision suggested by the I/O of BDDR was at Rs.569.51 lakh".*

From the above findings, it is obvious that the bank has diverted amount of Rs.15,30,55,000/- as loans, in violation of guidelines of Reserve Bank of India, turning them into non performing asset. The para 5.8 of the same RBI report mentions that non performing assets have increased to almost double of what they were in F.Y. 2009-10 and 2010-11 to F.Y. 2011-12. The heavy increase in the non performing assets clearly outline the facts that RBI guidelines, which are formed in line of financial conservatism, are being violated in disbursing loans which are turning into NPAs. One classic example of violation of RBI norms and divergence of funds can be found in Paragraph 5.2.1 of the report where the RBI auditors have found out that the assessee bank had camouflaged loans of Rs.42.38 lacs given to its staff as the priority sector lending.

10. Because of these diversion of funds, the capital of the bank has been eroding. Hence the expenditure claimed for activities termed as regular business activities are infact in violation

of the law of the land and in the ambit of illegality. This is a settled issue that expenses in violation of law cannot be claimed as expenditure. Hence, the cost of the diverted funds is not only expenses which are not wholly and exclusively for the purpose of business but are also diversion from known business purposes and made in violation of law and regulations.

11. The Bank has deposits of Rs.138,06,37,294.7/- during the year and direct and indirect expense on these deposits is Rs.19,60,08,132/-. If we take this proportion, the cost of diverted fund of Rs.15,30,55,000/- comes to Rs.2,17,95,628.5/-. As per reasons mentioned above, the expenses of Rs.2,17,95,629/- are being disallowed and added in the income of the assessee. Initiate penalty proceedings separately U/s 271(1)(c) for furnishing inaccurate particulars. "

**(C.1)** The assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 31.03.2017, the Ld. CIT(A) dismissed the assessee's appeal. The relevant portion of the order of the Ld. CIT(A) is reproduced as under:

"3. *Aggrieved by the order of the Assessing Officer (hereinafter 'AO') the appellant has filed this appeal taking the following grounds of appeal:-*

**3.1 Grounds of appeal:**

**1. That the learned Dy. Commissioner of income Tax, Circle - I, Ghaziabad has erred in law and on facts in making the addition of Rs. 1,15,00,000/- u/s 68 of Income Tax Act, 1961 for addition in Share Capital only by making the reference of RBI Inspection report, despite and ignoring the facts that the assessee submitted all the evidence to prove their credit worthiness. After providing the all the related documents the Ld' Assessing Officer didn't raise any query for the same. It is also worthwhile to mention here that the RBI Inspector had any role to justify the credit worthiness of the Shareholder. The have to give the report on financial discipline of the Bank according to rules and regulation of the RBI.**

**2. That the learned Dy. Commissioner of income Tax, Circle - I, Ghazjabad has erred in law and on facts in making the addition of Rs. 29,50,000/- u/s 68 of Income Tax Act, 1961 for addition in Share Capital made by three companies despite and ignoring the facts that the assessee submitted all the evidence to prove their credit worthiness.**

**After providing the all the related documents the Ld' Assessing Officer didn't raise any quarry for the same.**

**3. That the learned Dy. Commissioner of income Tax, Circle - I, Ghazaabad has erred in law and on facts in making the addition of Rs. 2,17,95,629/- for disallowing the expenditure u/s 37 by making the reference of RBI Inspection report, despite: and ignoring the facts that the assessee maintained its books of account properly and get audited even the Ld. Assessing Officer didn't rejected the books of account.**

**It is also worthwhile to mention here that the Ld. Assessing officer misunderstand the remarks of RBI inspector for non declaring the loans of Rs. 9.61 Crs as NPA and non making the provision of Rs. 5.69 Crs. On the same as diversion of the fund. Even the Ld. Assessing Officer ignore their comments about declaring more profit by such provisions of Rs. 5.69. Crs.**

**The Ld' Assessing Officer has erred by taking toe above base for disallowing the expenditure without making any deficiencies to the Books of Account.**

**4. Any Additional ground may be submitted with your kind permission if any.**

**5. That kindly stay the demand during the pendency of the appeal.**

**It is 'therefore., prayed, that the above addition may kindly be deleted and the appeal of the & appellant assessee may be allowed.**

4. Appellant had earlier vide letter dt. 17.02.2015 requested for early fixation of the case. However, this appeal was fixed for hearing on number of times, the details of which are given below, but no compliance was made to any of the notices issued. All these notices were sent to the appellant through Speed Post on the address given in the appeal petition i.e. Form No. 35:

SI. No.	Date of notice	Date fixed for hearing	Remark
1.	06.04.2016	25.04.2016	None Attended
2.	27.04.2016	05.05.2016	An application filed for adjournment on the ground that counsel is out of station and the case fixed for hearing on 18.05.2016
3.		18.05.2016	An application filed for adjournment for time to file written submission and the case fixed for hearing on 09.06.2016
4	17.03.2017	28.03.2017	An application filed for adjournment counsel out of station adjourned to 30.03.2017
5		30.03.2017	not attended

5. *From the above it is clear that despite several opportunities none appeared on behalf of the appellant for hearing only applications for adjournment have been filed before the undersigned. Hence the appeal filed by the appellant is liable to be dismissed for non-prosecution. In my above view, I find support from the following decision:-*

(i) *In the case of **CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 & 478)** wherein their Lordships have held that **"the appeal does not mean merely filing of appeal but effectively pursuing it"***

(ii) *In the case of Estate of **Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP)** while dismissing the reference made at the instance of assessee in default made following observations in their order. "if the party at whose instance the reference is made fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference.*

(iii) *In the case of **CIT Vs. Multiplan India Pvt. Ltd. 38ITD 320 (Del)**. The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant, nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date. The Hon'ble Tribunal laid down the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.*

6. *Therefore, keeping in view of the above, the appeal filed by the appellant is liable to be dismissed for non-prosecution. No statement of facts has been submitted by appellant alongwith Form 35. Thus all facts given in the assessment order are treated as true and correct facts in the case of dispute.*

7. *On merits, perusal of facts reveal that appellant is a cooperative bar and AO after obtaining statutory inspection of appellant from RBI examinee the share capital introduced in the appellant bank amounting to Rs. **1,15,00,000/-** and after detailed enquiry and having confronted appellant made an addition as appellant failed to discharge requisite onus **u/s 68** of the IT Act. Similarly an addition of Rs. **2,95,00,000/-** was made on account to failure to substantiate genuineness, identity and creditworthiness of eight investors of share capital. Appellant failed to discharge the primary onus **u/s 68**. An addition of Rs. **2,1795,629/-** was made by AO after considering the statutory report of RBI. In view of above facts since appellant failed to substantiate maintainability of appellant's claim regarding addition to share capital and incurrence of business, expenses **u/s 37** at assessment stage as well as during appellate stage. Thus, the additions made by AO are upheld and accordingly appellant's grounds of appeal are **dismissed.**"*

**(D)** This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 31.03.2017 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Ms. Rakhi Vimal, the learned Senior Departmental Representative (in short 'Ld. Sr. DR'). However, as mentioned earlier, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. Sr. DR. The Ld. Sr. DR relied upon the order of the Assessing Officer and the aforesaid impugned order dated 31.03.2017 of the Ld. CIT(A). After perusal of the order of the AO and the aforesaid impugned order dated 31.03.2017 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned appellate order of the Ld. CIT(A) has already been reproduced in foregoing paragraph **(C.1)** of this order. We find that the Ld. CIT(A) has given detailed reasons for his decision on merits in the aforesaid impugned appellate order dated 31.03.2017 of Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 31.03.2017 of Ld. CIT(A); and dismiss this appeal.

**(E)** Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for

restoration of the appeal in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

**(F)** In the result, appeal filed by Assessee is dismissed.

Order pronounced in the Open Court on 04/12/2019.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 04/12/2019  
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	