

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.3297/DEL/2016
Assessment Year 2007-08

Harsha Associates P. Ltd., 117, Har Govind Enclave, New Delhi.	v.	DCIT, Circle-12(1), New Delhi.
TAN/PAN: AAACH0568D		
(Appellant)		(Respondent)

I.T.A. No.3536/DEL/2016
Assessment Year 2007-08

DCIT, Circle-11(1), New Delhi.	v.	Harsha Associates P. Ltd., 117, Har Govind Enclave, New Delhi.
TAN/PAN: AAACH0568D		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjiv Sapra, CA		
Respondent by:	Shri Mithun Shete, Sr.D.R.		
Date of hearing:	05	04	2022
Date of pronouncement:	21	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned cross appeals have been filed by the assessee as well as Revenue against the order of the Commissioner of Income Tax (Appeals)-XVI, New Delhi ['CIT(A)' in short], dated 18.03.2016 arising from the assessment order dated 31.12.2009 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2008-09.

2. Briefly stated, the assessee is engaged in the business activity as real estate developers and dealing therein. The assessee filed return of income for Assessment Year 2007-08 in question which was subjected to scrutiny assessment under Section 143(3) of the Act. In the course of assessment proceedings, the Assessing Officer *inter alia* found that the outstanding liabilities towards various banks, i.e., Bank of Baroda, Indian Overseas Bank and Punjab National Bank are overstated to the extent of Rs.4,44,12,989/-. The Assessing Officer accordingly added the said amount to the total income of the assessee holding the same to be bogus liability shown by the assessee to reduce the taxable profits of the company. The Assessing Officer further observed that the assessee has shown an amount of Rs.13,46,880/- as receipts under dispute appearing under the head “other liabilities”. The Assessing Officer alleged that such liability has ceased to exist and consequently added the aforesaid sum to the total income. The Assessing Officer next observed that assessee has received an amount of Rs.1.40 crore from one Shri Ashok Verma. In the absence of any confirmation from the aforesaid lender, the Assessing Officer treated the amount receipt as unexplained income introduced in the shape of cash credits. The Assessing Officer also made some other additions (with which we are not presently concerned) and assessed the income of Rs.7,11,80,313/- against the returned income of Rs.28,71,047/-.

3. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) granted certain reliefs and confirmed some of the actions of the Assessing Officer as agitated in respective appeals reproduced in succeeding paragraph.

4. Aggrieved by the order of the CIT(A), both assessee as well as Revenue are in Cross Appeals before the Tribunal. The grounds of

appeal raised by the assessee read as under:

“1. The Ld. CIT (A) has erred both in law and on the facts of the case confirming the order of the AO.

2. The Ld. CIT(A) has erred both in law and on facts of the case upholding the addition of Rs.1,40,00,000/- made by the AO u/s. 68 of the Income Tax Act, 1961 ignoring the business interest involved in the transaction explained before AO as well as before CIT(A), ignoring the non-resident investment originated from foreign inward remittance, outside the tax jurisdiction, as explained to AO as well CIT(A), ignoring the claim of depositor in High Court plaint explained to CIT(A) indicating that company wanted to discharge the liability genuinely and in and in this connection a Demand Draft of Rs.50,00,000/- was issued as explained during the Assessment proceeding also. Hence, there has been a genuineness in this business transaction which has been ignored altogether and the Assessing Officer including CIT(A) without application of mind insisted the confirmation of statement of Account, ignoring the judicial process in progress to liquidate the outstanding and drawing adverse inferences on a transaction where the judicial monitoring of Court is in progress.

3. The Ld. CIT(A) has erred both in law and on facts of the case upholding the additions made by the AO amounting to Rs.4,89,744/-towards Advances from costumers received in regular course merely on the basis of no response to summon U/s 131 without considering the arrangements for realty transaction. These transactions are made with costumer for allotment of space in a shopping mall finally allotted and credit given for advance received.”

4.1 Grounds of appeal raised by the Revenue is also reproduced

hereunder:

1. *Whether on the facts & the Circumstances of the case, Ld. CIT(A) was correct in deleting the addition of Rs. 4,44,12,989/- on account of other liability?*

2. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the addition of Rs.2,46,880/- on account of cessation of liability ignoring the fact the assessee has not filed any confirmation in respect of these liability either before the AO or CIT(A)?*

(3) *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the addition of Rs. 12,92,241/ - on account of advance received from Sh. Jagdish Kumar & Sh. Avanish Kumar ignoring the fact that the identity, genuineness & creditworthiness of these two customer were proved either before the AO or the CIT(A).”*

5. When the matter was called for hearing, the ld. counsel for the assessee adverted to the grounds of appeal of the assessee and pointed out that first issue concerns addition of Rs.1.40 crore made by the Assessing Officer under Section 68 of the Act and confirmed by the CIT(A). In the matter, the ld. counsel pointed out that the assessee has entered into the collaboration agreement with the lender, Shri Ashok Verma and his brother, Shri Rakesh Verma for construction of Multiplex Cinema, Karnal, Haryan. However, the project could not be completed and the finances received by the assessee were returned to the lenders in terms of compromise agreement dated 25.11.2011 entered into between the assessee and the lender and submitted before the Hon'ble Delhi High Court for final settlement. It was further submitted that prior to such act of compromise, the lender had filed complaint dated 05.05.2010 against

the assessee before the Registrar of Companies which implies a deemed confirmation of finances of the lender involved. It was thus contended that under the circumstances, where the money received is vouched by complaints for its non-return coupled with a compromise in the subsequent year, the *bona fides* of the finance received cannot be questioned. It was submitted that the documentary evidences filed by way of paper book clearly demonstrates the act of advancing Rs.1.40 crore by the lenders to the assessee in the financial year relevant to Assessment Year 2007-08 in question and further amounts in the subsequent assessment year as per the collaboration agreement. It was contended that these sequence of events and documentation clearly proves that the onus placed upon the assessee under Section 68 stands duly discharged in the light of the judicial pronouncements; *CIT vs. Orissa Corporation P. Ltd.*, 159 ITR 78 (SC); *CIT vs. Mod Creations Pvt. Ltd.*, 354 ITR 282 (Delhi H.C.); *CIT vs. Nemi Chand Kothari*, 264 ITR 254 (Gauhati H.C.); *DCIT vs. Rohini Builders*, 256 ITR 360 (Guj. HC); *CIT vs. Real Time Marketing (P) Ltd.*, 221 CTR 716 (Delhi HC); *CIT vs. Dwarkadhish Investment Pvt. Ltd.*, 330 ITR 298 (Delhi HC). It was thus submitted in conclusion that the CIT(A) misdirected himself in law and on facts in confirming the action of the Assessing Officer towards such untenable additions opposed to the facts on record.

6. Adverting to the second issue, ld. counsel for the assessee submitted that the Assessing Officer made an addition of Rs.32,80,669/- towards alleged unexplained advance received from customer. It was submitted that the amount was received from various customers pending execution of agreement for sale of flat. The CIT(A) sustained the addition to the extent of Rs.4,89,744/- out of the aforesaid amount which is not justified in the facts and the circumstances of the assessee. The ld. Counsel pointed out that the

Revenue has also challenged the action of the CIT(A) for an amount of Rs.12,92,241/- out of the remaining relief granted by the CIT(A). In the mater, the Id. counsel submitted that the sale agreement was ultimately executed with all the customers in question. The copy of flat booking agreement etc. were adverted and it was pointed out that the advance received against the sale of flat was in the ordinary course of real estate business and is backed by clinching documents in corroboration. It was thus submitted that the CIT(A) was not justified in denying the relief to the extent of Rs.4,89,744/- to the assessee. By the same token, it was claimed that the appeal of the Revenue challenging the relief to the extent of Rs.12,92,241/- is without any sound basis. It was thus submitted that Ground no.3 of the Revenue appeal is integrally connected to corresponding Ground no.3 of the appeal of the assessee.

7. As regards Ground no.1 of the Revenue's appeal, the Id. counsel for the assessee submitted that the Assessing Officer had made such addition on account of 'other liabilities' payable to banks as shown in the financial statement of the assessee on the ground that such liability was not confirmed from the respective banks. In this regard, the Id. counsel submitted that the CIT(A) rightly appreciated the fact that it was not a case of bank overdraft where the bank could reflect such liability of the assessee in its books and confirm it. It was only a case of book overdraft as per the assessee's books where payment cheques were issued by the assessee to its various creditors, i.e., vendors/suppliers towards the end of the financial year although there was not enough bank balance in such banks. As explained before the CIT(A), such payment cheques were issued to various creditors against the payments outstanding in anticipation of ensuing recoveries. The cheques issued were cleared on the subsequent dates as reflected in the bank reconciliation

statement. The creditors were thus reduced on account of issuance of cheques by way of journal entry and liabilities by way of book overdraft were created. The Ld. counsel pointed out that such practices are common and in vogue in the business world. It was contended that the cheques are issued were either ultimately realized in the subsequent year or such entries stood reversed owing to non realization or remaining unsettled for any reason. The Ld. counsel thus submitted that the action of the CIT(A) in granting relief on this count is in consonance with rudimentary principles of accounting and business practices. No loss of Revenue has caused due to such journal entries which has the effect of reduction of creditors for corresponding increase in 'other liabilities'.

8. Adverting to Ground No.2 of the appeal of the Revenue, ld. counsel submitted that the Revenue has assailed the action of the CIT(A) towards deletion of addition of Rs.2,46,880/- on account of cessation of liability. It was submitted that CIT(A) was right in holding that Section 41(1) cannot be applied since such liability was in dispute before the Civil Court Karnal for part performance of contract. The assessee claimed right to forfeit which is under dispute for which documentary evidences are placed by way of paper book before the CIT(A) as well as Tribunal. The Ld. Counsel thus submitted that grievance raised by way of Ground No.2 in the revenue appeal is also not justified.

9. Ld. DR for the Revenue relied upon the order of the CIT(A) insofar as appeal of the assessee is concerned. However, in order to challenge reliefs granted by the CIT(A). The Ld. DR for the Revenue relied upon the process of reasoning adopted by the Assessing Officer.

10. We have carefully considered the rival submissions and

perused the assessment order as well as first appellate order. The matter referred to and relied upon has also been looked into in terms of Rule 18 of the Income Tax (Appellate Tribunal) Rules. We now proceed to examine various issues raised herein.

11. Ground No.1 of the appeal of the assessee is general in nature.

12. Ground No.2 concerns addition of Rs.1.40 crore received from Shri Ashok Kumar Verma under Section 68 of the Act. It is the case of the assessee that the amount was received in pursuance of collaboration agreement dated 21.08.2008 to pursue certain business interest in the form of 35% share in 'Harsha K3C Mall Cinema Karnal'. An amount of Rs.1.25 lakhs were claimed to have been received directly from Shri Ashok Verma and Rs.15 lacs were received from his brother Shri Rakesh Kumar on behalf of Shri Ashok Verma. The amounts were stated to have been received by way of foreign inward remittance from the lender who claims to be British Nationals and persons of Indian origin. The financing transactions culminated in complaint dated 05.05.2010 against the assessee by the lender before ROC (placed at page no.61-64 of the paper book). Copy of confirmatory letter from ICICI Bank along with copy of cheques issued by Shri Ashok Verma from his NRI account were placed for payments made by the financiers to the assessee. Copy of compromise agreement dated 15.11.2011 entered into by the assessee with the lender for settlement of outstanding due as submitted before the Hon'ble Delhi High Court was referred to establish the genuineness of the impugned amount.

12.1 In the light of the cogent documentary evidences, the *bona fides* of the loan/deposits transaction in question with Shri Ashok Kumar Verma, in our view, is beyond any iota of doubt. The CIT(A) has grossly ignored these self explanatory documents to come to a

conclusion adverse to the assessee. The action of the CIT(A) cannot be justified in view of formidable documentary evidences noted above. The confirmation of money lent is self evident from compromise carried out. The action of the CIT(A) is thus set aside and the Assessing Officer is directed to cancel the additions so made under Section 68 of the Act.

12.3 Ground No.2 of the appeal of the assessee is allowed.

13. Ground No.3 of the appeal of the assessee concerns addition of Rs.4,89,744/- as sustained by the CIT(A) towards unexplained advance from customer. Similarly, the Revenue has parallely challenged the deletion of addition to the extent of Rs.12,92,241/- on account of similar advances. Originally, aggregate addition of Rs.32,80,669/- were made by the Assessing Officer towards receipt of advances from various customers/ flat buyers alleging such advances to have remained unexplained. As alleged by Assessing Officer, notice under Section 131 of the Act were issued to certain customers/buyers of the flat which either returned unserved or reply was not received by the Assessing Officer resulting in additions towards unexplained advance received by the assessee.

13.1 The CIT(A) in first appeal sustained the addition to the extent of Rs.4,89,744/- and deleted the rest. In its cross appeal, the Revenue has also challenged the part deletion to the extent of Rs.12,92,241/- out of advances receipts from various customers. The tabulated party-wise position is reproduced hereunder:

S.No	Name of buyer	Amount of addition made by AO (Rs.)	Amount of addition deleted by CIT(A) (Rs.)	Amount of addition sustained by CIT(A) (Rs.)	Assessee's appeal before ITAT	Revenue's appeal before ITAT
(i)	Jagdish Kumar	15,74,983	15,74,983	—	-	5,51,243

(ii)	<i>Shahid</i>	7,86,783	7,05,039	81,744	81,744	-
(iii)	<i>Ashutosh Awashti</i>	1,20,000	—	1,20,000	1,20,000	—
(iv)	<i>Sandeep Chaudhry</i>	7,86,903	7,86,903	—	—	—
(v)	<i>Avanish Kumar</i>	7,41,000	7,41,000	—	—	7,41,000
(vi)	<i>Santosh Kr. Chugh</i>	2,00,000	2,00,000	—	—	-
(vii)	<i>Mohan Lal</i>	4,00,000	2,00,000	2,00,000	2,00,000	—
(viii)	<i>Rajiv</i>	88,000	—	—	88,000	—
	Total	32,80,669		4,89,744	4,89,744	12,92,2414

13.2 The assessee has submitted party-wise explanation towards advances received from different customers, which is noted herein for appreciation of facts in proper perspective;

(a) addition of Rs.81,744/- sustained by the CIT(A) was on account of receipt from a customer named Mr. Shahid. In this regard, it was submitted that total amount of Rs.7,86,783/- was received from Mr. Shahid out of which Rs.7,05,839/- was received in the earlier year and remaining Rs.81,744/- in question relates to current financial year. Flat booking agreement dated 10.03.2006 evidences the source being money received against flat booking to the assessee. The CIT(A) has wrongly proceeded on the factually incorrect premise that the amount has not been contested which has been controverted by the assessee. In these facts, where the payment received in earlier year has been accepted, the advance of Rs.81,744/- received during the year cannot be blemished. The addition of Rs.81,744/- thus appears to be wholly untenable.

(b) an amount of Rs.1.20 lakhs is stated to have been received from customer Mr. Ashutosh Awasthi which is supported by flat booking agreement dated 05.04.2006. In the wake of these facts, additions sustained for the aforesaid sum of Rs.1.20 lakhs by the CIT(A) is not justified.

(c) another sum of Rs.2 lakhs was received from one Mr. Mohan Lal. In this regard, it is claimed that aforesaid amount has been

received against flat booking agreement dated 03.09.2006 in Harsha City Mall. In the light of such evidence, the action of the CIT(A) is reversed.

(d) an amount of Rs.88,000/- is claimed to have been received from customer Mr. Rajeev Kumar. Flat booking agreement dated 09.10.2006 supports the receipt of advance against booking of flat in Harsha City Mall. In the circumstances, the aforesaid amount cannot be treated as unexplained.

13.3 In view of the factual position noted above, the action of the CIT(A) for sustaining the addition to the extent of Rs.4,89,744/- in respect of above noted customers is wholly unjustified and liable to be reversed.

13.4 Ground No.3 of the assessee's appeal is allowed.

14. The Revenue has also challenged the reversal of addition on account of flat customers Mr. Jagdish Kumar Rs.5,51,243/- and Mr. Avinash Kumar Rs.7,41,000/- aggregating to Rs.12,92,241/- as per Ground No.3 of its appeal.

14.1 The CIT(A) has deleted the addition in respect of these two parties for the reasons noted below.

“Finding :- I have considered the assessment order as well as the submission of the Ld AR. The Ld AR submitted that during the year under consideration of Rs.5,51,241/- was received from Sh Jagdish. The Ld AR has filed the copy of agreement between Jagdish Kumar and the appellant, the application form filled by Jagdish Kumar, the copy of PAN card of Sh Jagdish Kumar and also the ledger account in appellant's company. Out of Rs. 15,74,983/-, Rs. 10,23,740/- was opening balance that Rs.5,51,241/- has been received during the previous year under

consideration. However considering the evidence filed before me I am of the opinion that the identity, the creditworthiness of lender and genuineness of the transaction has been proved therefore no addition is called for.

xxxxxxxxxx

An amount of Rs.7,41,000/- has been received from Sh Avinash Kumar for Shop No.174 at Harsha city Mall at Indrapuram. The Ld. AR has also submitted the copy of agreement between Sh Avinash Kumar and M/s Harsha Associated Ltd. the ledger account of Sh Avinash Kumar in the books of appellant company is also furnished and it is seen that all the payment have been received by cheque. Considering all the evidences the addition on a/c advance received from Sh Avinash Kumar is deleted.”

14.2 In the light of the agreement with the above noted parties for proposed purchase of flat, the consideration for receipt of business advance stands proved. The action of the CIT(A) thus cannot be faulted.

14.3 Ground No.3 of the Revenue's appeal is thus dismissed.

15. We now advert to Ground No.1 of the appeal of the Revenue which concerns reversal of addition of Rs.4,44,12,989/- on account of 'other liabilities'. The assessee has declared certain liabilities in respect of various banks, viz. (i) Bank of Baroda Rs.67,43,549/-; (ii) Indian Overseas Bank Rs.4,90,071/-; (iii) Punjab National Bank Rs.3,71,79,369/-. It is the case of the assessee that although the liability was reflected in the name of above mentioned banks at the end of the year, such liabilities were shown outstanding merely on account of book overdrafts, i.e., on account of issuance of cheque from these banks to various creditors against payment due in anticipation of future anticipated recoveries, the details of which

were given to the Assessing Officer.

15.1 The assessee thus contends that the liability shown against the banks are not actual or real liabilities but on account of journal entry passed by increasing the book overdraft and reducing the corresponding creditors liability. The Assessee thus contends that the Assessing Officer has made additions in respect of above liability on the ground that respective banks have not confirmed the above stated liabilities owing to wrong appreciation of these facts. The assessee contends that the liabilities being book overdraft and not the real liability, could not have been confirmed by the bank.

15.2 The CIT(A) in the first appeal while granting the relief has discussed the issue as under:

Finding:- During the appellate proceedings the Ld AR stated that these liabilities are on a/c of bank overdraft on a/c of issuance of cheques to various parties for purchase of construction material, against anticipated recoveries in the Escrow Account from buyers of properties. The AR stated that the Assessing Officer did not provide him the adequate opportunity, as the query pertaining to the issue was raised just one week before the passing of the order. The Ld AR submitted the bank reconciliation statements in the paper book pages 17 to 19. These being the additional evidence were sent to the Assessing Officer for his comments on admissibility as well as merit vide letter No.DEL/CIT(A)-XXVII/R-R/A-P No.445/2012-13/42 dated May, 2012 the copy of which was delivered to the office of Addl.CIT, Range-12, New Delhi on 21/05/2012, apart from Assessing Officer, ACIT, Circle 12(1). The AO was asked to submit his report, the contents of the letter sent to AO are reproduced below:-

“Return declaring an income of Rs. 28,71,047/- was filed. In the assessment order, the income of the appellant was determined at

Rs.7,11,80,313/- by making various additions. With regard to the additions made, the appellant has filed certain evidences which were not tiled at the time of assessment as under:-

i. With regard to the addition of Rs. 4,44,12,989/-, it has been submitted that these liabilities were on account of book overdrafts on account of cheques issued to various parties. Confirmations from such parties have been filed.

ii. With regard to the addition of Rs. 13,46,880/-, it has been submitted that no details were asked for by the A.O. in respect of this liability. A copy of agreement with M/s Tech soft Global Ltd and copy of the judgment of Civil Court, Karnal has been filed in support of the appellant's contention.

iii. With regard to the addition of Rs. 1.40 Crores, a copy of agreement with Sh. Ashok Kumar and copy of account with Sh. Ashok Kumar and his brother Sh. Rakesh Kumar for having invested Rs. 1.25 Crores and Rs. 15.00 Lacs respectively has been filed. Also Sh. Ashok Kumar Verma on 2.5.2012 filed a letter at the Receipt Counter, copy of which have been filed before the DCIT, Circle-12(1) in which he has filed confirmation for having invested various amount with the appellant.

iv. Submissions and documentary evidence has been filed with regard to the balance additions.

A copy of the appellant's submissions along with the documentary evidence filed by him is enclosed herewith for your comments and you are requested to furnish your comments on the same within 15 days of the receipt of this letter.

A copy of the appellant's submissions alongwith the documentary evidence filed by him is enclosed herewith for your comments

and you are requested to furnish your comments on the same within 15 days of the receipt of this letter."

Thereafter many letters were sent to the Assessing Officer asking him to submit his report. However until the passing of this order no report has been submitted by the Assessing Officer, I am therefore admitting the additional evidence and deciding accordingly.

As far as the addition on a/c of other liabilities is concerned the Ld AR has furnished the confirmation of Indian Overseas Bank. With respect to Punjab National Bank it is submitted by the Ld AR vide letter dated 16/03/2016 that these are liabilities of Escrow Account of Punjab National Bank. It is submitted that due to recession in market, investor has not given money to the company that is why project could not be completed and held up and company has returned material to the respective supplier and settled the account by returning the material to them and received the cheques back. Copy of respective accounts are enclosed. It was further submitted by the AR that even if the account is not settled with the parties with respect to PNB Escrow account the same would still remain the liability of the appellant company towards bank for the AY 2007-08. Whether the account is settled or not, is not going to change of nature of transaction. The contention of the Ld. AR is accepted as the appellant company has made payment which are reversed in the subsequent year. The same cannot be treated as income of any year.

With respect to Bank of Baroda the AR stated that the bank was not cooperating and since the liability is genuine it may be confirmed directly from the bank. It was also stated by the Ld AR that in respect of Bank of Baroda the cheques have been issued to various parties in the month of March, the earliest payment made on 7th March, 2007 and the latest being on 30/03/2007. Considering all the facts and circumstances of the case and the material brought before

me and considering the fact that the liability has arisen on a/c of book/overdraft provided by the bank and also considering the fact that the whole transactions have left its footprints in the banking channel which cannot be manipulated. I am therefore, of the view that addition of Rs.4,71,52,013/- on a/c of other liabilities are not warranted and the same is deleted.”

15.3 The Revenue has challenged the action of CIT(A) in reversal of addition made by the Assessing Officer on the basis of unverified additional evidences placed before the CIT(A). We have examined the issue. As per the statement of facts before the CIT(A), it is the case of the assessee that addition in this regard was made by the Assessing Officer without giving sufficient opportunity. The confirmation from corresponding creditors were not demanded by the Assessing Officer. The CIT(A) in the first appeal asked for remand report on the issue but admitted the additional evidences on the ground that the Assessing Officer has failed to respond to such inquiry by way of remand proceedings on the issue. The CIT(A) eventually decided the issue in favour of the assessee based on submissions made on behalf of the assessee.

16. On inquiry from the Bench, the assessee filed certain reconciliation statement for the aforesaid banks showing actual discharge of the liabilities. On page no.34 of the paper book, reconciliation statement of ‘Indian Overseas Bank’ shows that the outstanding liability of Rs.6,76,707/- towards various creditors has been discharged between 03.04.2007 to 19.04.2007. In the light of payment shown to have been made, the explanation of the assessee in respect of outstanding towards Indian Overseas Bank is thus considered satisfactory.

16.1 The action of the CIT(A) in reversal of the addition of

Rs.4,90,071/- linked to Indian Overseas Bank is thus endorsed.

16.2 On perusal of the reconciliation statement of 'Bank of Baroda' amounting to Rs.67,43,549/- placed at page no.39 of the paper book, it is noticed that it is not shown as to how the liability has been discharged by payment or reversal of entry in creditors account. No confirmation of creditors is placed either. The date of actual payment through banking channel is not reflected. Similar is the case in respect of liabilities linked to Punjab National Bank amounting to Rs.3,71,79,369/-. The reconciliation statement does not show the date of discharge of liability in any manner. It was cursorily claimed that the material received were returned to the creditors in discharge of liabilities. However, no evidence is available on record to justify the narratives so made.

16.3 In these factual backdrop, the CIT(A), in our view, has not examined the issue in right perspective. The CIT(A) has failed to determine the *bona fides* of the liabilities and has hurriedly relied upon the narrative canvassed on behalf of the assessee and that too, without waiting for any verification report of the Assessing Officer. The bank reconciliation statement claimed to have been referred by the CIT(A) does not prove stand of the assessee towards discharge of liabilities or bona fide of outstanding liability in any manner. We are thus unable to see any justification in the reasoning of the CIT(A) which is contrary to the factual position on record. It is the admitted position that no documents were filed before the Assessing Officer. The documents filed before the CIT(A) neither supports the claim of assessee nor unverified by the Assessing Officer. The CIT(A) himself has opted to make no independent inquiry and has mechanically accepted the explanation offered by the assessee which does not appear to be backed by any sound basis. Therefore, the

action of the CIT(A) for reversal of addition in relation to Bank of Baroda Rs.67,43,549/- and Punjab National Bank of Rs.3,71,79,369/- is bereft of any sound factual basis. The Assessee has failed to discharge the onus which lay upon it to offer satisfactory explanation on inflated Bank liability. Hence, the action of the Assessing Officer is restored to the extent of Rs.4,39,22,918/- and the action of CIT(A) is set aside.

16.4 Ground No.1 of the Revenue's appeal is thus allowed in part.

17. Ground No.2 of the Revenue's appeal concerns addition of Rs.2,46,880/- on the cessation of liability. The outstanding liability, however, is claimed to be disputed by the assessee and pending before the Court. As emerges from record, the assessee entered into agreement with Techsoft Global Pvt. Ltd. and received some amount against it. A civil suit was filed by M/s. Techsoft Global Pvt. Ltd. for recovery of advance paid as token money. The CIT(A) has dealt with the issue as under:

“Findings:- The Ld AR submitted that the appellant was given an advance, as token money of Rs.11 lacs for purchase of entire 2nd and 3rd floor alongwith roof right in M/s Harsha Mall, for a consideration of Rs.4,75,00,000/- by Sh Harish Arora, Chairman and Managing Director of M/s Techsoft Global Pvt Ltd , 147, Gautam Nagar, New Delhi, on 18/09/2005 by cheque, which was encashed by the appellant on 20/09/2005. The rest of the payment was to be made in the following manner:-

i) 20% of the total sale consideration on signing of agreement.

ii) 20% after one month of signing of agreement

iii) 30% at the time of possession in the month of December, 2005

iv) 30% at the time of opening of cinema i.e. in April, 2006.

Afterwards some dispute arose between the appellant and M/s Techsoft Global Pvt Ltd. It is stated that M/s Techsoft Global Pvt Ltd filed a civil suit, against the appellant to perform its part of the contract i.e. handing over the possession of the property, as per the contract. It is contended by the Ld AR, that M/s Techsoft Global Pvt Ltd failed to perform its part of the contract and did not pay the money to the appellant, as per the terms and conditions provided in the contract. However, since the dispute was pending in a court of law the payment of Rs.11 lacs, received from M/s Techsoft Global Pvt Ltd was being reflected as liability in the balance sheet of the appellant.

In the last, it was contended by the Ld AR that the civil suit filed by M/s Techsoft Global Pvt Ltd for recovery of the advance of Rs. 11 lacs, as token money, given to the appellant was decided in favour of the appellant by the court decree dated 16/08/2011. The appellant earned right to forfeit the amount. So the liability ceased to exist in the financial year 2011-12 and the same is assessable as income in the AY 2012-13. This implies, that the liability was very much in existence in the AY 2007-08 which is before me, therefore same cannot be assessed in this year. Consequently the addition of Rs. 13,46,880/- on a/c of cessation of liabilities u/s 41(1) is deleted.

18. In the course of hearing, the Id. counsel for the assessee contends that against the reversal of addition of Rs.13,46,880/-, the Revenue has challenged the addition of Rs.2,46,880/- only and accepted the rest of the deletion. The Revenue could not provide any justification on nature of dispute to the extent of Rs.2,46,880/- and how this figure has been determined by the Revenue. In the absence

of any explanation from the Revenue and on examination of the findings recorded by the CIT(A), we do not see any reason to interfere with the order of the CIT(A). Ground No.2 of the appeal of the Revenue is dismissed.

19. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on 21/06/2022.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

DATED: **21/06/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER