

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 2997/Mum/2022 (A.Y. 2015-16)**

**M/s. Holiac Realty Pvt. Ltd.**

C/o G.P. Mehta & Co. CAS,  
807, Tulsiani Chambers,  
Nariman Point, Mumbai-400021.

**PAN: AAACN1591J**

..... Appellant

Vs.

ACIT, Circle-7(3)(1),  
6<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

..... Respondent

Appellant by	:	Sh. G.P. Mehta
Respondent by	:	Sh. Tejinder Pal Singh Anand, Sr. DR
Date of hearing	:	10/01/2023
Date of pronouncement	:	20/03/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-13, Mumbai (for short 'CIT(A)') dated 28.09.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:

*"1. The orders passed by the learned lower authorities are bad in law and bad in facts.*

*2. The learned commissioner of Income Tax (Appeals) have grossly erred in passing ex-parte order without giving an adequate & reasonable opportunity of being heard.*

*3. The learned CIT(A) has grossly erred in holding that appellant did not comply with the notices issued & he has further erred in passing the appellate order ex-parte.*

*4. The learned lower authorities have grossly erred in making an addition of Rs. 97,40,000/- by recourse to section 68 of the I.T. Act. 1961. Reasons assigned for impugned addition are wrong & contrary to the evidence on record. (Rs. 31,52,280/-).*

*5. The learned lower authorities have grossly erred in making an addition of Rs. 97,40,000/- even though the appellant adequately explained the nature of credit and source thereof.*

*6. The learned lower authorities have grossly erred in making addition/upholding it, by recourse to sec. 14A of the I.T. Act, 1961 at Rs. 66,682/- even though appellant had sufficient amount of own capital & interest free funds.*

*7. Having regard to the facts of the case, provisions of law & judicial propositions, impugned additions are wholly untenable in law.*

*8. The appellant may please be permitted to raise any additional or alternative ground on or before the hearing of appeal.”*

2. Brief facts of the case are that the assessee company filed its return of income on 30-09-2015 and declared Nil income after setting off of brought forward loss of Rs. 14,00,116/- under the normal provisions of Income Tax and book profit u/s. 115JB at Rs. 7,29,381/-. Assessee is engaged in real estate business specialising in construction and development of Info Tech Parks, Cyber Parks, Business Parks, SEZ as well as sale of lease of commercial, industrial and residential properties and other similar works.

3. During the year under consideration assessee has shown income from revenue from operations at Rs. 1,09,38,220/-, other income at Rs. 16,92,340/- and declared net profit at Rs. 26,94,513/-. Case of the assessee was selected for scrutiny and addition u/s. 68 was made to the tune of Rs. 97,40,000/- and disallowance u/s. 14A was also made to the tune of Rs. 66,682/-. Aggrieved with this order of AO assessee preferred an appeal before the office of Ld. CIT (A), but in vain and First Appellate Authority also confirmed the order of AO.

4. Being further aggrieved, assessee preferred this appeal before us. We have gone through the order of AO, Order of Ld. CIT(A) and submissions of the assessee. During the year under consideration assessee claimed the amount as Share application money received pending allotment, but later on claimed the same as unsecured loans. Further, there is no facts clearly emanated about the opening and closing balance as claimed by the assessee and as hold by the revenue.

5. It is further observed that assessee was not able to file the relevant document before the AO as well as Ld. CIT(A), e.g., ITR, Bank Statement, Balance Sheet, P&L account, Computation of Income etc. Further, as per Para 5 of the order of Ld. CIT(A)s order, 3 opportunities were provided to the assessee to substantiate its appeal, but no response received.

6. In the whole appeal the basic question of opening balance as claimed by the assessee and as held by the authorities below never established in either of the order and even by the assessee. All the merits of the case need to be established subject to opening balance of the case, which has not emanated clearly. Assessee needs to substantiate the Three limbs of section 68 and

department need to establish year of actual receipt of the amount. In these circumstances and as observed (supra), Ld. CIT(A)s order was passed ex-parte. We deem it fit to restore the matter back to the file of AO with a direction to establish the actual year of receipt of amounts covered u/s. 68 and assessee is directed to cooperate with First Appellate Authority with all the relevant documents to be produced and explain the matter to the satisfaction of F.A.A, as the conduct of the assessee not found to be satisfactory up till before any of the authorities below and even before us, no evidence advanced by the assessee to strengthen its appeal. In these terms matter is restored to the file of Ld. CIT(A).

**6. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 20<sup>th</sup> day of March, 2023.

**Sd/-**  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

**Sd/-**  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 20/03/2023

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**