

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.390/Del/2019  
Assessment Year: 2012-13

<b>M/s. Home Developers Project Pvt. Ltd. D-22, Defence Colony, New Delhi- 110024 PAN No.AACCH5937N (APPELLANT)</b>	<b>Vs</b>	<b>DCIT Central Circle 14 New Delhi (RESPONDENT)</b>
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Appellant by	Sh. Salil Aggarwal, Sr Advocate Sh. Shailesh Gupta, CA Sh. Madhur Aggarwal, Advocate
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	19/07/2023
Date of Pronouncement:	26/07/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-26, New Delhi dated 05.10.2018 pertaining to A.Y. 2012-13.

2. The grievance of the assessee read as under :

**1. Ground No.1**

*The learned CIT (A) erred on facts and in law in confirming addition of Rs.3,00,00,000/- made by the learned Assessing Officer u/s 68 of Income Tax Act in violation of the established rule of evidence and the principle of natural justice and therefore said addition is liable to be deleted.*

*1.1 The learned CIT (A) erred on facts and in law in confirming addition of Rs.3,00,00,000/- (Rupees three crore only) made by the learned Assessing Officer u/s 68 of Income Tax Act without providing to the assessee a copy of purported statement given by 'another assessee' against the assessee before the Investigating Wing of the Income Tax Department during the course of survey on the said 'another assessee' and without giving any opportunity to the assessee to cross examine and confront the said 'another assessee/person' who had purportedly given statement against the assessee.*

*1.2 The learned CIT (A) erred on facts and in law in confirming addition of Rs.3,00,00,000/- (Rupees three crore only) made by the learned Assessing Officer u/s 68 of Income Tax Act as unexplained credits in the books of accounts, even when the assessee has fully discharged its onus and established the (i) identity (ii) credit worthiness and (iii) genuineness of transactions, by simply relying on a purported statement of 'another assessee/person' given before the Investigating Wing of the Income Tax Department during the course of survey on the s.aid 'another assessee/person' and thereby completely ignoring the evidences and explanation filed by the assessee, which by itself are sufficient explanation as contemplated in Section 68 of IT Act.*

**2. Ground No.2:**

*The learned CIT (A) erred on facts and in law in confirming addition of Rs.45,000/- (Rupees forty five thousand) made by the learned AO*

*u/s 68 of Income Tax Act as unexplained cash deposit in bank without considering the fact and evidence that amount so deposited was out of cash in hand.*

3. **Ground No.3:**

*The learned CIT (A) erred on facts and in law in confirming addition of Rs.12,80,000/- (Rupees twelve lakhs eighty thousand) made by the learned AO as deemed profit computed @ 8% of Rs. 1,60,00,000/- received as gross revenue from finishing work completed during the year while completely ignoring the evidences of actual expenditure incurred by the assessee*

4. **Ground No.4:**

*The learned CIT (A) erred on facts and in law in confirming decision of the learned AO to impose penal interest u/s 234B and 234C of Income Tax Act, and to initiate penalty proceedings U/s 271(1) (c) of Income Tax, Act, which are not applicable in the case of assessee.*

5. **Ground No.5:**

*Any other ground that may be raised at the time of hearing.*

3. Representatives of both the sides were heard at length. Case records carefully perused. The relevant documentary evidences brought on record duly considered in the light of rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee filed its return of income on 28.09.2012 declaring Nil income. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

5. During the course of the scrutiny assessment proceedings the assessee was asked to explain why addition of Rs. 3 crores should not be made on account of accommodation entry taken

from Himanshu Verma who has admitted in the statement that he was an entry operator.

6. In its reply the assessee stated that it has received share application money from 10 parties namely :-

<b>Sl. No.</b>	<b>Name of company</b>	<b>Date of Receipt</b>	<b>Amount in Rs.</b>
1	<b>Rising Portfolio Pvt. Ltd.</b>	23.12.2011	25.00
2	<b>Mithilanchal Investment</b>	23.12.2011 & 11.01.2012	50.00
3	<b>Omexpo Enterprises Pvt. Ltd.</b>	24.12.2011	25.00
4	<b>Bliss Buildcon Pvt. Ltd.</b>	24.12.2011	25.00
5	<b>Saffron Logistics Pvt. Ltd.</b>	04.01.2012	25.00
6	<b>Soffpro Technologies Pvt. Ltd.</b>	04.01.2012	25.00
7	<b>White Collar Management</b>	04.01.2012	25.00
8	<b>Allegiance Trading Pvt. Ltd.</b>	04.01.2012 & 10.01.2012	50.00
9	<b>Ostrich Infra Reality Pvt. Ltd.</b>	05.01.2012	25.00
10	<b>AVS Alloy (India) Pvt. Ltd.</b>	07.01.2012	<b><u>25.0</u></b>
			<b>300.00</b>

7. Assessee submitted copies of ITR of the share applicant companies alongwith copies of certificates acknowledging receipt of the share certificates. Assessee also submitted copies of affidavit of these companies.

8. Discarding the evidences furnished by the assessee and without making any enquiry in respect of the documents submitted by the assessee the AO proceeded by relying upon the statement of Himanshu Verma and made the addition of Rs. 3 crores.

9. Assessee carried the matter before the CIT(A) but without any success.

10. U/s. 68 the assessee is required to establish

(a) identity

(b) Genuineness of the transaction

(c) Capacity of the lender / depositor

11. The initial burden is on the assessee. We find that to discharge the initial burden the assessee has submitted copies of ITR, bank statements, confirmations and affidavits acknowledging receipt of share certificates from the 10 investors companies.

12. We find that the AO has failed to probe / conduct scrutiny of the documents so furnished and could not point out any fault in the documentary evidences so furnished.

13. No material was brought on record by the AO to show that the affidavits filed by the directors of the investors companies were not genuine. No enquiries were conducted about the contents of the affidavits even during the remand proceedings the AO did not make any attempt to discredit the affidavit. The result is that the contents of the affidavits have not been disputed. This also shows that the applicants were present at the given addresses against whom action could have been taken. In our considered opinion there is no material whatsoever on record for doubting the veracity of the statements made in the affidavits and if the deponents have also not been subjected to cross-examination for bringing out the validity of their statements then authorities would not be justified in doubting the correctness of the statement made by the deponents in the affidavits. For this proposition we draw support from the decision of Hon'ble Supreme Court in the case of Mehta Parik and company 30 ITR 181.

15. Surprisingly we find that the entire addition is based upon the statement of alleged entry operator Himsanshu Verma but he was never produced for cross-examination. The onus of ensuring

his presence was on the AO but even the AO showed his inability to produce Himsanshu Verma for cross-examination.

16. It is incorrect on the part of the CIT(A) to say that the assessee has never produced the investors because the assessee was never asked to produce the investors. But the affidavits were on record and the AO was free to make any enquiry as he pleased to do.

17. Considering the facts in totality we are of the considered view that the assessee has successfully discharged the onus cast upon it by the provisions of section 68 of the Act and the AO has grossly failed in discharging the burden which shifted upon him. We, therefore, do not find any merit in the impugned addition and the same is directed to be deleted.

18. Ground No.1 with its sub grounds is allowed.

19. Ground No.2 is not pressed and the same is dismissed as not pressed.

20. Ground No.3 relates to the addition of Rs.12.80 lacs made by the AO as deemed profit computed @ 8% of Rs. 1.60 crores received as gross revenue from finishing work.

21. While scrutinising the return of income the assessee was asked to explain why profit of 8% be not considered in respect of revenue from operation of Rs. 1.60 crores.

22. On receiving no plausible reply the AO made the addition of Rs.12.80 lacs which was confirmed by the CIT(A). We find that nowhere the AO has discussed anything about the regular books of accounts of the assessee.

23. In our considered opinion without rejecting the books of account the AO has grossly erred in estimating the profit which is against the ratio laid down by the Hon'ble High Court of Delhi in the case of National Industrial Corporation Limited 258 ITR 578. Since the addition is solely based on estimation without rejecting the books of accounts, we do not find any merit in the impugned addition the AO is directed to delete the same. Ground No.3 is allowed.

24. Ground No. 4 relates to levy of interest u/s. 234 B and 234C of the Act. Being consequential in nature we direct the AO to levy interest as per relevant provisions of the law.

25. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26.07.2023.

Sd/-  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Dated: .07.2023  
\*Neha\*

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi