

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

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1779/Del/2017  
(ASSESSMENT YEAR-2012-13)**

Habitat Housing Finance Ltd. 302-A, Pal Mohan Plaza Desh Bandhu Gupta Road, Karol Bagh New Delhi-110 005 <b>PAN-AALCS 0264L</b> <b>(Appellant)</b>	Vs.	ITO Ward-11(1) New Delhi <b>(Respondent)</b>
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Appellant by	None
Respondent by	Sh. Waseem Arshad, CIT- DR

Date of Hearing	11/10/2023
Date of Pronouncement	17/10/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-4, New Delhi ["Ld. CIT(A)", for short], dated 23/12/2016 for Assessment Year 2012-13.

Grounds taken in this appeal are as under:

*"1. That on the facts and circumstances of the case, the learned CIT(Appeals) has erred in law while upholding the unjustified, unlawful and unwarranted addition of Rs. 8,51,90,000/- on account of Share Application Money u/s 68 of the Income Tax Act 1961;*

*2. That on the facts and circumstances of the case, the learned CIT(Appeals) has erred in law while upholding the unjustified, unlawful and unwarranted addition of Rs.85,35,082/- which is of the nature of capital expenses being investment in to Fixed Assets of the appellant Company during the year ended on 31.03.2012;*

*3. That on the facts and circumstances of the case, the learned CIT(Appeals) has erred in law while upholding the unjustified, unlawful and unwarranted addition of Rs.89,17,078/-on account of sundry creditors and*

*4. That on the facts and circumstances of the case, the learned CIT(Appeals) has erred in law while upholding the unjustified, unlawful and unwarranted addition of Rs.2,64,41,830/- being 75% of the entire expenses of the appellant company incurred exclusively for the purpose of the business of the appellant Company.”*

2. When the matter is called, neither the assessee nor the Advocate for the assessee appeared. Considering the fact that the assessee is not interested in prosecuting the present appeal, we are compelled to decide the appeal on hearing the Ld. DR and verifying the material on record.

3. The brief facts of the case are that the assessee filed its return of income declaring total loss of Rs.(-)3,23,03,017/-. The return was processed u/s 143(3) of the Income Tax Act ('Act' for short). The case of the assessee was selected for compulsory scrutiny. The assessment order came to be passed on 27/02/2015 u/s 144 of the

Act by making the additions under various heads by computing the total income of the Assessee at Rs.8,67,80,973/-.

4. Aggrieved by the assessment order dated 27.02.2015, the assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 23/12/2016, dismissed the appeal filed by the assessee. Aggrieved by the order of the CIT(A) dated 23/12/2016, the assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. DR relying on the orders of the lower authorities submitted that the assessment order made u/s 144 of the Act since the Assessee had not complied the notices issued to the Assessee. During the appellate proceedings, the assessee produced various copies of the documents, therefore, the CIT(A) sought for Remand Report from the A.O. and after considering the Remand Report, the Ld. CIT(A) has rightly dismissed the appeal as the assessee was not able to prove the creditworthiness of the creditors and genuineness of the transaction, therefore, submitted that the order of the lower authorities requires no interference.

6. We have heard the Ld. DR and perused the materials available on record. The assessment order came to be passed u/s 144 of the Act as the assessee made non-compliance. The assessee during the appellate proceedings produced various copies of the documents, therefore, the Ld. CIT(A) called for Remand Report from the A.O. The AO in his remand report dated 27/06/2016 submitted as under:

*“Kindly refer to your letter F. No. CIT(A)-4/Remand Report/2016-17/134 dated 26/05/2016 vide which a copy of petition of the assessee for the above mentioned assessment year was forwarded and the undersigned was requested to go through the submission of the assessee and send the requisite remand report.*

*As per Rule 46A of the income Tax Rules, 1962:-*

*The appellant shall not be entitled to produce before Commissioner of Income Tax (Appeals), any evidence other than evidence produced by him during the course of proceedings before the Assessing Officer except in the following circumstances, namely:-*

- (a) Where the Assessing Officer has refused to admit evidence.*
- (b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer, or*
- (c) Where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal, or*
- (d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

*Keeping in view the above, the additional evidence filed by the assessee during the course of appellate proceedings should not be admitted since ample opportunities, to file the same, were provided to the assessee during the course of assessment proceedings The*

assessment proceeding has been completed u/s 144 of IT Act, 1961 on 27/02/2015 of the income of Rs.9,67,80,973/-. The following additions had been made by the AO on account of unexplained cash credits in the books of account:-

1. Addition on account of disallowance of addition in fixed assets amounting to Rs. 85,35,082/-.
2. Addition on at count of sundry creditors amounting to Rs 89,17,078/-.
3. Addition of account of sundry creditors amounting to Rs.89,17,078/-.
3. Addition on account of expenses claimed in P&L account amounting to Rs. 2,64,41,830/-.

However, on merits quo the requisite report in the matter is submitted as under:-

1. Addition of Rs.8.51.90,00P/u/s 68 on account of unexplained cash credits.

The AD has correctly mode addition amounting to Rs 8,51,90,0007- on account of unexplained cash credits under section 68 of IT Act because the assessee has failed to compliance of notices issued to the company and its directors and order under section 144/ 147 had been passed.

During the year, the assessee claims to have a sum of Rs. 8,59,00,0007- received as shore application money from M7s Habitat Alliances Ltd. and allotted equity shares to amounting to Rs 7,79,00,0007- to the said applicant and remaining was pending for allotment of shares Now during the course of appellate proceedings the assessee has submitted fresh evidence in the form of bank statement of the assessee in which the said amounts have been received from the said applicant.

Further, the assessee has also submitted an unauthenticated bank statement of the applicant party from whom the share application money claimed to have been received: On going through the bank statement of M7s Habitat Alliances Ltd., It is seen that the funds have been received by the share applicant from some entitles which cannot be verified at the stage unless suitable directions to examine the creditworthiness ore given. The bank statement reflects that the

*funds have been invested in the assessee company immediately on receipt of funds in the bank account of the applicant. The bank account of the share applicant does not reflect any significant activity to generate such huge amount and further no balance sheet and P&L account of the share applicant has been filed to reflect the bonafides of the transaction. It would be absolutely fair to observe that the share applicant have been used as a conduit for inducing funds in the assessee company and as the applicant does not appear to have any worthwhile activity to command such funds from other person, it is proper to observe that it the assessee's own funds which have been routed through the layering of transactions.*

*The assessee has not furnished a copy of confirmation, ITR and balance sheet of the applicant company, which shows their creditworthiness and genuineness of transaction. On examination of bank statement of M7s Habitat Alliance Ltd, it is revealed that the credits in this company is received from two persons namely Smt. Rekha Manoj Kumar Jain and Shri Manoj Kumar Jain in absence of their ITR, I am unable to say about their identity and creditworthiness of the sundry creditors. The additional evidence filed by the assessee may not be entertained firstly because in spite of providing ample opportunities the same were not produced during the assessment proceedings. Secondly, the bank statements filed by the assessee are not authentic and cannot be relied upon since the same do not bear any signature or stamp of the issuing authority. To sum up the material adduced do not justify the genuineness or the creditworthiness of the transaction and even the identity is doubtful as no authentic properly signed documents by the applicant have been furnished.*

*The details led by the assessee has only been prima facie examined in the case of the share application money as the CIT(A) has not given any express direction to examine the same, it is kindly requested that in case the evidences are considered then due opportunity may be given to the undersigned as the assessee didn't comply during the course of the assessment proceedings.*

2. Addition on account of disallowance of addition in fixed assets amounting to Rs. 85.35.087/-

After examination of details filed by the assessee in respect of fixed assets purchased during the AY 2012-13, it reveals that the assessee claims to have purchased various assets amounting to Rs 85,78.1327-and sold out old computer instruments amounting to Rs 43.0507. The assessee has though submitted all the bills of assets purchased during the year except IBM Server purchased amounting to Rs 32,21,2107/- but the assessee has not submitted its Audit Report and Balance Sheet before your goodself as well as in the office of undersigned, hence, I am unable to ascertain depreciation claimed in the books of accounts are Correct. In absence of cove, and the proof of bonafide business activity, the deprecation should be disallowed in full.

3. Addition on accounts of Sundry Creditors amounting to Rs.89,17,078/-

During the assessment proceedings the 40 has made addition amounting to Rs.88,17,078/- on account of unconfirmed sundry creditors. On perusal of additional evidence produced before your goodself. In respect of the said addition it is found that the assessee has neither furnished any details relating to sundry creditors to justify its claim nor produced any confirmation/supporting bills and vouchers against which said liability was arose.

4. Disallowance of expenses claimed in P&L account amounting to Rs. 2,64,41, 830/-.

The assessee company has claimed amounting to Rs.3,52,55,775/- as expenses made during the year under the various heads. In the absence of the vouchers/bills, the AO has added in the income of the assessee company. Neither the assessee company has not filed any evidence about these expenses nor submitted IDS returns, which has shown that that the expenses claimed in P&L account are eligible u/s 40(a)(ia) of IT Act 1961. Therefore, the audition made by the AO is correct and sustainable."

7. The assessee responded to the said Remand Report vide letter dated 18/10/2016. On going through the Remand Report of the AO and also the reply of the assessee, the Ld. CIT(A) found that the assessee failed to prove the genuineness of the transaction and the creditworthiness of the creditors. The initial burden of proving the creditworthiness of creditors and the genuineness of the transaction is cast upon the Assessee as per Section 68 of the Act. In the present case, as the Assessee has not proved the burden cast upon it u/s 68 of the Act by providing requisite evidence before the Authorities, therefore, in our considered opinion, the Ld. CIT(A) has rightly confirmed the addition of Rs.8,51,90,000/- on the basis of remand report.

8. Further, in so far as disallowance of addition of Rs.85,35,082/- in the fixed asset, addition of Rs.89,17,078/- on account of sundry creditors and the disallowance expenses of Rs.2,64,41,830/- were also remained unexplained by the Assessee before the AO or before the Ld. CIT(A). Therefore, we find no reason to interfere with the above disallowances made by the A.O. which

has been confirmed by the CIT(A). Accordingly, we find no merit in the grounds of appeal of the assessee.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in open Court on 17<sup>th</sup> October, 2023.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 17/10/2023

*Pk/Sr.ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI