

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.3840/DEL/2015
Assessment Year 2010-11

ITO, Ward-11(1) New Delhi	Vs.	M/s. Habitat Housing Finance Ltd. 601, Akash Deep Building 26-A, Barakhamba Road New Delhi
TAN/PAN: AALCS0264L		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	19	03	2024
Date of pronouncement:	19	06	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed by the Revenue against the first appellate order passed by the Commissioner of Income Tax (Appeals)-15, New Delhi ['CIT(A)' in short] dated 25.03.2015 under Section 250 of the Act arising from the assessment order dated 21.03.2013 passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2010-11.

2. The Grounds of Appeal raised by the Revenue read as under:

"1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,71,395/- on account of administrative expense in absence of business activity during the year?"

2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,98,90,000/-u/s. 68 on account of unexplained cash credits?"*

3. Briefly stated, the assessee filed return of income (ROI) declaring income at Rs.3,91,610/- for the Assessment Year 2010-11 in question. The return filed by the assessee was subjected to regular assessment under Section 143(3) of the Act. The AO in the assessment order observed that the company was incorporated with the main object of carrying out real estate business. Later on, the main object was however changed to carrying on the housing finance business. During the year under consideration, there had not been any business activity. The AO observed that the assessee has claimed expenses to this extent of Rs.2,71,395/- whereas no business activity has been shown. The AO accordingly disallowed such expenses. The AO however observed that the assessee has shown increase in share capital from Ramsons Project Ltd. The assessee was asked to submit confirmation, bank statement, ITR copy of Ramsons Project Ltd. The assessee submitted a copy of bank statement of the subscriber but however no confirmation was stated to be filed before AO. The bank statement revealed to AO that most of the credit entries were in cash. Accordingly, the assessee was asked to produce the party for verification of genuineness, identity and creditworthiness. The assessee however failed to produce the party and also could not substantiate the genuineness of the transaction as well as the creditworthiness of the subscriber. The AO accordingly concluded that the primary onus which lay upon the assessee was not discharged. The AO accordingly invoked the provisions of Section 68 of the Act and treated the aforesaid amount of Rs.1,98,90,000/- as unexplained cash credit under Section 68 of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) took note of the submissions made on behalf of the assessee and reversed the additions of Rs.2,71,395/- made by the AO. The relevant operative paragraph is reproduced hereunder:

7.3. I have considered the facts of the case as well as the submissions made by the appellant. The appellant has amply clarified the fact that main object of the company was modified during the year and for carrying on a new start up, necessary expenditure was incurred by it. The ROC expenditure which was suo-motu added back by the appellant is the evidence that share capital was increased by the appellant company for meeting out the requirement of 'NBH'. The remaining expenditure of ₹2,71,395/- was clearly business expenditure which was incurred under different heads of the expenditure as elaborated by the appellant in its written submissions. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income-tax vs. Whirlpool of India Limited [supra] has held that for claiming expenses, income during the year is not essential. It is the existence of business which is an essential condition for claiming the expenditure. The appellant has amply established that it was engaged in a business activity which was a new line of business resulting in no income during the year but the expenditure claimed by the appellant, which was essentially required by the appellant company, is allowable expenditure under Section 37 of the Act. The addition of ₹2,71,395/- made by the AO is not justified. The same is directed to be deleted. Ground No. 1 of appeal is allowed."

5. The CIT(A) also reversed the addition of Rs.1,98,90,000/- made by the AO under Section 68 of the Act for which the relevant findings of the CIT(A) are reproduced hereunder:

"8.1. Ground No. 2 of appeal is against the addition of ₹1,98,90,000/- made by the AO u/s. 68 of the Act. It was noticed by the AO that appellant company has increased its share capital by ₹1,98,90,000/- which was shown as received from M/s. Ramsons Projects Limited. The AO asked the appellant to submit confirmation, bank statement of M/s. Ramsons Projects Limited and also to produce the party for the purpose of verifying the genuineness, identity and creditworthiness of M/s. Ramsons Projects Limited. As per the AO, the appellant did not discharge its onus and therefore, the AO treated the entire amount of

₹1,98,90,000/- as appellant's income from undisclosed sources and added it u/s 68 of the Act.

8.2. During the appellate proceedings, the appellant has submitted that M/s, Ramsons Projects Limited is the holding company of the appellant company and as explained earlier since as per the requirement of National Housing Business, the appellant company had to infuse a minimum amount of ₹2 crores as share capital money, the parent company M/s. Ramsons Projects Limited purchased 19,89,000/- equity shares of ₹10/- each of the appellant company and paid an amount of ₹1,98,90,000/-. The appellant has filed the copies of reply dated 08.10.2012, 30.10.2012, 07.11.2012 and 28.01.2013, wherein complete details as asked by the AO were submitted before him but the same were ignored by the AO. While explaining the bank account of the holding company M/s. Ramsons Projects Limited, the appellant company even explained that before paying ₹2 crores on 01.09.2009 vide cheque No. 38835 to the appellant company towards fresh share capital. M/s. Ramsons Projects Limited received the amount of ₹2 crores from M/s SAS Infotech Pvt. Ltd. It was claimed that identity, genuineness of transactions and creditworthiness of M/s. Ramsons Projects Limited were established from glaring documentary evidences such as the assessment orders u/s 143(3) passed by the Income Tax authorities in the case of M/s. Ramsons Projects Limited. The appellant has filed the copy of assessment order u/s 143(3) of the Act in the case of M/s. Ramsons Projects Limited for AY 2006-07 before the AO and during the appellate proceedings even the assessment order u/s. 143(3) of the Act dated 13.03.2015 in the case of M/s. Ramsons Projects Limited for AY 2012-13 was filed by it.

8.3. On considering the facts of the case as well as the submissions made by the appellant it is observed that M/s. Ramsons Projects Limited is the holding company of the appellant company and it has a full-fledged website giving complete details regarding the directors, shareholders, its financial results as well as the audited reports. The AO had filed all these details before the AO. As per the website of the company, M/s. Ramsons Projects Limited was established on 22.12.1994 under the name and style of M/s Ramsons Finlease Limited. Its name was changed to M/s. Ramsons Projects Limited and a fresh certificate of incorporation was obtained on 28.10.1997 from ROC, NCR- Haryana, New Delhi. As per the information on the website, it is a 'NBFC' (non deposit taking) duly registered with RBI and engaged in the business of loan and investments in securities. All the financial results and audited balance sheets are duly uploaded on the website of the company which are open for public view. From the evidences so discussed and produced before the AO also, it is amply clear that

the onus u/s 68 of the Act viz. identity, creditworthiness and genuineness of the transaction is duly established in the instant case. If the AO had any apprehension regarding the creditworthiness of M/s. Ramsons Projects Limited, necessary action could have been suggested by him to the concerned AO in the case of M/s. Ramsons Projects Limited. However, there remains no justification in treating the amount of ₹1,98,90,000/- as appellant's income as the same is duly explained by the appellant. The ratio of decisions of Hon'ble Courts as relied upon by the appellant in its written submissions fully supports the appellant's case. The appellant has produced the latest assessment order in the case of M/s M/s. Ramsons Projects Limited for AY 2012-13 passed by the AO [Ward 21(1), New Delhi on 13.03.2015] which clearly establishes the genuineness of the entity to whom the appellant company had issued the shares. Therefore, the addition of ₹1,98,90,000/- made by the AO in the appellant's income is not justified and the same is directed to be deleted. Ground No. 2 of appeal is allowed.”

6. Aggrieved by the reversal of action of AO on both counts, the Revenue is in appeal before the Tribunal.

7. When the matter was called for hearing, none appeared on behalf of the assessee. It is seen from the record that multiple opportunities have been given in the past to the assessee but assessee did not care to comply with hearing dates. It is apparent from the case record that assessee has evaded appearance and continued to remain defiant to the notices issued by the Tribunal. Owing to such alienating behavior on behalf of the assessee and proverbial negligence in attendance, we are constraint to proceed *ex-parte*.

8. The Ld. DR for the Revenue referred to the assessment order and submitted that the action of the CIT(A) is not justified and is based on gross misappreciation of facts. The ld. DR for the Revenue also submitted that the CIT(A) has adjudicated the issue on an altogether different tangent without giving any opportunity to the

AO while making observations *de hors* the facts placed before the AO.

8.1 With regard to the additions under Section 68 of the Act, the Id. DR pointed out that the CIT(A) proceeded on the footing that all the financial results and the audited balance-sheet are duly uploaded on the website of the subscriber-company which were open to public view and thus was available to AO. Such approach of the CIT(A) is incomprehensible. A minimum opportunity ought to have been given to the AO while adjudicating the issue and dislodging the given findings of the AO. The Id. DR for the Revenue also alleged that the order passed by the CIT(A) is neither reasoned nor convincing on facts. The CIT(A) has not dealt with the aspects of cash entries found in the bank statement of the subscriber by the AO. The CIT(A) has simply relied upon the statement of the assessee that certain replies were filed before AO wherein complete details were claimed to be placed before the AO. This is contrary to the findings in the assessment order. In such a situation, the matter ought to have been referred to the AO for comments. Nothing has also been discussed as to why failure of the assessee to produce the competent person from subscriber-company is of no consequence. While holding in favour of assessee, the CIT(A) has given a complete go bye to the requirement of law capsulated in Section 68 of the Act. The Id. DR thus submitted that first appellate order is patently unsustainable in law and requires to be reversed.

9. We have carefully considered the submissions made on behalf of the Revenue and have also perused the first appellate order and the assessment order and other material placed on record.

10. As regards first issue of disallowance of expenditure of Rs.2,71,395/-, the reason given by the CIT(A) while granting relief

appears justifiable. The CIT(A) has observed that it is the existence of business which is an essential condition for claiming the expenditure and once the business is set up and ready generation of income during the year is not necessary *per se*. The CIT(A) has supported his view with judicial precedents. We find ourselves in agreement as reproduced in proceeding paragraphs. We thus decline to interfere therewith. Ground No.1 of the Revenue Appeal is dismissed.

11. Ground No.2 concerns addition of Rs.1,98,90,000/- under Section 68 of the Act.

12. On perusal of the first appellate order, it is observed that the CIT(A) granted relief essentially on the premise that (a) the assessee has filed copies of certain replies whereby the complete details were produced before the Assessing Officer but such details were ignored by the Assessing Officer. (b) the assessee company explained that the payment to assessee company by the holding company namely, Ramsons Projects Ltd. sourced out of SAS Infotech Pvt. Ltd. and the identity, genuineness of transactions and creditworthiness of Ramsons Projects Ltd. stands established by a documentary evidences such as assessment order passed under Section 143(3) in the hands of the subscriber company (c) the financial statement of the subscriber company is available on the website. The CIT(A) thus found no justification in invoking Section 68 of the Act.

13. We straightaway observe that certain pertinent points were not addressed by the CIT(A) viz; (i) the financial credibility of the subscriber under serious doubt on account of cash deposits for which there is no whisper in the first appellate order. (ii) the concerned investor was not presented before the AO to illicit information towards source of investment. The availability of financial statement

on the website of the subscriber company cannot perforce compel the AO to necessarily adopt such website information. It is not known whether the complete information was uploaded on the website and whether authentic. The CIT(A) has simplistically relied upon the submission of the assessee that complete details were filed which were ignored by the Assessing Officer. What kind of details were submitted which seeks to discharge onus under Section 68 of the Act is not known.

14. The CIT(A), in our view, has decided the issue in haste and abrupt manner, without seeking any remand report incumbent in such circumstances. No inquiries is discernibly made by the CIT(A) himself either in exercise of co-terminus and co-extensive powers on such crucial points. The CIT(A) has readily accepted the plea of the assessee on discharge of onus overlooking vital factual aspects. Needless to say, the powers of CIT(A) are wide enough to include the power to examine all matter covered by the assessment order and to correct the assessment in respect of such matters which appears contrary to the position of law. In the instant case, the CIT(A) has rather not addressed itself on the points raised by the Assessing Officer. The first appellate order passed by the CIT(A) is not consistent with the position of law. Thus, the order of the first appellate authority deserves to be set aside and cancelled.

15. The order of the CIT(A) is thus set aside and the matter is restored to the file of the CIT(A) for fresh adjudication in accordance with law after making all inquiries as may be considered expedient towards *bona fides* of the amount of Rs.1,98,90,000/- in question stated to be received by the assessee from Ramsons Products Ltd. Needless to say, the CIT(A) shall make such inquiries as may be considered expedient or cause such inquiries through the

AO as may be deemed fit. It shall be open to the assessee to make such submissions and adduce such evidences in corroboration to discharge onus cast upon it under Section 68 of the Act as may be advised. A reasonable opportunity shall be given to the assessee by the CIT(A) in this regard.

16. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 19/06/2024

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/06/2024**

Prabhat