

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	ITA NO. 833/Del/2020		
	A.YR. : 2013-14		
Earth Homes Private Limited, B1/79, Sector-11, Faridabad Haryana-121006 (PAN: AACCE2606B) (APPELLANT)	VS.	ITO, WARD-8(1), C.R. BUILDING, NEW DELHI (RESPONDENT)	

Appellant by : Shri Alok Kumar Gupta, CA
Respondent by : Shri Rajesh Kumar Dhanesta, Sr. DR.

Date of hearing : 01.05.2025
Date of pronouncement : 01.05.2025

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(A)-34, New Delhi dated 19.06.2019, relating to assessment year 2013-14.

2. At the threshold, it is noted that the appeal is time barred by 162 days. In this regard, Ld. AR has submitted that delay in filing the appeal before the Tribunal is due to the reasons that order passed by the Ld. CIT(A) was not delivered to the assessee and also the Accountant of the company was not available to provide the relevant documents and Director of Company being technical person was not able to deal with the complex income tax matters.

Hence, delay in filing the appeal is neither intentional nor deliberate but due to unavoidable circumstances beyond the control of the assessee. In this behalf, the Director of the Assessee company has filed his affidavit, which is placed on record. Ld. DR could not controvert the aforesaid contention of the Id. AR. Upon hearing both the sides and perusing the records, we find that reasonable cause has been attributed to the assessee in filing the belated appeal before the Tribunal, hence, in the interest of justice, the delay in filing the appeal before the appeal deserve to be condoned. We hold and direct accordingly.

3. The brief facts of the case are that the assessee company is working as a commission agent and filed return declaring income of Rs. 10,37,500/- on 30.09.2013. The case was selected for scrutiny. AO has completed the assessment u/s. 143(3) vide order dated 23.03.2016 after making addition of Rs. 51,84,465/- on account of commission payment, Rs. 1,09,440/- on account of unsecured loan and Rs. 3,25,000/- on account of advertisement expenses. Accordingly, total income was assessed at Rs. 1,74,50,400/-. Against the above order of the AO, assessee preferred appeal before the Ld. CIT(A).

4. Against the above, assessee preferred appeal before the Ld. CIT(A) who vide his impugned order deleted the addition on account of commission.

4.1 As regards addition on account of unsecured loans is concerned, Ld. CIT(A) held that unsecured loans obtained by the assessee during the year was Rs. 29,25,000/- and interest paid thereon was Rs. 11,98,267/- could not be treated as explained. Hence, he confirmed the addition made by the AO to the extent of Rs. 41,23,267/- and assessee was granted relief of Rs. 67,80,274/- (Rs. 1,09,03,440 – Rs. 41,23,267). Ld. CIT(A) held as under:-

“...6.3 I have considered the facts of the case, finding of the AO and submission of the appellant. The appellant has received the loan of Rs. 29,25,000/- during the year and Rs. 69 lacs is the opening balance which already had been considered by the AO at the time of framing of assessment for AY 2012-13. Rs. 10,78,440/- is related to interest payment on which TDS has been deducted by the appellant as per the provisions of the Act. The

appellant has received the loan amount of Rs. 29,25,000/- during the year under consideration. It has filed confirmation, copy of bank account of the depositors whom it has received unsecured loan during the year under consideration. The appellant has not filed the copy of ITR and not explained the reasons for not producing the persons whom it has procure the loan during the year under consideration. The appellant also failed to provide the correct address of the persons, therefore, notices issued by the AO u/s. 133(6) are returned back unserved. The appellant has received the loan from Ms. Balwinder Kaur (Rs. 5,25,000/-), M/s Madhuvan Realtech Pvt. Ltd. (Rs. 14 lacs), Sh. Vivek Ranade (Rs. 5 lacs) and M/s Mink Real Estates Pvt Ltd. (Rs. 5 lacs) amounting to Rs. 29,25,000/-. Since appellant failed to furnish copy of account and produce the persons whom it has obtained loan during the year, creditworthiness and genuineness of the transaction could not be treated as explained only on the basis of extract of bank statement furnished by the appellant. The appellant also failed to establish identity of the lenders on ground realities. Thus unsecured loan obtained by the appellant during the year amounting to Rs. 29,25,000/- and interest paid thereon at Rs. 11,98,267/- could not be treated as explained and addition made by the AO to the extent of Rs. 41,23,267/- is hereby confirmed and appellant will get relief of Rs. 67,80,174 (Rs. 1,09,03,440 – Rs. 41,23,267).

5. We have heard both the parties and perused the records. We find that the opening balance was Rs. 69 lacs and Rs. 29,25,000/- has been received as loan during the year. Ld. CIT(A) noted that assessee has filed confirmation, copy of bank account of the depositors whom it has received unsecured loan during the year under consideration. The assessee has not filed the copy of ITR and not explained the reasons for not producing the persons whom it has procure the loan during the year under consideration. It was noted that the assessee also failed to provide the correct address of the persons, therefore, notices issued by the AO u/s. 133(6) are returned back unserved. The appellant has received the loan from Ms. Balwinder Kaur (Rs. 5,25,000/-), M/s Madhuvan Realtech Pvt. Ltd. (Rs. 14 lacs), Sh. Vivek Ranade (Rs. 5 lacs) and M/s Mink Real Estates Pvt Ltd. (Rs. 5 lacs) amounting to Rs. 29,25,000/-. Hence, it was held that since assessee failed to furnish copy of account and produce the persons whom it has obtained loan during the year, creditworthiness and genuineness of the

transaction could not be treated as explained only on the basis of extract of bank statement furnished by the appellant. The appellant also failed to establish identity of the lenders on ground realities. Thus unsecured loan obtained by the appellant during the year amounting to Rs. 29,25,000/- and interest paid thereon at Rs. 11,98,267/- was not treated as explained and addition made by the AO to the extent of Rs. 41,23,267/- was confirmed. Now before us, Ld. Counsel for assessee has filed an affidavit wherein it has been mentioned that Ld. CIT(A) confirmed the addition of Rs. 29,25,000/- being unsecured loans obtained during the year under consideration, Rs. 11,98,267/- instead of Rs. 10,78,440/- as disallowed by the AO being interest payable added by the company in the unsecured loan, holding the same as unexplained. It was submitted that the reasons for the addition u/s. 68 of the Act was non – service of notice sent by the AO to the depositors u/s. 133(6) of the Act and there is no response. It was further submitted that interest payable Rs. 1198267/- being consequential was also added being unexplained deposit though the AO added the sum of Rs. 1078440/- in the assessment order as unexplained deposit. The disallowed interest included the interest of Rs. 966000/- allowed to Mink Real Estate Pvt. Ltd. on opening balance of Rs. 6900000/ and this addition was deleted by the Ld. CIT(A) being opening balance, not received during the year under consideration. In this view of the matter interest of opening balance cannot be disallowed.

5.1 Now the Assessee has filed an affidavit stating therein that due to non-cooperation from the concerned parties the assessee could not meet the requirement of the law and could not file the necessary documents in support of its case. And now the assessee has been able to seek the cooperation from the parties and filing the documents as additional evidence u/r 29 of the Appellate Tribunal Rules, 1963 viz. Affidavit of Smt. Balwinder kaur; Affidavit and bank statement of Madhuban Realtech P ltd.; affidavit and bank statement of Shri Vivek Ranade and affidavit and bank statement of Mink Real Estate P Ltd. In

view of the above, we admit the additional evidences filed by the assessee before us, as aforesaid and in the interest of justice, remit back the matter to the file of the Ld. CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and considered the aforesaid evidences/documents.

6. Apropos issue of addition of Rs. 3,25,000/- on account of advertisement expenses holding the same not for business purposes as the payment of bill was made to M/s Prompt Communications but they raised the bill on M/s Ish Realtors instead of the assessee company. Before us, in the affidavit filed by the assessee, wherein a confirmation letter dated 15.4.2025 filed by the Authorised Signatory/Director of M/s Ish Realtors Pvt. Ltd. has been filed in which it was stated that the advertisement expenses incurred by the company are its business expenses. In our view and in the interest of justice, we remit back the issue to the file of the Ld. CIT(A) to decide the same, after giving adequate opportunity of being heard to the assessee and consider the relevant evidences/documents.

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

Order pronounced on 01.05.2025.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

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

Assistant Registrar, ITAT, Delhi