

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2076/Del/2011
Assessment Year: 2001-02

M/s. Unitech Prefab Ltd. (Now Known as RDC Concrete (India) Pvt. Ltd.), Sigma, , III Floor, Plot No. C/8, Plot No. C/8, Road No. 22, MIDC, Andheri (East), Mumbai	Vs.	ACIT, Circle-18(1), New Delhi
PAN : AAACU0108Q		
(Appellant)		(Respondent)

Appellant by	S/sh. Vishal Kalra & S.S. Tomar, Advocates
Respondent by	Sh. F.R. Meena, Sr.DR

Date of hearing	02.01.2017
Date of pronouncement	06.01.2017

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against the order dated 29th December, 2010 of the learned Commissioner of Income Tax (Appeals)-XXI, New Delhi, for assessment year 2001-02, raising the following grounds of appeal:

“1 On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition made under section 68 of the Act as unexplained sundry

creditors amounting to Rs. 4994613/-. Provisions of the Act ought to have been properly construed and regard being had to facts of the case said addition of Rs. 4994613/- should not have been confirmed. Reasons assigned by him are wrong and insufficient to justify addition of Rs. 4994613/-under section 68 of the Act.

2. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in invoking provisions of section 68 of the Act to the addition made of Rs. 4994613/- which are in the nature of amount due to sundry creditors. Provisions of the Act ought to have been properly construed and regard being had to facts of the case provisions of section 68 is not applicable to said transactions. Reasons assigned by him are wrong and insufficient to justify applicability of provisions of section 68 of the Act.

3. The proceeding initiated under section 147 of the Act and issuance of notice under section 148 of the Act is without jurisdiction in as much as the Assessing Officer has failed to satisfy that income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all the material fact necessary for his assessment. Therefore the Assessing Officer has no reason to believe that income had escaped assessment prior to the issuance of notice under section 148 of the Act. Provisions of the Act ought to have been properly construed and regard being had to facts of the case notice issued under section 148 of the Act be quashed and the order made under section 143(3) rws 147 of the Act be annulled / quashed.

4. The order made under section 147 rws 143 (3) of the Act by the learned Assessing Officer and confirmed by the learned Commissioner of Income Tax (Appeals) is illegal, bad-in-law, ultra virus and without allowing reasonable opportunity of the hearing, and without appreciating the facts, submission and evidences in their proper perspective and is liable to be annulled.

5. The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing.”

2. The brief facts of the case are that the original assessment under Section 143(3) of the Income-tax Act, 1961 (for short ~~the~~ Act) was completed on 25th March, 2004 at a net loss of Rs.2,88,01,910/-. Subsequently, notice under Section 148 of the Act was issued for reopening of the assessment after recording reasons. In the reassessment proceedings, the assessee was asked to furnish copy of the confirmation of one of the creditors, namely, M/s. Greaves Ltd. However, after providing sufficient opportunity, the Authorized Representative of the assessee filed a letter before the Assessing Officer expressing inability to file the confirmation from the said creditors. In view of the submissions of the assessee, the Assessing Officer held the outstanding credit balance of Rs.49,94,613/- in respect of M/s. Greaves Ltd. as unexplained and made addition under Section 68 of the Act. Before the learned Commissioner of Income Tax (Appeals) also, the assessee expressed inability in filing the confirmation from the said creditor and accordingly, the learned Commissioner of Income Tax (Appeals) upheld the addition. Aggrieved with the order of the learned Commissioner of Income Tax (Appeals), the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

3. At the time of hearing before us, the learned counsel for the assessee did not press grounds no. 3 & 4 and hence the same are dismissed as infructuous.

4. In respect of grounds no. 1 and 2, learned counsel submitted that the credit balance in question was actually opening credit balance in respect of M/s. Greaves Ltd. and no addition could have been made under Section 68 of the Act in the year under consideration for opening credit balance. In this connection, the learned counsel referred to page

no. 11 of the paper book, which is a copy of account of M/s. Greaves Ltd. for the year under consideration.

5. On the other hand, learned Sr. Departmental Representative submitted that the fact, whether the said credit balance was opening balance, is not borne out of the record as the same was not submitted before the lower authorities and, therefore, matter may be restored to the file of the Assessing Officer for verification of facts.

6. We have heard the rival submissions and perused the relevant material on record, including the paper book of the assessee containing pages 1 to 15. We find from the page no. 11 of the paper book, which is a copy of ledger account of M/s. Greaves Ltd. in the books of account of the assessee for the period from 01.04.2000 to 31.03.2001, i.e. the relevant period, that there is a credit balance of Rs.50,88,601/- at the beginning of the financial year and the closing balance is Rs.49,94,613/-, which the Assessing Officer had added. On perusal of account, we find that the amount of credit in question has not been credited during the year under consideration; therefore, no addition could have been made in terms of section 68 in the year under consideration. However, the learned Departmental Representative submitted that the fact of the opening credit balance of M/s. Greaves Ltd. is not borne out of the record and was not verified by the Assessing Officer. In view of the submission, in the interest of natural justice, we feel it appropriate to we direct the Assessing Officer to verify the opening credit balance of M/s. Greaves Ltd. from the books of account and other evidences and if the above contention of the assessee is found to be correct, no addition is called for on the issue in dispute in the year under consideration. However, if the fact of opening credit balance as submitted by the

assessee before us, is not verified, then he may take action in accordance with law. The assessee is directed to produce all the necessary documents in this regard before the Assessing Officer.

7. With the above directions, the appeal of the assessee is allowed partly for statistical purposes.

The decision is pronounced in the open court on 6th January, 2017.

Sd/-

(H.S. SIDHU)

JUDICIAL MEMBER

Dated: 6th January, 2017.

RK/-

Copy forwarded to:

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

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi