

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.63/Alld./2020
Assessment Year: 2001-02

Ghaus Memorial Sahkari Awas Samiti Ltd., 991/861 Kareli, Allahabad-211016, U.P.	v.	ACIT Range-2, Aaykar Bhawan , 38 M.G. Marg , Civil Lines, Allahabad. U.P.
PAN:AAAAG0896R		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A.K. Singh, Sr.D.R.
Date of hearing:	12.07.2022 and 22.07.2022
Date of pronouncement:	03.08.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No.63/Alld./2020 for assessment year 2001-02, is directed against an appellate order dated 06.08.2019 in Appeal No. CIT(A), Allahabad/10004/2006-07 passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year(ay):2001-02 in third round of litigation , the appellate proceedings had arisen before learned CIT(A) from the appellate order dated 19th November , 2008 passed by Income Tax Appellate Tribunal (hereinafter called " the tribunal") in ITA Nov. 220(Alld)/2006 in second round of litigation, remanding the matter back to the

file of Id. CIT(A) for fresh adjudication . The assessment order was passed by the Id. Assessing officer(hereinafter called “the AO”) in second round of litigation , vide assessment order dated 27th November, 2006 passed under Section 143(3) read with Section 254 of the Income-tax Act,1961(hereinafter called “ the Act”) .

2. The grounds of appeal raised by assessee in ITA No. 63/Alld./2020 for ay:2001-02, in memo of appeal filed with tribunal, reads as under:-

“1. That in any view of the matter assessment made on an income of Rs. 5,61,060/- by order dated 27.11.2006 u/s 143(3) /254 of the IT Act is bad both on the facts and in law.

2. That in any view of the matter the Assessing Officer failed to follow the directions of Hon’ble Tribunal vide order dated 07.10.2005 nor proper verification was done by the Assessing Officer made and as per own calculation addition of Rs. 6,02,264/- was made u/s 68 without providing reasonable opportunity to the assessee hence the addition made is highly unjustified.

3. That in any view of the matter the Ld. CIT(A) was wrong in passing the order ex-parte without providing reasonable opportunity to the assessee and the Ld. CIT(A) was also wrong in travelling the issue beyond jurisdiction when the said issue was not before the first appellate authority hence the addition as sustained by CIT(A) as per Para 5 of the order is highly unjustified.

4. That in any view of the matter before the first appellate authority the only issue was regarding addition of Rs. 6,02,264/- as made by the Assessing Officer was altogether ignored and altogether on different facts addition was made which was not the subject matter of appeal hence the addition of Ld. CIT(A) is bad in law.

5. That in any view of the matter the assessee reserves his rights to take any fresh ground of appeal before hearing of appeal.”

3. This is the third round of litigation before the tribunal. When this appeal was called for hearing before the Division Bench, on 12th July, 2022, none appeared on behalf of the assessee nor any adjournment application was filed, while the Department was represented by ld. Sr. DR . This appeal had come up for hearing before Division Bench on as many as nine times on earlier occasions, and on all the nine occasions, the assessee sought adjournment and the Bench was pleased to grant adjournment on request of the assessee. But, when this appeal came up for hearing before Division Bench on 12th July, 2022, none appeared on behalf of the assessee nor any adjournment application was filed. The Bench keeping in view that this is the third round of litigation before the tribunal and is a protracted litigation as the matter pertains to ay:2001-02 , and also that on as many as on nine occasions earlier when this appeal was listed before the Division Bench, the assessee sought adjournments which was granted by the Division Bench , while on 12th July, 2022 when this appeal came up for hearing before DB, none appeared on behalf of the assessee nor any adjournment application was filed, DB decided to proceed with the adjudication of the appeal on merits, after hearing Learned Sr. DR and pursuing the material on record .Thus, this matter was heard on 12th July, 2022 and orders were kept reserved. While studying the appeal file on 12th July, 2022 itself , it was observed that the appeal fee was short paid by the assessee to the tune of Rs. 4,111/- for which deficiency memo was also issued by Registry on 10th June, 2020, which was not complied with by the assessee, and hence interlocutory order dated 12th July, 2022 was passed by Division Bench fixing the appeal for clarification on the issue of deficient appeal fee paid by the assessee. The assessee the came forward and rectified the defect by paying short appeal fee of Rs. 4,111/- vide challan number 130(Internet Tax Payment Reference No: 712866953) dated 15th July, 2022 of AXIS Bank-BSR code 6360017 (the application dated 15th July, 2022 was filed by assessee with Registry

along with challan of Rs. 4,111/- which is now paced on record in file). This appeal was finally heard on 22nd July, 2022 with respect to removal of aforesaid defect of deficient appeal fee paid by assessee, but on 22nd July, 2022 again none appeared on behalf of the assessee nor any adjournment application was moved by the assessee, while Department was represented by Id. Sr. DR. This appeal was finally treated as heard as the deficient appeal fee defect was removed by the assessee, which clearly shows that the assessee is fully aware of proceedings but not coming forward to argue the matter nor any written submissions/ explanations/evidences were filed by the assessee in support of its contentions.

4. The only question which is before the tribunal now in this third round of litigation is with regards to the addition of Rs. 64,62,054/- towards fresh deposits raised by the assessee during the Financial Year 2000-01 (ay; 2001-02) which addition stood confirmed by Id. CIT(A) in third round of litigation by invoking provisions of Section 68 of the 1961 Act. . The brief facts of the case are that the assessee is a co-operative society. In the first round of litigation, the AO vide assessment order dated 26.03.2014 passed u/s 143(3) of the 1961 Act made additions , inter-alia, to the tune of Rs. 1,67,51,761/- to the income of the assessee towards unexplained deposits/cash credits u/s 68 of the 1961 Act. The matter travelled to Id. CIT(A) in the first round of litigation at the behest of the assessee , and Id. CIT(A) vide appellate order dated 20.09.2004 in Appeal No. 23/DCIT/R-II/Alld/2004-05 was pleased to confirm the additions as were made by the AO . The assessee filed second appeal with tribunal in the first round of litigation, and the tribunal vide appellate order dated 07th October, 2005 in ITA no. 481/Alld/2004 was pleased to restore the matter back to the file of AO for verification and restrict the addition to the amount of unexplained fresh deposits raised during the impugned assessment year by the assessee and delete the additions w.r.t. to deposits raised in earlier year . The AO in second round of

litigation was pleased to confirm the additions of Rs. 6,02,264/- towards difference in deposits being advance for land as is shown in assessee's Balance Sheet and the deposits being advance for land as per statement submitted by the assessee, vide orders dated 27.11.2006 passed u/s 143(3) read with Section 254 of the 1961 Act. The matter again travelled to Id. CIT(A) at the behest of the assessee in second round of litigation, who was pleased to delete the addition of Rs. 6,02,264/- as was made by the AO in its order dated 27.11.2006, but Id. CIT(A) was pleased to enhance the additions to the tune of Rs. 64,62,054/- towards fresh deposits raised by the assessee by invoking provisions of Section 68 of the 1961 Act, vide appellate order dated 03.06.2008 in IT Appeal No. 128/ACIT/R-I/Alld/06-07 by holding as under :

"2.3 The submission given by the appellant has been perused and it is noticed that the addition made by the AO falls outside the direction given by the Hon'ble ITAT, for the ITAT has given a clear cut direction that only current deposits of the assessment year under consideration have to be added, therefore, what the AO had to do was to find out the current deposits relevant to the year under consideration and make the necessary addition. The AO has gone beyond the direction given by the Hon'ble ITAT in making the addition of Rs. 6,02,264/- and therefore, the addition of Rs. 6,02,264/- is hereby deleted.

3. However, it is seen that the AO in the assessment order has observed that deposits made during the Financial Year 2001-02 was to the tune of Rs. 64,62,054/-, therefore, as per the directions of the Hon'ble ITAT the AO should have added this amount to the income of the appellant which she has not done. The Hon'ble ITAT in its order dated 7th October, 2005 in ITA No. 481(Alld)/2004 in Para 21 has observed that:

" In view of the above, the submission of the assessee that the amount of Rs. 1,67,51,761/- represents the deposits/instalments made by respective members of the society prior to assessment year under consideration and these being old

deposits, no addition can be made under Section 68 of the I.T. Act, 1961, is found to be acceptable. However, this version can be accepted only on verification. It may be pointed out that neither the AO nor the Id. CIT(A) had examine the issue from this angle. Hence, we set aside the finding of the Id. CIT(A) and allow the claim of the assessee subject to verification of the same by the AO. In case the amount of Rs. 1,67,51,761/- is found to be relating to the old balances and not the current deposits of the assessment year under consideration, then no addition shall be made under Section 68 of the I.T. Act and the addition made shall stand deleted. This ground is therefore, allowed subject to above observation.”

3.1 Thus, looking into these facts a notice of enhancement was issued to the assessee on 11.03.2008 asking it to explain as to why this amount of Rs. 64,62,054/- should not be added to its income. In view of the directions of the Hon’ble ITAT and as per the observation made by the AO in her assessment order that the deposits during the current year were to the tune of Rs. 64,62,054/-.

3.2 To this appellant has replied that:

”That the nature of activity as stated above is such that there was no question of barrowings by the Society but the members of the Society who booked flats/plots are bound to deposit regular instalments as per the bye-laws of the Society. The appellant never compelled any member to deposit the amount but the Society has got full power that if the members making payment of regular installment defaults, the Society can forfeit their old deposits and will be free to allot flat/plot to any other member meaning thereby the instilments received by the society is against their booking of flat/plot. The entire purpose behind that the members of the Society are middle class ground and most of them are salaried employees or doing some small activities and they are helpless in depositing/purchasing the plot/flat by making one-time payment, therefore, the matter requires consideration on these angles prior to taking any adverse view. Sir, the Society as stated above came into existence in the year 1992 and

the year under consideration is the assessment year 2001-02. Thus regarding the regular deposits by the members upto 31.03.2000 there is no dispute and the department has accepted the identities, genuineness of the members and the same members whose identities were accepted are the depositors of instalments during the year. This fact proves that there is no dispute upto the deposits till 31.03.2000 and the only query after thorough investigation made by the assessing officer or by the Hon'ble Income Tax Appellate tribunal or even in the second innings of the assessment by the assessing officer question now raised which is far away from the real and correct facts of the case. The question now raised by your goodself was thoroughly examined by the assessing officer who framed the first assessment.

That in this case a return was filed by declaring an income of Rs. 6,299.00 by claiming exemption under Section 80-P(c) of the Act. After filing of the return the assessing officer scrutinized the accounts thoroughly and framed the order on 26.03.2004 on a total income of Rs. 1,70,60,110.00. The assessment was made under Section 143(3) of the Act and in computing the above total income the main addition made by the then assessing officer by invoking the provisions of Section 68 of the Act and added a sum of Rs. 1,67,51,761/-. The said amount is nothing but belongs to the members who are the regular depositors of instalment against their booking of the flats/plots. The assessing officer examined each and every ledger account of the depositor and found that in all the ledger accounts, there was opening balance and as well as payments during the year. In this regard the assessing officer himself prepared a list and attached the same as part of the assessment order. In the list there are four columns such as serial number, name of members, address and amount, In the last the total amount is Rs. 1,67,51,761/- which the assessing officer added under the head difference. In this manner amount was added and by adding such amount the then assessing officer created a fictitious liability against the Society. Against the said order an appeal was field but the first appellate authority absolutely failed in considering the facts in appropriate manner and thus without appreciating the facts properly

confirmed the addition. In this way the order of the first appellate authority was far away from judicious approach without applying mind properly.”

3.3. The submission given by the appellant has been perused and I do not find any merit in the submission given by the appellant. In fact the observation of the AO that the fresh deposits cannot be taxed u/s 68 is completely wrong as the Hon'ble ITAT has given a clear cut direction that deposits/instalments made by respective members of the Society during the current year has to be investigated and the deposits pertaining to the current year has to be taxed. Thus the contention of the AO that the addition which was made by the preceding AO is not maintainable is based totally on wrong premises and is contradictory to the directions given by the Hon'ble ITAT in its order. In fact in its submission the appellant had nothing new to add except saying that the AO was perfectly justified in not adding a sum of Rs. 64,62,054/-. In fact in its entire submission the assessee has not been able to contradict the finding of the AO that the fresh deposit during the financial year 2000-01 is to the tune of Rs. 64,62,054/- and once the AO has reached this conclusion she had no option but to add this to the income of the assessee as per the directions of the Hon'ble ITAT. Thus the contention of the appellant is hereby rejected and addition of Rs. 64,62,054/- is hereby made to the income of the appellant.

4.2 The matter again reached tribunal at the behest of the assessee in second round of litigation. The tribunal was pleased to restore the matter back to the file of Id. CIT(A) for fresh adjudication in second round of litigation vide appellate order dated 19th June 2008 in ITA No. 220/Alld./2006 for ay: 2001-02 , by holding as under:

“5. After hearing both the sides, we are of the view that this issue requires to be investigated at the level of the Ld. CIT(A). Therefore, the matter is restored to the file

of the Ld. CIT(A) for deciding de novo after providing adequate opportunity to the assessee.

4.3 As directed by tribunal vide appellate order dated 19th June, 2008 in second round of litigation , the matter again reached Id. CIT(A) in the third round of litigation . The assessee did not enter appearance before Id. CIT(A) , despite several opportunities being granted by Id. CIT(A), who was pleased to confirm the additions vide appellate order dated 06th August, 2019 in ITA No. CIT(A), Allahabad/10004/2006-07, by holding as under:

“Notices dated 31.12.2008, 01.04.2014, 01.05.2014, 26.05.2014, 15.09.2015, 03.03.2017, 03.10,2017 and 15.07.2019 fixing the date for compliance on 05.01.2009, 09.04.2014, 12.05.2014, 18.06.2014, 23.09.2015, 20.03.2017, 17.10.2017 and 22.07.2019 were issued through official Income Tax Business Application (ITBA network)/speed post. These notices were served on the e-mail address/speed post submitted by the applicant while filing the appeal. No written submission or any paper books has been filed in support of any of the grounds of appeal in this office. It appears that assessee is not interested in pursuing his own appeal. The case is being decided in absence of any submission or attendance by the assessee or her A.R. On each of these days when the case was fixed for hearing, it is seen that the assessee has remained absent or on some occasions moved adjournment application, despite the fact that notice for the specific dates of hearing have consistently been sent to the address provided by the assessee in its memo of appeals. Accordingly, I hereby decide this appeal filed by the appellant assessee on the basis of material available on record.

Assessment in the above noted case was completed u/s 143(3) of the I.T. Act 1961 on 26.03.2004 on total income of Rs. 1,70,60,110/-. Learned CIT(Appeals), Allahabad vide his order dated 20.09.2004 in appeal No. 23/DCIT/R-II/2004-05 confirmed the above

additions. The assessee preferred an appeal against the order of Ld. CIT(A), Allahabad in the above noted case. Hon'ble ITAT, Allahabad vide its order dated 7.10.2005 in ITA No. 481(Alld)/2004 has allowed relief to the assessee. The orders of the then A.O. making additions of Rs. 1,67,51,761/- this(sic u/s) 68 of the I.T. Act, 1961 has been set aside with the directions that in case the amount of Rs. 1,67,51,761/- is found to be relating to old balances and not the current deposit of the assessment year under consideration, then no addition shall be made under section 68 of the IT. Act, 1961. However, AO noted that total credit shown as advance for land as shown in the balance sheet as on 31.3.2001 is Rs. 5,32,53,534/- however as per above details total comes to Rs. 5,38,55,799/- AO added the difference of Rs. 6,02,265/- (Rs. 5,38,35,799/- - Rs. 5,32,53,535) as unexplained credit u/s 68 of the I.T. Act, 1961. Appellant filed this appeal. Vide order dated 03.06.2008, Appeal No. 128/ACITR-1/Alld/06-07 the Ld. CIT(A) enhanced the income by making an addition of Rs. 64,62,054/- under Section 68 of the I.T. Act since this was the amount of deposit received during the year by the assessee. Against this order of the CIT(A), Allahabad enhancing the income, the appellant filed appeal before Hon'ble ITAT, Allahabad Bench against the addition of Rs. 64,62,054/-. In ITA No. 220(Alld)/2006 dated 19.06.2008 the Hon'ble ITAT, Allahabad who has restored the issue back to file of CIT(A), Allahabad to re-decide to issue a fresh after giving proper and sufficient opportunity to the assessee with following observations:-

5. After hearing both the parties, we are of the view that this issue requires to be investigated at the level of the Ld. CIT(A). Therefore, the matter is restored to the file of the Ld CIT(A) for deciding de novo after providing adequate opportunity to the assessee.

The contents of the AO's and CIT(A) order have been perused and I have no reasons to interfere with the stand taken by the CIT(A) earlier on the issue who gave these following observations:-

3.3 The submission given by the appellant has been perused and I do not find any merit in the submission given by the appellant. In fact the observation of the AO that the fresh deposits cannot be taxed u/s 68 is completely wrong as the Hon'ble ITAT has given a clear cut direction that deposits/installments made by respective members of the Society during the current year has to be investigated and the deposits pertaining to the current year has to be taxed. Thus the contention of the AO that the addition which was made by the preceding AO is not maintainable is based totally on wrong premises and is contradictory to the directions given by the Hon'ble ITAT in its order. In fact in its submission the appellant had nothing new to add except saying that the AO was perfectly justified in not adding a sum of Rs. 64,62,054/-. In fact in its entire submission the assessee has not been able to contradict the finding of the AO that the fresh deposit during the Financial Year 2000-01 is to the tune of Rs. 64,62,054/- and once the AO has reached this conclusion she had no option but to add this to the income of the assessee as per the directions of the Hon'ble I.T.A.T. Thus the contention of the appellant is hereby rejected and addition of Rs. 64,62,054/- is hereby made to the income of the appellant.

In result, the income is enhanced."

It is a fact that these deposits of Rs. 64,62,054/- were made during the Financial year 2000-01 and the directions of the Hon'ble ITAT to the AO are unambiguous that such an amount should be added to the income of the appellant. The Hon'ble ITT in its order dated 7th October, 2005 in ITA N. 481(Alld)/ 2004 in pars 21 has observed that:

"in view of the above, the submission of the assessee that the amount of Rs. 1,67,51,761/- represents the deposits/installments made by respective members of the society prior to assessment year under consideration and these being old deposits, no addition can be made under Section 68 of the I.T. Act, 1961 is found to be acceptable. However, this version can be accepted only on

verification. It may be pointed out that neither the AO nor the Ld. CIT(A) had examined the issue from this angle. Hence, we set aside the finding of the Ld. CIT(A) and allow the claim of the assessee subject to verification of the same by the AO In case the amount of Rs. 1,67,51,761/- is found to be relating to the old balance and not the current deposits of the assessment year under consideration, then no addition shall be made under Section 68 of the I.T. Act and the addition made shall stand deleted. This ground is therefore, allowed subject to above observations.”

Thus looking into these facts in order to implement the directions of the Hon'ble ITAT, AO had to only work out the deposits taken during the current year and these were found to the tune of Rs. 64,62,054/-. Hence, there was no fault with the addition made by the CIT(A) while enhancing the quantum. During the appeal proceeding also, the details and evidences in support of the claims made in the grounds of appeal are not filed, explaining as to why this amount cannot be added u/s 68 of IT Act even though this amount was received during the year under consideration. Therefore, the addition of Rs. 64,62,054/- is not interfered with. “

4.4 Now, the assessee has come in appeal before the tribunal in third round of litigation , and the assessee did not appeared before the Bench on 12th July, 2022 and 22nd July, 2022 when this appeal was called for hearing before DB and also that no adjournment application was filed by the assessee. On earlier occasions when this appeal came up for hearing before DB , the assessee sought adjournment on as many as nine occasions which the Bench was pleased to grant. On 12th July, 2022, the DB decided to proceed with adjudication of this appeal on merit, after hearing ld. Sr. DR and perusing the material on record. We heard arguments of ld. Sr. DR who vehemently supported the appellate order passed by ld. CIT(A). The ld. SR DR submitted that despite several opportunities being granted to the assessee ,

no evidences/explanations are filed by the assessee to satisfy the mandate of Section 68 of the 1961 Act. We have observed that the assessee is a co-operative society and has raised advance for land received from its members, which stood at Rs. 5,32,53,535/- as per audited Balance Sheet of the assessee as at 31.03.2001, out of which fresh amount of deposits/ cash credits raised by assessee during the year under consideration were to the tune of Rs. 64,62,054 which stood added by Id. CIT(A) u/s 68 of the 1961 Act, and which requires our adjudication . This is the third round of litigation and the entire course of litigation upto now is enumerated by us in preceding para's of this order , and the same is not repeated again. So far as addition of Rs. 6,02,264/- made by the AO in the second round of litigation being differential between deposit being advance for land from members as is reflected in the Balance Sheet and the statement of deposits raised by assessee from members filed by the assessee during assessment proceedings, stood deleted by Id. CIT(A) in second round of litigation and hence this has attained finality. So far as fresh deposits being advance for land from members to the tune of Rs. 64,62,054/- raised by assessee from members during the year under consideration, are in the form of cash credits which are recorded in assessee's books of accounts, and the onus is on the assessee to explain identity and creditworthiness of the creditor and genuineness of the transaction . The assessee has not submitted any evidences/explanation to discharge its onus u/s 68 of the 1961 Act even before us. The assessee did not entered appearance before Id. CIT(A) in third round of litigation and also chose not to appear before us when this appeal was fixed for hearing on 12th July, 2022 as well on 22nd July, 2022 nor adjournment application was filed. The assessee has not submitted any explanation/ evidences to satisfy the mandate of Section 68 of the 1961 Act. Even, statement of fact has not been filed before the tribunal, although it is stated to have been filed in Form No. 36. Thus, in these circumstances, adverse view is to be

taken as despite several stages of litigation, and despite being given adequate and sufficient opportunities by authorities including us, the assessee failed to satisfy the mandate of Section 68 of the 1961 Act with respect to fresh deposits of Rs. 64,62,054/- raised by assessee during the year under consideration from its members towards advance for land. The onus u/s 68 was on the assessee as the said sum stood credited in its books of accounts, which the assessee failed to discharge. Thus, we find no merit in the appeal filed by the assessee, which stand dismissed. We order accordingly.

5. In the result, appeal filed by assessee in ITA no. 63/Alld/2020 for ay: 2001-02 stands dismissed

Order pronounced in Open Court on 03/08/2022 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 03/08/2022

Kd Azmi

Copy forwarded to:

1. Appellant – Ghaus Memorial Sahkari Awas Samiti Ltd., 991/861, Kareli, Allahabad, 211016, U.P.

Respondent – ACIT Range-2, Aaykar Bhawan, Allahabad. U.P.

3. CIT(A) –Aayakar Bhawan, Civil Lines, Allahabad, U.P.

4. CIT, Allahabad, U.P.

5. The Id. Sr. DR. ITAT, Allahabad, U.P.

ITA No.63/ALLD/2020
Assessment Year: 2001-02
Ghaus Memorial Sahkari Awas Samiti Ltd.,
Allahabad, U.P.

By Order
Assistant Registrar

*ITA No.63/ALLD/2020
Assessment Year: 2001-02
Ghaus Memorial Sahkari Awas Samiti Ltd.,
Allahabad, U.P.*