

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. G. S. PANNU, PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No.307/Del/2018
(Assessment Year : 2009-10)

M/s. A and R Buildmart Pvt. Ltd., 11/8, Mandir Wali Gali, Yusuf Sarai, New Delhi-110 016	Vs.	ITO Ward-1(1) New Delhi
PAN No. AAHCA 2794 D (APPELLANT)		(RESPONDENT)

Assessee by	--None--
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	09.10.2023
Date of Pronouncement:	12.10.2023

PER CHANDRA MOHAN GARG, JM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, New Delhi dated 22.12.2017 for Assessment Year 2009-10.

2. The assessee has raised following grounds of appeal :

- “1. That the reopening of case is void ab initio. That on the facts & circumstances of the case the Ld. AO erred in addition of Rs.61,80,000/- as alleged concealed income simply on the basis of information received from DIT (Investigation Wing). The Ld. AO has not applied his independent mind on the tangible material which forms the basis of reason to believe. The conclusion of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a borrowed satisfaction.

2. *During the year under consideration (FY 2008-09) the company has received only total share application money of Rs. 30 Lacs (including share premium of Rs. 27,00,000/-), however Ld. AO made an addition of Rs. 60 Lacs as share application money received. This shows Ld. AO had not apply his independent mind to form reasons to believe for assessment u/s 147 of the Act.*
3. *The CIT(A) has upheld the addition upto Rs. 30,90,000/- and make a deletion for remaining addition of Rs. 30,90,000/-. That upheld addition of Rs. 30,90,000/- is also not justifiable since during the proceedings while the assessee has produce documents and evidences against the share application money received of Rs. 30,00,000/- the Ld. CIT(A) has ignored to the reply and evidence which was produced before him. To prove the genuineness, identity & creditworthiness of actual share application money of Rs. 30,00,000/-, the appellant has already submitted all the requisite documents.*
4. *The CIT (Appeal) neither considered to the facts of the case nor rely on the reply given during the proceedings u/s 250 of the IT Act, 1961.*
5. *The above grounds of appeal are independent and without prejudice to one another.*
6. *The detailed submission shall be filed at the time of hearing before your honor.*
7. *Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.”*

3. When the appeal was called for hearing neither the assessee nor any authorised representative or Counsel appeared nor any adjournment application has been filed despite due service of notice. Therefore, we proceed to decide the appeal *ex parte qua* assessee after hearing the arguments of Learned Sr. D.R. on behalf of the department.

4. From the grounds as well as contentions before the authorities below, we note that the Assessing Officer has made two additions to the income of assessee, viz. first under section 68 of the Act amounting to Rs.60,00,000/- shown by the assessee in its books of accounts as Share application money from M/s. Virgin Capital Services Pvt. Ltd. and second addition of Rs.1,80,000/- on account of Commission @ 3% for arranging bogus accommodation entry of Rs.60,00,000/- and assessed the same as undisclosed expenditure under section 69C of the Act. The assessee carried the matter before Learned CIT(A), the Learned CIT(A) reduced both the additions of Rs.60,00,000/- and second addition of Rs.90,000/- to 50% by observing that there was no credit entry Rs. 30,00,000/- under vide instrument no.028744 dated 24.09.2008. The assessee is before this Tribunal mainly with the two grievances, first upholding part addition of Rs.30,00,000/- under section 68 of the Act on the allegation of bogus Share application money and upholding of part unexplained commission expenditure of Rs.90,000/- under section 69C of the Act.

5. From the orders of the authorities below particularly submissions of assessee while filing additional evidence under Rule 46A of the Income-tax Rules, 1962, we note that the main contention of the assessee was that the assessee has discharged onus as per requirement of section 68 of the Act, therefore, no addition can be made in the hands of the assessee under section 68 & 69C of the Act. It was also contended that the Bank Statement of Current Account of assessee clearly reveals that there was only one credit entry of 30,00,000/- on 01.10.2008 vide instruction no.128081 but there was no credit entry of Rs.30,00,000/- vide instrument no.028744 dated 24.09.2008 in the Bank Statement furnished by the assessee

company during the course of assessment as well as remand proceedings.

6. The Learned CIT(A) on the submission of assessee called remand report from the AO wherein the AO vide report dated 10.08.2017 and second remand report vide dated 20.07.2017 wherein the AO confirmed that the Bank Statement account of assessee for the period 23.09.2008 to 31.03.2009 shows only one credit entry of Rs.30,00,000/- on 01.10.2008 vide instruction no.128081 and there was no credit entry of remaining amount of Rs.30,00,000/- under vide instruction no.028744 dated 24.09.2008 in the bank statement furnished in the assessee company during the assessment proceedings. Thus, conclusion of Learned CIT(A) deleting part addition is quite correct and justified.

7. From the relevant para of first appellate order, we note that the Learned CIT(A) upheld the first addition of Rs.60,00,000/- and has reduced the second addition of Rs.1,80,000/- to Rs.90,000/- with following observations and findings:

“Adverting to the facts in the appellant's case, it is obvious that only documentary evidence by way of confirmation, bank statement, copy of acknowledgement of return is filed to explain the source of the impugned credit. Despite, repeated opportunities, the onus was not discharged before the AO. Copy of bank accounts of the company also reveals simultaneous deposits and withdrawals leading credence to the modus operandi employed by such companies to provide accommodation entries. These facts only show that a paper trail is sought to be created to camouflage the entire transaction to introduce unaccounted Income by way of share capital in the hands of the appellant company.”

In view of the facts of the case and the judicial pronouncements referred above, it is apparent that the appellant has taken accommodation entry from M/s Virgin Capital Services (P) Ltd. Neither genuineness of transaction nor the creditworthiness of the subscribing company, the onus of which rested on the appellant has been discharged. The explanation

offered regarding the amounts credited in the books of accounts of the appellant has correctly been found to be unsatisfactory by the AO. However the appellant has submitted that;

“we have taken a credit of only transaction vide PO No. 128081 dated 27/09/2008 of Rs. 30 Lacs while the transaction vide PO No. 028744 dated 24/09/2008 of Rs 30 Lacs is never credited in our account.” and also submitted an affidavit.

The AO in his remand report has acknowledged that "with regard to verification of the entries from the records, it is submitted that during the course of assessment proceedings, the assessee company filed the copy of bank statement of current account No. 100717 (copy enclosed) for the period 23.09.2008 to 31.03.2009 which shows only one credit entry of Rs. 30,00,000/- on 01.10.2008 vide instrument No.028744 in the bank statement furnish by the assessee company during the course of assessment proceedings."

Therefore, the addition is restricted to Rs. 30,00,000/- only as the entry was credited in the bank and is part of the Balance Sheet.

Accordingly, the addition made by the AO with regard to unexplained credit of Rs.30,00,000/- is upheld. The AO has also brought to tax commission payment of Rs.90,000/- to arrange for the impugned accommodation entry which is also part of elaborate modus operandi for obtaining accommodation entries In view thereof, addition of Rs 90,000/- is in order and is confirmed. These grounds of appeal are partly ruled against the appellant.

7. In the result, appeal is partly allowed.”

8. From the relevant para of first appellate order, we note that the Learned CIT(A) has granted part relief to the assessee regarding first addition of Rs.60,00,000/- made u/s 68 of the Act by restricting same Rs.30,00,000/- only which was found credit in the Bank account of the assessee and directed the AO to delete the second entry vide dated 24.09.2008 which was not found to be credited to the Bank account of the assessee. Consequently, Learned CIT(A) also restricted the second addition on account of unexplained commission expenditure to Rs.90,000/-.

9. On careful consideration of basis taken by the AO, explanation filed by the assessee before the authorities below, both the remand reports of the AO and material available on record, we are of the considered view that the Learned CIT(A) was right in restricting the addition under Section 68 of the Act to Rs.30,00,000/- and the second addition u/s 69C of the Act to Rs.90,000/- as the remand report was clearly revolving the fact that the alleged entry dated 24.09.2008 was not found credited to the Bank account of the assessee. The assessee failed to discharge onus lay on him as per section 68 of the Act regarding entry dated 01.10.2008 hence, AO rightly made addition. Therefore, we reach a logical conclusion that the Ld. CIT(A) has rightly evaluated factual position of the case and thereafter, granted part relief to the assessee reducing the addition u/s 68 of the Act to Rs.30,00,000/- and second addition of Rs.90,000/- under section 69C of the Act. We are unable to see any ambiguity or any other valid reason to interfere with the findings recorded by the Learned CIT(A). Therefore, we are uphold the same. Accordingly, the grounds of assessee are dismissed.

10. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 12.10.2023

Sd/-

(G. S. PANNU)
PRESIDENT

Date:- 12.10.2023

Priti Yadav, Sr. PS*

Copy forwarded to:

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

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI