

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.378/Ind/2018  
Assessment Year: 2012-13**

|                               |                              |   |
|-------------------------------|------------------------------|---|
| ITO 4(3)<br>Indore            | <b><u>बनाम/</u></b><br>Vs.   | M/s Vinyaka Infraventure India<br>Pvt. Ltd, 203, Anmol Sagar<br>Darshan,9/1, New Palasia,<br>Indore |
| (Revenue)                     |                              | (Respondent)  |
| PAN:AADCV3600K                |                              |   |
| Revenue by                    | Shri Amit Kumar Soni, Sr. DR |   |
| Respondent by                 | None                         |   |
| <b>Date of Hearing:</b>       | <b>18.07.2019</b>            |   |
| <b>Date of Pronouncement:</b> | <b>31.07.2019</b>            |   |

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

The above captioned appeal filed at the instance of Revenue pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 13.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 27.03.2015 by ITO-4(3), Indore.

2. The Revenue has raised following grounds of appeal:

*“Whether on the facts and in the circumstances of the case, ld. CIT(A) has erred in allowing the appeal of the assessee by deleting all the additions of Rs.77,12,500/- without appreciating the finding of the AO as per assessment order.*

*Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in not considering the enquiries done and statement recorded by the Dy. CIT (Central), Indore and investigation done by Investigation Wing where in so many discrepancies in respect of assessee company were found as noted in assessment order and various additions were made by the AO accordingly.*

*3. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting of Rs.20,00,000/- made by the AO u/s 68 of the IT Act whereas the assessee company failed to give any satisfactory reply before the AO nor explained with the entries with books of accounts.*

*4(i) Whether on the facts and in the circumstances of the case, ld. CIT(A) has erred in allowing the appeal of the assessee pertaining to the addition of Rs.25,00,000/- made by the AO u/s 68 of the IT Act whereas the money lender companies having no existence physically and were found to be providing accommodation entry only as well their identity and creditworthiness was not proved.*

*(ii) Whether on the facts and in the circumstances of the case, ld. CIT(A) has erred in allowing the appeal of the assessee in full without requiring remand report from the concerned AO in pursuance the additional submission/documents as furnished by the assessee company which is against principles of natural justice and Rule 46A of IT Rules.*

*5(i) Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.32,12,500/- made by the AO u/s 69 of the IT Act*

*even when the assessee company failed to explain the proper sources of these expenses and ultimately they were proved to have met in cash out of undisclosed income.*

*(ii) Whether on the facts and in the circumstances of the case, ld. CIT(A) has erred in allowing the appeal of the assessee in full without requiring remand report from the concerned AO in pursuance the additional submission/documents as furnished by the assessee company which is against principles of natural justice and Rule 46A of IT Rules.”*

3. Brief facts as culled out from the records are that the assessee is a Private Limited Company engaged in Real Estate Developers business. Nil income was shown in the e-return filed on 29.09.2012. Case was selected for scrutiny assessment as per CASS, followed by serving of notices u/s 143(2)& 142(1) of the Act. Information called out from the Learned Assessing Officer (in short Ld. AO) were partly furnished and after considering the same Ld. AO made an addition of Rs.45,00,000/- u/s 68 of the Act for unexplained cash credit and addition u/s 69 C of the Act at Rs.32,12,500/-. Income assessed at Rs.77,12,500/-.

4. Against the order of Ld. AO, assessee preferred an appeal before the Ld. CIT(A) and succeeded in all the grounds.

5. Now the revenue is in appeal before the Tribunal. When the case was called out none appeared at the assessee's behest. Since various opportunities were given to the assessee in the past to which no compliance was made, it was decided to adjudicate the issues with the assistance of Ld. DR and available records.

7. Ld. DR referring to the grounds made a common submission that the assessing officer failed to conduct proper inquiry about the identity, genuineness and creditworthiness of the cash creditors as well as the alleged unexplained expenditure in purchase of land. He also submitted that all the issues raised in this appeal may be set aside to the file of Ld. CIT(A) for adjudication afresh after calling for a remand report from the Ld. AO to be prepared after conducting sufficient inquiry.

8. We have heard Ld. DR and perused records placed before us. Through this appeal, revenue has challenged the finding of Ld. CIT(A) deleting the additions of Rs. 20,00,000/- and Rs.25,00,000/- u/s 68 of the Act and deletion of addition u/s 69C of the Act at Rs.32,12,500/-. During the course of hearing Ld. DR pointed out with regard to the unexplained cash credit u/s 68 of the Act at Rs.25,00,000/- received from four Private Ltd. Co. at Rs.4,00,000/-, Rs.8,50,000/-, Rs.5,00,000/- & Rs.7,50,000/- respectively. It was submitted that all the alleged four Pvt. Ltd. Co. are not having regular sources of income from business operations and they are merely accommodation entry provider.

9. As regards additions for cash credit u/s 68 of the Act at Rs.20,00,000/- that we find that a survey u/s 133A of the Act was conducted in the case of M/s Shah Bharat Kumar laxmichand, Indore. Various incriminating documents were found which

contained information of certain cash transactions in the form of amount advanced to the assessee, Ld. AO treated it as an unexplained cash credit received from Shah Bharat Kumar laxmichand. However, Ld. AO did not conduct sufficient inquiry by way of issuing summons to the alleged cash creditors for the loan of Rs.25,00,000/- and cash credit from Shah Bharat Kumar laxmichand will at Rs.20,00,000/- before making the additions Ld. CIT(A) has also not taken necessary steps to satisfy about the identity, genuineness and creditworthiness of the cash creditors as well as transactions.

10. As regards, the addition u/s 69C at Rs.32,12,500/- the same was based on the observation of the Ld. AO on the basis of registered deed of the agricultural land situated at Mangalia, Sanwer Indore, as per which cheque of Rs.26,00,000/- has been given by assessee. However no description of cheques was mentioned nor any specific information was provided by the assessee to explain the investment of Rs.32,12,500/- (cheque of Rs.26 lacs and registration expenses of Rs.6,12,500/-).

11. From perusal of the finding of the Ld. CIT(A) as well as in the facts and circumstances of the case and looking to the lack of inquiry conducted by the Ld. AO before making the additions, we are of the considered view that all the issues raised by the revenue needs to be set aside to the file of Ld. CIT(A) for adjudication afresh. We direct the ld. CIT(A) to call a remand report from the Ld. AO, on

all the issues raised in this appeal which should be prepared after issuing necessary notices/summons to the concerned parties and after collecting the information as per the provisions of law in order to support the additions made by him. Ld. DR raised no objection if all the issues are set aside to the file of Ld. CIT(A).

12. We, accordingly as per the terms indicated above set aside all the grounds raised in this appeal to the file of Ld. CIT(A) for afresh adjudication. Needless to mention that proper opportunity of being hear should be provided to the assessee.

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

*Order was pronounced in the open court on 31 .07.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated :31 /07/2019

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**