

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "एसएमसी", नई दिल्ली में

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

सुश्री सुषमा चावला, उपाध्यक्ष  
**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT**

आयकर अपील सं. / ITA No.8035/Del/2018

निर्धारण वर्ष / Assessment Year 2015-16

VAG Commodities (P) Ltd.,  
D-42, South Extension, Part-I  
New Delhi

PAN-AAACT3578R

.....अपीलार्थी/ Appellant

vs

ITO, Ward-26(1),  
New Delhi

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Satyam Sethi, Advocate and  
Shri. Atra Trana Panda, Advocate

प्रत्यर्थी की ओर से / Respondent by : Sh. Pradeep Singh Gautam, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2020	घोषणा की तारीख / Date of Pronouncement: 21.02.2020
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, VP**

The present appeal filed by assessee is against order of CIT(A)-9, New Delhi dated 16.10.2018 relating to assessment year 2015-16 against order passed under section 143(3) of the Act.

2. The only issue raised in the present appeal is against addition of Rs. 20 Lacs u/s 68 of the Act.

3. Briefly in the facts of the case, the AO during the course of assessment proceedings noted the assessee to have received Rs. 20 Lac as unsecured loan from M/s Prasad Fincap Ltd. Notice under section 133(6) of the Act dated 27.09.2017 was issued to M/s Prasad Fincap Ltd., to ascertain the genuineness and correctness of the transaction. The notice under section 133(6) of the Act was received back unserved with the remarks “No such firm at this address.”

4. The assessee thus was issued a show cause notice to produce the Director of the said concern. In reply, the assessee submitted documents relating to the said concern in the DAK. However, the Director was not produced for verification. The AO further allowed opportunity to the assessee to provide confirmation from the party independently. However, no such evidences were furnished. Hence the AO made the addition under section 68 of the Act at Rs. 20 Lac. The CIT(A) upheld the order of AO, against which the assessee is in appeal.

5. The learned AR for the assessee pointed out that the assessee had received Rs. 10 Lac on 19.05.2014 and another Rs. 10 Lac on 20.05.2014. The confirmation of the said party was filed alongwith the proof of tax deduction at source on the interest due to M/s Prasad Fincap Ltd,. The copy of the TDS certificate has also been filed on record. The said amount was returned back to the said concern and all the transactions were through banking channel. The learned AR for the assessee fairly admitted that the AO may give notice under section 131 of the Act to the Director of the assessee company as the amount has been repaid and the said party is not cooperating.

6. The learned DR for the Revenue placed reliance on the orders of the authorities below.

7. On the perusal of record and after hearing both the authorized representatives, the issue which arises in the present appeal is against the addition made under section 68 of the Act at Rs. 20 Lac. The said addition is made on account of loan received by the assessee during the year and where the assessee had failed to produce the Director of the said concern, the amount was added as undisclosed income of the assessee. Under section 68 of the Act, the onus is upon the assessee to establish the identity and creditworthiness of the person and also to establish the genuineness of the transaction.

8. The learned AR for the assessee has pointed out that the said loan which was received by the assessee had been repaid and also pointed out that on the said loan, interest was paid on which tax was deducted at source and deposited in the account of Department. Necessary evidences in this regard have been filed. However the initial onus upon the assessee has not been discharged. The AO had issued notice under section 133(6) of the Act which remained uncomplied. Accordingly, it is deemed fit that the matter be restored back to the AO who shall issue notice under section 131 of the Act to the Director of the M/s Prasad Fincap Ltd,. The assessee is thus directed to discharge the onus cast upon it under section 68 of the Act. The Assessing Officer shall decide the issue in accordance with law. The grounds of appeal raised by the assessee are thus allowed for statistical purposes.

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

Order pronounced in the open court on 21<sup>st</sup> February, 2020.

**Sd/-**  
**(SUSHMA CHOWLA)**  
**उपाध्यक्ष/VICE PRESIDENT**

दिल्ली / दिनांक Dated : 21<sup>st</sup> Feb, 2020

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली  
Assistant Registrar, ITAT, Delhi