

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)

ITA No.6150/DEL/2014

[A.Y 2011-12]

DCIT  
Central Circle-18  
New Delhi

Vs.

Paramount Residency Pvt. Ltd.  
208, Savita Vihar, Sikka Mansion  
LSC, 2<sup>nd</sup> Floor  
New Delhi-110092

Appellant by : Ms. Sushma Singh, CIT (DR)

Respondent by : Dr. Rakesh Gupta, Advocate

Date of Hearing : 10.12.2020  
Date of Pronouncement : .12.2020

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the  
CIT(A)-3, New Delhi dated 08.08.2014 pertaining to A.Y. 2011-12.

2. Representatives of both the sides were heard at length. Case record carefully perused.

3. The grievance of the revenue read as under :-

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs. 22,18,88,782/- made by the AO on account of unverifiable purchases.*

2. *On the facts and in the circumstances of the case, the CIT(A) has erred in hiding that the purchases made from the three parties are shown in the "Material at Site" when no such connection has been established by the assessee by production of any document in this regard.*

3. *On the facts and in the circumstances of the case, the CIT(A) has erred in hiding that no addition can be made to the income of the assessee if the expenditure is not claimed in the P&L account.*

4. *On the facts and in the circumstances of the case, the CIT(A) has erred in hiding that the AO is at liberty to examine the allowability of purchase in the assessment year 2012-13 when the transactions has been undertaken in the A. Y. 2011-12 and has been found to be bogus.*

5. *On the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the fundamental cannons of principle of taxation that the determination of income and examination of accounts under the Income Tax Act is qua assessment year wise.*

6. *On the facts and in the circumstances of the case, the CIT(AS) has erred in deleting the addition of Rs. 6,25,00,000/- made by the AO on account of unverifiable purchases.*

7. *On the facts and in the circumstances of the case, the CIT(A) has erred in holding that the creditworthiness, genuineness and identity of the creditor shall be examined while examining the case of Grugal Developers Pvt. Ltd. when amounts were found credited in the accounts of the assessee.*

8. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition as the same has been allowed in clear violation of the expression provisions of law in as much as when the creditors are found to be bogus the addition has to be made in the hands of the assessee and provisions of the Income Tax Act does not allow any discretion in this regard.*

9. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

*10. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

4. Ground No.1 to 5 are in respect of the disallowance of Rs.22,18,88,782/- which were deleted by the CIT(A).

5. Facts on record show that during the course of the scrutiny assessment proceedings the AO found that the assessee has debited expenditure on account of purchase of material made from the following parties :-

1. M/s. Mohan Ram Trading Co. amounting to Rs.1,25,40,049/-
2. M/s. Shyamji Traders amounting to Rs.25,79,978/-
3. Ganga Trading Co. amounting to Rs.85,01,193/-
4. U-Tek Sales Corporation amounting to Rs.5,50,00,100/-

6. During the course of search and seizure proceedings carried out by the investigation wings, it was found that these parties are not existing at the addresses mentioned on the bills and could not be found in the field

inquiries conducted for this purpose. The AO made the additions by holding as under :-

*“5. I have considered the reply filed by the assessee and do not find any merit in the submissions. When a claim of expenditure has been made, the assessee is duty bound to support the same by positive evidences. The alleged suppliers of materials were neither found existing at the given addresses during the course of search & seizure proceedings and post search inquiries, nor they could be located during the present proceedings. Summons u/s 131 of the Income Tax Act were issued to all the above mentioned parties but the same were received back unserved. Since the genuineness of the expenditure claimed by way of alleged purchases from the above mentioned parties has not been proved, the purchases made from the above parties has not been proved, the purchases made from the above parties aggregating to Rs. 22,18,88,782/- are treated as non genuine and therefore disallowed. I am therefore making an addition of Rs.22,18,88,782/-to the total income of the assessee company on account of unverifiable purchases. Further submissions of the assessee that when assessee is following percentage of completion method for declaring its income, the claim of expenditure by way of above purchases in only to that extent is also not acceptable because in the project work in progress, entire purchases are debited.”*

7. On perusal of the record we find that on identical set of facts for the same parties the AO in A.Y.2010-11 in assessee’s own case had made addition of Rs.78621320/-. The quarrel travelled upto the Tribunal and

the Tribunal in ITA No.4907/Del/2014 vide order dated 13.08.2018 has dealt with the disallowance as under :-

*“14. We have given thoughtful consideration to the orders of the authorities below. The facts on record show that a search and seizure operation was carried out in the appellant’s group on 11.3,2011, It is pertinent to mention here that no incriminating material was found during the course of search proceedings. The AO chose four parties from whom building construction materials were purchased. It would not be out of place to mention that the fair market value of the project situated at Paramount Symphony, NH - 24, Ghaziabad is at Rs. 3,29,82 68 526/ which was estimated by the Valuation Cell of the Income-tax Department at Rs, 3,53,47,33,96;1/- . This means that the Valuation Cell of the I.T. Department has estimated the fair market Value of the said project much higher than the value declared by the assessee. Further, on a project of more than 300 crores, the AO has doubted the genuineness of purchases only to the extent of Rs, 7,86 crores, which is about 2.52%,*

*15. The lower authorities have harped upon the fact that the parties were not produced for verification. While doing so, both the lower authorities have ignored the conclusive direct evidences brought on record,; namely, PAN details, VTA details, TIN Numbers, confirmations and bank statements. There is no dispute that all the payments have been made by account payee cheques. The lower authorities have taken an adverse view because they found that the payees have withdrawn cash on the same or succeeding day. There is not an iota of evidence whatsoever to*

*show that the cash has reached back to the assessee.*

16. *The Hon'ble Calcutta High Court in the case of CIT Vs, Dataware Private Limited in Tax Appeal No. 263 of 2011 a GA No. 2856 of 2011 in its order dated 21.09.2011 has observed as under:*

*"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the RAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence"*

17. *The Hon'ble Supreme Court in the case of Tejua Rohit Kumar Kapadia 94 Taxmann.com 325 has declined to allow the SLP against the judgment of the Hon'bte Gujarat High Court wherein the Hon'ble High Court has held that purchases made by the assessee - trader were duly supported by bills and payments were made by account payee cheque and the seller also confirmed the*

*transaction and there was no evidence to show that the amount was recycled back to the assessee and accordingly, held that addition was not called for. In that case also, the AO had disallowed some expenditure treating the purchases as bogus and made the addition.*

18. *The Id. DR Has strongly relied upon the judgment of the Hon'ble Gujarat High Court in the case of N.K. Proteins Ltd 2016-TIOL 3165- AHM-IT wherein the facts show that during the course of search proceedings at the office premises of NKPL, blank signed cheque books and vouchers of number of concerns were found. Further, endorsed blank cheques of NKPL by these concerns were also found wherein the endorsement was on the back of the cheques. Accordingly, the purchases made from these concerns were treated as bogus purchases by the AO.*

19. *The facts of the case in hand are clearly distinguishable from the facts of this case in as much as there; was nothing of such documents, as referred, were found from the possession of the assessee even during the course of search and seizure operation. The Id, PR has also placed reliance on some other judicial decisions, but the facts are totally different from the facts of the case in hand.*

20. *As mentioned elsewhere, total estimated value of the project for the year under consideration is more than Rs. 300 crores,*

*Therefore it would be a futile exercise to doubt the genuineness of a meager amount of Rs.7.86 crores. Moreover, as mentioned elsewhere, the purchases were duly supported by bills and vouchers. The payment have been made through account payee cheques. The payments are reflected in the bank statement of the payer and the payee. We, therefore, do not find any reason for doubting the genuineness of these purchases. While restricting the disallowance to Rs. 1,96,55,330/-, the reasoning given by the first appellate authority is not only absurd, but illogical. The first appellate authority has heavily relied upon the decision in the case of Vijay Proteins Ltd 55 TTJ [Ahd] 76. Considering the facts of the case in totality, as discussed hereinabove, we are of the considered view that that entire addition deserves to be deleted. We, accordingly, set aside the findings of the CIT(A) and direct the AQ to delete the entire addition of Rs.7,86,21,320/-.”*

8. As no distinguishing facts have been brought to our notice nor we find any in the assessment order, respectfully following the findings of the coordinate Bench (supra) ground No. 1 to 5 taken together are dismissed.

9. Ground No.6 to 8 relates to the deletion of addition of Rs.6.25 crores.

10. Facts on record show that during the course of assessment proceedings the AO noticed that the assessee has obtained loans from various persons as under :-

1. Bholra Motor Finance (P) Ltd. Rs.1,00,00,000/-
2. P. Seven General Finance (P) Ltd. Rs.2,55,00,000/-
3. Toor Finance Company Ltd. Rs.1,55,00,000/-
4. Vemuri Finvest (P) Ltd. Rs.1,15,00,000/-

Totaling to Rs. 6.25 crores

11. The assessee was asked to explain these credits in the light of section 68 of the Act. The AO observed that the assessee has failed to discharge the onus cast upon it by the provisions of section 68 of the Act. The AO further observed that one of the group concerns M/s. Fusion Conbuild Private Limited has also received share application from the same parties mentioned herein above. The AO further observed that the another group concerns namely M/s. Frugel Developers Pvt. Ltd. has also shown to have received share application money from all these parties mentioned here in above.

12. The assessee in its reply before the AO stated as under :-

*“During the year under consideration to argument the need of working capital we had obtained loans from certain parties through RTGS/Banking channels. The funds so obtained were however returned through account payee cheques drawn on our disclosed bank accounts within same accounting year. AS required by your goodself, the complete details and addresses of such parties alongwith their respective statements of accounts were already placed on record.*

*“It is also a matter of fact on record as borne out by the search proceedings as well that nothing on the contrary is found suggesting that the share application money is otherwise not genuine. Nothing in this connection have been confronted to us in either the assessment or search and later post search proceedings. It is also a matter of fact borne out by the assessment proceedings that till date nothing on the contrary is communicated to us. ”*

13. Reply of the assessee did not find any favour with the AO who proceeded by making addition of Rs.6.25 crores u/s. 68 of the Act.

14. Before the CIT(A) the assessee strongly contended that the loans received from four parties were in the month of September, 2010 and the same were duly repaid back in the month of October, 2010. The loans were received through banking channels and were paid back through banking channels.

15. It was also contended that sufficient opportunity was not given by the AO to prove the identity, creditworthiness and genuineness of the

transaction from the four lenders. Additional evidences were furnished under rule 46 A which were duly considered by the CIT(A). A remand report was called and the AO submitted his report vide letter dated 15.04.2014 which is exhibited at para 8.3 of the order of the CIT(A).

16. The assessee made further submissions by way of a rejoinder to the AO's remand report and such rejoinder is exhibited at pages 22 to 30 of the order of the CIT(A).

17. After considering the facts and the submissions and the rejoinder the CIT(A) held as under :-

*"I have gone through the above submission of the appellant and have considered the facts and evidences on record. The AO's contention is that they received loans from the above mentioned 4 parties and immediately the said loans were returned back to them and thereafter the same amount was invested by these 4 investors, as share application money in appellant's other group company for which separate addition has also been made by the same AO.*

*The details of amounts received and returned back are as under:-*

Sl.No.	Party Name	Date and Amount Received in Assessee Book		Date and Amount of Repayment		Date on which money is invested as Share Application Money		Remarks
		Date	Amount (Rs. in Lacs)	Date	Amount (Rs. in Lacs)	Date	Amount (Rs. in Lacs)	
1	Bholā Motors Finance Private Limited	09.09.2010	20.00					Total Addition of this party in Frugal Developers Private Limited, a group company under same management is Rs. 1.50 Crores which includes Rs.1.00 Crores of loan amount of Paramount Residency Private Limited
		09.09.2010	25.00			07.10.2010	50.00	
		10.09.2010	54.00			07.10.2010	50.00	
		10.09.2010	1.00	07.10.2010	100.00			
			<u>100.00</u>		<u>100.00</u>		<u>100.00</u>	
2	P seven General Finance Private Limited	09.09.2010	30.00	25.09.2010	50.00	25.09.2010	50.00	Total Addition of this party in Frugal Developers Private Limited, a group company under same management is Rs. 2.55 Crores which includes Rs.2.55 Crores of loan amount of Paramount Residency Private Limited
		10.09.2010	70.00	27.09.2010	135.00	28.09.2010	65.00	
		14.09.2010	53.50	07.10.2010	50.00	28.09.2010	70.00	
		16.09.2010	40.00	07.10.2010	20.00	07.10.2010	50.00	
		16.09.2010	41.50			08.10.2010	20.00	
		16.09.2010	20.00					
			<u>255.00</u>		<u>255.00</u>		<u>255.00</u>	
3	Toor Finance Co. Limited	14.09.2010	61.00	27.09.2010	35.00	27.09.2010	35.00	Total Addition of this party in Frugal Developers Private Limited, a group company under same management is Rs. 1.93 Crores which includes Rs.1.55 Crores of loan amount of Paramount Residency Private Limited
		14.09.2010	55.50	27.09.2010	15.00	28.09.2010	15.00	
		15.09.2010	30.00	07.10.2010	105.00	08.10.2010	50.00	
		16.09.2010	8.50			08.10.2010	5.00	
						08.10.2010	50.00	
			<u>155.00</u>		<u>155.00</u>		<u>155.00</u>	

4	Vemuri Finvest Private Limited	16.09.2010	65.00	27.09.2010	115.00	27.09.2010	115.00	Total Addition of this party in Fruga Developers Private Limited, a group company under same management is Rs. 1.47 Crores which includes Rs.1.15 Crores of loan amount of Paramount Residency Private Limited
		16.09.2010	50.00					
			<b>115.00</b>		<b>115.00</b>		<b>115.00</b>	

*From the perusal of the above chart, it is clear that Rs. 6.25 crore which was received during the year from the 4 investors was immediately refunded back and it found that the same money is being invested in the appellant's group entity, namely Frugal Developers Pvt. Ltd. as share application money, and in their case the addition of the like amount has been made by the same AO in the year under consideration on the ground that Frugal Developers Pvt. Ltd. have not been able to explain the identity, creditworthiness and genuineness of the share application money received from the above mentioned 4 investors. Since as per principle of equity and justice, the same amount cannot be added twice, accordingly the addition of Rs. 6.25 crores made in the appellant's hand stands deleted and the creditworthiness, genuineness and identity of the above 4 parties will be considered in the hands of Frugal Developers Pvt. Ltd. for which the appeal has also been filed separately vide appeal No. 179/2013-14 dated 26.04.2013.*

19. We have given a thoughtful consideration to the aforementioned findings of the CIT(A). At the very outset we don't agree with the findings of the FAA holding that this is a case of double addition. Merely because the alleged repayment by the assessee was invested as share application money in group concerns M/s. Frugel Developers Private Limited where again the genuineness of the transaction was doubted and the additions were made, would not make the addition as double addition in the hands of the present appellant. Since the loans were found credited in the books of accounts of the appellant, in the light of the provisions of section 68 of the Act, it was incumbent upon the assessee to discharge the initial burden in proving the identity, genuineness and creditworthiness of the lender, which in our opinion the assessee has grossly failed to discharge. Once the assessee fails to discharge the initial burden cast upon it, the provisions of section 68 become imperative. The FAA has been carried away with the fact that the same amount has been added in the group concerns which was not at all relevant on the facts of the present case.

19. We accordingly set aside the findings of the CIT(A) so far as this deletion of Rs.6.25 crores is concern and restore that of the AO. Ground No. 6 to 8 are accordingly allowed.

20. In the result, the appeal filed by the revenue is partly allowed.

Sd/-  
**[SUCHITRA KAMBLE]**  
**JUDICIAL MEMBER**

Dated: .12.2020  
\*Neha\*

Sd/-  
**[ N. K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

Asst. Registrar  
ITAT, New Delhi

Date of dictation	10.12.2020
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