

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

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No.127/DEL/2020
[Assessment Year: 2010-11]**

VPS Infratech Pvt. Ltd. CB-385B, Ring Road, Naraina, New Delhi-110028	ITO, Ward-26(4), C.R. Building, New Delhi-110001
C-2/42, Janakpuri, New Delhi-110058 (AR)	
PAN-AACCV9991J	
Assessee	Revenue

Assessee by	None
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	01.12.2021
Date of Pronouncement	13.12.2021

ORDER

This appeal filed by the assessee is directed against the ex-parte order dated 26.09.2019 of the learned CIT(A)-28, New Delhi, relating to Assessment Year 2010-11.

2. None appeared on behalf of the assessee at the time of hearing. No petition seeking adjournment has been filed. The notice of hearing issued by the Registry through RPAD was returned un-served by the postal authority with remark "left without address". The assessee has also not taken any steps to

intimate the change of address, if any. Therefore, I deem it proper to decide the appeal on the basis of material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 24.03.2011 declaring total income of Rs.7879/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'the Act') on 04.06.2011. Subsequently, on the basis of information obtained from the Investigation Wing that during the course of search operation in the case of Sh. Surendra Kumar Jain group of cases, it was revealed that he was involved in providing accommodation entries to the persons. The assessee is also one of the beneficiaries of such accommodation entries. The Assessing Officer, thereafter reopened the case u/s 147 of the Act after recording the reasons and after obtaining necessary approval from the competent authority. Accordingly, notice u/s 148 of the Act was issued to the assessee. Since, the assessee did not make any compliance to the notice u/s 148 of the Act, notice u/s 142(1) was issued by the Assessing Officer fixing the case for 24.07.2017. There was no compliance to the side of the assessee. Subsequently, the Assessing Officer issued notice u/s

143(2) and 142(1) of the Act which is served upon the assessee. The Assessing Officer also issued summons along with the notice u/s 142(1) to the directors Sh. Varun Arya and Pooja Arya but again there was no compliance. Subsequently, the director of the assessee company Sh. Varun Arya appeared before the Assessing Officer, whose statement was recorded. After considering the various submissions made by the assessee from time to time and observing that the assessee has failed to substantiate the three ingredients of provisions of section 68 of the Act i.e. the identity and creditworthiness of the persons who were invested in the shares of the assessee company and the genuineness of the transaction, the Assessing Officer made addition of Rs.25,00,000/- to the total income of the assessee.

4. Similarly, the Assessing Officer made addition of Rs.43,750/- being commission paid @ 1.75% for arranging the accommodation entries of Rs.25 Lakhs. Apart from the above, the Assessing Officer also made addition of Rs.50,000/- on account of cash deposit in the bank account u/s 69A of the Act. Thus, the Assessing Officer determined the total income of the assessee at Rs.26,01,630/-.

5. In appeal, the ld. CIT(A) upheld the action of the Assessing Officer.

6. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

Aggrieved by the order of the Ld. CIT(A), the appellant submits the present appeal challenging the propriety, legality and justness of the said order on amongst other the following grounds :-

- *That the Ld. CIT (A) erred in law and facts of the case in sustaining the order passed by the A.O. v/s 147/143(3) because the order was passed ex-party hence principle of natural justice violated.*
- *That on the facts and in the circumstances of the case and in law, LD. CIT(A) erred in sustaining the order passed by the AO u/s. 147/143(3) without appreciating that assumptions of jurisdiction u/s. 148 by AO was in violation of mandatory jurisdictional conditions stipulated under the Act.*
- *That the Ld. CIT(A) erred in law and on facts in holding that the assessee failed to fulfil the requirements of section 68 of the Act as per settled law in the facts and circumstances of the case.*
- *That the Ld. CIT(A) erred in law and on facts in confirming the addition Of 25,93,750/- to the income of the assessee made by the A.O. u/s 68 Of the Act in the facts and circumstances of the case.*
- *That on the facts and in the circumstances of the case and in law, Ld CIT-(A) erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that sole reason for addition has been non production of director of companies which is held to be not the valid reason for addition u/s 68.*
- *That on the facts and in the circumstances of the case Shri Ravinder Arya, who was Managing Director of the*

appellant Company was primarily looking of the entire affairs of the Company. He has since expired, the other directors were not involved in the day to day operations of the Company and hence were not well informed about the details of overall functioning and management of the Company. As Managing Director the deceased, Shri Ravinder Arya entered into financial transactions with the parties dealt with the Company and in this circumstance the other directors are not in a position to give true and fair details of the affairs of the Company.”

7. I have heard the ld. DR and perused the record. I find due to inability of the assessee to substantiate the identity and creditworthiness of the share applicant and genuineness of the transaction, the Assessing Officer made addition of Rs.25 lakhs u/s 68 of the Act. Further, he made addition of Rs.43,750/- being commission @1.75% for arranging the accommodation entries. The Assessing Officer also made addition of Rs.50,000/- being the cash deposits in the bank account. I find due to non-appearance of the assessee before the Ld. CIT(A), the Ld. CIT(A) in a very detailed order, sustained the additions made by the Assessing Officer. I do not find any infirmity in the order of the ld. CIT(A) in sustaining the additions made by the Assessing Officer. I find, the Ld. CIT(A) in his exhaustive order has thoroughly discussed all the issues and has given his reasoning while sustaining the addition which in my opinion is a reasoned one and does not call for any

interference. I, therefore, uphold the same and the grounds raised by the assessee are dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order was pronounced in the open court on 13th December, 2021.

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 13/12/2021

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi