

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VARANASI CIRCUIT BENCH, VARANASI  
BEFORE SHRIVIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.27/VNS/2020  
Assessment Year: 2017-18

|  |    |   |
|--|----|---|
| M/s Admire Realtors Private Ltd.,<br>37, Elgin Road, Civil Lines,<br>Allahabad-211001,U.P. | v. | DCIT, Central Circle,<br>Varanasi ,U.P. |
| <b>PAN:AAkca2997f</b>  |    |   |
| (Appellant)  |    | (Respondent)                            |

|                        |                          |
|------------------------|--------------------------|
| Appellant by:          | None                     |
| Respondent by:         | Sh.Neeraj Kumar, CIT -DR |
| Date of hearing:       | 24.08. 2022              |
| Date of pronouncement: | 26.08.2022               |

**ORDER**

**Per RamitKochar, Accountant Member:**

This appeal in ITA No. 27/Vns/2020 for assessment year(ay) 2017-18 is filed by assessee which has arisen out of appellate order dated 03<sup>rd</sup> December, 2019 passed by ld. Commissioner of Income-tax(Appeals)-III, Lucknow(hereinafter called “ the CIT(A)”), in Appeal No. 14/DCIT/CC/Vns./CIT(A)-III/Lko/18-19 for ay: 2017-18, the appellate proceedings had arisen before ld. CIT(A) , from assessment order dated 27<sup>th</sup> December, 2018 passed by learned Assessing Officer(hereinafter called “ the AO”)u/s. 143(3) r.w.s. 153B of the Income-tax Act, 1961 for ay: 2017-18.

2. The assessee had not entered appearance before the Division Bench, despite notices being sent by Registry by speed post as well by e-mail. It is in fact, the assessee who filed an application for early hearing on 23.02.2021, but since then the assessee is not appearing before the Division Bench. When this appeal came up for hearing before DB on 24<sup>th</sup> August, 2022, none appeared on behalf of the assessee nor any adjournment applications were filed on behalf of the assessee. The DB decided to proceed to adjudicate this appeal on merits in accordance with law, after hearing Id. CIT-DR and after perusing the material on record.

**ITA No.27/Vns/2020, AY 2017-18**

3. The grounds of appeal raised by assessee in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi Circuit Bench, Varanasi, in ITA no. 27/Vns/2020 for ay:2017-18, reads as under:

- “1. *Because the Ld. Lower Authorities has erred on facts and under the law in assessing the income Rs.8,29,500/- instead of returned income of Rs.6,14,440/- by treating entire professional receipts as undisclosed income.*
2. *Because the addition are solely based on hypothetical situations, surmises, conjecture and personal presumptions as well as without proper verification/consideration of material and details available on record, hence the same is liable to be deleted.*
3. *Because the Ld. CIT (A) erred in taking a view that the appellant has not maintained any record which may enable the AO to compute his income without appreciating the fact that the books of account of the appellant, being private limited company, has been kept and audited by the Independent Chartered Accountant as per the provision of Companies Act.*
4. *Because the Ld. CIT (A) erred in affirming the addition done by the Ld. AO u/s 68 of the Act in the case of the appellant without appreciating that provisions of Section 68 are not applicable in the facts and circumstances of the case since the appellant has already accounted for the income and paid the tax thereon. Therefore; the*

*same cannot be considered to be undisclosed income in term of Section 68 of the Act.*

5. *Because the Ld. Lower Authorities erred in not allowing the legitimate business expenses from the consultancy and brokerage receipts*
6. *Because the Ld. Lower Authorities has not considered the submission made and the case laws relied upon by the assessee.*
7. *Because the Ld. Lower Authorities has also erred in applying tax at the rate of 60% on the alleged unexplained credit of Rs.8,29,500/-*
8. *The assessee craves leave to add/ alter any of the grounds of appeal before or at the time of hearing."*

4. The brief facts of the case are that there was a warrant of authorization issued by ld. Pr. Director of Income tax (Inv.), Lucknow, and search , seizure and survey operations u/s. 132 & 133A of the 1961 Act were carried out by Investigation Wing on the business and residential premises of M/s Tulsiani Construction and Developers Pvt. Ltd. , its sister concerns, residential premises of Directors and Proprietors of the group , on 16.11.2016. During the course of search, seizure and survey operations carried out by Revenue u/s. 132 & 133A of the 1961 Act, several documents, cash, jewellery etc. as per Annexures to the Panchnama's drawn, were claimed by Revenue to have been found/seized by the search party. A search was conducted in the business premises of the assessee namely M/s. Admire Realtors Pvt. Ltd., on 16.11.2016. Thereafter the cases was centralized with ld. DCIT , Central Circle, Varanasi, vide order dated 26.09.2017 passed by ld. PCIT, Allahabad , for completion of assessment proceedings u/s. 153A/143(3) of the 1961 Act. The assessee filed return of income u/s. 139 , on 27.03.2018 for impugned assessment year 2017-18, showing total income of Rs.6,14,440/-. The AO issued notice's u/s. 143(2), on 14.09.2018 ,while notice u/s 142(1) was issued

on 17/09/2018 and 30/10/2018, which were claimed by Revenue to have been duly served on the assessee.

The assessee is a Private Limited Company and has claimed to be engaged in construction and other ancillary and related activities and it claimed to have derived income under the head business and profession. The Assessing Officer observed during course of assessment proceedings that for all the assessment years from 2011-12 to 2016-17, the assessee had not offered income to the scale offered in ay: 2017-18. Since there was a sudden rise in income which was found to be disproportionate to income offered in earlier years as compared to impugned ay: 2017-18 which is the year of demonetization , the AO asked assessee to provide justification for the cash deposits made during demonetization period. The assessee was asked by AO to furnish following details:

- (i) Bills and vouchers for cash receipts.
- (ii) TDS deducted by payer
- (iii) Cash Book
- (iv) Sales Ledger
- (v) Bills of expenses incurred, if any
- (vi) Sales tax/Service tax details
- (vii) Name, PAN, address of persons from whom cash has been received against sales/service.
- (viii) Registration details in sales tax.

The assessee submitted cash book, receipt ledger and vouchers in support of its claim, and the assessee had shown income from business and consultancy.. It was also observed by AO that the assessee has deposited cash of Rs.8.00 lacs on 13.11.2016 in its bank account with Federal Bank and the

assessee was asked by AO to explain the sources of cash deposits in the bank account, which the assessee explained that the cash deposits of Rs. 8,00,000/- on 13.11.2016 was made out of income received from brokerage and commission. The assessee filed copies of cash book and brokerage & commission account from 1.4.2016 to 30.11.2016 along with copy of income receipt. The assessee submitted that the same is verifiable from income tax return and audited financial statements. Further in response to specific queries raised by AO, the assessee submitted as under:

- The bills and vouchers for cash receipts have already been enclosed hereinabove.
- No TDS has been deducted by the payer.
- The cash book has already been enclosed hereinabove for your perusal.
- The sale/ brokerage ledger has also been enclosed hereinabove.
- For bills of expenses, your assessee begs to say that the Profit and loss account has already been submitted before your goodself, wherein complete list of expenses has been attached. However, complete books of accounts, alongwith the bills, vouchers will be produced before your goodself for your kind perusal whenever you desire.
- The service tax is not applicable on your assessee for the receipts are less than Rs. 10,00,000/- as per Notification 33/2012-ST.
- The cash receipts have been enclosed hereinabove, showing details of the Name and address of the persons from whom cash has been received against sales/service.
- Registration under service tax law is not applicable on your assessee as the receipt of commission is less than Rs. 9,00,000/-.

The AO issued show cause notice u/s. 142(1) dated 11.12.2018 to the assessee, whereby the assessee was asked to submit PAN, name and address of persons from whom cash was received allegedly against sales/service, which as per the Assessing Officer, the assessee had failed to adduce evidence to prove identity, creditworthiness and genuineness of the parties whose name appears in those receipts. Further, the Assessing Officer asked the assessee to justify the claim for expenses and to produce bills for expenses. The AO also asked assessee to justify the nature and scope for

consultancy services allegedly provided by the assessee. As per the Assessing Officer vide aforesaid show cause notice, claim of the assessee for consultancy income was not genuine, and the cash deposited and credited in the books of accounts was generated out of unexplained and unaccounted sources and the same was brought in the books of accounts by the assessee under the garb of consultancy income. Thus, the Assessing Officer asked assessee to justify deposit of cash of Rs.8,29,500/- credited in its books of account and why the same be not treated as unexplained cash credit and added as income of the assessee as unexplained income for the impugned assessment. The assessee submitted before AO that all the receipts vouchers in which full name of the person from whom receipt of consultancy income was received, was given. The assessee submitted before the AO that all the receipt vouchers against consultancy income were submitted wherein the name of person from whom consultancy income was received, was duly mentioned. The assessee submitted that neither under the Income-tax Act nor under service tax laws, the assessee is required to keep record relating to PAN and address of such persons. The assessee submitted before the AO that the consultancy services relating to real estate business was rendered in the earlier years also and for this year also similar consultancy income was received. The assessee also submitted before AO that list of all expenses were duly submitted along with audited financial statements. The assessee submitted before AO that major expenses to the tune of Rs. 1,20,000/- were towards salary paid to staff, which does not require bills. The assessee also submitted before AO that the assessee is Business Consultant within scope of 'Management and Business Consultant' under the Service Tax law, and the assessee provided consultancy services towards real estate business. The assessee also submitted that its Director Mr. Mahesh Tulsiani is a qualified Engineer and has expert knowledge in the field. The assessee submitted before AO that similar consultancy

rendered for earlier years , were accepted by department u/s 143(1) of the 1961 Act. The assessee submitted before the AO that the assessee has offered explanation and provided the documents such as receipts, vouchers and the amount has been shown as income/receipts, the additions if made by AO will be illegal.

The Assessing Officer rejected the contentions of the assessee by holding that no scope of work for consultancy services was defined, which should have been reflected in the bills and/or vouchers. The AO observed that receipt vouchers contains name of the person and amount for which consultancy was allegedly provided , without any other details such as address or PAN. The AO also observed that the assessee did not provide the details of employees or key persons of the company who have been providing consultancy on behalf of the company. The AO observed that the receipt voucher is after thought and was prepared post search merely to justify the claims of assessee's receipt. The AO observed that the genuineness of transaction and the identity and creditworthiness of persons from whom money is claimed to have been received , have not been justified.

The Assessing Officer also observed that the assessee has not produced books of account during assessment proceedings, despite being given several opportunities. The Assessing Officer also doubted genuineness of the expense incurred by the assessee, and the AO observed that the expenses such as audit fee, ROC fee, Bank charges and professional charges have not increased in proportion to increase in income , while so far as staff salary expenses of Rs. 1,20,000/- claimed by the assessee, the AO observed that apart from this year under consideration , the assessee has not claimed salary and labour expenses in any of the earlier years. The AO concluded that the expenditure was claimed by the assessee merely to disguise the receipt of credit of money in

the books of accounts , as genuine. The Assessing Officer also observed that the registration with service tax department is mandatory once services provided exceeds Rs. 9 lacs and deduction of service tax become mandatory once the turnover of services crosses Rs.10.00 lacs. The AO observed that the assessee has deliberately kept the turnover just below Rs.9.00 lacs in most of the cases, so that no registration is required. The AO observed that this argument gathers further strength from the fact that the same amount i.e. Rs.8.00lacs has been deposited in cash in respective bank accounts by multiple companies belonging to Tulsiani Group of Companies. The AO observed that in Pawaini Infrazone Private Limited and Tulsiani Fitness and Healthcare Limited, where even the turnover crossed Rs. 9 lacs, those entities also did not get themselves registered under service tax laws, to avoid further scrutiny by other department. The AO also observed that it could not be coincidence that all these companies have similar turnover for ay:2017-18. The Assessing Officer also observed that under Section 44AA of the 1961 Actr.w.r. 6F of the Income Tax Rules,1962, the assessee is required to maintain books of accounts , which also includes bills of expenditure. The AO observed that despite various opportunities, the assessee did not produce any bills/vouchers pertaining to expenditure. The assessee claimed before AO that the major expenses is of staff salary of Rs.1,20,000/- , which does not require bills. The AO observed that no salary register is maintained by assessee to justify the payment of salary. The AO observed that salaries were paid in cash, and the assessee failed to discharge its onus , as it did not keep original records of expenditure and receipts both. The AO observed that the assessee has submitted ledger of service provided .The AO observed that after the date of deposit of cash amount of Rs.8.00 lacs in bank during the month of November , 2016 i.e. the month of demonetization, Nil or small amount of consultancy charges has been received by the assessee. The AO observed that

it is noteworthy that in the remaining four months from December, 2016 to March, 2017, the assessee has not received any amount of money against consultancy services. The AO observed that how it is possible that the assessee received approximately Rs. 8lacs in the first eight months of the year against consultancy services, but did not receive anything in the remaining four months of the financial year. This as per AO is clear evidence of window dressing of accounts and the assessee has tried to fabricate its account post demonetization and search operation. The AO observed that the expenditure claimed and income shown is used as coloring device merely to establish the genuineness of sources of income, while as per AO the fact is that the assessee deposited cash in bank account out of unaccounted and undisclosed sources of income, under the garb of consultancy income. The Assessing Officer also observed that no documents relating to consultancy services for the financial year 2016-17 pertaining to relevant ay: 2017-18 was found, impounded or seized during the course of search, seizure and survey operations conducted by Revenue. It was also observed by the Assessing Officer that survey u/s. 133A of the Act was conducted by Revenue in the premises of ShriUdayKushwaha, CA of the assessee, but no document supporting the claim of the consultancy services were found. Thus, the AO concluded that the vouchers are all made up post search and/or demonetization merely to prove creditworthiness to consultancy income, which in fact represents undisclosed cash credit. The AO also observed that the assessee did not deposit advance tax on these alleged consultancy income claimed to have been earned by the assessee, which also proves that it is only after search and demonetization that the assessee deposited the cash from unexplained and undisclosed sources and was coerced to submit tax with interest. The Assessing Officer also observed that search and seizure operation on Tulsiani Group was conducted by Revenue, on 16.11.2016 and nearly 30-35 companies were

centralized to this office. Amongst these cases, a total of 11 companies, which had been showing very little or no business till the ay: 2016-17, were selected by the assessee group to deposit unaccounted cash accumulated with the group. These companies were primarily showing their income from business and consultancy. The AO observed that it was only in the ay:2017-18, which happens to be year of demonetization that all these companies registered manifold growth in their turnover. The AO observed that surprisingly but not coincidentally ,all the companies deposited on amount of Rs.8.00 lacs in cash in their bank accounts, during the demonetization. A comparative chart for all the companies for ay: 2011-12 to 2017-18 showing pattern of consultancy income earned by these 11 companies were reproduced by AO in its assessment order , as under:

**Chart of 11 group companies under consideration and the pattern of turnover in eight years including AY 2018-19 for comparison**

| S.No | Name of the company                     | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | Cash deposit during demonetization | Date of deposit |
|------|---|---------|---------|---------|---------|---------|---------|---------|---------|------------------------------------|-----------------|
| 1    | Pawini Infraventure Pvt. Ltd.           | 58000   | 46000   | 0       | 45000   | 33500   | 31160   | 893100  | 31400   | 800000                             | 13.11.2016      |
| 2    | Pawini Homes Pvt. Ltd.                  | Nil     | Nil     | 25500   | 40800   | 27400   | 26560   | 891300  | 25200   | 800000                             | 13.11.2016      |
| 3    | Grace Infracore Pvt. Ltd.               | 0       | 0       | 24500   | 35400   | 25000   | 26600   | 859700  | 26550   | 800000                             | 13.11.2016      |
| 4    | Admire Infracore Pvt. Ltd.              | 0       | 32000   | 40500   | 30500   | 33400   | 33800   | 882000  | 35500   | 800000                             | 16.11.2016      |
| 5    | Admire Infracore Pvt. Ltd.              | 0       | 30000   | 92000   | 34500   | 36900   | 32600   | 890700  | 34500   | 800000                             | 16.11.2016      |
| 6    | Tulsiani Fitness and Healthcare P. Ltd. | 0       | 33000   | 42000   | 40500   | 36500   | 34650   | 932400  | 34100   | 800000                             | 13.11.2016      |
| 7    | Admire Realtors Pvt.                    | 0       | 34000   | 48500   | 31000   | 33800   | 32200   | 829500  | 60000   | 800000                             | 13.11.2016      |

|    |   |     |     |       |       |       |       |        |                  |        |            |
|----|---|-----|-----|-------|-------|-------|-------|--------|------------------|--------|------------|
|    | <b>Ltd.</b>                                     |     |     |       |       |       |       |        |                  |        |            |
| 8  | PawiniInfrazone Pvt. Ltd.                       | 0   | 0   | 26000 | 36400 | 11500 | 0     | 978600 | 17000            | 800000 | 13.11.2016 |
| 9  | AvantikaInfra ventures Pvt. Ltd. (sale of soil) | Nil | Nil | Nil   | Nil   | Nil   | Nil   | 807100 | Return not filed | 800000 | 13.11.2016 |
| 10 | PawiniBuildzone Pvt. Ltd.                       | 0   | 0   | 25000 | 34300 | 24400 | 23350 | 879800 | 27800            | 800000 | 13.11.2016 |
| 11 | Sunshine Infrazone Pvt. Ltd.                    | 0   | 0   | 27500 | 33300 | 25400 | 24160 | 895300 | 27900            | 800000 | 13.11.2016 |

Chart of 11 group companies under consideration and comparison of similar pattern of receipts before and after demonetization month i.e. November, 2016

| S.No. | Name of the company                           | Total receipts as shown by assessee during ay: 2017-18 | Receipts as per ledger upto 13.11.2016 | Receipts as per ledger 13.11.2016 to 31.3.2017 |
|-------|---|--|--|--|
| 1.    | PawiniInfraventure Pvt. Ltd.                  | 893100   | 813900                                 | 79200  |
| 2.    | Pawini Homes Pvt. Ltd.                        | 891300   | 851200                                 | 40100  |
| 3.    | Grace Infrazone Pvt. Ltd.                     | 859700   | 859700                                 | 0  |
| 4.    | Admire Infraprojects Pvt. Ltd.                | 882000   | 882000                                 | 0  |
| 5.    | Admire Infraheights Pvt. Ltd.                 | 890700   | 852200                                 | 38500  |
| 6.    | Tulsiani Fitness and Healthcare Pvt. Ltd.     | 932400   | 892400                                 | 40000  |
| 7.    | <b>Admire Realtors Pvt. Ltd.</b>              | <b>829500</b>  | <b>829500</b>                          | <b>0</b>                                       |
| 8.    | PawiniInfrazone Pvt. Ltd.                     | 978600   | 857700                                 | 120900   |
| 9.    | AvantikaInfraventure Pvt. Ltd. (sale of soil) | 807100   | 794600                                 | 12500  |
| 10.   | PawiniBuildzone Pvt. Ltd.                     | 879800   | 859500                                 | 20300  |
| 11.   | Sunshine Infrazone Pvt. Ltd.                  | 895300   | 895300                                 | 0  |

The Assessing Officer observed that evidently turnovers of all the companies are having similar pattern. None of the companies have reported turnover in any other assessment year to the extent shown in the demonetization year i.e. relevant ay: 2017-18. It cannot be mere coincidence that all the companies belonging to one Group follows exactly same pattern, i.e. had negligible turnover till the demonetization year and suddenly in the year demonetization occurred, the turnover increased to several times. The AO observed that that turnover has again decreased in ay: 2018-19 i.e. the year after demonetization. It is therefore clear that, the assessee has tried to use the entire arrangement as a coloring device, just to evade taxation and action against the companies. The AO observed that theassessee has certainly failed to provide satisfactory explanation of money so credited in the bank account.

The Assessing Officer also observed that during the course of assessment, theassessee was time and again given opportunity to provide details of persons from whom such Consultancy receipt was credited. But, in response the assessee has only provided Name of such persons without any address, contact details or any other detail by which identity and as a natural corollary to it, Creditworthiness of such persons may be ascertained. The AO observed that the assessee has failed to satisfy the mandate of Section 68 of the 1961 Act, to establish identity, creditworthiness and genuineness of the cash credit. The AO referred to following judicial precedents to conclude that the onus lies on the assessee to prove the identity and creditworthiness of the payers and genuineness of the transaction, which in the instant case the assessee failed to do so:

- a) Kamal Motors v. CIT(2003) 131 Taxman 155(Raj.)
- b) Roshan Di Hatti v. CIT (1977) 107 ITR 938(SC)
- c) Kale Mohammad Hanif v. CIT (1963) 50 ITR 1(SC)

- d) Hazi Nazir Hussain v. ITO (2004) 271 ITR (AT) 14(Del.)
- e) A Govindrajulu Mudaliar v. CIT (1958) 34 ITR 807(SC)
- f) CIT v. M. Ganapathi Mudaliar (1964) 53 ITR 623(SC)
- g) Hon'ble ITAT, Bombay decision in M/s Mont Blanc Properties and Industries Private Limited ( ITA No. 614/Bom/87)
- h) CIT v. Durga Prasad More (1971) 82 ITR 540(SC)
- i) Sumati Dayal v. CIT 214 ITR 801(SC)
- j) Chuhar Mal v. CIT(1988) 172 ITR 250(SC)
- k) Dhakeshwari Cotton Mills v. CIT (1954) 261 ITR 775(SC)
- l) Hon'ble ITAT, Delhi decision in the case of Harsh Win Chadha v. DDIT
- m) Hon'ble Supreme Court judgment and order in the case of McDowell v. CTO
- n) Hon'ble Supreme Court judgment and order in the case of CIT v. P. Mohankala

Thus, the AO held that the consultancy receipt of Rs. 8,29,500/- shown by assessee is unexplained cash credit u/s. 68 of the 1961 Act , and is to be taxed @60% by invoking provisions of Section 115BBE of the 1961 Act, vide assessment order dated 27<sup>th</sup> December, 2018 passed by AO u/s 143(3) read with Section 153B of the 1961 Act.

5. Aggrieved by assessment order dated 27<sup>th</sup> December, 2018 passed by the AO u/s 143(3) read with Section 153B of the 1961 Act, the assessee filed first appeal before Id. CIT(A) , which stood dismissed by Id. CIT(A) vide appellate order dated 03<sup>rd</sup> December, 2019, by holding as under:

*“Ground No. 1 to 6 are relates to addition of Rs. 8,29,500/-, made by the AO.*

7. *In this case return of income was filed at total income of Rs. 6,14,440/- on receipts of 8,29,500/-. During the course of assessment proceedings the AO noted that the appellant had disclosed abnormal jump in income for the*

*year under consideration. The appellant had deposited 8,00,000/- on 13/11/2016 in the bank account, during demonetization period. On being confronted to substantiate source of deposit and receipts, it was submitted that the total receipts were part of professional income of the relevant financial year, which were deposited by appellant. The appellant also submitted copies of bills raised for professional receipts. It was claimed that the appellant provided consultancy to several persons and the fee received in cash was deposited in the bank account after deduction of expenses. The AO rejected the contention of the appellant and held that the total receipts of the appellant were from undisclosed sources and taxed them u/s 68 of the Act and applied provisions of section 1158BE of the Act.*

*8. During the course of appellate proceedings it was once again submitted that the receipts disclosed by the appellant was professional receipts, which was duly recorded in the books of account, subject to audit and properly vouched. It was further submitted that the appellant had regularly disclosed Income from professional receipts in the preceding year also and the same were accepted as such by the AO, hence it was unwarranted that the same were not accepted for the year under consideration.*

*9. I have examined the assessment order of the AO and the submission made by the appellant. The only issue which needs examination pertains to the treatment of receipts disclosed by the appellant.*

*10. The appellant has disclosed total receipts of Rs. 8,29,500/- for the year under consideration as professional Income received on account of consultancy provided by it. The same has been claimed on the strength of receipts issued by it to the persons who had received the said consultancy. This issue has been examined by the AO in the assessment order. The claim of the appellant was not accepted for the following reasons:*

- Very little Income disclosed in preceding year.*
- All the income has been received in the period prior to demonetization and very little or no Income has been received post demonetization period.*
- The receipts do not disclose any detail, other than name and amount of the person to whom it was issued.*
- No supporting evidence was produced in support of expense claimed by the appellant.*
- No receipt was found during the search and seizure operation.*

11. A perusal of the submission made by the appellant shows that the appellant has not submitted anything with regards to the fact that there is abnormal increase in the professional receipt of the appellant. In the preceding years the appellant has disclosed receipts in the range of Rs. 31,000/- to 48,500/-. The receipt of the appellant has again dipped to Rs. 60,000/- in the next year, for the A.Y. 2018-19.

12. Thus it is clear that there is no rising trend in the trajectory of receipts of the appellant. The receipts disclosed by the appellant in the year under consideration are abnormally high in comparison to the overall trend of amount of receipts disclosed by the appellant. It is a fact that no document was found during the search and seizure operation conducted at the premises of the appellant with regard to the professional receipts and the appellant has submitted the copies of the bills during the assessment proceedings only

13. The receipts issued by the appellant are all issued prior to the date of deposit of cash i.e. 13/11/2016 . It is practically improbable that a company having a robust business up to a certain date ceases to have any business after that particular date. The bills issued by the appellant does not provide any information with regards to identity of the person to whom the same is being issued except for the name of the person. Thus the genuineness of the receipt issued by the appellant is very much doubtful. The appellant has contended that it was not bound by any law to maintain any record in this regard, but it is against all human probability that none of the receipts issued by the appellant contains any details whatsoever except the name regarding the person to whom it was issued. The appellant has not submitted any details regarding the consultancy provided by it to its customers, only a vague description has been offered by that it has provided consultancy services regarding structural designing and planning etc. relating to construction of small houses. Even if the contention of the appellant is accepted for the sake of argument, then too details regarding its customer can be generated from the scope of consultancy provided by it. A person who wishes to have consultancy regarding the structural design and construction of house needs to provide details regarding dimensions of the area of the land ,location, budget and the basic requirements it seeks to have in the dwelling unit. Thus the details regarding the customer can be obtained very easily by the appellant. Furthermore the type of consultancy provided by the appellant requires that the customer needs to meet the professional more than once, in order to get the requisite consultancy. This in turn necessitate maintenance of information and details regarding the customer with the professional. The appellant has claimed that no details were maintained by it which is against the natural course of action In case of such professional

14 Furthermore all the eleven group companies have deposited identical amount during the demonetization period and all the group companies have disclosed petty amount as income in the preceding and succeeding years. There is abnormal increase in turnover during the year under consideration. Almost all the receipts have been accrued prior to date of deposit of cash and negligible amount has been received after the deposit in all the case. The amount has been received in cash for which no verification is possible except for the bills issued by the company. Thus it can be seen that all the group companies have followed a similar pattern, which is against the established norms and human probability. It is pertinent to note here that the eleven group companies have disclosed following turnover for the year under consideration

| S.No. | Name of the Company                             | Amount of turnover |
|-------|---|--------------------|
| 1     | PawiniInfraventure Pvt. Ltd.                    | 813900             |
| 2     | Pawini Homes Pvt. Ltd.                          | 851200             |
| 3.    | Grace Infrazone Pvt. Ltd.                       | 859700             |
| 4.    | Admire Infraprojects Pvt. Ltd                   | 882000             |
| 5     | Admire Infraheights Pvt. Ltd                    | 852200             |
| 6     | Tulsiani Fitness and healthcare Pvt. Ltd        | 892400             |
| 7.    | Admire Realtors Pvt. Ltd.                       | 829500             |
| 8     | PawiniInfrazone Pvt. Ltd.                       | 857700             |
| 9     | AvantikaInfraventuresPvt Ltd.<br>(Sale of soil) | 794600             |
| 10    | PawiniBuildzonePvt Ltd,                         | 859500             |
| 11    | Sunshine Infrazone Pvt. Ltd.                    | 895300             |

A peculiar fact that emerges from the perusal of the above reveals that all these companies have two common directors i.e. Mr. NareshTulsiani and Mr. Mahesh Tulsiani. The appellant has claimed that these directors are well qualified to provide technical consultancy. If the contention of the appellant is taken at its face value than these two persons have provided consultancy of approxRs. 94 Laks in the period 01/04/2016 to 13/11/2016. All the fees has been received in the denomination of Rs. 12-16000/-. Thus the average size of consultancy provided by the directors is Rs. 14,000/-. Accordingly to achieve the said turnover the directors needed to provide approx 680 consultations during the said period even when they were engaged in other companies also. Looking at this it can be safely assumed that the consultancy practice of the these two directors was quite handsome but due to inexplicable reasons this vanished in the post demonitization period. It is against the human probability that a professional consultant to have extraordinary clientele during a certain period, but the same just vanishes without trace, after a certain period. The appellant is

*engaged in consultation In real estate sector and this extra ordinary turnover has been achieved even when the whole sector was going through crisis.*

*15. The appellant has contended that it was not liable to maintain any books as per section 44AA of the Act read with Rule 6F of IT Rules 1962. It is correct that the appellant was not liable to maintain any prescribed books of account. But the mandate of section 44AA of the Act provides that the assesses should maintain such books of account which enables the AO to compute his income. In this case the appellant has not maintained any record which may enable the AO to compute his income. Therefore the sources of the receipts have remained unsubstantiated. The persons who have provided the amount are not recognizable, the circumstantial evidences also points toward the fallacy in the contention, made by the appellant. In this regards the judgment made by the Hon'ble supreme court in the case of CIT vsDurga Prasad more [1971] 82 ITR 540, at pages 545-547 made a reference to the test of human probabilities in the following fact situation:-*

*"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real, in a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.*

*It is well settled principle of law as declared by the Hon'ble Supreme Court in the case of SumatiDayal Vs. CIT (214 ITR 801) (SC) that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that standard of proof beyond reasonable doubt has no applicability in determination of matters under taxing statutes, in the present case, it is clear that apparent is not the real as evidence from the investigation report.*

*16. In view of the above mentioned facts, the material brought on record by the AO, and the decision of CIT vsDurga Prasad More (1971) 82 ITR 540, and the case of SumatiDayal vs. CIT (supra) 214 ITR 801 (SC), the test of human probabilities needs to be applied and true nature of the transaction has to be ascertained in light of the surrounding circumstances. Considering the facts and*

circumstances of the case, I find that the appellant has not maintained any record which may enable the AO to compute his income and the source of receipts have remained unsubstantiated. In view thereof addition of Rs. 8,93,100/- made by the AO u/s 68 of the I. T. Act are hereby upheld.

17. The appellant has also contended that the provisions of section 115BBE are not applicable in its case. In order to adjudicate the same, a visit to the provision of the section 115BBE is necessary. The section 115BBE is as under

Section 11588E was originally introduced by Finance Act 2012 w.e.f. 01.04.2013. Section 115BBE as enacted then is reproduced as under:

1158BE. Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.-(1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of-

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent, and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1)"

The real purpose of introducing this provision was to charge higher tax at the maximum marginal rate in respect of income/expenditure/investment on the assessee who fails to explain the nature and source of said income/expenditure/investment. The relevant sections which enable the AO to assess such income/expenditure/investment are contained in sections 68,69,69-A, 69-B,69-C,69-D

18. Section 1158BE was amended vide Finance Act 2016 w.e.f. 01.04.2017 to the effect that no setting off of any loss shall be allowed against Income of the nature referred to in the specified sections. This section was further amended vide Taxation Laws (Second Amendment) Act 2016 w.e.f. 01.04.2017 (A.Y 2017-18). The section as amended as on today reads as under:

"(1) Where the total income of an assessee,

*(a) Includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the Return of Income furnished under section 139, or*

*(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of*

*(i) the amount of Income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and*

*(ii) the amount of income-tax with which the assessee would have been chargeable had his total Income been reduced by the amount of income referred to in clause (i)*

*The purpose and object of the latest amendment was explained in the statements of objects and reasons*

*"Concerns have been raised that some of the existing provisions of the Income tax Act, 1961 could possibly be used for concealing block money. It is, therefore, Important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision."*

*Section 115BBE imposes tax at a flat rate of 60% (w.e.f... A/Y 17-18) without making any deduction in respect of any expenditure or allowance as may be admissible to an assessee under any provision of the Act.*

*A perusal of the afore said provisions show that this Section is applicable where assessee's income is recorded in books but has not been offered to tax and the assessee fails to prove the nature and source to the satisfaction of the A.O.*

*This section is also applicable to the assessee who are not required to maintain books of accounts but is found to have made unexplained investment, unexplained expenditure or he is found to be in possession of money, bullion, jewellery or other valuable articles.*

*Where an assessee voluntarily shows Income in his return but he is unable to prove source of such income to the satisfaction of the A.O., such income is liable to be held for taxation under section 115BBE.*

*The provision of section 115BBE can also be applied in the following circumstances:*

*a. Claiming exempt income from any source which the assessee fails to substantiate to the satisfaction of the A.O.*

*b. Claiming income from agricultural operations which the assessee fails to substantiate to the satisfaction of the A.O.*

*c. The provision of section 68 will be attracted to the credits in the books of account on account of cash sales. Such cash sales can also be treated as unexplained income chargeable to tax under section 68 read with section 1158BE, if the names and addresses of the buyers are not mentioned in the cash memo.*

*d. A professional will have also to prove the nature and source of his receipts in a definite manner by maintaining the record on the basis of some norms.*

*19. Thus considering the facts of the case I find that the AO has correctly applied the provisions of section 1158BE in this case. The appellant has failed to correctly explain the source of receipts disclosed by it and in such cases the application of provisions of section 1158BE are warranted.”*

6. Still aggrieved by appellate order dated 03<sup>rd</sup> December, 2019 passed by Id. CIT(A), the assessee filed second appeal with tribunal . None appeared when this appeal was called for hearing before the Division Bench, on 24<sup>th</sup> August, 2022. The assessee filed appeal in the year 2020 and despite opportunities granted to the assessee ,the assessee chose not to enter appearance before tribunal. Notices for hearing were sent by Registry by e-mail as well as speed post , which remains un-complied with by the assessee. In-fact, it is the assessee who moved an application filed on 23.02.2021 with tribunal for early hearing of the appeal, but later on the assessee never appeared before the tribunal. Now, when this appeal came up for hearing before the Division Bench , dated 24.8.2022, the Bench decided not to grant any further adjournment and proceeded to adjudicate this appeal on merits in accordance with law, after hearing Id. CIT-DR. The Id. CIT-DR opened argument before the Division Bench and submitted that this appeal pertains to ay:2017-18. It was submitted that assessee did not produce books of

accounts either before the Assessing Officer as well as before the ld. CIT(A). It was submitted that cash was deposited by assessee in its bank account to the tune of Rs. 8 lacs during the demonetization period, on 13.11.2016 and complete details have been brought out by Assessing Officer in its order. It was submitted by ld. CIT-DR that assessee has claimed that under the provision of Sections 44AA read with Rule 6F, the assessee is not required to maintain books of account, but ld. CIT-DR that the assessee is required to maintain books of accounts not only under the provisions of the 1961 Act but also under the Companies Act as the assessee is a Private Limited Company. Thus, the ld. CIT-DR submitted that assessee is required to maintain books of account. It was submitted by ld. CIT-DR that ld. CIT(A) dismissed the appeal filed by the assessee. Our attention was drawn by ld. CIT-DR to the appellate order passed by ld. CIT(A). It was submitted by ld. CIT-DR that cash of Rs.8.00lacs was deposited by the assessee in its bank account on 13<sup>th</sup> November 2016, which was the period of demonetization. It was submitted by ld. CIT-DR that assessee never give any details of consultancy income earned by it and merely name of the person and the amount of consultancy services were given, while the details such as address, PAN etc. was not furnished by the assessee. It was submitted by ld. CIT-DR that even details of scope of work of consultancy services rendered were not submitted by the assessee. Reliance was placed by ld. CIT-DR on the decision of Hon'ble Supreme Court in the cases of *Sumati Dayal v. CIT, 214 ITR 801 (SC)*, and *CIT v. Durga Prasad More [1971] 82 ITR 540*. Our attention was drawn by ld. CIT-DR to Paras 12 to 16 of ld. CIT(A)'s appellate order, and it was submitted that the additions were made by invoking provisions of Section 68 and applying tax rate as prescribed u/s. 115 BBE of the 1961 Act. It was submitted that all the receipts which were shown by the assessee as consultancy income are bogus and it is rather undisclosed and unaccounted money which was deposited by

the assessee in its bank account, and which was camouflaged by way of consultancy income of small denomination in its books of account. The Id. CIT-DR submitted that it is against all human probability that such small-small amount of consultancy averaging Rs. 14000/- each will be rendered by the assessee, which was done to cover up cash deposit of Rs. 8,00,000/- in the bank accounts by the assessee. It was submitted that in all eleven companies belonging to the same group exhibited similar pattern of deposit of cash in their bank account between 13.11.2016 to 16.11.2016, during the period of demonetization which was camouflaged as consultancy income with an intent to evade taxes. It was submitted by Id. CIT-DR that similar explanation was given by all the assessee in all the eleven cases. It was also submitted that for earlier years, the consultancy income shown was negligible and also for subsequent period post deposit of cash in bank account between 13.11.2016 by the assessee, the alleged consultancy income was NIL, and even for subsequent assessment year, the assessee has shown negligible consultancy income. It was submitted that the assessee was searched on 16.11.2016. It was submitted that in all eleven cases of the group, similar pattern was followed and similar receipts from consultancy services were shown, except in the case of ITA No. 24/VNS/2020 for ay: 2017-18 where the assessee has claimed to have sold soil which is again a bogus claim as no evidence whatsoever was made available substantiating sale of soil. Thus, the Id. CIT-DR submitted that all the cash deposits in bank accounts happened between 13.11.2016 to 16.11.2016 for all these eleven entities, and the cash receipts were offered to tax as business income, but the same were unaccounted and undisclosed cash which these eleven assessee's deposited in bank during demonetization period. The Id. CIT-DR submitted that appeals of nine companies-assessee's out of eleven assessee's, were heard by tribunal on

23.08.2022 (Appeals in ITA no. 24/Vns/2020 and 30-37/Vns/2020, all for ay: 2017-18 , and the facts are similar in all these appeals.

7. We have heard ld. CIT-DR and perused the material available on record. The brief facts of the case are that there was a warrant of authorization issued by ld. Pr. Director of Income tax (Inv.), Lucknow, and search , seizure and survey operations u/s. 132 & 133A of the 1961 Act were carried out by Investigation Wing on the business and residential premises of M/s Tulsiani Construction and Developers Pvt. Ltd. , its sister concerns, residential premises of Directors and Proprietors of the group , on 16.11.2016. A search was also conducted in the business premises of the assessee, on 16.11.2016, as part of the above searches. The assessee filed return of income u/s. 139 , on 27.03.2018 for impugned assessment year 2017-18, showing total income of Rs.6,14,440/-. Theaforesaid income was shown under the head 'Profit and Gains of Business or Profession'. The assesseeclaimed that the said income had been earned from consultancy income which is related to real estate business. It transpired during the assessment proceedings that assessee declared meager income in the preceding years upto ay: 2016-17 ranging from Rs. 31000/- to Rs. 48,500/-and it is only in this year under consideration, the assessee has declared income , to the tune of Rs. 6,14,440/, and even in subsequent year ay:2018-19 meager income of Rs. 60,000/- was declared. It further transpired during the assessment proceedings that the assessee has claimed to have earned consultancy income of small small denominations averaging Rs. 14,000/- , in cash, and that too the majorily the alleged consultancy income was claimed to have been received before 13.11.2016, while subsequent to 13.11.2016 till the end of financial year on 31.03.2017, again the income level fell sharply, so much so alleged consultancy income of Rs. 8,29,500/- was stated to be received from 01.04.2016 to 13.11.2016 , while no alleged consultancy income was claimed

to received from 14.11.2016 to 31.03.2017, and all alleged consultancy income were stated to be received in cash. Thus, none of the alleged consultancy income was received by cheque , and despite the assessee having bank account , these alleged consultancy income received in cash , were not deposited in bank account, until 13.11.2016, when in one tranche the assessee deposited Rs. 8,00,000/- in its bank account. For earlier years , the assessee declared meager income and subsequent to ay:2017-18, the assessee declared meager income of Rs. 60,000/- for ay:2018-19, which is evident from chart reproduced below , in this order. The assessee allowed cash to built up until 13.11.2016 through these small small denomination of alleged consultancy income aggregating to Rs. 8,29,500/- claimed to have been received by the assessee, and deposited cash of Rs. 8,00,000/- in one tranche its bank account on 13.11.2016. Incidentally, when this cash of Rs. 8,00,000/- was deposited in bank in one tranche on 13.11.2016, the demonetization of bank notes of denomination Rs. 1000 and Rs. 500 was announced , on 08.11.2016 .The effect of demonetization of existing bank notes of denomination of Rs. 1,000 and Rs. 500 which were in circulation until 08<sup>th</sup> November, 2016 , were that they were withdrawn from circulation and cease to be legal tender, post announcement of demonetization . As per FAQ issued by RBI , the reasons for demonetization and scheme , were given as under:

***“1. Why was the Scheme of Withdrawal of Legal Tender Character of the old Bank Notes in the denominations of ₹ 500 and ₹ 1000 introduced?”***

*The incidence of fake Indian currency notes in higher denomination has increased. For ordinary persons, the fake notes look similar to genuine notes, even though no security feature has been copied. The fake notes are used for antinational and illegal activities. High denomination notes have been misused by terrorists and for hoarding black money. India remains a cash based economy hence the circulation of Fake Indian*

*Currency Notes continues to be a menace. In order to contain the rising incidence of fake notes and black money, the scheme to withdraw legal tender character of the old Bank Notes in the denominations of ₹ 500 and ₹ 1000 was introduced.*

## **2. What is this scheme?**

*The legal tender character of the bank notes in denominations of ₹ 500 and ₹ 1000 issued by the Reserve Bank of India till November 8, 2016 (hereinafter referred to as Specified Bank Notes) stands withdrawn. In consequence thereof these Bank Notes cannot be used for transacting business and/or store of value for future usage. The Specified Bank Notes (SBNs) were allowed to be exchanged for value at RBI Offices till December 30, 2016 and till November 25, 2016 at bank branches/Post Offices and deposited at any of the bank branches of commercial banks/Regional Rural Banks/Co-operative banks (only Urban Co-operative Banks and State Co-operative Banks) or at any Head Post Office or Sub-Post Office during the period from November 10, 2016 to December 30, 2016”*

The purpose of demonetization of old bank notes of denomination of Rs. 500 and Rs. 1000 by withdrawing its legal tender character , was to **curb themenace of fake notes and black money**. The assessee deposited cash of Rs. 8,00,000/- in its bank account with Federal Bank in one tranche, on 13.11.2016, which is just within five days of demonetization of bank notes of Rs. 500 and Rs. 1000 announced by GOI. However , to allow genuine and bonafidepeople not to suffer due to the sudden demonetization of old bank notes of Rs. 500 and Rs. 1000wherein these old bank notes ceased to be legal tender, government allowed a window to exchange for value such demonetized old bank notes notesof denomination of Rs. 500 and Rs. 1000 as well allowed deposit ofsuch demonetized bank notes in bank accounts, during specified period.

In the case of this group as many as 11 companies deposited Rs. 8,00,000/- each in their respective bank accounts between 13.11.2016 to 16.11.2016,

and in all these 11 entities belonging to Tulsiani Group , similar pattern of explanation is offered that consultancy income was earned by these eleven companies which were all of small small denomination averaging Rs. 14000/- . Only name of person to whom alleged consultancy services were claimed to be rendered by these assessee's had been given, while no details of the address , PAN of these persons to whom consultancy was rendered were given . Even the scope of consultancy services rendered by these eleven entities were not given. The similar pattern of earning alleged consultancy services wherein major receipts were allegedly received upto 13.11.2016 is visible, that as much as more than Rs. 8 lacs were received from these alleged consultancy services (only one entity namely Avantika Infraventures Pvt. Ltd. Claimed to received alleged amount from sale of soil) by each of these eleven entities until 13.11.2016. The cash of around Rs. 8 lacseach was allowed to be accumulated until 13.11.2016 by all these 11 entities. None of the entities deposited accumulated cash in their bank account , until 13.11.2016 to 16.11.2016, when each of the entity deposited cash of Rs. 8,00,000/- each in their respective bank accounts, which happens to be period of demonetization. Thereafter, similar pattern is also visible in all these 11 entities, that they received meager consultancy income from 14.11.2016 to 31.03.2017. All these eleven entities have common Directors namely Mr. NareshTulsiani and Mr. Mahesh Tulsiani. All these eleven entities showed meager income for all the years upto ay: 2016-17 and then there is spurt of cash income in ay: 2017-18 which is explained to be alleged consultancy income , and thereafter again in ay: 2018-19,meager income was claimed to be earned. All the eleven companies received all the alleged consultancy income shown by them in small small denomination for financial year 2016-07 (one company showing sale of soil namely Avantika Infraventures Private Limited –with no evidence given of sale of soil , otherwise all other similarities

are present in this company also ) were received in cash and not even one consultancy income was received by cheque. All these eleven companies deposited cash of Rs. 8,00,000/- in their respective bank accounts between 13.11.2016 to 16.11.2016. We are enclosing hereunder complete charts of the pattern shown by eleven companies of Tulsiani Group, and in fact AO has also reproduced the said details/chart in assessment order:-

**Chart of 11 group companies under consideration and the pattern of turnover in eight years including AY 2018-19 for comparison**

| S.No | Name of the company                              | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19          | Cash deposit during demonetization | Date of deposit |
|------|--|---------|---------|---------|---------|---------|---------|---------|------------------|------------------------------------|-----------------|
| 1    | Pawini Infraventure Pvt. Ltd.                    | 58000   | 46000   | 0       | 45000   | 33500   | 31160   | 893100  | 31400            | 800000                             | 13.11.2016      |
| 2    | Pawini Homes Pvt. Ltd.                           | Nil     | Nil     | 25500   | 40800   | 27400   | 26560   | 891300  | 25200            | 800000                             | 13.11.2016      |
| 3    | Grace Infraczone Pvt. Ltd.                       | 0       | 0       | 24500   | 35400   | 25000   | 26600   | 859700  | 26550            | 800000                             | 13.11.2016      |
| 4    | Admire Infracprojects Pvt. Ltd.                  | 0       | 32000   | 40500   | 30500   | 33400   | 33800   | 882000  | 35500            | 800000                             | 16.11.2016      |
| 5    | Admire Infracheights Pvt. Ltd.                   | 0       | 30000   | 92000   | 34500   | 36900   | 32600   | 890700  | 34500            | 800000                             | 16.11.2016      |
| 6    | Tulsiani Fitness and Healthcare P. Ltd.          | 0       | 33000   | 42000   | 40500   | 36500   | 34650   | 932400  | 34100            | 800000                             | 13.11.2016      |
| 7    | Admire Realtors Pvt. Ltd.                        | 0       | 34000   | 48500   | 31000   | 33800   | 32200   | 829500  | 60000            | 800000                             | 13.11.2016      |
| 8    | Pawini Infraczone Pvt. Ltd.                      | 0       | 0       | 26000   | 36400   | 11500   | 0       | 978600  | 17000            | 800000                             | 13.11.2016      |
| 9    | Avantika Infracventures Pvt. Ltd. (sale of soil) | Nil     | Nil     | Nil     | Nil     | Nil     | Nil     | 807100  | Return not filed | 800000                             | 13.11.2016      |
| 10   | Pawini Buildzone Pvt.                            | 0       | 0       | 25000   | 34300   | 24400   | 23350   | 879800  | 27800            | 800000                             | 13.11.2016      |

|    |                              |   |   |       |       |       |       |        |       |        |            |
|----|------------------------------|---|---|-------|-------|-------|-------|--------|-------|--------|------------|
|    | Ltd.                         |   |   |       |       |       |       |        |       |        |            |
| 11 | Sunshine Infrazone Pvt. Ltd. | 0 | 0 | 27500 | 33300 | 25400 | 24160 | 895300 | 27900 | 800000 | 13.11.2016 |

Chart of 11 group companies under consideration and comparison of similar pattern of receipts before and after demonetization month i.e. November, 2016

| S.No. | Name of the company                           | Total receipts as shown by assessee during ay: 2017-18 | Receipts as per ledger upto 13.11.2016 | Receipts as per ledger 13.11.2016 to 31.3.2017 |
|-------|---|--|--|--|
| 1.    | PawiniInfraventure Pvt. Ltd.                  | 893100   | 813900                                 | 79200  |
| 2.    | Pawini Homes Pvt. Ltd.                        | 891300   | 851200                                 | 40100  |
| 3.    | Grace Infrazone Pvt. Ltd.                     | 859700   | 859700                                 | 0  |
| 4.    | Admire Infraprojects Pvt. Ltd.                | 882000   | 882000                                 | 0  |
| 5.    | Admire Infraheights Pvt. Ltd.                 | 890700   | 852200                                 | 38500  |
| 6.    | Tulsiani Fitness and Healthcare Pvt. Ltd.     | 932400   | 892400                                 | 40000  |
| 7.    | Admire Realtors Pvt. Ltd.                     | 829500   | 829500                                 | 0  |
| 8.    | PawiniInfrazone Pvt. Ltd.                     | 978600   | 857700                                 | 120900   |
| 9.    | AvantikaInfraventure Pvt. Ltd. (sale of soil) | 807100   | 794600                                 | 12500  |
| 10.   | PawiniBuildzone Pvt. Ltd.                     | 879800   | 859500                                 | 20300  |
| 11.   | Sunshine Infrazone Pvt. Ltd.                  | 895300   | 895300                                 | 0  |

Since , there was huge deposit of cash in bank account to the tune of Rs. 8,00,000/- on 13.11.2016 by assessee and that too during demonstration period , the assessee was asked to explain the sources of these cash deposits. The assessee only provided name of the persons who gave cash in small denomination towards alleged consultancy services rendered by assessee , while no address, PAN etc. of the person to whom consultancy services were

rendered was provided by assessee to both the authorities below, and even before us no such details are provided. The assessee also did not provided the scope of alleged consultancy services rendered by it to various persons in small small denomination. Similar pattern was followed in all the eleven companies which belong to this Tulsianigroup , and no details were furnished except the name of person and amount received. The assessee on its part is contending that it is not under any obligation either to maintain books of accounts or to furnish any such details such as address of person, PAN of the person from whom consultancy income was received or the scope of work rendered. The argument is fallacious, as it is the amount stood credited in its books of accounts, and the onus is on theassessee to substantiate by evidence that apparent is real , and has also to prove the identity and credit worthiness of the payer , as also the genuineness of the transaction. All the eleven assessee'sof the Tulsiani group including assesseehave shown the income from consultancy below threshold limit of Rs. 10 lacs , so that obligations under service tax law does not fall on them. None of these companies are registered under service tax laws. None of the eleven entities deposited any advance tax for the impugned assessment year, despite the fact that major portion of income was received prior to 13.11.2016, and advance tax installments fell due on 15.06.2016, 15.09.2016 ,15.12.2016 and 15.03.2017, but no advance tax was deposited. It is also against human probabilities, that with practically no infrastructure available, all these eleven assessee's rendered large number of consultancies of small small amounts. Even ,the assessee did not provide details of employees or key persons of the company who have been providing consultancy on behalf of the company. Even during search and seizure conducted by Revenue u/s 132(1) , on 16.11.2016, there was no evidence /material found/seized which could suggest that the assessee was in-fact rendering consultancy services. Even survey u/s133A

was conducted by Revenue on CA of the assessee, but no evidence /material as to rendering of such consultancy services was found/impounded during the course of survey. The assessee is obligated to maintain and keep proper books of accounts not only under the 1961 Act but also under the Companies Act, as the assessee is private limited company. The primary onus is on the assessee to prove that the transactions recorded in its books of accounts towards consultancy receipts are genuine and apparent is real and not a smoke screen to evade taxes, which inter-alia requires proving whether consultancy services were infact rendered and to whom the services were rendered, and thus these alleged consultancy services were genuinely rendered and not used as shield to convert unaccounted and undisclosed cash , more so when demonetization of bank notes was announced just five days back . The assessee has only furnished the name of persons to whom alleged consultancy services were rendered , but no address, PAN or even the scope of services rendered were furnished. The assessee was consistently showing meager income in the earlier years , and in this year only small small consultancy services were claimed to be rendered and that too majorily from 01.04.2016 to 13.11.2016 , wherein the amount of alleged consultancy services rendered were to the tune of Rs. 8,29,500/- until 13.11.2016 , and while consultancy services rendered were from 14.11.2016 to 31.03.2017, were to the tune of Nil .Again in the subsequent assessment year, the assessee has shown meager income of Rs. 60,000/- in the return of income filed with the revenue. The assessee has deposited Rs. 8,00,000/- in its bank account on 13.11.2016 in one tranche, which is the period of demonetization and in our considered view was done to avoid getting its unaccounted and undisclosed money in the form of cash becoming valueless/worthless as the old bank notes ceased to be legal tender , with the demonetization announced on 08<sup>th</sup> November, 2016, legal tender character of the old bank notes in the

denomination of Rs. 1000 and Rs. 500 were withdrawn . Further, As many as eleven companies belonging to Tulsiani Group of Companies , deposited cash of exactly Rs. 8,00,000/- in their respective bank accounts , between 13.11.2016 to 16.11.2016. This group has interests in real estate business .Thus , in our considered view , the assessee has failed to justify that consultancy income claimed by it to have earned during the year under consideration was genuine consultancy income earned by it, and rather the assessee has converted unaccounted and undisclosed cash under the garb of alleged consultancy income and we hold that no such consultancy services were rendered by the assessee. The assessee failed to provide identity and creditworthiness of the persons giving cash to it towards alleged consultancy services and genuineness of the transaction could also not been proved by the assessee, and we have no hesitation in holding that it is the unaccounted and undisclosed money/income which has been brought into the books of the assessee under the garb of consultancy income, and this entire transaction of consultancy income was coloring device adopted by assessee to give legitimacy to its unaccounted and undisclosed cash/money/income by depositing cash in bank during demonetization period, to avoid old demonetized bank notes held by it from becoming valueless as legal character of old bank notes of denomination of Rs. 500 and Rs. 1000 were withdrawn, owing to demonetization announced on 08<sup>th</sup> November, 2016. We have observed that both the authorities have passed well reasoned ,detailed and speaking order, and we are not inclined to interfere with the orders passed by authorities below, and we confirm the appellate order passed by Id. CIT(A). We also hold that learned CIT(A) rightly relied upon decision of Hon'ble Supreme Court in the case of SumatiDyal(Supra) and Durga Prasad More(Supra) , as the claim of consultancy income set up by the assessee is a coloring device adopted by the assessee to convert its unaccounted and

undisclosed money which was going to become valueless due to bank notes of Rs. 1000 and Rs. 500 ceased to be legal tender , due to demonetization announced on 08<sup>th</sup> November, 2016 . The authorities below have rightly invoked provisions of Section 68 and made additions to the income of the assessee as the amount stood credited in books of accounts of the assessee , and the assessee failed to satisfy the mandate of Section 68, as identity and creditworthiness of the payer is not proved nor genuineness of the transaction of alleged consultancy income was proved. Once Section 68 is invoked, then AO has rightly applied tax-rate provided within provisions of Section 115BBE of the 1961 Act. So, far as expenses claimed by the assessee are concerned, we are of the considered view that the assessee could not show that it was engaged in any business or profession whatsoever, and in our considered view, the assessee is not entitled for claim of deduction of expenses claimed by it. We donot find any merit in the appeal filed by the assessee in ITA No. 27/Vns/2020 for ay: 2017-18, which now stand dismissed.This disposes of ground no. 1 to 7 raised by the assessee, while ground number 8 is general in nature which does not require separate adjudication , and hence consequently all the eight grounds raised by the aassessee stand dismissed. We order accordingly.

8. In the result appeal of the assessee in ITA no. 27/Vns/2020 for ay: 2017-18 stand dismissed .We order accordingly.

Order pronounced on 26<sup>th</sup> August , 2022 at Varanasi, U.P. , in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
[VIJAY PAL RAO]  
JUDICIAL MEMBER  
DATED: 26/08/2022

Sd/-  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –M/s Admire Realtors (P) Ltd., 37, Elgin Road, Civil Lines, Allahabad-211001,U.P.
2. Respondent –DCIT, Central Circle, Varanasi ,U.P.
3. The CIT(A) –III, Lucknow,U.P.
4. The CIT,Varanasi, U.P.
5. The CIT-DR (ITAT), AayakarBhawan, M. A. Road, Varanasi, U.P.
6. The Guard File

By order  
Assistant Registrar