

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

**ITA No.28/VNS/2020
Assessment Years: 2017-18**

M/s Pawini Infrazone (P) Ltd., 37, Elgin Road, Civil Lines, Allahabad, U.P. PAN-AAGCP8715N	v.	DCIT, Central Circle, Varanasi
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Sh. Neeraj Kumar, CIT DR
Date of hearing:	25.08.2022
Date of pronouncement:	30.08.2022

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 3.12.2019 of CIT(A) for the assessment year 2017-18.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that nobody has been appearing on behalf of the assessee since beginning after filing the appeal despite various notices issued to the assessee through RPAD as well as email on the email ID given in Form No. 36. Accordingly, this Bench proposes to hear and dispose of this appeal *ex parte*. The assessee has raised following grounds of appeal:

1. Because the Ld. Lower Authorities has erred on facts and under the law in making the addition of Rs.9,78,600/- under section 68 of IT. Act.

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. Lower Authority 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.9,78,600/*

8. *The assessee craves leave to add/ alter any of the grounds of appeal before or at the time of hearing."*

3. We have heard the learned CIT DR and carefully perused the impugned orders of authorities below. The assessment was framed by the Assessing Officer under section 143(3) r.w.s. 153B after a search and seizure action was carried out at the business premises of M/s Tulsiani Construction and Developers Pvt. Ltd. The assessee is one of the group companies and was covered under the said search.

4. The solitary issue arises in this appeal as well as in the other group company's appeals is an addition made by the Assessing Officer under section 68 of the Income Tax Act on account of cash deposited in the bank account during the demonetization period.

5. At the outset, we note that this Tribunal has considered and decided an identical issue in the appeals of other group companies vide order dated 26.08.2022 in ITA No. 24/VNS/2020 and ITA Nos. 30/VNS/2020 to 37/VNS/2020 in para 7 to 13 as under:-

“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.7,75,350/-. The aforesaid income was shown under the head ‘Profit and Gains of Business or Profession’. The assessee claimed 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. 58,000/- and it is only in this year under consideration, the assessee has declared income, to the tune of Rs. 7,75,350/-, and even in subsequent year ay:2018-19 meager income of Rs. 31400/- 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 majorly 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. 8,13,900/- was stated to be received from 01.04.2016 to 13.11.2016, while only Rs. 79,200/- 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. 31400/- 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. 8,13,900/- 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 08th 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 the menace 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 bonafide people not to suffer due to the sudden demonetization of these old bank notes of denomination of Rs. 500 and Rs. 1000 wherein they ceased to be legal tender, government allowed a window to exchange for value such demonetized old bank notes of denomination of Rs. 500 and Rs. 1000 as well allowed deposit of such 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 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 alleged 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 lacs each 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. Naresh Tulsiani 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 Infracventures 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 Infracventure 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. Ltd.	0	0	25000	34300	24400	23350	879800	27800	800000	13.11.2016
11	Sunshine Infraczone 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.	Pawini Infracventure Pvt. Ltd.	893100	813900	79200
2.	Pawini Homes Pvt. Ltd.	891300	851200	40100
3.	Grace Infraczone Pvt. Ltd.	859700	859700	0
4.	Admire Infracprojects Pvt. Ltd.	882000	882000	0
5.	Admire Infracheights Pvt. Ltd.	890700	852200	38500
6.	Tulsiani Fitness and Healthcare Pvt. Ltd.	932400	892400	40000
7.	Admire Realtors Pvt. Ltd.	829500	829500	0
8.	Pawini Infraczone Pvt. Ltd.	978600	857700	120900
9.	Avantika Infracventure Pvt. Ltd. (sale of soil)	807100	794600	12500
10.	Pawini Buildzone Pvt. Ltd.	879800	859500	20300
11.	Sunshine Infraczone 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 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 group , 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 which stood credited in its books of accounts, and the onus is on the assessee 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's have 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 the 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/s 133A 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. 8,13,900/- until 13.11.2016, and while consultancy services rendered were from 14.11.2016 to 31.03.2017, were to the tune of only Rs. 79,200/-. Again in the subsequent assessment year, the assessee has shown meager income 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, 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 as the old bank notes ceased to be legal tender, as with demonetization announced on 08th November, 2016, legal tender character of the 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 be 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 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 08th 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 Sumati Dyal(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 08th 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. 30/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. 30/Vns/2020 for ay: 2017-18 stand dismissed .We order accordingly.

9. Since facts in other appeals in ITA no. 31-37/Vns/2020 for ay: 2017-18 are similar to the facts in appeal in ITA no. 30/Vns/2020 for ay: 2017-18, our decision in ITA no. 30/Vns/2020 for ay: 2017-18 shall apply mutatis mutandis to appeals in ITA no. 31-37/Vns/2020 all for ay: 2017-18, and hence all the appeals in ITA no. 31-37/Vns/2020 for ay: 2017-18 stand dismissed.We order accordingly.

10.In the result appeals filed by these seven assessee's in ITA no. 31-37/Vns/2020 all for ay: 2017-18 stand dismissed.We order accordingly.

11. So far as appeal in ITA no. 24/Vns/2020 for ay: 2017-18 is concerned, all the facts are similar in this appeal as well as in appeals in ITA Nos. 30-37/Vns/2020, except that the explanation is furnished as to alleged amount received during the year in cash is from alleged sale of soil in ITA no. 24/Vns/2020 for ay: 2017-18 without substantiating the same by cogent evidences, and hence the appeal in ITA no. 24/Vns/2020 for ay: 2017-18 also stand dismissed. We order accordingly.

12. In the result appeal of the assessee in ITA no. 24/Vns/2020 for ay: 2017-18 stand dismissed .We order accordingly.

13. In the result all the nine appeals filed by respective assessee's in ITA no. 24, 31-37/Vns/2020 all for ay: 2017-18 stand dismissed.We order accordingly."

6. Since the issue in the appeal in hand as well as in the case of other group appeals in ITA No. 24/VNS/2020 and ITA Nos. 30/VNS/2020 to 37/VNS/2020 is common and arising from identical facts and circumstances therefore, maintaining the rule of consistency, we follow the earlier order of this Tribunal dated 26.08.2022 (supra) and decide this issue against the assessee. Accordingly, this appeal of the assessee stands dismissed.

7. In the result, appeal of the assessee stands dismissed.

Order pronounced on 30.08.2022 at Allahabad, U.P. in accordance with Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 30/08/2022
Varanasi/Allahabad
Sh

Copy forwarded to:

1. Appellant-M/s Pawini Infrazone (P) Ltd.
2. Respondent-DCIT,C.C, Varanasi
3. CIT(A),Varanasi
4. CIT
5. DR

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

By order
Sr. P.S.