

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 1486/Mum/2019 (A.Y. 2010-11)

M/s Vidhata Enclave Pvt. Ltd.  
Shop No.6, Sadguru Shopping Centre,  
Tank Road, Bhandup West,  
Mumbai-400078

**PAN: AACCV2929C**

..... Appellant

Vs.

ITO, Ward-13(3)(3),  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

..... Respondent

|                       |   |                    |
|-----------------------|---|--------------------|
| Appellant by          | : | None               |
| Respondent by         | : | Ms. Kavita Kaushik |
| Date of hearing       | : | 09/06/2022         |
| Date of pronouncement | : | 06/09/2022         |

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as ('CIT(A)'] dated 30.11.2018 for the Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 20,00,000/- being amount received from sale of Investment as cash credit u/s. 68 of the Income Tax Act, 1961 without considering the facts of the case that the said money has been received by the appellant against the sale of investment only.”*

2. Brief facts of the case are that assessee filed its return of income on 08-01-2011 declaring taxable income of Rs 3,671/-, subsequently, as per the information received from the investigation wing of the income tax department that the assessee received Rs 20,00,000/- from one hawala/entry operator namely Mr. Praveen Kumar Jain. There are no of companies and firms being controlled, managed and operated by Mr. Praveen Kumar Jain and its associates. Mr. Praveen Kumar Jain had admitted on oath that he was indulged in providing accommodation entries and also admitted that his companies and firms are merely paper companies with no real business transaction.

3. It is observed by the A.O that out of 18 share-holders 6 share-holders are the companies which are being controlled by Mr. Praveen Kumar Jain. **A.O further observed that investments received in the guise of share capital are out of cash circulated and layered in Mr. Praveen Kumar Jain group companies.** He also observed that the entire sums credited in the account of investor companies are instantly being transferred to some other company. Assessee is failed to produce any person from Investor Company he merely confirmed that the transactions was done through banking channel. As per A.O, at the beginning of the assessment, the assessee company was not aware of the address of its investor company or its director and has not kept any track of them. It seems that the assessee has never meet the investor and never cared to send its annual reports to its investors including minutes of board meeting and corporate decisions. The

assessee has not discharged its onus of producing the investor, which is its own witness.

4. The facts narrated supra clearly indicate that A.O reopened the case with a hypothesis that transactions with Mr. Praveen Kumar Jain Company is in the nature of receiving share application money/share allotment money. The name of the company with which the assessee entered into transaction was M/s Ansh Merchandise Pvt. Ltd. This company M/s Ansh Merchandise Pvt. Ltd. was being controlled and managed by Mr. Praveen Kumar Jain.

5. We have gone through the order of Ld. CIT(A) along with submissions of the assessee and case laws relied upon by the assessee and Ld. CIT(A). As submitted by assessee he has not sold shares of his own company rather the transaction entered into with M/s Ansh Merchandise Pvt. Ltd. is a transaction of sale of investment of Rs 20 lacs. As per the assessee company it sold 4000 shares of M/s Lovely Vyapar Pvt. Ltd @500, amounting to Rs 20 lacs to M/s Ansh Merchandise Pvt. Ltd.

6. Considering the order of A.O and Ld. CIT(A) (dealing with assessee's submission) we found a huge gap in the facts as narrated by A.O and those submitted by assessee before Ld. CIT(A). Other facts and the case laws we haven't considered as the same is not relevant in the adjudication of the matter. We further observed that the order of Ld. CIT(A) is not able to substantiate the fact of the case effectively.

7. In the light of above, we restore this matter back to the file of Ld. CIT(A) for fresh consideration of the facts involved after giving a proper opportunity to the assessee and a proper fact finding report from the concerned A.O.

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

Order pronounced in the open court on 6<sup>th</sup> day of September, 2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 06/09/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)  
**ITAT, Mumbai**