

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

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2726/Del/2019
(ASSESSMENT YEAR 2011-12)**

M/s VRP Landbase (P) Ltd. 2, Hyde Park, Prakriti Marg, Sultanpur Farms M.G. Road, New Delhi PAN-AACCV 5429R	Vs.	Income Tax Officer, Ward-17(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Ms. Ruchika Jain, Advocate
Respondent by	Sh. Shyam Manihar, Senior Departmental Representative ("Sr. DR", for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the impugned appellate order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi ["Ld. CIT(A)", for short], dated 10/12/2018 for Assessment Year 2003-04. Grounds taken in this appeal are as under:

“1 Under the facts and circumstances of the case, the addition of Rs.3,37,20,000/- u/s 68 on account of sundry creditors as unexplained income made by the ld. A.O. and confirmed by ld. First Appellate Authority is grossly unwarranted, injudicious, against the facts of the case and bad at law.

2. Under the facts and circumstances of the case, ld. Assessing Authority has grossly erred in making and ld. First Appellate Authority has grossly erred in confirming the double additions on account of credits from M/s Global Spirit Construction, firstly, on account of unexplained creditors u/s 68 for Rs.70,20,000/- and secondly, for Rs.78,00,000/- on account of receipts appearing in form 26AS statement, which is grossly injudicious, unwarranted, against the facts of the case and bad at law.

3. Without prejudice to the other grounds and under the facts and circumstances of the case, the addition of Rs.78,00,000/- made by the ld. AO and confirmed by the ld. First Appellate Authority based on receipts appearing in Form 26AS statement, is grossly unwarranted against the facts of the case and bad in law.

4. Without prejudice to above and under the facts and circumstances of the case, the ld. Assessing Authority has grossly erred in computing and Ld. First Appellate Authority has grossly erred in confirming the demand for tax at Rs. 1,38,01,212/- and adopting the rate of surcharge at 10%, instead of 7.5% which is the correct applicable rate of surcharge for the year under consideration.

5. All the aforesaid grounds of appeal are independent grounds and are without prejudice to each other. The appellant

prays for leave to add, modify, alter, withdraw all or any of the grounds of appeal.”

(B) In this case, the assessment order dated 18/03/2014 was passed by Assessing Officer (“AO”, for short) under section 144 of Income Tax Act wherein the assessee’s total income was assessed at Rs.4,06,03,741/- as against loss of Rs.9,16,259/- as per return of income. In the aforesaid assessment order, an addition of Rs.3,37,20,000/- was made u/s 68 of Income Tax Act on account creditors reflected in the balance sheet, and a further addition of Rs.78,00,000/- was made on account of transactions reflected in Form 26AS.

(B.1) Aggrieved, the assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 10/12/2018, the Ld. CIT(A) confirmed the aforesaid addition of Rs. Rs.3,37,20,000/-. The Ld. CIT(A) also confirmed the aforesaid addition of Rs.75,00,000/-, while directing the Assessing Officer to allow credit for corresponding tax deducted at source (“TDS”, for short).

(B.1.1) Aggrieved again, the assessee has filed this present appeal in Income Tax Appellate Tribunal (“ITAT”, for short). In the

course of appellate proceedings in ITAT, a paper book containing the following particulars was filed from the assessee side:

S. No.	Contents
1.	Written submissions
2.	Submission of the appellant in the form of chart for addition on account of S. Creditors, explained by appellant as the amount received from the parties towards advance for sale of land in FY 2010-11 and sale deed executed in subsequent FY 2011-12 (Part 1)
3.	Submissions of the appellant in the form of chart containing factual details of land sold to Amit Sankhwal jointly with Ravinder Sharma
4.	Submissions of the appellant in the form of chart for addition on account of S. Creditors, explained by appellant as the amount received from the party as advanced for sale of land in FY 2010-11 and refunded in next FY 2011-12 (Part-11)
5.	Submissions of the appellant that additions for Sprit Global Constructions has been made as double addition by the Id. A.O. (Part 111)
6.	Copy of the appellate order passed by Ld. CIT(A) dated 10.12.2018
7.	Copy of the remand report issued by the Ld. Assessing Authority under Rule-46A dated 28.02.2017
8.	Copy of the assessment order passed by the Ld. Assessing Authority u/s 144 of the Act dated 28.03.2014
9.	Copy of Income Tax Computation Form for demand computed by the Id. A.O. in his order passed u/s 144 of the Act dt 28.03.2014
10.	Copy of the show cause notice u/s 142(1) of the Act dated 21.03.2014 issued by the Ld. A.O. fixing the hearing for 26.03.2014 served upon the appellant on 25.03.2014
11.	Copy of ITR acknowledgement receipt for filing ITR and Computation of Income for the relevant AY 2011-12

12.	Copy of the audited financial statement of the appellant for the year ended 31.03.2011
	Application under Rule 46A dt 18.03.2015 filed by the appellant alongwith following relevant documents
13.	Application under Rule 46A dt 18.03.2015
14.	Affidavit sworn by CA Kapil Arora regarding refusal to admit evidence by Id. AO. during assessment proceedings
15.	Cover page containing index of documents submitted under Rule 46A alongwith written submissions of appellant
16.	The explanatory chart of sundry creditors containing the detailed submissions of appellant.
17.	Written submissions dated 07.12.2016 submitted by the appellant before CIT(A)
18.	Written Submissions dated 22.08.2017 on rejoinder to remand report filed by the appellant
19.	Written Submissions dated 24.01.2018 tiled by the appellant
	Partv-wise documentary evidences relied upon by the appellant
	Partv 1: KantaVirmani (Mala Virmani
20.	Confirmation from the party along with address and PAN Number submitted vide letter dated 25.01.2014 before the Ld.AO
21.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs.50 lacs
22.	Copy of registered sale deed dated 08.07.201 1 entered for sale of agricultural land executed in the subsequent FY 2011-12 for Rs. 61.40 lacs

23.	Copy of the relevant page of bank statement of appellant company for FY 2011-12 reflecting the transaction for receipt of balance amount of Rs. 11.40 lacs against sale deed
	<u>Partv 2 : Mayank Gupta</u>
24.	Confirmation from the party along with address and PAN Number submitted vide letter dated 17.01.2014 before the Ld.AO
25.	Copy of the relevant pages of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 1.25 crores
26.	Copy of registered sale deed dated 08.07.2011 for sale of agricultural land executed in the subsequent FY 2011-12 for Rs. 2.19 crores
27.	Copy of the relevant page of bank statement of appellant company for FY 2011-12 reflecting major transactions for receipt of balance amount in FY 11-12
	Partv 3 : Ravinder Sharma
28.	Confirmation from the party along with address and PAN Number submitted vide letter dated 17.01.2014 before the Ld.AO
29.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 67 lacs
30.	Copy of registered sale deed dated 24.10.2011 for sum of Rs. 63.47 lacs for sale of agricultural land executed in the joint name of Amit Sankhwal and Ravinder Sharma in subsequent FY 2011-12
31.	Copy of registered sale deed dated 24.10.2011 for sum of Rs. 5 lacs for sale of agricultural land executed in the name of Ravinder Sharma in subsequent FY 2011-12

	<u>Party 4: Amit Sankhwal</u>
32.	Confirmation from the party along with address and PAN Number submitted vide letter dated 25.01.2014 to the Ld.AO
33.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 50 lacs
34.	Copy of sale deed dated 24.10.2011 for sale of land for a sum of Rs. 63.47, executed in FY 2011-12 in joint name of Ravinder Sharma and Amit Sankhwal
35.	Copy of the ledger account confirmation of Mr. Amit Sankhwal in the books of appellant company reflecting the refund of sum of Rs. 50 lakhs made on 19.05.2011 in the subsequent FY 2011-12
36.	Copy of the corresponding ledger confirmation of appellant in the books of Mr. Amit Sankhwal, reflecting the refund of sum of Rs. 50 lakhs made on 19.05.2011 in the subsequent FY 2011-12 along with the copy of his 1TR, and his bank statement
37.	Copy of the relevant page of bank statement of appellant company reflecting the refund transaction made in FY 2011 - 12 of Rs. 50 lacs to Amit Sankhwal
	<u>Party 5 : R.K. Chush</u>
38.	Confirmation from the party along with address and PAN Number submitted vide letter dated 17.01.2014 before the Ld.AO
39.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 20 lacs
40.	Reply to notice u/s 133(6) sent by the party during assessment proceedings confirming the fact that he had paid the amount to VRP Landbase P Ltd for purchase of land and which was received back as the deal was not matured, and submitting the

41.	Copy of the ledger account continuation of Mr. R K Chugh reflecting the refund of amount of Rs. 20 lakhs made on 07.06.2011 in the subsequent FY 2011-12 relevant to A.Y.2012-13
42.	Copy of his ITR and Computation of Income for AY 2011-12
43.	Copy of the relevant page of bank statement of appellant company reflecting the refund transaction
	<u>Partv 6 : Suiata Chugh</u>
44.	Confirmation from the party along with address and PAN Number submitted vide letter dated 17.01.2014 before the Ld.AO
45.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 20 lacs
46.	Reply to notice u/s 133(6) sent by the party during assessment proceedings confirming the fact that she had paid the amount to VRP Landbase P Ltd for purchase of land and which was received back as the deal was not matured, and submitting the
47.	" Copy of the ledger account confirmation of Ms. Sujata Chugh reflecting the refund of amount of Rs. 20 lakhs made on 07.06.2011 in the subsequent FY 2011-12 relevant to A.Y.2012-13
48.	Copy of his ITR and Computation of Income for AY 2011 12
49.	Copy of the relevant page of bank statement of appellant company reflecting the refund transaction
	Partv 7 : Universal Buildwell Pvt. Ltd.
50.	The copy of the ledger account confirmation of M/s Universal Buildwell Pvt. Ltd. filed during the course of assessment proceedings on 25.01.2014

51.	Copy of the relevant page of bank statement of appellant company for FY 2010-11 reflecting the transaction for receipt of amount of Rs. 35 lacs
	<u>Party 8: Spirit Global Constructions Ltd.</u>
52.	Copy of confirmed ledger account of the appellant, VRP Landbase Pvt Ltd. in the books of Sprit Global Constructions Ltd alongwith the copy of bank statement and ITR from Spirit Global Construction Ltd
53.	Form 26 AS of the appellant company reflecting the 1 DS Credit of Spirit Global Constructions Ltd. of 1NR 78 lacs
54.	Copies of complete bank statements of the appellant company for the FY 2010-11 maintained with Bank of Maharashtra and PNB

(B.2) In addition, a “Synopsis Paper Book with Case Laws Compilations” was also filed from the assessee’s side, containing the following particulars:

S. No.	Contents
1.	Synopsis of arguments of the appellant before this Hon. Bench of ITAT
2.	Party-wise breakup of Sundry creditors
3.	Brief chronology of relevant events related to assessment, Rule 46A and appellate proceedings
4.	Note containing submissions of appellant distinguishing the allegations of Id. CIT(A) Id. A.O. in his remand report
5.	Synopsis of judicial precedents relied upon by the appellant
6.	Judicial Precedents relied upon by the appellant
	Once trading advances raised in the relevant year, is adjusted against sale executed in the subsequent year or refunded in subsequent year, the genuineness of the transaction is established and there is no cause for addition u/s 68:

7.	Principal Commissioner of Income-tax (Central-3) v. Montage Enterprises (P.) Ltd., [2018] 100 taxmann.com 100 (SC), including Delhi High Court ruling in the relevant case, Pr. Commissioner of Income-tax v. Montage Enterprises (P.) Ltd., [2018] 100 taxmann.com 99 (Delhi)
8.	Commissioner of Income-tax, Delhi-VI Vs. Tulip Finance Ltd., [2009] 178 Taxman 182 (Delhi)
9.	PCIT Vs. Dutta Automobiles (P.) Ltd, [2017] 81 taxmann.com 107 (Calcutta)
10.	CIT Vs Bhitl Das Modi, [2005] 276 ITR 517 (Allahabad), [2005] 193 CTR 574 (Allahabad)
	Rental income in the case of real estate to be assessed as Income from House Property
11.	Commissioner of Wealth-tax Vs. Atma Ram Properties (P.) Ltd., [2017] 86 taxmann.com 89 (Delhi)
12.	Principal Commissioner of Income-tax Vs. E City Real Estate (P.) Ltd, [2018] 100 taxmann.com 94 (SC)
	Power of ITAT to entertain legal claim for the first time
13.	National Thermal Power Co. Ltd. Vs. CIT, [1998] 97 Taxman 358(SC)
14.	Relevant extract of Finance Act, 2011 for applicable surcharge rate in case of companies for AY 2011-12 and
15.	Relevant extract of Memorandum Explaining the Finance Bill 2011 clarifying the applicable surcharge rate for domestic companies for AY

(B.2.1) In the aforesaid “Synopsis Paper Book with Case Laws Compilations”, a synopsis of arguments contained in 18 pages was included, wherein a prayer was made as under:

“.....it is hereby prayed that as the lower authorities have not verified the complete facts of the case and all the additions have been by ld. AO and confirmed by CIT(A) arbitrarily without giving due regard to the facts and documentary evidences placed on record by the appellant. Therefore, if it is deemed necessary by this Hon’ble Court, the matter may kindly be set-aside to the file ld. A.O. for complete verification of facts and records.”

(C) At the time of hearing before us, the ld. Counsel for the assessee once again submitted that lower authorities did not verify the complete facts of the case and that all the additions were made by ld. AO and confirmed by ld. CIT(A) arbitrarily without giving due regard to the facts and documentary evidences placed on record by the assessee. It was further submitted that the matter may be set-aside to the file of the Assessing Officer for complete verification of facts and records. The Ld. Sr. DR for Revenue expressed no objection to this prayer made from the assessee's side. Representatives of both sides, ld. Counsel for the assessee as well as ld. Sr. DR for Revenue submitted at the time of hearing before us, that the impugned appellate order dated 10/12/2018 of the Ld. CIT(A) may be set aside and all the issues in dispute in the present appeal in ITAT may be restored to the file of the Assessing Officer with direction to pass fresh assessment order in accordance with law after providing reasonable opportunity to the assessee.

(D) In view of the foregoing, in the specific facts and circumstances of the present appeal before us, and as representatives of both sides are in agreement with this, we hereby

set aside the impugned appellate order dated 10/12/2018 of the Ld. CIT(A) and restore all the issues in dispute in the present appeal to the file of the Assessing Officer with the direction to pass a *denovo* assessment order in accordance with law after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed off in accordance with aforesaid directions.

(D.1) For statistical purposes, this appeal is treated as partly allowed.

This order was pronounced in Open Court on 15/03/2023 in the presence of representatives of both sides, after conclusion of the hearing and is signed today on 15/03/2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 15/03/2023

Pk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI