

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.528/Kol/2023  
Assessment year: 2015-16

Vishal Vinimay Pvt. Ltd.....Appellant  
129/1, Salkia School Road,  
Opposite Hooghly Dock,  
Howrah-711106.  
[PAN: AAACCV3934H]

vs.

DCIT, Circle-13(2), Kolkata.....Respondent

**Appearances by:**

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 01, 2023

Date of pronouncing the order : August 01, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 30.03.2023 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. For that based on the facts and circumstance of case as well as in the law the Ld CIT was not justified in upholding the addition of Rs 18,17,170/- made by the Ld Assessing Officer merely on the basis of on the comparative emanation from last year's cost of material consumed without considering of the fact that there has been technological upgradation in the products dealt in by the assessee therefore drastic fall*

*in the price of the stock due to out-dation of said product. (Tax effect – Rs.561505/-)*

*2. For that based on the facts and circumstance of case as well as in the law the Ld CIT was not justified in upholding the addition of Rs 17,95,437/- made by the Ld Assessing Officer in the nature of commission income reported in 26AS by not considering the fact that the same had already been included in the revenue form operation activity of the assessee company. (Tax effect - Rs 538632/-)*

*3. Without Prejudice to anything mentioned in the ground number 2 above even if the said addition of commission income of Rs 17,95,437/- is considered for addition than the Ld CIT was not justified in not allowing the current year loss to be adjusted against the said addition as Section 115BBE read with Section 68 allows the loss to be adjusted addition made under section 68 up AY 16-17.*

*4. Without Prejudice to anything mentioned in the ground number 2 & 3 above the Ld CIT was not justified by not allowing the TDS credit of Rs 1,79,548/- as it was inadvertently not claimed by the assessee at time of filing of income tax returns. (Tax effect - Rs 179548/-)*

*5. We crave leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.”*

3. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the same is an ex parte order passed u/s 144 of the Act. He has further invited our attention to the appellate order of the CIT(A) to submit that the same is also an ex parte order. The ld. counsel has further submitted that the assessee company has stopped working since the year 2016 and the office of the assessee company remained closed. For this reason, no proper compliance could be made either before the Assessing Officer or before the CIT(A). The ld. counsel has further submitted that the assessee has fair case on merits. He has also submitted that as per the settled law, the Income Tax Authorities should charge legitimate taxes from the assessee and that the assessee can very well demonstrate that the impugned additions were not warranted in this case. The ld. counsel has also relied upon the affidavit of one of the directors of the assessee company namely Rajesh Kumar Shaw.

4. The Id. DR however has submitted that the case of the assessee has remained unrepresented before the lower authorities.

5. Considering the rival submissions, we are of the view that interests of justice will be well-served, if, the assessee is given an opportunity to present its case before the Assessing Officer. The order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for decision afresh on the issue raised in the present appeal. Needless to say that the Assessing Officer will give proper opportunity to the assessee to present its case.

4. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

***Kolkata, the 1<sup>st</sup> August, 2023.***

Sd/-  
[डॉक्टर मनीष बोराड /Dr. Manish Borad]  
लेखा सदस्य /Accountant Member

Sd/-  
[संजय गर्ग /Sanjay Garg]  
न्यायिक सदस्य /Judicial Member

Dated: 01.08.2023.

RS

*Copy of the order forwarded to:*

1. Vishal Vinimay Pvt. Ltd
2. DCIT, Circle-13(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches