

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2295/DEL/2019
Assessment Year: 2013-14**

M/s VRK Infratech Pvt. Ltd., Unit 2, Tower No. 1, The Arcade, World Trade Centre, Cuffee Parade, Mumbai-400005. PAN: AACCH0207M	<u>Vs</u>	Income-tax Officer, Ward-2(5), Noida,
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. Vivek Vardhan, Sr. DR	
Date of hearing	03.08.2023	
Date of pronouncement	09.08.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-I, Noida, dated 27.02.2017, pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and as per the law, the Ld. Commissioner of Income Tax (Appeals)- 1, Noida erred in passing the impugned order dated 27.02.2017 ex-parte without providing the Appellant a reasonable opportunity of being heard.

2. The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in

rejecting the books of accounts under section 145(3) of the Act.

3. *The Ld.CIT(A) erred in confirming the addition of Rs.60,00,000/- u/s 68 of the Act without appreciating the facts and circumstances of the case.*

4. *The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs. 1,00,000/- estimating the income from consultancy without appreciating the facts and circumstances of the case.”*

2. Facts giving rise to the present appeal are that in this case the assessee filed its return of income declaring total income at Nil on 29.09.2013. The case of the assessee was taken up for scrutiny assessment. The assessment was framed vide order dated 10.03.2016, thereby the Assessing Officer made addition of Rs. 60,00,000/- on account of unexplained advance against property. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals). Before the learned CIT(Appeals) there was no representation on behalf of the assessee. Therefore, the learned CIT(Appeals) decided the appeal in the absence of the assessee and assessed income at Rs. 97,74,50,000/-, against the returned income at Nil. Aggrieved against this now the assessee is in appeal before this Tribunal.

3. No one attended the proceedings on behalf of the assessee. It is seen from the record that no one has been attending the proceedings on behalf of the assessee despite various notices sent at the address furnished by the assessee in Form no. 36. A notice sent through DR is stated to have been duly served. Under these facts

the appeal of the assessee is taken up for hearing ex parte, qua the assessee and is being decided on the basis of the material available on record.

4. Learned DR supported the orders of the authorities below and submitted that the assessee has been thoroughly negligent.

5. We have heard learned DR and perused the material available on record. We find that the learned CIT(Appeals) has disposed of the appeal, inter alia, by observing as under:

“17. Perusal of the Balance Sheet of the appellant showed that it has received credit of Rs. 86,50,00,000/- and has claimed payment of Rs. 10,63,50,000/- and has claimed the same to be share subscription and refund of the share subscription respectively, However, no material has been furnished to support its claim either before the Ld. A.O. or in the present proceedings. The Balance Sheet of the appellant has nothing to justify such enormous investment by faceless investors. Admittedly, the total authorized capital of the appellant is only Rs. 1,00,00,000/- divided into 10 Lakhs shares of Rs 10 each out of which 3,60,000 shares of Rs. 10/- each were fully subscribed and paid up but not a single paise of premium was received by the appellant. But for remaining 6,40,000 shares the appellant has received share application money of Rs, 66,50,00,000/- which is a premium of Rs. 85,86,00,000/- which is a premium of Rs. 1341.57 per share of Rs. 10 each. There is nothing either on record or in the Balance Sheet of the appellant to justify payment of premium on snares of Rs. 10 each by more than 134 times and when the promoters or the majority shareholders have paid not a single paise by way of share premium. Out of 3,60,000/- share which are allotted so far by the appellant company 3,59,999/- shares are owned by one shareholder and one share by another which is done deliberately to avoid the mischief of the Indian Companies Act, 1956 which makes it mandatory that two or more shareholders only will constitute a private limited company. It is but clear that the entire claim of the appellant is a colorable exercise to avoid paying tax on its unaccounted income and to launder its unaccounted income which may possibly be the proceeds of crime

18. In view of the failure of the appellant to discharge its obligation in law despite repeated opportunities granted to it and despite the service of notice u/s. 251(2) r./w. 251(1)(a) of I.T. Act, 1961 the income of the appellant is enhanced by Rs. 86,50,00,000/- under section 68 of I.T. Act, 1961 and by Rs. 10,63.50,000/- under section 69 of I.T. Act, 1961. The addition of Rs. 86,50,00,000/- is also covered under the provisions of section 68A of I.T. Act, 1961 while the addition of Rs. 10,63,50,000/- is also covered by the provisions of section 69C of I.T. Act, 1961. The taxable income of the appellant is therefore computed at Rs. 97,74,50,000/- against the returned income of Rs. NIL.”

6. Looking to the facts available on record it is noticed that the learned CIT(Appeals) enhanced the income of the assessee from Rs. 61,00,000/-, as assessed by the learned AO, to Rs. 97,74,50,000/-. Therefore, in our considered view the assessee should have been given an opportunity. It is further noticed that a office note is appended along with the assessment order, which speaks as under:

“This case had been selected for scrutiny under CASS on the ground “Large share application money received against unalloted shares”. Fact has been examined. The share application money of Rs.86,50,00,000/- had been received during FY 2011-12, relevant to Ah 2012-13. However, the assessee has not furnished even the confirmations of the persons from whom the share application money has been received. It is stated that the share application money was received from M/s Green Field Estate, A - 60, Sushant Lok, Gurgaon and M/s Raw Promoters & Developers Pvt. Ltd., A - 60, Sushant Lok, Gurgaon. Notices u/s 133 (6) had been sent to these persons but the envelopes containing these notices have been received back with the remark “There is no house number 60 in A block”. Therefore, the address is not correct and fabricated. Action u/s 147 will be taken for the AY 2012-13. As the entry does not pertain to the year under consideration, no addition has been made. Addition of Rs.61,00,000/- has been made after detailed discussion in the body of the order.”

7. In view of the above it is clear that learned CIT(Appeals) failed to take note of action proposed by the AO. We, therefore, set aside the impugned order and restore the matter to the file of learned CIT(Appeals) for deciding it afresh after giving due opportunity to the assessee of being heard. Grounds raised are allowed for statistical purposes.

Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 9th August, 2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI