

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "H", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA NOS. 8410 to 8412/Del/2019		
A.YRS. : 2012-13 to 2014-15		
DCIT, CENTRAL CIRCLE-26, ROOM NO. 323, ARA CETNRE, JHANDEWALAN EXTN., NEW DELHI - 110 055	VS.	M/S VKS PROPERTIES P. LTD., 412, MG HOUSE 1, COMMUNITY CENTRE, WAZIRPUR INDUSTRIAL AREA, NEW DELHI - 52 (PAN: AACCV2627D)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

AND

C.O. NO. 100 to 104/DEL/2022 (IN ITA NOS. 8410, 8411, 8412, 8413 & 8493/DEL/2019		
A.YRS. : 2012-13 to 2014-15, 2016-17 & 2015-16)		
M/S VKS PROPERTIES P. LTD., 412, MG HOUSE 1, COMMUNITY CENTRE, WAZIRPUR INDUSTRIAL AREA, NEW DELHI - 52 (PAN: AACCV2627D)	VS.	DCIT, CENTRAL CIRCLE-26, ROOM NO. 323, ARA CETNRE, JHANDEWALAN EXTN., NEW DELHI - 110 055
<b>(RESPONDENT)</b>		<b>(APPELLANT)</b>

Assessee by : Shri Ved Jain, Adv. & Ms.  
Supriya Mehta, CA  
Department by : Ms. Sapna Bhatia, CIT(DR)

Date of hearing : 16.08.2023  
Date of pronouncement : 18.08.2023

## **ORDER**

### **PER BENCH :**

The Revenue has filed the aforesaid 03 Appeals against the respective impugned orders passed by the Ld. CIT(A)-29, New Delhi relating to assessment years 2012-13 to 2014-15 and Assessee has filed the aforesaid 05 Cross Objections relating to assessment years 2012-13 to 2014-15 and 2016-17 and 2015-16 respectively. Since the issues involved in all the 03 Revenue appeals are common and identical, except the difference in figure of addition made on protective basis, hence, all the 03 appeals of Revenue alongwith Assessee's 05 Cross Objections were heard together and are being disposed of by this common order for the sake of convenience, by only dealing with Revenue's Appeal No. 8410/Del/2019 (AY 2012-13) and the decision thereof will apply *mutatis mutandis* to other Revenue's ITA Nos. 8411 to 8412/Del/2019 (AYrs. 2013-14 & 2014-15).

2. The grounds raised in Revenue's appeal No. 8410/Del/2019 (AY 2012-13) are reproduced as under:-

1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the protective addition of Rs. 12,63,58,536/- made by the AO on account of unexplained cash credits, without considering the fact that the assessee has failed to discharge the onus to satisfy the conditions laid on u/s. 68 of the I.T. Act, 1961 with regard to the nature and source of credit entries in respect of share capital / premium / unsecured loans and other credits in bank.

2. That the appellant craves leave to add, amend, after or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

3. Briefly stated facts are that assessee filed return of income on 30.9.2012 declaring income of Rs. 85,626/-. In the assessment order, the AO has made an addition u/s. 68 of the Act on account unexplained credit entries of Rs. 12,63,58,536/- in the bank account of the appellant received from various parties on protective basis by observing that since the assessee has failed to discharge the onus to satisfy the conditions laid on u/s. 68 of the I.T. Act with regard to the nature and source of credit entries of share capital / premium / unsecured loans and other credits in bank totaling to Rs. 12,63,58,536/- and treated the same as unexplained entries and added to the income of the assessee as its income from undisclosed sources u/s. 68 of the Act on protective basis as substantive addition will be made in the hands of the respective beneficiaries and assessed the income of the assessee at Rs. 12,64,44,162/- as against the returned income of Rs. 85,626/- vide order dated 17.12.2018 passed u/s. 153C r.w.s. 153A/143(3) of the Act. Against the assessment order dated 17.12.2018, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 20.8.2019 has partly allowed the appeal by observing that the commission income earned on providing accommodation entries through the assessee company have already been assessed by the

Assessing Officer in the hands of Sh. Anand Jain and Naresh Jain which has been confirmed by him in their respective appeals, hence, no further addition can be made in the hands of the assessee company and deleted the protective addition of Rs. 12,63,58,536/-.

4. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the records.

5. At the time of hearing, Ld. DR relied upon order passed by the AO and reiterated the contention raised in the grounds of appeal of the Revenue and requested that appeal of the Revenue may be allowed.

6. On the contrary, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order on the basis of the facts and circumstances of the case and in accordance with provisions of law, therefore, the appeal filed by the Revenue may be dismissed. In support of his contention, he filed the copy of Tribunal's order dated 28.4.2023 passed in ITA No. 1318/Del/2019 (AY 2010-11) & Ors. in the case of Sh. Anand Kumar Jain vs. ACIT & Ors. wherein, on similar analogy and facts and circumstances, the Tribunal held that since the substantive addition has already been completed in the case of Sh. Naresh Kumar Jain, and hence, no protective addition can be confirmed at this juncture in the case of the assessee i.e. Anand Kumar Jain in Revenue's ITA No. 2890/Del/2019 (AY 2012-

13) and accordingly dismissed the appeal of the Revenue. Therefore, he requested to dismiss the Revenue's appeal by following the aforesaid precedent by upholding the order of the Ld. CIT(A), New Delhi. Ld. DR could not controvert this proposition of the Ld. Counsel for the Assessee.

7. We have heard the rival contentions and perused the case law cited by the Ld. AR for the assessee. We have gone through the impugned order of the Ld. CIT(A) and found that Ld. CIT(A) has elaborately discussed the issue in dispute and deleted the addition in dispute by observing as under:-

*"...It is noticed that the appellant company has received funds from various concerns and transferred the same to the above mentioned companies/concerns immediately thereafter, and accordingly, appellant company is not beneficiary company. The above arrangement of funds is nothing but part of modus operandi of the accommodation entry provider to introduce the unaccounted funds of the beneficiaries in their respective bank accounts. Further, the AO also in the assessment order has observed that the appellant company was a conduit company operated by Sh. Naresh Jain and Anand Jain to provide accommodation entries to various beneficiaries. Accordingly, the addition in such cases can at best be that of commission earned on such accommodation entries. The commission income earned on providing accommodation entries through the appellant company have already been assessed by the AO in the*

*hands of Sh. Anand Jain and Naresh Jain which has been confirmed by me in their respective appeals. Therefore, I am of the view that no further addition can be made in the hands of the appellant company under the facts as discussed above. Under the circumstances, the protective addition made by the AO of Rs. 12,63,58,536/- is directed to be deleted.....”*

7.1 From the above, it is noted that the commission income earned on providing accommodation entries through the assessee company have already been assessed by the AO in the hands of Sh. Anand Jain and Naresh Jain which has been confirmed by the Ld. CIT(A) in their respective appeals. Therefore, Ld. CIT(A) has rightly held that no further addition can be made in the hands of the assessee company and therefore, directed to delete the protective addition of Rs. 12,63,58,536/- made by the AO. We further find that the issue in the instant appeal is squarely covered by the Delhi Tribunal's order dated 28.4.2023 passed in ITA No. 1318/Del/2019 (AY 2010-11) & Ors. in the case of Sh. Anand Kumar Jain vs. ACIT & Ors. wherein, on similar aspect and identical facts and circumstances, the Tribunal held that since the substantive addition has already been completed in the case of Sh. Naresh Kumar Jain, hence, no protective addition can be confirmed at this juncture in the case of the assessee i.e. Anand Kumar Jain in Revenue's ITA No. 2890/Del/2019 (AY 2012-13) and accordingly dismissed the appeal of the Revenue.

7.2 In view of facts and circumstances of the present case and respectfully following the precedent, as aforesaid, we are of the considered view that Ld. CIT(A) has rightly decided the issue in favour of the Assessee and deleted the addition in dispute, after elaborately discussing the issue in detail, which did not require any interference on our part. Hence, we uphold the findings of the Ld. CIT(A) on the issue in dispute and accordingly reject the ground raised by the Revenue by dismissing the appeal of the Revenue.

8. Following the consistent view as taken in Revenue's ITA No. 8410/Del/2019 (AY 2012-13) as aforesaid, the other Revenue's ITA Nos. ITA Nos. 8411 & 8412/Del/2019 (Ays. 2013-14 & 2014-15) also stand dismissed.

9. In the result, all the 03 Revenue Appeals are dismissed.

10. As regards Assessee's Cross Objections bearing C.O. Nos. 100 to 102/DEL/2022 in ITA Nos. 8410 to 8412/DEL/2019 relating to assessment years 2012-13 to 2014-15 are concerned, since we have already dismissed all the 03 appeals of the Revenue for the Ays. 2012-13 to 2014-15, as aforesaid, by upholding the order of the Ld. CIT(A), hence, the C.O. Nos. 100 to 102/DEL/2022 for Ays. 2012-13 to 2014-15 have now become infructuous, therefore, the same are dismissed as such. As regards the C.O. No. 103 & 104/Del/2022 filed in ITA No. 8413 & 8493/Del/2019 (Ays. 2016-17 & 2015-16) respectively, are concerned, the Ld.

AR for the assessee did not press the same, hence, the same are dismissed as not pressed.

11. In the result, the 05 Cross Objections of the Assessee stand dismissed, in the aforesaid manner.

Order pronounced on 18/08/2023.

Sd/-

**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

SRB

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar