

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

**BEFORE**

**DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4889/Del/2017  
Asstt. Year: 2013-14

ACIT, Central Circle-2 Room No. 363 3 <sup>rd</sup> Floor, E-2, ARA Centre, Jhandewalan Extn. New Delhi - 110 055	Vs.	R.V. Buildtech & Amusement P. Ltd., Sector-10, Metro Walk, Near Rithala Metro Station, Rohini, New Delhi- 110 085 PAN AAFCR87733B
(Appellant)		(Respondent)

Assessee by:	None
Department by:	Ms. Monika Dhami, CIT-DR
Date of Hearing:	30.08.2023
Date of pronouncement:	17.11.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the Revenue is directed against the order dated 19.05.2017 of the Ld. Commissioner of Income Tax (Appeals)-23, New Delhi ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2013-14.

2. The Revenue has taken the following grounds:-

- “1. *The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in quashing the order u/s 153A of the Act.*
3. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in law by holding that addition u/s 153A cannot be made without incriminating material gathered during course of search.*

4. *On the facts & circumstances of the case, the Ld. CTT(A) has erred in deleting the addition of Rs. 1,50,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961.*
5. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,12,500/- made by the AO on account of unexplained commission expenses.*
6. *The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

3. It is a search case. Search/seizure operation under section 132 of the Income Tax Act, 1961 (**the “Act”**) was carried out on 10.03.2015 on Appu Ghar Group of cases. The case of the assessee was also covered under section 132 of the Act. Notice under section 153A of the Act was issued on 20.10.2016. In response thereto, the assessee filed its return on 15.11.2016 for AY 2013-14 declaring income at Rs. Nil. Statutory notices under section 143(2) and under section 142(1) along with questionnaire were issued on 18.11.2016. The assessee filed reply before the Ld. Assessing Officer (**“AO”**) who perused the same and test checked the books of account produced.

4. The Ld. AO completed the assessment on 30.12.2016 under section 153A r.w. 143(3) of the Act on total income of Rs. 3,22,46,500/- including therein addition of Rs. 1,50,00,000/- being ‘unexplained cash credit’ shown in the garb of share application money under section 68 of the Act; addition of Rs. 1,12,500/- being commission expenses incurred for getting accommodation entries under section 69C of the Act and addition of Rs. 1,71,34,000/- being unsecured loan/funds given to the assessee by M/s. K.D. Consultancy Pvt. Ltd. treating the same as assessee’s own unaccounted funds of the group routed through them.

5. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) challenging the additions. During appellate proceedings, the assessee submitted that the Ld. AO made the addition of Rs. 1,50,00,000/- and assumed commission of Rs. 1,12,500/- on share capital on the ground that

it received share capital of Rs. 1,50,00,000/- from the companies managed by Shri Ashok Bardia. It was pointed out that in the case of Surana Buildtech Pvt. Ltd., also a part of Appu Ghar Group the same Ld. AO passed order for AY 2011-12 on the basis of same set of facts and on the basis of same grounds. It was submitted that Paper Book along with detailed submission has been filed in Surana Buildtech Pvt. Ltd.'s case for AY 2011-12 which may be taken and considered as assessee's submission in respect of the addition of Rs. 1,50,00,000/- on account of share capital.

6. Regarding addition of Rs. 1,71,34,000/- in respect of unsecured loan received from K.D. Consultancy Pvt. Ltd., the assessee submitted that during the year the assessee had given loans and advances of Rs. 1,71,34,000/- to K.D. Consultancy Pvt. Ltd. and had not received any amount from them. Attention of Ld. CIT(A) was drawn to the copy of ledger account along with audited balance sheet which formed part of the Paper Book. It was contended that the Ld. AO made the addition without applying his mind.

7. The Ld. CIT(A) considered the submissions of the assessee. He deleted the addition of Rs. 1,50,00,000/- on account of share application money under section 68 of the Act by observing and recording his findings as under:-

***“3.1.2 Ground nos. 01 to 18 and 20 in all the 03 cases/appeals for the above respective assessment years relate to addition on account of share application money u/s 68 of the Act. I have considered the submissions of the appellant and the assessment orders. The assessment orders in all the above respective cases/appeals for the above mentioned assessment years are verbatim the same/similar as also the submissions of the Lnd. AR in all the above respective cases/appeals for the above. mentioned assessment years and the only matter considered in the assessments and under challenge is the issue related to holding the share capital/share application /unsecured loan as unexplained u/s 68 of the Act and estimated commission hereon, and in respect of AY 2013-14 in the appeals for M/s R.V. Buildtech & Amusement Pvt. Ltd. and M/s VGRM Infrastructure & Amusement Pvt. Ltd. the appellant has, in ground nos. 02, 04, 05 to 18, also challenged the assessments made u/s 153A of the Act contending that the assessment is not based on any***

*incriminating document found during the search, in ground nos. 06, 07, 09, 10 & 14 the appellant has raised objections against the reliance placed by the AO on the statements of various persons, including the group Chairman Sh. Gian Vijneshwar, which was retracted immediately after the search, without adducing any corroborative evidence, and failure on the part of the AO to provide opportunity for cross-examination of the various persons whose statements have been relied upon by the AO, hence appeals of all these cases for the above mentioned assessment years are considered and decided by a single combined order.*

*3.1.2 The primary facts of these cases/appeals are as under*

S.No	Name of the assessee	Assessment Year	Original Return		Return u/s 153A	
			Date	Return Income	Date	Return Income
1.	R.V. Buildtech & Amusement Pvt. Ltd	2013-2014	27.09.2013	Nil	15.11.2016	Nil
2.	VGRM Infrastructure & Amusement Pvt. Ltd.	2013-2014	27.09.2013	Nil	13.06.2016	Nil

*3.1.3 The facts of the matter, as mentioned above at para-3.1.2, have been considered in great detail in my order dt. 04.05.2017 in the group case of M/s Surana Buildtech Pvt Ltd. in Appeal Nos. 337 & 338/16-17 for AYS 2011-12 and 2012-13 at paras-4.1 to 4.1.9 wherein I have held that*

*"the AO was not within the jurisdiction bestowed on him by law to make the impugned additions in the assessment u/s 153A of the Act, and therefore the impugned assessment orders for both the assessment years cannot be sustained. It is held accordingly and the reassessment orders for both assessment years are quashed." (para-4.1.7).*

*and that,*

*"no addition could be made without providing opportunity for cross-examination of the persons whose statements were relied upon by the AO make the addition and for this reason as well the addition is not sustainable." (para-4.1.5).*

*and that,*

*"no addition could be made on the basis of a retracted statement and for this reason as well the addition is not sustainable." (para-4.1.6).*

3.1.3.2 As regards the share certificate issued by various Appu Ghar group companies found from the corporate office of the group being pages-24 to 42 of Annx. A-17/M-2, the AO has observed that share certificate issued by various Appu Ghar Group Companies to different group companies of Bardias and the Jain family or in which they were somehow associated were found in the corporate office of the group (Annexure No A-22, A-23, A-26, A-27, A-28 & A-29 of party M-2). Vide order sheet dt. 25.04.2017 in the case of M/s Surana Buildtech Pvt. Ltd. for AYS 2011-12 & 2012-13 (supra) the appellant's AR was asked to submit copies of these seized documents which have been submitted and I find that these relate to following companies

- i. Appu Ghar Recreation Parks Pvt Ltd
- ii. Onus Infrastructure & Developers Pvt Ltd
- iii. Prop Link Real estate consultants Pvt Ltd
- iv. Appu Ghar Buildtech & Infrastructure Pvt Ltd
- v. Appu Ghar Holdings Ltd
- vi. Appu Ghar Securities and Solutions Pvt Ltd
- vii. Team Bulldoon Pvt Ltd
- viii. Appu Ghar Entertainment Pvt Ltd
- ix. International Amusement Holdings Ltd
- x. Rainbow Progress Ltd
- xi. MJ Entertainment Pvt Ltd
- xii. Kamakshi Marketing Pvt Ltd

and admittedly no share certificates of the above 02 companies, Ms RV. Buildtech & Amusement Pvt. Ltd. and M/S VGRM Infrastructure & Amusement Pvt. Ltd, were found and therefore these seized document or not relevant for these 02 companies and cannot be considered as incriminating documents in respect of these 02 companies.

3.1.3.3 Further, in my order in the case of M/s Surana Buildtech Pvt. Ltd. (supra) at para-4.1.3.3 I have held that the documents pages: 24 to 42 of Annx. A-17/M-2 and email retrieved from computer used by Shri Sukhbir Singh Bawa (Annexure A-52. Party M-2) cannot be considered as incriminating material found during the course of search related to the appellant company.

3.1.3.4 Accordingly, the assessments in both the cases M/s RV. Buildtech & Amusement Pvt. Ltd. and M/s VGRM Infrastructure & Amusement Pvt. Ltd. for the AY 2013-14, being "completed" assessments, are quashed.

3.1.3.5 Further, it is also held that no addition could be made in both the cases, M/s R.V. Buildtech & Amusement Pvt. Ltd. and M/s VGRM Infrastructure & Amusement Pvt. Ltd. for the AY 2013-14, without providing opportunity for cross-examination of the persons whose statements were relied upon by the AO to make the addition, and that no addition could be made on the basis of a retracted statement and for these reason as well the addition in both cases/appeals are not sustainable, and the addition made in both cases/appeals are liable to be deleted.

3.1.3.6 Having considered the facts related to the share application/share capital/unsecured loan in respect of M/s Surana Buildtech Pvt. Ltd. and all these other cases of the group at paras-4.1.8 to 4.1.8.2 in my order in the case of Surana Buildtech Pvt Ltd. for AYS 2011-12 & 2012-13 (supra) I have held that,

*"the addition made is not sustainable on merits as well. I hold accordingly."*

*and I have deleted the addition in the case of M/s Surana Buildtech Pvt Ltd. for AYS 2011-12 & 2012-13 (supra). Following the same, and in view of the facts in these two cases discussed herein above, the additions in both the above assessments of M/s R.V. Buildtech & Amusement Pvt. Ltd. and M/s VGRM Infrastructure & Amusement Pvt. Ltd. for the AY 2013-14 are deleted."*

8. As regards addition of Rs. 1,12,500/- on account of commission expenses incurred for getting accommodation entries under section 69C of the Act, the Ld. CIT(A) deleted the same observing thus:

*"...the facts of the matter are similar which have been considered in my order dated 4.5.2017 in the group case of Surana Buildtech Pvt. Ltd. in Appeal No. 337 and 338/6-17 for AY 2011-12 at paras 4.2 and for similar reasons and following the same the addition on this account is deleted as well".* (page 10 of Ld. CIT(A)'s order)

9. In so far as the addition of Rs. 1,71,34,000/- being unsecured loan obtained by the assessee from K.D. Consultancy Pvt. Ltd. treated by the Ld. AO as assessee's own unaccounted funds routed through the group companies is concerned, the Ld. CIT(A) deleted the same by observing and recording his findings in paras 3.3.2.2 and 3.3.2.3 of his appellate order (page 11-12) extracted below:

*"3.3.2.2 In the first two cases, M/s R.V. Buildtech & Amusement Pvt. Ltd. and M/s VGRM Infrastructure & Amusement Pvt. Ltd. for the AY 2013-14, the*

*additions made by the AO reflects total non-application of mind (apparently in the process of copy and paste from another order of the group) in as much as in both these cases no share application money or unsecured loan as observed by the AO has been taken by the two appellants and, in fact, they had advanced money to M/s K.D. Consultancy Pvt. Ltd., another Appu Ghar group company, as is also perceptibly visible from the audited accounts of these two companies where the respective amount of Rs.1,71,34,000/- and Rs. 1,71,33,000/- are reflected under 'loan and advances under the group-head 'current assets. The AO has apparently not even bothered to have a look at the audited accounts of these companies before making additions. The additions are ill-founded and baseless and therefore **deleted**.*

*3.3.2.3 In respect of M/s M.V. Realtors & Amusement Pvt. Ltd. for AY 2015-16, the appellant had taken unsecured loan from M/s K.D. Consultancy Pvt. Ltd. (KDCPL) of Rs. 1,71,00,000/-. The basic fact is that the amount received from KDCPL on various dates (Rs 10,00,000/ on 08.03.2013. Rs 84,00,000/- on 11.03.2013 & Rs 77,34,000/- On 14.03.2013) through Kotak Mahindra Bank account no 7811204085 of KDCPL were returned/refunded to KDCPL on 14.06.2014 (Rs.1,40,00,000/-) and 28.06.2014 (Rs 31,33,000/-) through Kotak Mahindra Bank account no.0111207657 of the appellant company. Thus, during the financial year relevant to AY 2015-16 under consideration itself M/s MV. Realtors & Amusement Pvt. Ltd., the appellant company, had in fact refunded the amount taken in the year relevant to AY 2013-14 but the AO, without examining the accounts of the appellant and that of KDCPL in the books of the account and the relevant bank accounts, reflective of total non-application of mind, held the amount refunded as unsecured loans taken during AY 2015-16 and made the addition. Even otherwise the transactions are through banking channel and inter-corporate loan transactions within the same group. This addition also being ill-founded and baseless is accordingly **deleted**.”*

10. The Revenue did not challenge the deletion of addition of Rs. 1,71,34,000/- by the Ld. CIT(A) made by the Ld. AO. However, the Revenue is dissatisfied by the deletion of addition of Rs. 1,50,00,000/- under section 68 of the Act and deletion of addition of Rs. 1,12,500/- under section 69C of Act made by the Ld. AO and all the grounds relate thereto.

11. We heard the Ld. CIT-DR. None for the assessee attended the hearing on 30.08.2023 when the appeal was called out. We therefore, proceeded to decide the appeal after hearing the Ld. CIT-DR.

12. The Ld. CIT-DR supported the order of the Ld. AO. She submitted that the Ld. CIT(A) was not justified in holding that addition under section 153A

cannot be made without incriminating material gathered during search. She defended the Ld. AO's action in making the impugned additions.

13. We have carefully perused the material available in the records and considered the submissions of the Ld. CIT-DR. We have found that the Ld. CIT(A) has taken note of the fact that the assessee declared nil income in original return filed on 27.09.2013 as also in return filed under section 153A of the Act on 15.11.2016 for AY 2013-14. However, the Ld. AO made three additions aggregating to Rs. 3,22,46,500/- out of which the addition of Rs. 1,71,34,000/- deleted by the Ld. CIT(A) has been accepted by the Revenue as the said addition was based on facts contrary to those available in the records. For the remaining impugned two additions deleted by the Ld. CIT(A), it is observed that the Ld. CIT(A) has followed his order passed in the case of M/s. Surana Buildtech Pvt. Ltd. in appeal Nos. 337 & 338 for AY 2011-12 and 2012-13 in which assessments making similar additions were quashed by him. The Revenue has not brought on record any material to show that decision of the Ld. CIT(A) has been interfered with by any higher judicial forum. In this view of the matter and in the absence of any factual inaccuracy found by us in the order of the Ld. CIT(A), we endorse his findings and reject the Revenue's grounds relating thereto.

14. We do not find any substance in the contention of the Revenue that the Ld. CIT(A) has erred in law by holding that addition under section 153A cannot be made without incriminating material gathered during course of search. There has to be incriminating material recovered during search qua the assessee in each of years for purpose of framing an assessment under section 153A. There are umpteen number of decisions in support of the above proposition. We may refer the following:-

- (i) Kabul Chawla vs. ACIT (2014) 50 taxmann.com 238 (Delhi-Trib) affirmed by Hon'ble Delhi High Court in CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del)
- (ii) Pr. CIT vs. Ms. Lata Jain (2016) 384 ITR 543 (Del)
- (iii) Pr. CIT v. Vikas Gutgutia (2017) 396 ITR 691 (Del)

- (iv) Pr. CIT vs. Meeta Gutgutia (2017) 248 Taxman 384 (Del)  
(SLP dismissed in PCIT vs. Meeta Gutgutia (2018) 257 Taxman 441 (SC))
- (v) PCIT vs. Ramesh Bhai Jivraj Desai (2020) 275 Taxman 522 (Guj)
- (vi) Smt. Jami Nirmala vs. PR. CIT (2021) 437 ITR 573 (Orissa)
- (vii) PCIT vs. Jaypee Financial Services Ltd. (2021) 282 Taxman 475 (Del)

15. For the reasons set out above and following the decisions (supra), we hold that the appeal of the Revenue is devoid of any merit which we hereby reject.

16. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the open court on 17<sup>th</sup> November, 2023.**

**sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 17/11/2023  
**Veena**

Copy forwarded to -

- 1. Applicant
- 2. Respondent
- 3. CIT
- 4. CIT (A)
- 5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	

Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	