

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1345/DEL/2021 [A.Y. 2016-17]

The Dy. C.I.T. Vs. Vibhore Vaibhav Infrahome Pvt Ltd
Central Circle Khasra No. 1117, Raj Nagar
Ghaziabad Ghaziabad

PAN: AABCF 2720 J

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa, Adv
Ms. Ayushi Gupta, CA

Department By : Ms. Sapna Bhatia, CIT- DR

Date of Hearing : 19.02.2024

Date of Pronouncement : 21.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A), Kanpur dated 14.06.2021 pertaining to A.Y. 2016-17.

2. The grievances of the Revenue reads as under:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO to the tune of Rs. 3,20,60,409/- on account of difference of income surrendered during the course of search proceedings and the income declared by the assessee in return of income. As the Ld. CIT(A) has not appreciated the fact that Shri Praveen Tyagi Director of the assessee company has confessed to surrender the amount of Rs.16,65,60,788/- which was received as cash against the booking and the same was not declared in the books of accounts and the same i.e. Rs. 16, 5,60,788/- was treated as "On Money" by the director himself.

2. On facts and circumstance of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO to the tune of Rs. 20,00,000/- unverifiable expenses. During the course of assessment proceeding the AR of the assessee company had acknowledged vide order sheet entry dated 26.12.2018 that some of the vouchers are not proper.

3. On facts and circumstance of the case and in law, the Ld. CIT(A) relevant facts & circumstances and misread the facts to arrive at the conclusion."

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that a search and seizure operation was conducted u/s 132 of the Income-tax Act, 1961 [the Act, for short] on 03.11.2016 at the premises of assessee company VVIP Group.

5. During the course of search and seizure operation at the residential premises of Shri Praveen Tyagi, Director of the assessee company, Annexure A was found and seized which is as under:

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VVIP ADDRESSES 6300

Sl. No.	Applicant Name	Unit Address	Total Cost	Received #	Received #	Total Received	Balance	Remarks
1	Mrs. Anju Sharma	I-101 (1)	15,817,000	4,837,205		4,837,205	14,979,795	Cancel
2	Mr. Praveen Tyagi	I-701 (2)	485,013			485,013	(485,013)	Cancel
3	Mr. Naveen Tyagi	I-301 (2)	16,288,282	12,051,965	3,907,928	15,959,893	328,389	
4	Mrs. Pooam Tyagi	I-401 (2)	16,162,282	8,676,914	13,300,000	21,976,914	(5,814,632)	
5	Mr. Ayan Garg	I-501 (2)	16,036,282	974,896	12,703,808	13,678,704	2,357,578	
6	Mr. Harjeet Singh	I-601 (2)	15,910,282	584,938	13,001,748	13,586,686	2,323,596	
7	Mrs. Meenu Gupta	I-701 (3)	25,736,000	15,512,882	10,036,000	25,548,882	187,118	
8	Mr. Rajeev Kumar	I-801 (2)	15,658,282	3,704,606	9,597,628	13,302,234	2,356,048	
9	Mr. Dajeeet Oberoi	I-901 (2)	25,000,000	344,705	1,400,000	1,544,705	23,455,295	
10	Mr. Naveen Jindal	I-1001 (1)	15,760,830	2,914,948		2,914,948	12,845,882	
11	Mr. Suresh Rana	I-1101 (1)	15,817,467	2,143,788	3,301,000	5,444,788	10,372,669	
12	Mrs. Rupinder Kaur	I-1201 (2)	19,405,500	974,896	10,500,000	11,474,896	7,930,604	
13	Mr. Praveen Kumar	I-12A01 (1)	17,083,200				17,083,200	Cancel
14	Mr. Vinod K. Malhotra	R-201 (2)	19,278,500	16,011,299	2,204,000	18,215,299	1,064,201	
15	Mr. Rishi Garg	R-301 (3)	24,000,000	15,149,237	2,000,000	17,149,237	6,850,763	
16	Mrs. Ruby Tyagi	R-401 (2)	16,162,282	11,454,307	13,301,868	24,760,175	(8,597,893)	
17	Mrs. Sanka Tyagi	R-501 (2)	16,036,282	9,214,771	13,701,808	22,918,579	(6,882,297)	
18	Mrs. Anita Tyagi	R-601 (2)	22,000,000	15,000,000	7,000,000	22,000,000		
19	Mr. Vibhor Tyagi	R-701 (2)	15,764,282	8,549,869	12,100,000	20,549,869	(4,785,587)	
20	Mr. Sunil Rawat	R-801 (2)	18,268,750		15,500,000	15,500,000	2,768,750	
21	Mr. Ashwini Chandel Tyagi	R-901 (1)	13,137,500	11,601,359		11,601,359	1,536,141	
22	Mrs. Pooja Arora	R-1001 (1)	15,559,262	389,959	12,100,000	12,489,959	3,105,323	
23	Kalpana Khosla	R-1101 (1)	15,498,000	15,225,921		15,225,921	272,079	
24	Mrs. Madhu Tyagi	R-12A01 (2)	15,941,467	974,896	6,000,000	6,974,896	8,966,571	Cancel
Total			411,373,332	157,578,184	266,560,788	314,138,972	88,238,370	

Reconciliation

Total Amount - 16,65,69,788

Cancelled by Refund

Pooam Tyagi	I-401 (2)	58,14,632
Ruby Tyagi	R-401 (3)	85,97,893
Sanka Tyagi	R-501 (2)	68,82,297
Vibhor Tyagi	R-701 (2)	47,65,587
Madhu Tyagi	R-12A01 (2)	60,00,000

3,20,60,409

Balance Disclosed in 153 A Return

13,45,00,379

6. Shri Praveen Tyagi, Director of the company was confronted with the above seized document who stated that the above payments have been received in the company against the booking of flats in F.Y 2015-16. He further stated that cash received amounting to Rs. 16,65,60,788/- has not been shown in the books of account of the assessee company as this amount is on money which he offered as unaccounted income of the assessee company.

7. However, during post search proceedings, the assessee company filed a written reply in respect of the surrendered amount of Rs. 16,65,60,788/- on the issue of on money. The relevant part reads as under:

interest on capital and depreciation when considered the net profit rate works out 3.86% against 1.68% of the earlier year.

6. That the company has not charged ON MONEY on the sale of flats of any project as a matter of policy. The department had conducted search on 03.11.2016 at the business and residential premises of VVIP group of companies, its directors and employees and search operations continued overnight and the following day. The undersigned director had to coordinate search at different premises. During search, two loose sheets are alleged to have been found/recovered from the possession of employees of the company which were neither in the handwriting of any of the Directors of the company nor in the handwriting of any of their family members. The loose slips contained some typed-out figures.

One loose document contained typed figure of Rs. 16,65,60,788/- apparently, cash receipts from booking of certain specified flats, number of flats booked, number of flats cancelled and the excess amount refundable to the applicants noted therein. In this regard, it is stated that the company had constructed 26 special category flats measuring 6300 sq.ft. each out of which, 24 flats were booked at the time of launch of this project. However later on realizing its high cost, number of bookings were finally cancelled. As stated above, the company does not charge ON MONEY on the sale of flats as a matter of policy, but in order to push the booking of the said specified flats, cash component seem to have been introduced and collected for which some estimates were found to have been jotted down on a loose paper recovered from the possession of one of the employees of the company. This was an old document and did not reflect the correct status of the bookings as on the date of search. The other loose sheet recovered from the possession of an ex-employee of company contained typed out figure of marriage expenses of Rs. 7,25,65,220/- whereas most of such expenses were paid by cheque.

In the statement recorded under section 132(4) of the Act, the undersigned, though totally exhausted, had offered an additional income of Rs. 25 Cr. While working out the additional income simply, the sum total of all such documents was adopted and offered the same as an additional income. If the cash amount introduced on the booking of the specified flats is treated as income, the cash paid back on the cancellation of bookings, the excess amount recorded as refundable against some bookings and the cash expenses alleged to be incurred on the marriage are to set off out of said income. Free from fall out of search, locker operation and demonetization of currency, the applicant has been advised by legal experts that offer made amounts to double taxation because all the out goings and liabilities against such specified flats are to be set off only out of the ON MONEY receipts, while the applicant added up all the figures being not properly advised on the subject as a lay man and this request of the applicant needs to be considered by your honor sympathetically and judiciously. It is an undisputed fact that no other incriminating document or cash was found or seized from the premises, from possession of any of directors and/or employees of the company. Accordingly, it is confirmed that the assessee company and for that purposes any of the directors and employees have not received and/or collected any ON MONEY on the sale of flats of all other projects except the Special 26

8. However, when the Assessing Officer saw the returned income of the assessee, he found that the assessee has included Rs. 13,45,00,379/- in its income out of total surrendered amount of Rs. 16,65,60,788/- and added the difference amount of Rs. 3,20,60,409/-

9. The Assessing Officer further found that the assessee has claimed expenses under various heads which are mostly supported by self generated vouchers and, therefore, made adhoc disallowance of Rs. 20 lakhs.

10. The assessee challenged the addition before the ld. CIT(A) and vehemently contended that documents should be read as a whole and in the alleged Annexure A, the assessee has returned Rs. 3,20,60,409/, therefore, the same was not included in the returned income of the assessee and balance surrendered amount has been honoured and the assessee has paid taxes thereon.

11. After considering the facts and submissions, the ld. CIT(A) found the contention of the assessee correct. In the loose sheet which is basis for making addition since there was refund of Rs. 3,20,60,409/-, the ld. CIT(A) directed the Assessing Officer to delete the same from the additions made.

12. In so far as adhoc addition of Rs. 20 lakhs is concerned, the ld. CIT(A) was of the opinion that no specific defect has been pointed out and addition has been made on surmises and conjectures and on

hypothetical observations and, accordingly, directed the Assessing Officer to delete the same.

13. Before us, the ld. DR strongly supported the findings of the Assessing Officer but could not point out any factual error in the findings of the ld. CIT(A).

14. Seized document is exhibited elsewhere. It can be seen from the same that out of total amount of Rs. 16,65,60,788/-, Rs. 3,20,60,409/- has been refunded as mentioned in the sheet itself. Therefore, net cash generated by the assessee amounts to Rs. 13,45,00,379/- and the same has been disclosed by the assessee in its return of income. Deletion of Rs. 3,20,60,049/- cannot be faulted with.

15. It would be pertinent to mention here that though the receipt of cash was found to be noted in the loose sheet, but physical cash was never found from the premises of Shri Praveen Tyagi nor any investment not disclosed was found which means that cash of Rs. 13,45,00,379/- must have been spent of some personal venture like family functions, marriage in the family etc etc.

16. In so far as addition of Rs. 20 lakhs is concerned, there is no dispute that it is purely on adhoc basis though the observation of the Assessing Officer that some of the expenses are supported by self generated vouchers cannot be brushed aside lightly. But, such petty expenses cannot be Rs. 20 lakhs. Therefore, in the interest of justice and fair play, we direct the Assessing Officer to restrict the addition to Rs. 1 lakhs only. The assessee shall get part relief on this addition.

17 In the result, the appeal of the Revenue in ITA No. 1345/DEL/2021 is partly allowed.

The order is pronounced in the open court on 21.02.2024.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 21st FEBRUARY, 2024.

VL/

Copy forwarded to:

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

Asst. 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	