

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.227/KOL/2024  
Assessment Year: 2012-13**

Guru Awaas Pvt. Ltd. C/o Rajesh Mohan & Associates, Unit No. 18, 5 <sup>th</sup> floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700013. (PAN: AACCG9886H)	Vs.	Income Tax Officer, Ward-9(2), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

Present for:

Appellant by : Shri Abhisek Bansal, AR

Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 29.04.2024

Date of Pronouncement : 15.05.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld. CIT(A)"] vide Order No. ITBA/NFAC/S/250/2023-24/1059364225(1) dated 04.01.2024, which is against the assessment order passed by the ITO, Ward-9(2), Kolkata u/s. 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2012-13.

2. The grounds of appeal raised by the assessee are reproduced as under:

- “1. For that the assessment order passed by the Ld. AO is bad in law as well as on facts.
2. For that the assessment order passed by the Ld. AO without any DIN is bad in law.
3. For that the reasons recorded by the Ld. AO merely on the basis of information received without independent application of mind is bad in law.
4. For that the reasons recorded by the Ld. AO being vague as well as incorrect, entire reassessment proceedings is bad in law.
5. For that the Ld. AO erred in not providing the assessee copies of materials relied upon, approval obtained and the standard proforma used for obtaining such approval which forms part of the reason recorded.
6. For that the reasons recorded by the Ld. AO without following the mandatory SOP issued by the Hon'ble CBDT is bad in law.
7. For that the Ld. AO erred in disposing off the objection raised by the assessee in cryptic manner without dealing with each objections raised by the assessee.
8. For that the Ld. AO erred in making addition of Rs. 50 Lakh received from M/s Parijat Vinimay Pvt. Ltd. as unexplained cash credit whereas the said amount was received against sale of immovable property whereby the income arising from such sale was duly recognized in the very next year when the sale was complete and the advance received was adjusted against the sale proceeds.
9. For that even otherwise, the addition made u/s 68 is bad in law since the amount is received against sale of property and there is no dispute to the identity of the purchaser and the fact that the amounts have been received through bank.
10. For that even otherwise, the addition made by the Ld. AO merely disbelieving the evidences adduced by the assessee without himself carrying out any inquiry is bad in law.
11. For that under the facts and circumstances of the case, the addition made by the Ld. AO is liable to be deleted.
12. For that the appellant craves leave to add, alter or withdraw any grounds of appeal on or before hearing of the appeal.”

3. At the time of hearing it was observed that there was delay of 126 days in filing the appeal but no application for condonation of delay was placed in file. Hence, the appeal was refixed for clarification in this regard on 29.04.2024. The Ld. AR on behalf of the assessee stated that the order of the Ld. CIT(A) is dated 04.01.2024 and inadvertently in column No. 3 of Form No. 36 the date of order has been incorrectly mentioned as 3<sup>rd</sup> August, 2023 and the date of service for communication of the order is also erroneously mentioned as 03.08.2023. The contention was found to be correct. It appears that a revised Form No. 36 was also filed mentioning the date of order as 04.01.2024. This revised Form No. 36 appears to have been filed in the course of the hearing and has not been filed before the Registry. However, the contention regarding dates is found to be correct and the appeal filed on 07.02.2024 is held to be filed within time.

4. Brief facts of the case are that the income tax return was furnished for the AY 2012-13 on 29.09.2012 showing total income of Rs. Nil and the same was processed u/s. 143(1) of the Act. Subsequently, on the basis of the information received from the DDIT (Inv.) Unit-2(4) being the list of beneficiaries of accommodation entries, it was noted that the assessee was one such beneficiary and had received funds to the tune of Rs.50,50,000/- during the Financial Year 2011-12. Accordingly, the proceeding u/s. 147 of the Act was initiated with the prior approval of the Ld. PCIT-3, Kolkata. The assessee furnished the return of income showing total income of Rs. Nil on 31.03.2019 and also asked for reasons recorded for income escaping assessment. The AO has mentioned in the assessment order that the reason had been supplied to the assessee and the objection for reopening of the assessment was disposed of by the AO. The AO mentioned that the transaction of Rs.50,00,000/- has been made by the assessee from M/s. Parijat Vinimay Pvt. Ltd. (in short 'PVPL') for sale of commercial units

during the FY 2011-12 relevant to the AY 2012-13. Hence, it is clear that the assessee's income at Rs.50,00,000/- had escaped assessment for the assessment year 2012-13. This amount was disallowed and added back to the total income of the assessee for the AY 2012-13 u/s. 68 of the Act and the total income was assessed at Rs.50,00,000/-. Before the Ld. CIT(A), the assessee challenged the assessment order on several grounds which can be categorised into those related to the reopening of assessment and the addition made and the Ld. CIT(A) dismissed the appeal by holding as under:

*"5.2. In grounds 1 to 11, the appellant has challenged the assumption of jurisdiction u/s. 147 of the Income Tax Act, 1961 and relied upon various decisions. I have gone through the written submission and the various case laws, relied upon. The Assessing Officer has issued notice u/s. 148 of the Income Tax Act, 1961 on the basis of information received from the department that the appellant was involved in getting accommodation entry. Hence on the basis of the information, the Assessing officer issued the notice u/s. 148 of the Income Tax Act, 1961. Hence the grounds 1 to 11 raised by the appellant are without merits and hence dismissed."*

5. Aggrieved with the order of the Ld. CIT(A), assessee has filed the appeal before us. We have heard the rival contentions and examined the record and the submissions made.

6. Ground nos. 1 and 12 are general in nature and do not require any separate adjudication.

7. Ground nos. 2, 3, 4, 5, 6 and 7 were not pressed by the Ld. AR at the time of hearing, hence they are not being adjudicated, and these grounds are dismissed as not pressed.

8. Ground nos. 8, 9, 10 and 11 relate to the addition of Rs.50,00,000/- being the amount received from PVPL. During the course of hearing, it was brought to our notice that the AO as well as the Ld. CIT(A) have rejected the submission made in this regard in a summary manner without examining the evidence filed. Ld. CIT(A) vide para 5.3 of his order has held as under:

*“5.3. In grounds 12 to 14, the appellant has challenged the order of the Assessing Officer on merits that it has not received accommodation entry worth Rs.50,00,000/- but it is advance received from M/s. Parijat Vinimay Pvt. Ltd. for sale of flat which was offered to tax in AY 2013-14. I have gone through the contention of the appellant. No details of flat, any agreement or any other details of property have been given. Only ledger of transaction with M/s. Parijat Vinimay Pvt. Ltd. has been given. Reliance has been made on various case laws that this transaction has been done through banking channels. Since all these transactions are made as accommodation entries and hence the transaction through banking channel will not help the appellant. Reliance is made here on the judgment of Hon’ble Supreme Court in the case of PCIT Vs. Nra Iron and Steel Pvt. Ltd. delivered on 5 March, 2019, where Hon’ble Lordship has clearly mentioned that mere transaction through banking channels will not help the appellant and onus of proof is there on the appellant to prove the genuineness of the transaction to the satisfaction of the Assessing Officer. Hence, the addition of the Assessing Officer is confirmed and the appeal of the appellant is dismissed.”*

9. Before us it was contended that the assessee had sold a flat in the assessment year 2013-14 for which advance was received during the year under consideration. It was also contended that the reasons recorded were wrong as the reasons were recorded for income escaping assessment of Rs.50,50,000/- while the addition has been made for Rs.50,00,000/-. It was submitted that the conveyance deed was submitted before the Ld. CIT(A) and the same also figures at pages 108 to 146 filed in the paper book filed in the course of appeal before us and the sum of Rs.50,00,000/- received as advance is mentioned at page 143 of the paper book, being the details of payment mentioned in the conveyance deed. Besides this, the assessee had also sold other properties and the entire sale proceeds had been recognised as revenue in the AY 2013-14. The details of the advance received at Rs. 16,00,000/- on 05.07.2011, Rs. 15,00,000/- on 10.09.2011 and Rs.19,00,000/- on 27.11.2011 being the total amount of Rs 50,00,000/- received from PVPL from the FY 2011-12 were filed before the AO on 29.04.2019 and the same appear at page 68 of the paper book filed during the course of the appeal. The conveyance deed was done on 30.03.2013 and the sales have been booked at Rs.99.50 lakhs for this

transaction on 01.04.2013 and total sales of Rs.5,47,80,800/- have been shown in the AY 2014-15 out of which sales of Rs.99,50,000/- are in the name of PVPL for which advance of Rs. 50,00,000/- was received during the year under consideration. These facts were not controverted by the Ld. DR at the time of hearing before us.

10. We have heard the rival contentions and have perused the material available on record and find that since the amount of Rs.50,00,000/- related to the sale proceeds of the property for which the conveyance deed was drawn on 31.03.2013 and the entire sale proceed of Rs.99,50,000/- have been disclosed in the AY 2014-15, the same having been received by cheques as per the details submitted before the AO, therefore, there was no justification for disregarding the reply filed by the assessee and making the impugned addition of Rs.50,00,000/- u/s 68 of the Act by the AO, which has also been confirmed by the Ld. CIT(A). We, therefore, allow these grounds of appeal and hereby delete the addition of Rs.50,00,000/- made by the AO, more so when the addition is at variance as the reasons recorded mention Rs.50,50,000 without providing the details to the assessee and the addition has been made at Rs. 50,00,000/- and the reply of the assessee has not been discussed by the AO in the assessment order as to why the reply was not found to be acceptable.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15<sup>th</sup> May, 2024.

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Rakesh Mishra)  
Accountant Member

Dated: 15<sup>th</sup> May , 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A), NFAC, Delhi
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata