

**आयकर अपीलिय अधिकरण “बी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकर अपील सं. ITA No.1043/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2017-18)**

DCIT Central Circle-2(4), Chennai-34.	बनाम/ Vs.	M/s. Pearl Printers and Publishers (P) Ltd. 8/16, Mogappair West, Chennai-600 058.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AABCP-7244-H</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

**2. Cross Objection No.11/Chny/2024**  
**(In ITA No.1043/Chny/2023)**  
**(निर्धारण वर्ष / Assessment Year: 2017-18)**

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स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AABCP-7244-H</b>		
(अपीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ <b>Revenue by</b>	:	Shri V. Nandakumar (CIT) –Ld. DR
प्रत्यर्थी की ओरसे/ <b>Assessee by</b>	:	Shri G. Baskar & Shri I. Dinesh (Advocates)- Ld. ARs

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	07-03-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03-06-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax

(Appeals)-19, Chennai [CIT(A)] on 19-07-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 153A of the Act on 29-09-2021. The assessee has filed cross-objections against the appeal of the revenue.

### 1.2 The grounds raised by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the addition of Rs.3,30,34,825/- made by the assessing officer towards undisclosed income in respect of loan liability in the name of M/s VV Minerals set off through book entries in the relevant assessment year.

2.1 The Ld.CIT(A) failed to appreciate that the decision of Hon'ble Apex Court in the case of M/s Abhisar Buildwell Pvt. Ltd. is not applicable to the facts of the present case. In this case warrant has been issued in the name of the assessee and the ledger accounts of the assessee company were seized in the premises of M/s Velammal Educational Trust vide Ann : ANN/Bank/VEL/LS/S-2. Hence, AO had jurisdiction to frame assessment u/s 153A and the addition was made on the basis of incriminating material found in the seized materials.

2.2 The Ld.CIT(A) erred in not appreciating the fact that the incriminating material was found in the regular books themselves. The adjustment entry of Rs.3.30 Crores without actual payment to the creditor was a falsified entry and thus incriminating in nature.

2.3 The Ld. CIT(A) failed to appreciate that the assessee furnished no explanation as to why specific amount payable to M/s VV minerals was set off as advance book fees receipts in the accounts of institutions belonging to assessee group.

2.4 The Ld. CIT(A) failed to appreciate that though the liabilities had been set off during the year itself resulting in cessation thereof, no income has been recognized during the year from sale of books as observed by the Ld. CIT(A). The above amounts have been transferred only to advance book fee received account for FY 2016-17 relating to AY 2017-18.

### 1.3 The grounds of assessee's cross objection read as under: -

1.1 The CIT(A) ought to have annulled the assessment framed u/s.153A of the Income Tax Act as the materials on the basis of which the addition was made by the AO were found during the course of search in case of a third party and not in the during the course of search of the assessee.

1.2 The CIT(A) ought to have held the addition on the base of seized material through a separate search warrant in the case of a third party cannot be utilized in an assessment framed u/s.153A of the IT Act.

1.3 The CIT(A) also ought to have seen that when the evidences collected in the search of the third party is being used the assessing officer of the searched person has to first record his satisfaction; and thereafter satisfaction has to be recorded by the Assessing Officer of this assessee as required u/s.153C of IT Act before proceeding to frame an assessment. In the absence of such a satisfaction note the assessment has no legs to stand and ought to have been cancelled by CIT(A).

2.1 The CIT(A) has rightly held that the addition of Rs.3,03,34,825/- made by the AO cannot be treated as undisclosed income as all these transactions are recorded in the regular books of accounts.

2.2 The department is wrong in contending that what was found in the regular book themselves could also be treated as incriminating material.

2.3 The CIT(A) has rightly held that all the transactions are recorded in the regular books of accounts of the assessee as well as the schools to whom the liability had been transferred by journal entry and settled out of the sale proceeds of the books. The CIT(A) have rightly held that the adjustment entry of Rs.3.30 Crores is not a false entry but is backed back by bank transactions in the subsequent period.

2.4 The CIT(A) had also rightly held that the liability had been transferred to the other concerns to whom the appellant had sold books and the amount due to VV minerals was settled out of the sale proceeds of the school books.

As is evident, the sole issue that fall for our consideration is impugned addition of Rs.330.34 Lacs as arising out of search assessment. The assessee has challenged the assessment proceedings on legal grounds besides supporting impugned order.

1.4 The Ld. CIT-DR advanced arguments in support of assessment framed by Ld. AO and relied on various judicial decisions. The Ld. AR, while supporting the impugned supported on merits, raised legal plea and submitted that impugned addition could not be sustained in view of recent decision of Hon'ble Apex Court in the case of **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)**. The copy of the same has been placed on record. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

2.1 During the course of search action u/s 132 on 21-01-2020 in group cases of M/s. Velammal Group Institutions, the office premises of the assessee located at Mogappair, Chennai was also covered. Some incriminating material was seized and notice u/s.153A was issued to the assessee on 21-11-2020 calling for return of income. The assessee admitted income of Rs.508.79 Lacs. Subsequently, notice u/s. 143(2)

was issued which was followed by notice u/s 142(1) of the Act. In the said notice, it was alleged that during the course of search u/s 132 of Income Tax Act at the premises of M/s. Veeramakali Educational Trust, while analyzing assessee's books of accounts, it was found that the assessee company received an amount of Rs.800 Lacs from M/s VV Group of companies during financial year (FY) 2012-13. The assessee repaid loan of Rs.200 Lacs in FY 2013-14 and Rs.269.65 Lacs in FY 2015-16. In FY 2016-17, the assessee set-off remaining liability of Rs.330.34 Lacs by passing journal entries as under: -

<b>Institution</b>	<b>Amount for which journal entry is passed (in Rs.)</b>
Ayanpuram Nadar Uravinmural Snagam	3,76,411/-
VGS-Mambakkam-17-18	50,00,000/-
VGS-Surapet-17-18	50,00,000/-
VMHSS-Main-17-18	2,00,00,000/-
VV-Surapet-17-18	26,58,414/-

2.2 A sworn statement was recorded from Shri Kalidoss who was working as an Accountant wherein he stated that the said amount was adjusted in the ledger account pertaining to M/s VV Group of companies (in the books of the assessee company). The same was a book adjustment entry only and adjusted against the advance fees entries of the institutions. The Ld. AO thus formed an opinion that the assessee company set-off the liability of M/s VV Group of companies without actually paying-off the same and the amount was adjusted against advance fees entries of schools. The assessee submitted that credit balance standing against M/s VV Minerals as on 01-04-2016 was transferred to various accounts which were finally transferred to sales account and treated as income. However, rejecting this explanation, Ld.

AO treated the amount of Rs.330.34 Lacs as undisclosed income of the assessee and framed the assessment.

### **Appellate Proceedings**

3.1 During appellate proceedings, the assessee assailed impugned addition by way of elaborate written submissions which have been extracted in the impugned order. The assessee also assailed assumption of jurisdiction on legal grounds.

3.2 The Ld. CIT(A) concurred with assessee's submissions that Ld. AO should have examined the applicability of the provisions of Sec.41(1) i.e., remission / cessation of liability rather than treating the transaction as undisclosed income. The assessee, on the other hand, admitted income of Rs.326.58 Lacs by way of sale of books. No expenses were claimed against this income. Making addition thereof again would amount to taxing the same income twice. Therefore, the addition to that extent could not be sustained. The balance amount of Rs.3.76 Lacs was adjusted towards the amount payable by M/s Ayanpuram Nadar Uravinmural Snagma at the request of the assessee. Therefore, the action of Ld. AO in treating the impugned amount as undisclosed income was not tenable.

3.3 The assessee also raised a legal ground that the addition was not based on any incriminating material. The Ld. CIT(A) noted that the assessee filed original return of income on 27-10-2017. The notice u/s 143(2) could have been issued on or before 30-06-2018. Since the notice was not issued and the time limit had expired on the date of search i.e., 21-02-2020, the assessment was unabated assessment. In such a case, the assessment could be reopened u/s 153A only if any incriminating material was found during the course of search. A

document would partake the character of incriminating material only when it is established that the transactions narrated in the seized material is undisclosed or unexplained and the income earned out of such transaction had escaped the scope of taxation. However, the impugned addition was not based on any incriminating material but it was based upon analysis of books of accounts. The regular books of accounts as maintained by the assessee could not be treated as incriminating material. The decision of Hon'ble Apex Court in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** would squarely apply to the facts of the case. Therefore, the assessment was bad-in-law and the impugned addition was not sustainable. Consequently, the other legal grounds were held to be academic in nature.

3.4 Aggrieved as aforesaid, the revenue is in further appeal before us whereas the assessee has filed cross-objections against the appeal of the revenue.

#### **Our findings and Adjudication**

4. From the facts, it emerges that the assessee group was subjected to search on 21-01-2020. The assessee was also searched. On the basis of material found in the course of search at the premises of M/s. Veeramakali Educational Trust, while analyzing assessee's books of accounts, it was found that the assessee company received an amount of Rs.800 Lacs from M/s VV Group of companies during financial year (FY) 2012-13. The assessee repaid loan of Rs.200 Lacs in FY 2013-14 and Rs.269.65 Lacs in FY 2015-16. In FY 2016-17, the assessee set-off remaining liability of Rs.330.34 Lacs by passing journal entries to various parties as tabulated in preceding para 2.1. The contention of the assessee is that the assessee has offered sale against these

adjustments and it is finding of Ld. CIT(A) that no expenditure has not been claimed by the assessee against the same. It is also a pertinent fact to note that the aforesaid entries are found recorded in the books of accounts. These facts remain uncontroverted before us also. The Ld. CIT(A) has also rendered a finding that taxing the impugned amount again would amount to double taxation which could not be sustained in the eyes of law. We concur with these findings as well as the finding that no case of remission or cessation of liability u/s 41(1) could be made out by Ld. AO against the assessee. In view of these uncontroverted findings, no interference is required by us in the impugned order.

5. So far as the legal grounds are concerned, it could be seen that this year is a case of unabated assessment and the additions u/s 153A could be made only to the extent of any incriminating material found during the course of search on assessee. However, evidently, the impugned addition is not based on such an incriminating material. Therefore, the ratio of decision of Hon'ble Apex Court in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** has rightly been made applicable by Ld. CIT(A) to the present case. Concurring with the same, we confirm the impugned order, in this regard also. In other words, the revenue's appeal stand dismissed which make assessee's cross-objections infructuous.

6. The revenue's appeal as well as assessee's cross-objections stands dismissed.

*Order pronounced on 3<sup>rd</sup> June, 2024*

**Sd/-**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष / **VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :03-06-2024  
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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF