

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.1460/DEL/2018
(Assessment Year: 2013-14)**

ACIT, Central Circle 26,
New Delhi.

vs.

M/s. Bharat Buildtech P. Ltd.,
8-B, Rajendra Park,
Pusa Road,
New Delhi.

(PAN : AACCB4322K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aman Garg, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 26.06.2024
Date of Order : 28.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-29, New Delhi dated 08.12.2017 for the assessment year 2013-14.

2. Grounds of appeal taken by the Revenue read as under :-

“1. That on the facts & under the circumstances of the case, the Id. CIT(A) has erred in law in allowing the appeal of assessee on the issue of initiating the assessment proceedings against the appellant u/s 153C of the Act in the absence of any material belonging to the appellant company found during the course of search, ignoring that the addition was made on the basis of documents found during search containing entries pertaining to the assessee and also not appreciating the ratio laid

down by the hon'ble Jurisdictional High Court in the case of Ganpati Fincap Services Pvt. Ltd (2017) 395 ITR 692 (Delhi).

2. That on the facts and in the circumstances of the circumstances of the case, the Ld. CIT(A) has erred in law and on the facts in deleting the addition of RS.1.80 Crore made by the AO on account of unexplained investment signified by purchase of property u/s 69 of the I.T. Act, when none of the parties has challenged the document and signatories have verified it as signed by then and cross examination opportunity was also provided by the AO.”

3. Brief facts of the case are that Assessing Officer in this case made an addition of Rs.1.8 crores under section 69 of the Income-tax Act, 1961 (for short ‘the Act’) alleging that assessee had paid the above mentioned amount in cash to M/s. VRP Landbase Pvt. Ltd. for purchase of land.

4. Upon assessee’s appeal, ld. CIT (A) deleted the addition.

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

6. At the outset, ld. Counsel for the assessee submitted that in this case, correspondingly, AO made addition of Rs.1.8 crores u/s 69 of the Act in the hands of M/s. VRP Landbase Pvt. Ltd.. The case of M/s. VRP Landbase Pvt. Ltd. was considered by the ITAT, Delhi Bench in the case of ACIT vs. M/s. VRP Landbase Pvt. Ltd. in ITA No.2266/Del/2018 vide order dated 28.03.2022. Considering the issues and discussing it elaborately, the Tribunal observed that AO has no evidence to demonstrate that M/s. VRP Landbase Pvt. Ltd. has received any cash from the assessee and

dismissed the Revenue's appeal. We may gainfully refer from the aforesaid

ITAT order as under :-

“7. We have considered rival submissions and perused the materials on record. A reading of the assessment order clearly reveals that based on the document seized from the premises of a third party as well as the statement recorded on oath from Sh. Ved Prakash, the Assessing Officer has added back an amount of Rs.1.80 crores under section 69A of the Act. Though, the Assessing Officer has alleged that the signatories to the agreement to sale pursuant to which the assessee received the amount of Rs.1.80 crores are Sh. Ved Prakash and Sh. Rajesh Kumar Dhir, however, in the statement recorded under section 131 of Sh. Rajesh Kumar Dhir has emphatically denied of having paid the amount of RS.1.80 crores to Sh. Ved Prakash.

8. Further, on in-depth analysis of facts and materials on record, learned Commissioner (Appeals) has recorded a factual finding that the assessee had only received a cheque of Rs. 60 lakhs as an advance from M/s. Bharat Buildtech Pvt. Ltd. and no other payment was to be received till the execution of sale deed. The aforesaid factual position was also corroborated in the cross examination of Sh. Rajesh Kumar Dhir. It is also a fact on record that apart from the agreement to sale and the statement initially recorded from Sh. Ved Prakash, there was I no other corroborative evidence available with the Assessing Officer to demonstrate that any cash was received by the assessee. Even, no such entry was found recorded in the books of account of the assessee. It is also relevant to observe that M/s. Bharat Buildtech Pvt. Ltd. had also filed a suit before the Hon'ble Delhi High Court subsequently for recovery of the cheque amount of Rs.60 lakhs paid to the assessee. In the suit filed before the Hon'ble Delhi High Court, there is no mention of any cash payment being made to the assessee. As rightly observed by learned Commissioner (Appeals), since the agreement to sale was found from the premises of a third party, the Assessing Officer could not have drawn presumption under section 292C of the Act, It is also a fact that the property in question was owned by Sh. Chandrakant Sharma, which was finally sold to M/s. AKN Developers Pvt. Ltd. on 26.08.2012. Thus, the assessee was never the owner of the said property.”

7. Accordingly, in view of the aforesaid decision of coordinate Bench of the Tribunal in the case of M/s. VRP Landbase Pvt. Ltd. (supra), the issue involved in the present case is covered in favour of the assessee. Accordingly, we do not find any infirmity in the order of Id. CIT (A) and we uphold the same.

8. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on this 28th day of June, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 28th day of June, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-29, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**