

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI ANIKESH BANERJEE, JM

**ITA Nos.4757 & 4758/Mum/2023**

(Assessment Year: 2016-17 &15-16)

ITO, Ward 3(3)(3)  
672, Aayakar Bhavan,  
Mumbai-400 020

Vs.

ART DECO Mumbai  
Private Limited  
32/A, Laxmi Industrial  
Estate New land road,  
Andheri (West),  
Mumbai-400 053

**(Appellant)**

**(Respondent)**

**PAN No. AAACU2004K**

**Assessee by** : Shri Satyaprakash Singh, AR  
**Revenue by** : Shri Manoj Kumar Sinha, DR

**Date of hearing:** 09.07.2024  
**Date of pronouncement :** 22.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No.4757/Mum/2023 and ITA No. 4758/Mum/2023 is filed by the Income Tax Officer, Ward 3(3)(3), Mumbai for A.Y. 2016-17 and 2015-16 respectively, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 28<sup>th</sup> October, 2023, for A.Y. 2016-17 and appellate order of the same date for A.Y. 2015-16, wherein the appeal filed by the assessee against the assessment order passed on 31<sup>st</sup> March, 2022, under Section 147 read with section 144B of the Income-tax Act, 1961 (the Act), 1961, passed by the NFAC, was partly allowed.

02. Briefly, the learned Assessing Officer is aggrieved with the same and is in appeal before us as per following grounds for A.Y. 2015-16:-

*"1. Whether on the facts and circumstances of the case and in law, Ld.CIT(A) was right in deleting the addition of Rs. 2,00,00,000/- made by the AO with respect to unexplained income u/s. 69A of the Income Tax Act*

*2. Whether on the facts and circumstances of the case and in law, Ld.CIT(A) was right in deleting the addition of Rs. 57,131/- made by the AO with respect to unexplained income u/s. 69A of the Income Tax Act."*

03. The learned Assessing Officer has also raised following grounds of appeal for A.Y. 2016-17, wherein the assessment order passed on 31<sup>st</sup> March 2022, by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] allowed by the learned CIT (A):-

*"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in deleting the addition of Rs. 1,70,00,000/- made by the AO with respect to unexplained income u/s. 69A of the Income Tax Act.*

*The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."*

04. We first look into the facts for A.Y. 2015-16, wherein the fact shows that assessee filed its return of income on 29<sup>th</sup> September 2015, at ₹1,33,152/-. This return was processed on 17<sup>th</sup> October 2015, and



was not scrutinized. Subsequently, it was found that the assessee was involved in providing accommodation entry to another Shell Company Outstrip Suppliers Pvt. Ltd. and therefore, notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 31<sup>st</sup> March 2021. Assessee on 7<sup>th</sup> February 2022, requested the learned Assessing Officer to consider the original return filed as return in response to the above notice. Notice under Section 143(2) of the Income-tax Act, 1961 (the Act) was issued on 16<sup>th</sup> March 2022. During the course of assessment proceedings, it was noted that the case was reopened on the basis of report in case of Swarnprakash Vanijya Pvt. Ltd., wherein it was found that director of that company operated bank account with AXIS Bank, wherein the funds were received from companies whose name have been struck off like Outstrip Suppliers Pvt. Ltd. The information also shows that Outstrip Suppliers Pvt. Ltd was a paper company formed for the purpose of providing accommodation entries only. The assessee was asked to furnish the details of the transaction with the above company; however, on 28<sup>th</sup> February 2022, it was stated that assessee has not done any transaction with the above company during the Financial Year 2014-15, relevant to A.Y. 2015-16. However, for A.Y. 2016-17, the assessee has given an advance to that company for purchase of plot. The assessee furnished the ledger copy, from the bank statement of Outstrip Suppliers Pvt. Ltd. The learned Assessing Officer found that from a current account with Allahabad Bank of ₹2 crore has been transferred on 5<sup>th</sup> March 2015. This transaction was not found in the books of the assessee. The learned Assessing Officer further found that on the same date the assessee received of ₹2 crores from VVF(India) Ltd, which was also not found in the books of account of the assessee. Accordingly, the learned Assessing

Officer made an addition under Section 69A of the Act of ₹ 2 crores. The assessee was issued a show cause notice by the draft assessment order proposing the above addition wherein the assessee explained that there is an accounting error in data entry due to which the transactions were entered into and recorded on 5<sup>th</sup> April 2015, instead of 5<sup>th</sup> March 2015. Therefore, the transaction was recorded in A.Y. 2016-17. The learned Assessing Officer after considering the financial statements of the assessee did not accept the explanation and further issued notice under Section 133(6) of the Act to VVF(India) Limited, which was replied to. The learned Assessing Officer reached at a conclusion that there is a difference in closing balance of bank account of ₹57,131/-, over and above the discrepancy of ₹2 crores, and therefore, assessment order under Section 144B read with section 147 of the Act was passed on 31<sup>st</sup> March, 2022, wherein the addition of ₹2 crores under Section 69A of the Act on account of advance of ₹57,131/- of difference in bank statement was made and total income of the assessee was determined at ₹2,01,90,283/-.

05. Aggrieved with the above assessment order of the assessee preferred the appeal before the learned CIT (A), wherein the learned CIT (A) decided the above ground as per Para 5.2 to 5.6 as under:-

*"5.2 I have carefully gone through the grounds of appeal, statement of fact, assessment order passed by the AO and written submission along with documentary evidence uploaded by the appellant. It is a matter of record that the report of investigation was received by the Ld. AO from DDIT (Inv.), Unit-3(3), Kolkata. The subject of the said report is*



*"Report in the case of M/s Swarnprakash Vanijya Pvt. Ltd (Director: Mr. Sudeb Ghosh and Mr. Manash Das) and related beneficiary entities for F.Y. 2014-15 & 2015-16. In this report, it is stated that Mr. Sudeb Ghosh and Mr. Manash Das are two directors of M/s Swarnprakash Vanijya Pvt. Ltd who opened current bank account no. 914020028822169 on 25/07/2014 with Axis Bank wherein huge fund of Rs. 79,58,98,500/- and Rs. 47,25,77,218/- in F.Y. 2014-15 and 2015-16 respectively has been received from the entities who are stricken off companies like M/s Outstripe Suppliers Pvt. Ltd. etc. Further, it is stated that funds which has been received in the said bank account got transferred to different entities and fund in this account remained minimal or negligible. It was also alleged by the AO that M/s Swarnprakash Vanijya Pvt. Ltd. as well as its directors are not traceable and also M/s Swarnprakash Vanijya Pvt. Ltd., never filed ITR for any year. AO further observed that on examination of the bank statement of M/s Swarnprakash Vanijya Pvt. Ltd, it was identified that source of fund of this company was from various entities which were also shell entities. One of these shell entities is M/s Outstripe Suppliers Pvt. Ltd. which is having same financial pattern as M/s Swarnprakash Vanijya Pvt. Ltd. This entity i.e., M/s Outstripe Suppliers Pvt. Ltd. also have no financial creditworthiness. It was strike-off as per the data available with the MCA. It had also never filed any ITR, hence this company was also formed for dealing in accommodation entries only. Based on these observations, the Ld. AO concluded that M/s*

*Outstripe Suppliers Pvt. Ltd. is a paper company which was fabricated for the purpose of providing accommodation entries only. The fact of the matter is that this is not the finding of the investigation report received. Nowhere the report suggested that the company M/s Outstripe Suppliers Pvt. Ltd is company engaged in providing the accommodation entries only. The Ld. AO did not conduct any investigation or enquires to ascertain whether this company existed on the addresses mentioned before it being strike-off from the MCA portal. In view of any investigation not being undertaken by the Ld. AO it is difficult to uphold the conclusion of the AO. Further, from the submissions made by the appellant it is clear that:*

*a) Appellant has submitted name, address, PAN No., Bank statement highlighting amount of advance received by it and ledger Account of the party.*

*b) On the basis of documentary evidence submitted by appellant learned AO send notice u/s 133(6) of the Act to the party i.e. VVF (India) Limited (Godrej Group). In response to the same, VVF(India) Limited (Godrej Group) has filed details as per notice u/s 133(6) of the Act which has been reproduced by learned A.O on para no. 7.2 and page number 7 of the Assessment Order.*

*c) On the basis of documentary evidence submitted by appellant it is seen that appellant has taken a loan of Rs. 2,00,00,000/- from VVF*

*(India) Limited vide cheque dated 05.03.2015 and the same amount i.e. Rs. 2,00,00,000/- has been invested by the appellant by giving advance against land vide cheque dated 05.03.2015 to Outstripe Suppliers Pvt. Ltd.*

*d) However, as indicated by the appellant that due to some unavoidable circumstances transaction could not be materialised. Accordingly, appellant has made repayment of Rs. 2,00,00,000/- to VVF( India) Ltd.*

*The summary of repayment to M/s VVF (India) is amply reflected in the Bank account of the appellant as under:*

Sr. No.	Date of repayment	Amount of repayment
1.	13.06.2015	40,00,000
2.	13.06.2015	30,00,000
3.	07.07.2015	45,00,000
4.	24.07.2015	45,00,000
5.	13.08.2015	10,00,000
6.	25.08.2015	30,00,000
	Total	2,00,00,000

*e) Since, the deals was not materialising, the appellant contended that apprehending some foul play, the appellant continuously requested M/s Outstripe Suppliers Pvt. Ltd. to refund of his money and due to continuous efforts of the appellant, the appellant received its money from the this company as per the detail given here under and this can be duly verified from the books of the account of the appellant. Hence, appellant has received Rs. 2,00,00,000/- which was given as advance to*



*Outstripe Suppliers Pvt. Ltd. The summary of the same is as under:*

Sr. No.	Date of repayment	Amount of repayment
	13.06.2015	40,00,000
	15.06.2015	30,00,000
	16.06.2015	5,00,000
	29.06.2015	45,00,000
	22.10.2015	50,00,000
	Total as on 31-03-2016	70,00,000
	24.11.2016	12,50,000
	24.03.2017	17,50,000
	Total as on 31.03.2017	2,00,00,000

*Therefore, on perusal of the entire transactions trail revealed that appellant has taken advance from VVF (India) Limited of Rs. 2,00,00,000/- and the same amount has been given to Outstripe Suppliers Pvt. Ltd. for purchase of the land. However, due to cancellation of the transaction, appellant has repaid entire amount to VVF (India) Limited and subsequently M/s Outstripe Suppliers Pvt. Ltd. has also paid back to the appellant. It is quite strange that the Ld. AO is not doubting the first part of the transaction that is the receipt of money by the appellant from VVF (India) and raising all doubts on the subsequent payment arising from the same amount to M/s Outstripe Suppliers Pvt. Ltd. for the purposes of purchasing a land which did not materialise. Such selective approach cannot be a basis of making any addition, the sources of funds acknowledged, and the expenditure incurred there from is treated as unexplained. Further, the bank account also revealed that the money so advanced by the appellant to M/s Outstripe Suppliers Pvt. Ltd is duly received by the appellant in his bank account. Without prejudice to the*

*observation of the Ld. AO about the credibility of the M/s Outstripe Suppliers Pvt. Ltd, one fails to understand how and why anyone will take this transaction and what benefit will accrue to the appellant in this. It is not the case of the AO that appellant is indulging in multiple transactions and converting his ill got money to white.*

**5.3** *Section 69A of the Act states that where in any year the taxpayer is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the taxpayer offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, than the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the taxpayer for such year. A bare reading of the section makes it clear that the Ld. AO has wrongly invoked the section for the money receipt is duly recorded in the books of account of the appellant and the appellant also gave explanation of the acquisition of the money over which the AO has no doubt. For invoking provisions of Section 69A, the assessee should be the owner of any money, bullion, jewelry, or any other valuable articles. If the assessee is not found to be the owner of any money, bullion, jewelry, or any other valuable articles, in such a situation, invoking the provisions of section 69A was not justified.*

**5.4** *The Hon'ble Supreme Court in the case of D. N. Singh vs. CIT [2023] 150 taxmann.com 301/293 Taxman 550/ 454 ITR 595 has an occasion to deal with the provisions of section 69A of the Income Tax Act 1961. The Hon'ble SC held that section 69 and section 69A, apart from being close neighbours, have resemblance with one another. Section 69 deals with unexplained investment and section 69A deals with unexplained money, bullion, jewellery or other valuable article. In the case of investments under section 69, the law giver contemplates the Assessing Officer finding that the assessee had made investments. In the case of section 69A, the assessee found to be the owner of the money, bullion, jewellery or other valuable article. In both cases, if the assessee is able to offer an explanation for the nature and source for investments and it is not found unsatisfactory, there can be no deemed income under either of the provisions. The apex court broke down section 69A into the following essential parts:*

- a) The assessee must be found to be the owner;*
- b) He must be the owner of any money, bullion, jewellery or other valuable articles;*
- c) The said articles are not recorded in the books of account, if any maintained;*
- d) The assessee is unable to offer an explanation regarding the nature and the source of acquiring the articles in question; or*



*The explanation offered is found to be not satisfactory in the opinion of the Assessing Officer;*

*e) If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable articles may be deemed to be the income of the financial year in which the assessee is found to be the owner;*

*f) In the case of money, the money can be deemed to be the income of the financial year.*

*5.5 In the present case of the appellant, AO accepted that the money in question was taken as advance from M/s VVF India Limited and is duly recorded in the books of the account of the appellant. Secondly, it is also clear from the bank account entries that the money received from VVF India limited was advanced to M/s Outstripe Suppliers Ltd. for purchase of the land. It is also not denied by the AO that the same money was returned by M/s Outstripe Suppliers Ltd. to the appellant in trenches as evident from the bank accounts details duly submitted by the appellant. It is also accepted by the AO that the appellant had returned the money taken on advance from VVF India Limited. Under these circumstances and in the face of these evidences available on record, the Ld. AO arbitrarily concluded that the money in question is not explained and the appellant is trying to give colour to the entire transaction.*



*5.6 Therefore, in view of the above facts, circumstances and judicial pronouncements, the addition made u/s 69A of the Act is unwarranted. Hence, an addition made by the AO as unexplained money u/s 69A of I.T. Act amounting to Rs. 2,00,00,000/- is unjustified and is required to be deleted. Thus, Ground No.4 of the appeal is allowed.”*

06. Therefore, the addition of ₹2 crore made by the learned Assessing Officer under Section 69A of the Act, was deleted. Addition of ₹57,131/- was also deleted.
07. The learned Assessing Officer is aggrieved and has preferred the above appeal wherein as per ground no. 1 and ground no.2, the above two additions were contested.
08. The learned Departmental vehemently supported the order of the learned Assessing Officer and submitted that the learned CIT (A) has deleted the addition without considering the facts recorded by the learned Assessing Officer. He supported the order of the learned Assessing Officer.
09. Ld. Authorized Representative vehemently supported the order of the learned CIT (A). He referred to the submission made in ground no 4 of the appeal before the learned CIT (A), his submission was that assessee has taken advance from VVF (India) Ltd. Assessee has submitted name, address and Permanent Account number of that company showing the amount of advance received and ledger account of that company. In response to the notice under Section 133(6) of the Act that the party has confirmed the action and also the number of receipts of the above transactions. The assessee has taken

loan of ₹2 crores vide cheque dated 5<sup>th</sup> March 2015 and the same amount has been invested by the assessee in advance against loan on the same date to Outstripe Suppliers Pvt. Ltd. Further, the transaction could not be completed and therefore, in 6 tranches the amount of ₹2 cores was paid to VVF India Pvt. Ltd. and further, in 7 installments the Outstripe Suppliers Pvt. Ltd. has also been repaid the amount of ₹2 crores. He referred to the copy of the account to show the above transaction. He stated that as the transactions could not be completed, the money was repaid by Outstripe Suppliers Pvt.Ltd. and also, assessee repay to VVF (India) Ltd. Both the parties have confirmed these transactions. He referred to the Provisions of Section 69A of the Act and submitted that the additions specified therein are not satisfied. On consideration of all this evidence, the learned CIT (A) has deleted the addition.

010. With respect to addition of ₹57,131/-, he submitted that the learned CIT (A) has considered the above transaction as consequential to the above addition, same was deleted. Accordingly, the appeal of the learned Assessing Officer on ground no.2, is not sustainable.
011. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that in the present case, the assessee has ₹2 crores from VVF (India) Ltd. on 5<sup>th</sup> March 2015 [F Y 2014-15] [AY 2015-16] and the same amount has been invested on the same date to Outstrip Suppliers Pvt. Ltd. It is undisputed that assessee recorded these transactions in its books on 5th April 2015 [FY 2015-16] [Ay 2016-17]. This is admitted by the assessee before the LD AO. However, the issue remains is that despite this error whether addition can be made in hands of assessee u/s 69A of the Act. It is not the case that the assessee has not recorded the



transaction of Loan taken of Rs 2 Cr and Loan given of Rs 2 Crs. It recorded it in its books of account instead of on 5th March 2015, on 5th April 2015. The Transaction is reflected in the bank statements of the assessee. Both the parties confirmed the above transaction by submitting details of the loan taken and repaid. These details were submitted before the learned assessing officer along with the details of repayment of loan. Loan taken of Rs 2 Crores from VVF Limited is a Godrej Group company. Loan given to Outstripe suppliers limited was with a purpose of acquiring a plot of land which did not materialize and therefore assessee was repaid by Outstripe suppliers Limited, and assessee repaid it to VVF Limited. The learned assessing officer invoked the provisions of section 69C of the act and held that the assessee is the owner of a loan given to the other company but has not recorded sale in the books of accounts of the assessee. In the present case admittedly though there was an error of punching of the date in the books of account, but loan amount given, and loan amount taken from two different parties was recorded in the books of accounts of the assessee supported by the bank statement and confirmation of those parties. It is immaterial for the application of section 69 A of the act that assessee could not submit the detail of the transaction of advances for immovable property which did not materialize. Therefore, it cannot be said that assessee is owner of the asset which is not recorded in the books of account of the assessee. Therefore, the provisions of Section 69A of the Act are not satisfied as the assessee is not found to be the owner of any sum, which is not recorded in the books of account of the assessee. The learned CIT – A has considered all the aspects of the above transaction and thereafter deleted the addition made under section 69A of the act by the learned assessing officer with reasons.

No infirmity is pointed out in the order of the first appellate authority. Therefore, we do not have any hesitation in upholding the order of the learned first appellate authority. Accordingly, we do not find any merit in the appeal of the learned Assessing Officer. Accordingly, both the grounds of appeal are dismissed.

012. Coming to A.Y. 2016-17 in ITA No. 4757/Mum/2023, the fact shows that assessee filed return of income on 4<sup>th</sup> May 2017, at ₹1,33,152/-. The return was picked up for scrutiny for reassessment by issue of notice under Section 148 of the Act on 31<sup>st</sup> March 2021. In this case, the learned Assessing Officer made an addition of ₹1,70,00,000/- to the total income of the assessee on account of transaction with Outstripe Suppliers Pvt. Ltd. This transaction is an offshoot of transaction in A.Y. 2015-16, wherein out of ₹2 crores ₹1.70 crores repaid by Outstripe Suppliers Pvt. Ltd. to the assessee and subsequently, same was repaid to VVF (India) Ltd. The assessment order under Section 143(3) read with section 147 of the Act was passed on 31<sup>st</sup> March 2022, determining the total income of the assessee at ₹1.70 crores. The assessee preferred the appeal wherein the learned CIT (A) passed an order on 28<sup>th</sup> October 2023, deleting the addition as per paragraph no. 15.2. The learned CIT (A) further noted that in A.Y. 2015-16, the addition of ₹2 crores is deleted in the appellate order and therefore, the impugned addition of ₹1.70 crores is part of the above sum, hence, the appeal of the assessee was allowed deleting the above addition. The learned Assessing Officer is aggrieved and has preferred this appeal, wherein the deletion of the addition of ₹1.70 crores was challenged.
013. Contesting the appeal, the learned departmental representative submitted that this is the part of the same addition made of ₹ 2 crores



for assessment year 2015 – 16 wherein a sum of ₹ 1.70 crores has been paid by the assessee to the party from whom the loan was taken and also received by the assessee from the party to whom loan was given.

014. The learned authorized representative supported the order of the learned CIT – A.
015. We have carefully heard the parties and perused the orders of the learned lower authorities. The amount of ₹1.70 crores is part of the transaction of ₹2 crores which was part of the addition of ₹2 crores made in A.Y. 2015-16. As we have upheld the order of the learned CIT (A) deleting the addition of ₹2 crore, we also confirmed the order of the learned CIT (A) deleting the addition of ₹1.70 crores for the reason that it is part of the same transaction of ₹2 crores and further, it amounts to double addition of ₹1.70 crores made by the learned Assessing Officer. Accordingly, we do not find any merit in the appeal of the learned Assessing Officer for this year. Accordingly, it is dismissed.
016. In the result the appeal of the learned Assessing Officer for A.Y. 2015-16 and 2016-17 pertaining to the same transaction are dismissed.

Order pronounced in the open court on 22.07.2024.

Sd/-  
(ANIKESH BANERJEE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.07.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:



1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai