

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

**BEFORE,  
SHRI G.S.PANNU, VICE PRESIDENT  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.183/Del/2021  
(ASSESSMENT YEAR 2017-18)**

Valaka Engineering Pvt. Ltd. 601, Diamond Prestige 41-A, AJC Bose Road, Kolkata West Bengal-700 017  PAN-AACCG 1930A <b>(Appellant)</b>	Vs.	ACIT Central Circle-16 (Now CC-20), Delhi     <b>(Respondent)</b>
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**ITA No.1087/Del/2021  
(ASSESSMENT YEAR 2017-18)**

DCIT Central Circle-20 New Delhi     <b>(Appellant)</b>	Vs.	Valaka Engineering Pvt. Ltd. 156a Lenin Sarani 3rd Floor, Kamalalaya Centre, Kolkata West Bengal-700 017  PAN-AACCG 1930A  <b>(Respondent)</b>
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Appellant by	Sh. K. Gopal, Adv. Sh. Bharat Mehta, CA & Sh. Mukesh Malkani, AR
Respondent by	Sh. Shashi Bhushan Shukla, CIT-DR & Sh. Amit Katoch, Sr. DR

Date of Hearing	03/05/2024
Date of Pronouncement	24/07/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

These Cross Appeals in ITA No.183/Del/2021 by Assessee as well as ITA No.1087/Del/2021 by Revenue are filed against the order of Learned Commissioner of Income Tax (Appeals)-26, New Delhi [“Ld. CIT(A)”, for short], dated 28/01/2021 for Assessment Year 2017-18.

2. Grounds taken in both appeals are as under:

**ITA No.183/Del/2021 by Assessee**

*“1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal)- 26, New Delhi erred in confirming addition of Rs.89,00,000/- out of 12,79,37,621/- by treating the proceeds from genuine Sales of Shares of Rs.89,00,000/- as non-genuine without appreciating the law, facts and circumstances of the case.*

*The provisions of the Act ought to have been properly construed and regard being had to facts of the case no such addition should have been made Reasons assigned by Commissioner of Income Tax (Appeal)-26 New Delhi are wrong and unlawful to justify the addition of Rs.89,00,000/- The same to be deleted.*

*2. The order made under section u/s 143(3) of the Act by the learned Assessing Officer is bad-in-law, ultra virus and without appreciating the facts and law in their proper perspective and is liable to be annulled.*

*The appellant crave leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing.”*

**ITA No.1087/Del/2021 by Revenue**

*“1. In the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.11,89,37,620 (restricted the addition from Rs.12,78,37,620/- to Rs.89,00,000/-) made u/s 68 of the Act, without appreciating the fact that assessee failed to substantiate its claim during the assessment proceedings.*

*2. In the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,00,000/- made u/s 68 of the Act, without appreciating the fact that assessee failed to substantiate its claim during the assessment proceedings.*

*3. (a) The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of the hearing of the appeal.*

3. Brief facts of the case are that, the assessee filed return of income for the Assessment Year 2017-18 declaring a total income of Rs. 2,02,19,320/-. The assessee company was covered under survey operation u/s 133A of the Income Tax Act ('Act' for short) along with search conducted on Paras Mall Group of cases on 28/06/2016. Consequently, the case of the assessee was selected for scrutiny a notice u/s 143(2) of the Act was issued and thereafter notice u/s 142(1) of the Act and the questionnaire were issued. The assessment order came to be passed u/s 143(3) of the Act on 29/12/2019 by making addition of

Rs. 12,79,37,621/- u/s 68 of the Act as unexplained cash credit and further made addition of Rs. 1,00,000/- in view of cash deposited in the bank account as unexplained cash credit u/as 68 of the Act.

4. As against the assessment order dated 29/12/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 28/01/2021, restricted the addition to Rs. 89,00,000/- out of the total addition made by the A.O. of Rs. 12,79,37,621/- u/s 68 of the Act, further deleted the addition of Rs. 1,00,000/- made u/s 68 of the Act on account of cash deposit made by the assessee.

5. Aggrieved by the order of sustaining the addition of Rs. 89,00,000/- u/s 68 of the Act, the assessee preferred the Appeal in ITA No. 183/Del/2021 on the grounds mentioned above and as against the deletion of addition of Rs. 11,89,37,620/- which was made u/s 68 of the Act by the A.O. and the deletion of addition of Rs. 1,00,000/- made u/s 68 of the Act, the Department of Revenue preferred the Appeal in ITA No. 1087/Del/2021 on the grounds mentioned above.

**ITA No. 183/Del/2021 (ASSESSEE)**

6. The only issue involved in the present Appeal of the assessee is regarding sustaining the addition of Rs. 89,00,000/- out of Rs. 12,79,37,621/-. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) committed error in confirming the addition of Rs. 89,00,000/- out of Rs. 12,79,37,621/- by

treating proceeds from genuine sales of shares of Rs. 89,00,000/- as non genuine without appreciating the law, facts and circumstances of the case. The Ld. Counsel made elaborate submission and also taken us through the paper book by pointing out that all the four parties have responded to the notices issued u/s 133(6) of the Act, furnished confirmation letters, bank statements, acknowledgment of the return and balance sheet and the profit and loss account of the creditors. Further submitted that, the Assessing Officer had drawn an adverse inference relying on the statement recorded way back on 12/11/2012 during the course of search action carried on in the premises of Parveen Agarwal u/s 132(1) of the Act and even those parties have responded to the notices issued u/s 133(6) of the Act during the remand proceedings conducted in the month of September and October, 2020. The A.O. has not brought any contrary material evidence or proof against the Assessee, on the contrary the Assessee produced the documentary evidence and established the capacity and creditworthiness of the parties by producing the cogent documents which have not been rebutted by the A.O. or the CIT(A) and the additions have been made only based on the statement of Shri Praveen Kumar Agarwal recorded on 12/11/2012 and the assessee has not been provided with the opportunity of cross examination of the said Sh. Parveen Kumar Agarwal, therefore, submitted that the order impugned is required to be set aside.

7. Per contra, the Ld. Departmental Representative submitted that the assessee was not able to prove purchase transaction of the shares and sale transactions of shares with the four companies namely (i) Vijaypath Infrastructure Pvt. Ltd.(ii) Careful Engineering Pvt. Ltd.(iii) Suniyojit Hirise Ltd. and (iv) Careful Developers Pvt. Ltd. The said Companies are the entry operators, the amount claimed to have been credited/received have not been proved satisfactorily, therefore, submitted that the grounds of Appeal of the assessee requires to be dismissed.

8. We have heard both the parties and perused the material available on record. The Ld. A.O. while making the addition u/s 68 of the Act held that the amount credited in the bank account of the assessee as unexplained cash credit and the details of the parties are as under:-

<i>(i) M/s. Greatful Infrastructure Pvt. Ltd</i>	<i>Rs. 1,04,00,000/-</i>
<i>(ii) Indus Projects Ltd</i>	<i>Rs. 1,00,00,000/-</i>
<i>(iii) Panchkoti Promoters Pvt. Ltd</i>	<i>Rs. 15,00,000/-</i>
<i>(iv) Prince Developers</i>	<i>Rs. 1,00,00,000/-</i>
<i>(v) Kingfisher Properties Pvt. Ltd</i>	<i>Rs.30,00,000/-</i>
<i>(vi) Reward Consultant Pvt. Ltd</i>	<i>Rs.5,00,000/-</i>
<i>(vii) Vijaypath Infrastructure Pvt. Ltd</i>	<i>Rs. 10,00,000/-</i>
<i>(viii) Wellness Forever Medicine Pvt. Ltd.</i>	<i>Rs. 1,56,34,684/-</i>
<i>(ix) Lakshdeep Estate and Hotel Pvt. Ltd</i>	<i>Rs.5,75,00,000/-</i>
<i>(x) Gateway Financial Services</i>	<i>Rs.83,02,937/-</i>
<i>(xi) Careful Engineering Pvt. Ltd</i>	<i>Rs.30,00,000/-</i>

<i>(xii) Suniyojit Hirise Ltd</i>	<i>Rs. 19,00,000/-</i>
<i>(xiii) Mehta Enterprises.</i>	<i>Rs.6,00,000/-</i>
<i>(xiv) Careful Developer Pvt. Ltd.</i>	<i>Rs.30,00,000/-</i>
<i>(xv) Deposit in HDFC Bank AJc</i>	<i>Rs. 15,00,000/-</i>
<i>(xvi) Cash Deposit in the Bank account</i>	<i>Rs. 1,00,000/-</i>

9. The Ld. A.O. observed that the credit entries in the bank account of the assessee maintained with Bank of India Sakinaka Branch, Mumbai from various entities managed by Sh. Parveen Kumar Agarwal, and the said sh. Praveen Kumar Agarwal gave statement during the course of search action conducted on 12/11/2012 u/s 132(4) of the Act wherein stated that none of the entities, which are managed or controlled by him are carrying on any actual business and they are merely providing accommodation entries. Based on the said statement of the Sh. Parveen Kumar Agarwal dated 12/11/2012, a show cause notice dated 16/12/2019 has been issued to the assessee by the A.O. to explain the credit entries in the bank account and made additions.

10. The Ld. CIT(A) has sustained the addition of Rs. 89,00,000/- in respect of following parties:- (i) M/s. Vijaypath Infrastructures Pvt. Ltd. Rs. 10,00,000/- (ii) Careful Engineering Pvt. Ltd.-Rs.30,00,000/-, (iii) Suniyojit Hirise Pvt. Ltd. Rs.19,00,000/-and (iv) Careful Developers Pvt. Ltd.-Rs.30,00,000/-. The Ld. CIT(A) while restricting the addition held as under:-

*“7.4 Regarding the remaining amount of Rs, 89,00,000/-, the appellant has submitted that these amounts have been received from sale of shares held by it from earlier years. These amounts are as under:*

<i>. Sr.</i>	<i>Name of Party</i>	<i>PAN</i>	<i>Transaction</i>	<i>Date</i>
<i>1</i>	<i>Vijaypath</i>	<i>AADCVG63</i>	<i>10,00,000</i>	<i>24.08.20.</i>
<i>2</i>	<i>Careful Engineering</i>	<i>AAECC395</i>	<i>30,00,000</i>	<i>12.12.201</i>
<i>3</i>	<i>Suniyojit Hirise Ltd,</i>	<i>AANCS304</i>	<i>5,00,000</i>	<i>25.01.20</i>
		<i>511</i>	<i>14,00,000</i>	<i>17</i>
<i>4</i>	<i>Careful Developers Pvt Ltd.</i>	<i>AAECC017</i> <i>1F</i>	<i>30,00,00</i> <i>0</i>	<i>04.03.201</i> <i>7</i>
		<i>Total</i>	<i>89,00,000</i>	

*AS per the details submitted by the appellant, it is observed that all these transactions of sales have been reflected in the books in the year under consideration. Although the appellant is claiming that these shares have been held by it since earlier years, the appellant has not been able to furnish any evidences of purchase of these shares. Further, it is observed that the sales have not been effected at the book value and no report regarding the market valuation of these shares had been submitted by the appellant, thereby not giving any rational basis of sale value of these transactions. It is further observed that all these transactions have been carried out through the companies managed by Sh. Parveen Kumar Aggarwal, who has admitted that during his statement u/s 132(4) that he has been providing accommodation entries to various entities including these entities. The appellant has not been able to prove purchase transactions of these shares and the sales transactions of shares to the above mentioned companies of the entry operator, the amounts*

*claimed to have been credited/received have not been satisfactorily. In these facts and circumstances of the case, the addition made by the AO of Rs. 89,00,000/- u/s 68 of the IT Act, 1961 is confirmed.”*

11. It is found from the record that the Ld. A.O. relied on the statement of Sh. Parveen Kumar Agarwal recorded on 12/11/2012 u/s 132(4) of the Act and proceeded with assessment for the year under consideration i.e. Assessment Year 2017-18. Admittedly, there is no statement made by the said Sh. Parveen Kumar Agarwal in respect of any particular transaction made for the year under consideration. Though, the statement of said Sh. Parveen Kumar Agarwal has been relied by the A.O., no opportunity of cross examination has been provided to the assessee during the course of assessment proceedings, apart from the same, all the above four parties have responded to the notices issued u/s 133(6) of the Act by, furnishing the confirmation letters, their bank statements, acknowledgement of their return and balance sheet and also profit and loss account of the creditors. The assessee had produced the above details before us in the paper book in following manners:-

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Ack. of response to notice 133(6) (pg.no)</i>	<i>Ledger accounts (pg.no)</i>	<i>Bank statements (pg.no)</i>	<i>ITR filing ack. For the A.Y 2017-</i>	<i>B/S &amp; P&amp;L (pg.no)</i>	<i>Remanded report paper book III (pg.no)</i>
1.	<i>M/s. Vijaypath I Infrastructure</i>	1	2	3 & 4	5	15 & 16	538

2	<i>M/s. Careful</i>	26		28 to 30	31 &	48 & 49	540
3	<i>M/s. Suniyojit</i>	58 & 59	60	61 o 64	65	75 & 76	541
4	<i>M/s. Careful</i>	86 & 87		89 & 90	91	101 & 102	542

12. The assessee had proved the identity of the creditor, capacity of such creditor to advance the amount and the genuineness of the transaction, but the Ld. A.O. relied on the statement of Sh. Parveen Kumar Agarwal which was recorded on 12/11/2012 for the Assessment Proceedings pertaining to the Assessment Year 2017-18 which is not only illogical and cannot be made for the basis to make additions in the year under consideration. Thus, in our considered opinion, since the assessee had established the identity of the parties, genuineness of the transaction which were carried out through banking channels and the Assessee had also establish the capacity and creditworthiness of the parties by furnishing the income tax return, balance sheet and profit and loss account of the creditors, in the absence of any rebuttal made by the A.O. the additions made by the A.O., cannot be sustained. In view of the above discussion, we find merit in the Grounds of Appeal of the assessee, accordingly, we allow the Grounds of Appeal of the assessee and delete the sustained addition of Rs. 89,00,000/-.

13. In the result, Appeal of the assessee is allowed.

**ITA No. 1087/Del/2021 (Revenue)**

14. In the Appeal filed by the Department of Revenue, challenged the deletion of addition of Rs. 11,89,37,620/- pertaining to 10 parties. The Ld. Departmental Representative by relying on the assessment order submitted that the Ld. CIT(A) committed error in deleting the addition, therefore, sought for allowing the Grounds of Appeal.

15. The Ld. Counsel for the assessee submitted that all the nine parties except Mehta Enterprises, have responded to the notices issued u/s 133(6) of the Act, the parties have confirmed the transaction and furnished documentary evidence in support of the same, even in the Remand Report of Ld. A.O. dated 18/11/2020, not disputed the genuineness of the transaction. The details of the responses the notice u/s 133(6) of the Act, ledger accounts, confirmation of accounts, bank statements, ITR, balance sheet and P & L Account have been produced before the A.O. which are reproduced before us by the Assessee in following manners:-

<i>Name of the party</i>	<i>Ack. of response to notice (pg.no)</i>	<i>Ledger accounts (pg.no)</i>	<i>Confirmation of accounts (pg.no)</i>	<i>Bank statement (pg.no)</i>	<i>ITR filing ack. For the A.Y.2017-18 (pg.no)</i>	<i>B/S And P&amp;L (pg.no)</i>

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1	M/s. Lakshadweep estate & hotel Pvt. Ltd.	1 & 2		3	4 to 8	10	32 & 33
2	M7s. Reward Consultants Pvt. Ltd.	40		41	42 to 46	47	63 & 64
3	M/s. Grateful Infrastructure Pvt. Ltd.	79 & 80	81		82 to 91	92	102 & 103
4	M/s. Indus Project Pvt. Ltd.	113		114	115		123& 179
5	M/s. Panchkti Promotions Pvt. Ltd.	182 to 184	185		186 to 189		
6	M/s. Kingfisher Properties Pvt.	190			192 to 193	191	
7	M/s. Wellness forever Medicare Pvt. Ltd.	219 to 221		222	223 to 236	237	
8	M/s. Suniyojit Hirise Pvt. Ltd.	324&325	326		327 to 330	331	341& 342
9	M/s. Mehta Enterprises				353		
10.	M/s Gateway Financial Services Ltd.	380	381	382	424 & 425		- -

16. The Ld. CIT(A) had also admitted the additional evidence filed by the assessee and while deleting the addition, the Ld. CIT(A) held as under:-

*“7.2 It is observed from the remand report that the AO had verified the transactions of Rs.10,34,37,620/- relating to various parties/bank and had mentioned the remarks "No Comments" against these transactions in the chart submitted in remand proceedings, thereby accepting these transactions on the basis of verification of the documents submitted by the appellant. The AO had not brought on record anything adverse on the submissions /documents made by the appellant during the second proceedings. In these facts and circumstances of the case, the addition of Rs. 10,34,37,620/- made by the AO u/s 68 of the IT Act, 1961 is not sustainable and is hereby deleted.*

*7.3 Regarding the remaining addition of Rs. 2,44,00,000/-, it is observed that the appellant has claimed that the following transactions of Rs. 1,55,00,000/- relate to sale of fabric in AY 2016-17:*

Sr. No.	Name of Party	PAN	Transaction (in Rs.)	Date of credit entry	Sale of fabric reflected in the
i i	Grateful Infrastructure Pvt. ltd.	AADCG8424 G	57.0. 000 18.0. 000 10,00,000	08.04.2016 12.04.2016 15.07.2016	2005-06
2	Kingfisher Properties Pvt,	AAECK3394 G	3000000	02.08.2016	2005-06
3	Panchkoti Promoters Pvt. Ltd	AAGCP9792 F	15,00,000	29.06,2016	2005-06
4	Mehta				

		Total	1,55,00,000		
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it is observed from the audited accounts of the appellant for FY 2015-16 that the appellant has reflected the sale of fabric to these parties in AY 2016-17 and the debit balances of these parties are appearing in the balance sheet of the company as on 31.03.2016. The appellant has filed the ledger account of these parties wherein, these amounts have been shown as opening balances. The AO has even commented this fact in the remand report, but has remarked that the appellant has not submitted any evidence in this regard. The section 68 read as under:

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the [Assessing) Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."*

7.3.1 It is clear from the submissions made by the appellant and the audited results of the appellant that these transactions have been reflected in the accounts of the appellant in AY 2016-17 and in AY 2017- 18 only the outstanding amounts from the parties relating to these transactions have been received by the appellant. As per section 68, the year of taxability of transactions is when the sum is found credited in books maintained for any previous year and not the actual date of receipt of payment. The AO had considered the actual date of receipt as the date of transaction (in AY 2017-18), whereas, the appellant has shown the credit of these transactions in the audited books in AY 2016-17. Therefore, in my opinion, these transactions, allegedly managed through the entry operator, are

*taxable u/s 68 in AY 2016-17 and not in the year under consideration. In these facts and circumstances of the case, the addition of Rs. 1,55,00,000/- made u/s 68 of the IT Act 1961, on account of these transactions is not sustainable.”*

17. Considering the fact that the assessee has fulfilled the burden cast upon him u/s 68 of the Act in respect of identity, creditworthiness and genuineness with respect to the above 10 parties and their transaction have been duly established by furnishing the documentary evidence and as the CIT(A) granted relief relying on the Remand Report dated 18/11/2020, we find no error or infirmity in the order of the CIT(A). Accordingly, we find no merit in the Ground No. 1 of the Revenue, accordingly, the Ground No. 1 of the Revenue is dismissed.

18. Ground No. 2 is regarding deletion of addition of Rs. 1,00,000/- made u/s 68 of the Act on account of deposit of cash. During the assessment proceedings, the said addition was made on the ground that the assessee had made no explanation regarding the source of the cash deposited on 12/11/2016 in the bank account maintained by the assessee in Indian Overseas Bank, accordingly, A.O. made addition of Rs. 1,00,000/- to the total income of the assessee as unexplained cash credit u/s 68 of the Act. During the appellate proceedings, the Ld. CIT(A) deleted on the ground that the A.O. in the Remand Report had accepted the explanation of the assessee regarding the source of the cash in hand as per books of accounts of the assessee and has

offered remarks 'no comments', therefore, the cash deposit of Rs. 1,00,000/- has been accepted by the A.O. himself, accordingly, the CIT(A) deleted the addition.

19. Considering the fact that the A.O. himself satisfied with the explanation given by the assessee during the Remand Proceedings in respect of the source of cash deposit of Rs. 1,00,000/-, the Ld. CIT(A) has rightly deleted the said addition which requires no interference at the hands of the Tribunal. Accordingly, the Ground No. 2 of the Revenue is dismissed as devoid of merit.

20. In the result, Appeal filed by the Department is dismissed.

Order pronounced in open Court on 24<sup>th</sup> July, 2024

Sd/-

**(G.S.PANNU)**  
**VICE PRESIDENT**

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated: 24/07/2024  
*Pk/R.N, Sr ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

