

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.254/PUN/2024
निर्धारण वर्ष / Assessment Year: 2018-19**

DCIT, Circle-2, Pune	बनाम / V/s.	Vastushodh Realty, Office No.101 & 102, Lotus Plaza, Karve Road, Opposite Karishma Society, Pune – 411 038 Maharashtra PAN : AAJFV8897P
.....अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 10.09.2024
घोषणा की तारीख / Date of Pronouncement : 12.09.2024

आदेश / ORDER

PER S.S. GODARA, JM :

This Revenue's appeal for assessment year 2018-19 arises against the NFAC's Order No.ITBA/NFAC/S/250/2023-24/1059158540(1), dated 28.12.2023, involving proceedings u/s.250 of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. Suffice to say, it emerges during the course of hearing with the able assistance coming from the Revenue side that it's sole substantive grievance raised herein seeks to revive the Assessing Officer's action making sec.68 unexplained cash credits addition of Rs.6,49,91,600/- representing contribution to the assessee's partners' capital account from the twin partners S/Shri Sachin Kulkarni and Nitin Kulkarni. These clinching details duly emerges from the impugned CIT(A)/NFAC's order wherein he has restricted the same to a *lump sum* amount of Rs.2,31,10,312/- in the following terms :

7.2 Addition of capital introduced into the partner's capital account:

The AO resorted to addition under section 68 on the aggregate amounts introduced in the only two partners' capital account as unexplained for the reason the credit worthiness of the partners was not satisfactorily explained.

The AO added the entire credits without considering even the disallowances for the reason that the appellant did not furnish individual capital account but only consolidated account. During appeal also, the appellant did not meet out the requirements of the AO. Be that as it may, while taxing the credits, the AO turned blind eye to the aggregate withdrawals also found reflected therein. Unless the contrary is proved by the AO, such a

treatment relying upon a document only in part and not in its entirety would be against the principle of equity and therefore the AO is directed to consider the credits net of the withdrawals only as addition called for.

Therefore, this ground is partly allowed.”

3. Suffice to say, it is clear from the above narrated concise facts that the impugned addition herein represents capital contribution in assessee's firm made by its partners. That being the case, we are of the afraid that such a course of action itself is not sustainable as per the following case law.

1. *ACIT v. Ambika Enterprises (ITA No.31/Del/2020) dated 21.07.2023*
2. *Nova Medicare v. ITO (150 taxmann.com 363 (Telangana) dated 15.02.2023*
3. *Keshwarwani Sheetalaya v. CIT [(2020) 315 CTR 815 (All)]*
4. *PCIT v. Vaishnodevi Refoils & Solvex [(2018) 253 Taxman 135 (Guj)]*
5. *Prayag Tendu Leaves Processing Co. v. CIT [(2018) 400 ITR 120 (Jharkhand)]*
6. *CIT v. Metachem Industries [(2000) 245 ITR 160 (MP)]*

4. We thus conclude that although the assessee has not come in appeal against the CIT(A)/NFAC's findings partly upholding the impugned addition; the Revenue's instant sole substantive ground deserves to be rejected with a rider that such an addition has to be made only in the concerned partner's hands than that of a partnership-firm. Ordered accordingly.

5. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on 12th September, 2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
S.S. GODARA
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th September, 2024

VBP/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune