

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.1855/Del/2024
[Assessment Year: 2012-13]**

AVA Builders Private Limited, Upper GF, H.No.39, Punjabi Mohalla, Delhi-110048	Vs	Addl./JCIT(A)-9, Mumbai
PAN-AAGCA1296D		
Assessee		Revenue

Assessee by	Shri Susheel Wadhwa, CA
Revenue by	Shri Sanjay Kumar, Sr. DR

Date of Hearing	14.10.2024
Date of Pronouncement	09.12.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 18.03.2024 of the National Faceless Appeal Centre, Delhi, relating to Assessment Year 2012-13.

2. The grounds of appeal raised by the assessee reads as under:-

1. *That having regard to the facts and circumstances of the case, Ld. AO has erred in Law and on facts in making an assessment u/s. 147 of the Income Tax Act.*

2. *That having regard to the facts and circumstances of the case, Ld. AO has erred in Law and on facts in making an addition of Rs. 15,00,000/- u/s. 68 of the Income Tax Act, 1961.*

3. *That having regard to the facts and circumstances of the case, Ld. AO the action of the Ld. AO in charging interest u/s. 234A/B/C of the Income Tax Act is erroneous.*

4. *That having regard to the facts and circumstances of the case, the action of the Ld. AO erred in initiating penalty proceedings u/s. 271(1)(c) of the Income Tax Act.”*

3. Brief facts of the case:- The original return of income was filed on 29.09.2012 declaring loss of Rs.3,93,963/- for AY 2012-13 and the assessment was completed on the returned income. Thereafter, on receipt of information from the Investigation Wing, Delhi, vide letter dated 08.03.2019 informing that the assessee company had provided loan of Rs.15 lakhs to Shri Vinay Vats, one of the Directors of the assessee company during FY 2011-12 from undisclosed sources. Accordingly, notice u/s 148 was issued on 27.03.2019. In response to which the assessee filed its return on 18.04.2019 declaring income of Rs.90,400/-. During assessment proceedings, the AO rejected the claim of the assessee that the source of the said advance of loan to Shri Vinay Vats was an equivalent amount credited in the books of the assessee company by cheque dated 15.03.2012 with the narration 'Cheque No. being loan received from Shri Vinay Vats'. The AO on perusal of the bank statement of the assessee as well as Shri Vinay Vats found that no cheque of Rs.15 lakhs was ever produced in the bank account, whereas, a cheque of Rs.15 lakhs was given by the assessee to Shri Vinay Vats on 22.03.2012. Accordingly, the AO held that the assessee had entered into bogus transaction of Rs.15 lakhs and added the same to the total income of the assessee u/s 68 of the Act. The relevant discussion by the AO is reproduced as under:-

“2. In response, the assessee filed its return on 18.04.2019, declaring income of Rs. 90,400/- for the AY 2012-13. Subsequently, the notices u/s 143(2) of the Act and 142(1) of the I.T. Act, 1961 were issued to the assessee. During the course of assessment proceedings, the assessee was asked to furnish the copy of ledger account with

narration in the bank account statement and source of payment made to Sh Vinay Vats. In response the assessee has furnish the details and ledger account which are placed on record. The reply of the assessee has been considered and it is found from the ledger account of the Sh Vinay Vats in the books of assessee company, that cheque from Sh. Vinay Vats has been shown credited in the books of M/s AVA Builders Pvt. Ltd vide dated 15.03.2012 of Rs. 15,00,000/- with the narration 'Ch. No. being loan received from Sh Vinay Vats. On perusal of bank account statement of the assessee as well as of Sh Vinay Vats no such cheque of Rs. 15,00,000/- from Sh. Vinay Vats was ever produced in the bank account. Whereas, a cheque of Rs. 15,00,000/- was given by the assessee to Sh. Vinay Vats on 22.03.2012. Keeping in view of the above, it is quite clear that the assessee has made a bogus entry of Rs, 15,00,000/- credited in its books of account during the F.Y. 2011-12 relevant AY 2012-13, moreover, no cheque number has been reported in the ledger account. It is also found from the bank account statement of Sh. Vinay Vats the available balance in his bank account on 15.03.2012 was Rs. 69,133/- only. It is clear that the assessee has entered into bogus transaction of Rs. 15,00,000/-, therefore, the same is added to the total income of the Assessee."

3.1. The AO, thus, treated the credit entry of Rs.15 lakhs received from Shri Vinay Vats on 22.03.2012 as an unexplained cash credit and added u/s 68 of the Act.

4. Against the above order, the assessee appealed before the ld. CIT(A).

5. The assessee submitted that the amount of Rs.15 lakhs paid by the assessee company to Shri Vinay Vats was out of the proceeds of FDRs and amount received from M/s Sterling Auto Tech. Pvt. Ltd. and submitted copy of confirmation from M/s Sterling Auto Tech. Pvt. Ltd. (Page No.69 to 72 of the paper book). The assessee further submitted that the cheque received from its Director Shri Vinay Vats could not be encashed as the same was misplaced by its office and could not presented for clearing in the bank. It was further submitted that the amount reflected as received in assessee company's books of accounts was reversed on 03.04.2012 and the amount was later recovered from Shri Vinay Vats recovered vide cheque numbers as detailed at serial no.1 to 3

in the loan confirmation between the assessee company and Shri Vinay Vats at page no.42 of the paper book. In the said loan confirmation, the receipt of the said cheque of Rs.15 lakhs on 15.03.2012 and its reversal on 03.04.2012 is also reflected. In this regard, an affidavit by Shri Ankit Vats, Director of the assessee company was also filed (Page no.58 of the paper book). The submission of the assessee is reproduced on page no.5 to 8 of the order of the Ld. CIT(A).

6. The ld. DR supported the orders of the authorities below.

7. We have heard the rival submissions and perused the material available on record. In this case, the main dispute is with regard to the source of Rs.15 lakhs advanced as unsecured loan by the assessee company to its Director, Shri Vinay Vats. The ld. AR has explained with documentary evidences (placed at pages no. 69 to 72 of the paper book) that the source of the said loan is out of the proceeds of FDRs and amount received from M/s Sterling Auto Tech. Pvt. Ltd. and not the amount of Rs.15 lakhs received by the assessee company from Shri Vinay Vats. The said submission was also made before the AO/ld. CIT(A), which has not been disputed by the AO/Ld. CIT(A) on merits. Further, the cheque received from Shri Vinay Vats was misplaced and could not be presented to the bank is also supported by the loan confirmation placed on page no.42 of the paper book, wherein, the cheque being loan received from Shri Vinay Vats was reversed on 03.04.2012 with the narration 'being cheque dishonour', and further three cheques dated 09.04.2012, 24.05.2012 and 29.06.2012 for Rs.1,50,000/-, Rs.3,50,000/- and Rs.10,00,000/- respectively was received from Shri Vinay Vats by the

assessee company as claimed by the assessee. Therefore, the credit entry of Rs.15 lakhs received from Shri Vinay Vats on 15.03.2012 and its reversal entry on 03.04.2012 are self-cancelling transactions having no financial implications as the source for advancing of loan to Shri Vinay Vats has been duly explained by the assessee and not disputed by the AO/Id. CIT(A) on merits. Therefore, the addition of Rs.15,00,000/- u/s 68 of the Act is not sustainable and the same is deleted. Ground no.2 of the appeal is allowed.

8. In view of the fact that the ground no.2 of the appeal is allowed, ground no.1 of the appeal becomes academic and not adjudicated.

9. Ground No.3 of the appeal is with respect to levy of interest u/s 234A, 234B and 234C of the Act. Charging of interest is consequential and the AO will levy interest as per law.

10. Ground No.4 of the appeal is with respect to initiation of penalty u/s 271(1)(c) of the Act. This ground of the appeal is premature and hence dismissed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 9th December, 2024.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated:09.12.2024.

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent

3. PCIT
4. CIT(A)
- 5.

DR

Asst. Registrar,
ITAT, New Delhi,