

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 1933/KOL/2024  
(Assessment Year:2012-13)**

**Lagan Vincom Pvt. Ltd.**  
2<sup>nd</sup> Floor, Room No.206 & 207,  
4/1, Middleton Street, Sikkim  
Commerce House, Kolkata-  
700071, West Bengal

**(Appellant)**

**Vs.**

**ITO, Ward-1(1)**  
Aaykar Bhavan, P-7,  
Chowringhee Square,  
Kolkata-700069,  
West Bengal

**(Respondent)**

**PAN No. AABCL5732E**

**Assessee by** : Shri A.K. Tirbriwal, AR  
**Revenue by** : Shri Sailen Samadder, DR

**Date of hearing:** 17.12.2024  
**Date of pronouncement :** 31.01.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 24.07.2024 for the AY 2012-13.

02. At the time of hearing, the assessee pressed only ground nos.6,7 and 8, in which the common issue raised is against the order of Id. CIT (A) confirming the addition of ₹1,22,50,000/- as made by the Id. AO by wrongly invoking the provisions of Section 69A of the Act when the said transactions were duly recorded in the books of the assessee.
03. The facts in brief are that the assessee filed the return of income on 22.03.2013, declaring total income of ₹1,70,693/-, which was duly



processed u/s 143(1) of the Act on 03.05.2013. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 22.03.2019, after obtaining approval from the competent authority. The assessee filed the return of income in compliance to notice issued u/s 148 of the Act on 01.05.2019, declaring income of ₹5,51,659/- with current year loss of ₹3,80,966/-. During the course of assessment proceedings, the Id. AO observed that on the basis of credible information received from ITO, Ward 10(4), Kolkata, it is found that assessee has received funds to the tune of ₹1,22,50,000/- from M/s Hitendra Commercial Pvt. Ltd. which is a shell company and accordingly, the assessee was asked vide notice dated 06.06.2019 to furnish the details of transactions with the said company along with supporting evidences and copy of bank statement. The assessee accordingly furnished the details called for by the Id. Assessing Officer. The Id. AO on perusal of the said details observed that money received by the assessee from M/s Hitendra Commercial Pvt. Ltd. was against the sale of unquoted equity shares of M/s Pavaki Vanijya Private Limited and M/s Sky Scrapers Nirmans Private Limited to the tune of ₹1,22,50,000/-. The Id. AO also issued notice u/s 133(6) of the Act, however the same were returned unserved for incomplete address and finally the addition of ₹1,22,50,000/- was made u/s 69A of the Act as on account of unexplained money after rejecting the reply of the assessee by holding that the said money was nothing but accommodation entries in the garb of sale of investments.

04. In the appellate proceedings, the Id. CIT (A) upheld the addition on the ground that investment company did not have any genuine creditworthiness and consequently the transactions were held to be not genuine.



05. After hearing the rival contentions and perusing the materials available on record, we find that the assessee during the year has sold unquoted shares of two companies namely; M/s Pavaki Vanijya Private Limited and M/s Sky Scrapers Nirmans Private Limited, which were shown as sale of shares for which the sale proceeds were received through banking channel in the books of account of the assessee. The Id. AR main contentions was that since the assessee has duly shown the sale of investments in the books of accounts and consequently, the addition by the Id. AO u/s 69A of the Act on account of unexplained money is bad in law and may be deleted. We note that these shares were bought by the assessee in the preceding assessment years. We have carefully perused the section 69A of the Act and find that the said provisions deal with unexplained money. It has been provided in the said section that where in any financial year the assessee 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 assessee 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 AO, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year. Therefore, the addition can only be made if he above conditions were duly satisfied as provided u/s 69A of the Act. In the present case, the assessee was not found to be owner of any money, bullion, jewellery or other valuable article as the assessee has already recorded money received from sale of shares in the books of account and therefore, the provisions of Section 69A of the Act are not applicable. The case of



the assessee find force from the decision of the co-ordinate Bench in the case of Maa Sharrada Enterprise Vs. ITO in ITA No. 586/KOL/2024 for A.Y. 2017-18, wherein the co-ordinate Bench has held as under:-

"9. We have duly considered the rival contentions and gone through the record carefully. There is no dispute with regard to the fact that total sales of the assessee during the year was of Rs.48,79,27,027/-. It has made purchases of Rs.47,24,59,237/-. The analysis made by the assessee in a tabular form in the submission of the Id. Counsel for the assessee is worth to note here, which reads as under:-

**A.Y. 2017-18**

Name of Bank	Branch Address	Account No.	Amount of cash deposit(Rs.) during 8 <sup>th</sup> Nov. to 31 <sup>st</sup> December, 2016	Amount of cash deposit (Rs.) Rest of the period during FY 2016-17	Total
HDFC Bank	Madhyamgram	00232000011323	9,90,000	97,95,000/-	107,85,000/-
Axis Bank	New Barrackpore	913020041902854	203,10,000/-	12,89,38,090/-	14,92,48,090/-
Total			2,13,00,000/-	13,87,33,090/-	16,00,33,090/-

**A.Y. 2016-17**

Name of Bank	Branch Address	Account No.	Amount of cash deposit(Rs.) during 8 <sup>th</sup> Nov. to 31 <sup>st</sup> December, 2015	Amount of cash deposit (Rs.) Rest of the period during FY 2015-16	Total
HDFC Bank	Madhyamgram	00232000011323	66,37,025/-	271,54,486/-	337,91,511/-
Axis Bank	New Barrackpore	913020041902854	251,48,960/-	12,24,20,305/-	14,75,69,265/-
Total			3,17,85,985/-	14,95,74,791/-	18,13,60,776/-

10. A perusal of the above figure would indicate that the assessee has deposited Rs.13,87,33,090/- during the accounting period of this A.Y. except the period of 8th November to 31st December, the Id. Assessing Officer has not doubted about these deposits. Their sources are identical. He even did not deem it necessary to examine the source of that money His only doubt is qua the source of Rs.2,13,00,000/-, out of which he has made addition of Rs.1,29,00,000/- roughly. In the assessee's line of business, cash is being generated regularly which depicts in the earlier year where assessee has deposited Rs.3.17 crores during the period from 8th November to 31st December, 2015. This was not a demonetization period but no doubt was expressed by the revenue on this deposit. The total deposit in the year was Rs.18.13 crores including the period of 8th November to 31st December, 2015. In the A.Y. 2017- 18, i.e. involved in the present appeal, total deposit in cash was of Rs.16,00,33,090/-. The Id. Assessing Officer has accepted the majority of the cash deposits.

11. We have reproduced the assessment order but no specific reason is discernable from the finding of the Id. Assessing Officer for disbelieving cash deposits during demonetization period. To our mind, it is an arbitrarily exercise of powers at the end of the revenue. There is no logic or reasoning given for not accepting these cash deposits. The assessee was in such a line of business, where it has to sale pulses, wheat gram,



flour and related products in cash. The other argument given by the Id. Counsel for the assessee that cash was recorded and, therefore, section 69A cannot be invoked. For buttressing this proposition, he relied upon the judgment of ITAT, Chandigarh Bench in the case of DCIT -vs.- Roop Fashion reported in [2022] 145 taxman.com 216. In that case also, on identical circumstances the Revenue disbelieved the cash sales. The Tribunal has examined this issue in detail and then, compared the total sales of A.Ys. 2015-16, 2016-17, 2017-18 and deleted the addition. The cash was recorded in the books hence it cannot be termed as unexplained cash. Only thing which was required to be explained was the source of such deposits, which assessee has explained i.e. out of sale proceeds, deposits have been made.

12. On due consideration of the above facts and circumstances, we are of the view that addition made by the Id. Assessing Officer and confirmed by the Id. CIT(Appeals) is not sustainable. Accordingly, we allow this ground of appeal and delete the addition of Rs.1,29,23,200/-."

06. The Id. AR also relied on the decision of the Hon'ble High Court in the case of Sarika Jain Vs. CIT [2017] 84 taxmann.com 64 (Allahabad), wherein Hon'ble High Court has held as under:-

"15. The use of the word "thereon" is important and it reflects that the Tribunal has to confined itself to the questions, which are arising or are subject matter in the appeal and it cannot be travelled beyond the same. The power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and it is not open to the Tribunal to adjudicate any other question or an issue, which is not in dispute and which is not the subject matter of the dispute in appeal.

16. In the present case, it is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the appellant-assessee as his personal income under Section 68 of the Act and not whether such an addition can be made under Section 69-A of the Act.

17. In view of the above, it can safely be said that the Tribunal travelled beyond the scope of the appeal in making the addition of the said income under Section 69-A of the Act. It may be worth noting that the Tribunal has recorded a categorical finding that "it is clear that under the provisions of Section 68, the addition made by the Assessing Officer and sustained by the CIT (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer and the CIT (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under Section 68 of the Act.

18. In view of the above, when the said income cannot be added under Section 68 of the Act and the Tribunal was not competent to make the said addition under Section 69-A of the Act, the entire order of the Tribunal stand vitiated in law.

19. Accordingly, we answer the question of law, as framed above, in favour of the appellant-assessee and against the Revenue and hold that the Tribunal was not



competent to make any addition under Section 69-A of the Act and as the same was subject matter of the appeal before it.

**20.** Accordingly, the impugned order dated 20.12.2007 is set aside and the matter is remanded to the Tribunal for deciding the appeal afresh in accordance with law."

07. Considering the facts of the assessee case in the light of the aforesaid decisions, we are inclined to set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition.

08. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.01.2025.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 31.01.2025

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

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