

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos.1050/Del/2023
(A.Y. 2012-13)**

Vijay Pal Singh Pro. Vedant Projects Gurjar Market, Opposite Suresh Park, Modi Nagar Ghaziabad, Uttar Pradesh, 201201	Vs.	ITO, Ward 1(5) CGO Complex-1, Hapurchungi, Ghaziabad-201014
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AWKPS2894N		
Appellant	..	Respondent

Appellant by :	Ms. Rano Jain, Adv, Ms. Sakshi Ratogi, Adv
Respondent by :	Sh. Dayainder Singh Sidhu, CIT, DR
Date of Hearing	08.01.2025
Date of Pronouncement	12.02.2025

ORDER

PER MADHUMITA ROY: (JM):

The instant appeal filed by the assessee is directed against the order dated 14.02.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the assessment order passed by the ITO, Ward-1(5) dated 23.03.2015 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) for Assessment Year 2012-13.

2. In fact, being aggrieved by the order dated 23.03.2015 passed by the ITO, Ward 1(5), Ghaziabad appeal was filed before the Ld. CIT(A) by

the assessee which was dismissed whereupon appeal being ITA No. 4294/Del/2016 was filed before the ITAT which was allowed for statistical purposes by setting aside the issue to the Ld. CIT(A) for his consideration afresh upon granting an opportunity of being heard to the assessee. That particular appeal was finally disposed of by confirming the order passed by the Ld. AO sustaining the order of addition of Rs.30,77,00,000/- on account of unsecured loans under Section 68 of the Act. Hence, the instant appeal.

3. The brief facts leading to the case is this that the appellant is a proprietor of M/s Vedanta Projects filed its return of income declaring income at Rs.6,04,522/- which was considered for scrutiny and notice whereupon under Section 143(2) dated 30.08.2013 was served. The assessee had received an amount of Rs.30,77,00,000/- from three concern namely M/s Romila Infra P. Ltd., M/s Yajat Infra P. Ltd. and M/s Raima Buildwell P. Ltd. to the tune of Rs.9,77,00,000/- and Rs.11,00,00,000/- and Rs.10,00,00,000/- respectively. It is the case of the revenue that this amount was introduced in the books of the assessee to be siphoned to M/s Era Infra Engineering Ltd., the erstwhile employer of the assessee before us. The assessee got a contract for construction of 4 lane Gwalior bypass and the same project was sub-contracted to the said M/s Era Infra Engineering Ltd and for that purpose the assessee had to pay huge amount to the aid M/s Era Infra Engineering Ltd. from the payment received from the above 3 companies. The assessee claimed that he has produced all relevant documents in order to prove the identity and creditworthiness these 3 creditors and the genuineness of the transaction as well, copy whereof appearing at pages 6 to 51 of the paper book filed before us which was ultimately not found to be satisfactory and addition to the tune of Rs.30,77,00,000/- was

made in the hands of the assessee on very many accounts particularly source of income and creditworthiness of the creditors was not proved, letter sent to the parties since returned which proved that they do not exist at the given addresses. Further that the inspector deputed for inquiry reported that none of the creditors was found existing at these addresses. The entire money given by the creditors was lent to that M/s Sushila Steels whose credential are also not known. Relevant to mention the assessee's claims that the documents in this regard duly filed before the CIT(A) which was not found to be satisfied and addition made by the Ld. AO, therefore, was confirmed.

4. However, assessee's counsel made an alternative argument to this effect that the Ld. AO on the similar issue arose in Assessment Year 2010-11 held that the assessee has been treated as a conduit whereby ultimate beneficiary is M/s Era Infra Engineering Ltd. But it was further observed that the assessee has earned commission on the amount provided to said M/s Era Infra Engineering Ltd. In this regard, she has drawn our attention to page 8 of the said assessment order dated 16.03.2017 appearing at page 150 of the paper book filed before us. In the order dated 16.03.2017 for assessment year 2012-13 the assessee was found to be a conduit only and ultimate beneficiary was the employer company i.e. M/s Era Infra Engineering Ltd. as observed by the Ld. AO. Thus, the amount of Rs.30,77,00,000/- received from the above 3 creditors cannot be added in the hands of the assessee who is after all not the beneficiary of the disputed transaction. Having regard to this particular aspect of the matter, the impugned addition under Section 68 of the Act on account of unsecured loans to the tune of Rs.30,77,00,000/- is not found to be sustainable and therefore, deleted.

5. So far as the commission earned by the assessee as a conduit on the total transaction the ld. AO for assessment year 2012-13 estimated such commission @ 2% which was again divided into 4 parts stating that there were 4 parties altogether involved in the said transaction is concerned, the said commission of the assessee was computed at $\frac{1}{4}$ of the 2% of the total amount received and after giving benefit to the assessee on account of salary income and business income offered by the assessee in its return of income, the remaining amount was added in the hands of the assessee. The Ld. Counsel appearing for the assessee, thus, prayed for the same relief in the year under consideration which is found to be acceptable and we note that no contrary fact has been brought to our notice by the departmental representative appearing before us.

6. Having regard to this particular observation made by the Ld. AO in its order dated 26.03.2017 passed in the earlier year as narrate hereinabove and taking into consideration the entire aspect of the matter, we find that the assessee is at least eligible to such relief. We, therefore, order accordingly by directing the Ld. AO to recompute income in the above mentioned terms and to grant relief to the assessee in terms of our observation made above. The appeal preferred by the assessee is, thus, allowed for statistical purposes.

7. The appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12.02.2025

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 12.02.2025

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI