

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA**  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**  
**AND**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA Nos.450 & 451/KOL/2024**

(निर्धारण वर्ष /Assessment Years : 2011-2012 & 2010-2011)

<b>Vinkas Estates Private Limited</b> <b>27A, Waterloo Street, 1<sup>st</sup> Floor</b> <b>Room No.105, Kolkata</b>	Vs	<b>DCIT, Circle-9(2), Kolkata</b>
<b>PAN No. :AABCV 6848 B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	None (Adjournment letter filed)
राजस्व की ओर से /Revenue by	:	Ms. Monalisa Pal Mukherjee, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	21/05/2025
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	21/05/2025

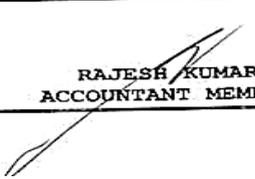
**आदेश / ORDER**

**Per Bench :**

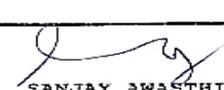
These two appeals are filed by the assessee against the separate orders passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 05.01.2024 for the assessment years 2011-2012 & 2010-2011.

2. None appeared on behalf of the assessee, however, an adjournment application has been filed on behalf of the assessee on the ground which is not acceptable looking to the facts and circumstances of the case. Accordingly, the adjournment application filed by the assessee is rejected and appeals of the assessee being disposed off after considering the submission of Ms. Monalisa Pal Mukherjee, Sr. DR, who appeared on behalf of the revenue as well as the facts available on record.

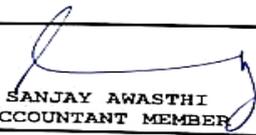
3. The grounds given by the assessee remained unsubstantiated. Here it must be mentioned that the appeals have been filed by the assessee on 14.03.2024 and both the appeals have been posted on multiple occasions.
4. In the present appeal, a few order sheet entries would have importance. The order sheet entries on 21.05.2024, read as under :-

ITA 450/KOL/2024 (Assessment Year: 2011-12)	
In the case of <b>VINKASH ESTATES PVT. LTD.</b> vs. <b>DCIT, CIR. 9(2)</b>	
Bench: A  4 <u>21-May-</u> <u>2024</u> (Tuesday)	Assessee represented by: Rakesh Kr. Jain, FCA Department represented by: Altaf Hossain, Addl. CIT  During the course of hearing it reveals that ITA No.451/Kol/2024, A.Y.2010-11 also involves similar issue. Therefore, both the appeal should be heard together. Put up for consolidation. Hearing is adjourned to 22/07/2024. Ld. DR is directed to produce the Assessment Records on the next date of hearing. In case, record is not traceable, then Ld. A.O. should appear virtually. The meeting Id and Password for the hearing be sent through DR.
	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">   <b>RAJESH KUMAR</b>            ACCOUNTANT MEMBER         </div> <div style="text-align: center;">   <b>RAJPAL YADAV</b>            VICE PRESIDENT         </div> </div>

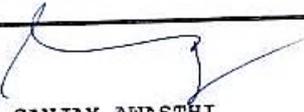
6. The order sheet entries on 06.08.2024, reads as under :-

ITA 450/KOL/2024 (Assessment Year: 2011-12)	
In the case of <b>VINKASH ESTATES PVT. LTD.</b> vs. <b>DCIT, CIR. 9(2)</b>	
Bench: B  6 <u>06-Aug-</u> <u>2024</u> (Tuesday)	Assessee represented by: Debabrata Guchhait, Staff Department represented by: P.P Barman, Addl.CIT, Sr. DR.  Vide order dated 21.05.2024, it was directed as under: "During the course of hearing it reveals that ITA No. 451/Kol/2024, A.Y.2010-11 also involves similar issue. Therefore, both the appeal should be heard together. Put up for consolidation. Hearing is adjourned to 22/07/2024. Ld. DR is directed to produce the Assessment Records on the next date of hearing. In case, record is not traceable, then Ld. A.O. should appear virtually. The meeting Id and Password for the hearing be sent through DR." However, neither the assessment records have been sent by the Assessing Officer nor he himself has appeared virtually in the hearing. Under the circumstances, it is directed to the Assessing Officer either ensure that the assessment records are sent to this Tribunal by the next date of hearing, if not so done, he would appear personally before this Tribunal to explain his position. Adjourned to 08.08.2024.
	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">   <b>SANJAY AWASTHI</b>            ACCOUNTANT MEMBER         </div> <div style="text-align: center;">   <b>SANJAY GARG</b>            JUDICIAL MEMBER         </div> </div>

## 7. The order sheet entries on 08.08.2024, reads as under :-

ITA 450/KOL/2024 (Assessment Year: 2011-12)	
In the case of VINKASH ESTATES PVT. LTD. vs. DCIT, CIR. 9(2)	
Bench: B <u>7</u> 08-Aug- 2024 (Thursday)	<p>Assessee represented by: Rakesh Kumar Jain, FCA Department represented by: P.P Barman, Addl.CIT, Sr. DR.</p> <p>Vide order dated 06.08.2024, it was directed to the Assessing Officer either to ensure that the assessment records are sent to this Tribunal by the next date of hearing, if not so done, he would appear personally before this Tribunal to explain his position.</p> <p>However, today, a letter has been received from the concerned Assessing Officer namely Mr. Arijit Chakraborty, DCIT, Circle-1(1), Kolkata, vide which he has informed that though the jurisdiction of the assessee has been transferred from Ward-3(1), Kolkata to Circle-1(1), Kolkata on 25.06.2024, however, the file of the assessee has not been transferred to him. Therefore, he was not able to get the files from previous jurisdiction and send to this Tribunal. A time of 30 days has been requested by him. In view of the aforesaid request of the concerned DCIT, Circle-1(1), Kolkata, the case is adjourned to 23.10.24.</p> <p>It is directed to the concerned ACIT/DCIT/ITO, Circle-1(1), Kolkata as well as of Ward-3(1), Kolkata to ensure that the assessment records in this case are received in this Office/with the concerned DR, with copy of the required documents to the assessee/AR of the assessee at least one week before the date of hearing; failing which we will be constrained to take strict action against the erring officers.</p>
	 <b>SANJAY AWASTHI</b> ACCOUNTANT MEMBER
	 <b>SANJAY GARG</b> JUDICIAL MEMBER

## 8. The order sheet entries on 24.10.2024, reads as under :-

ITA 450/KOL/2024 (Assessment Year: 2011-12)	
In the case of VINKASH ESTATES PVT. LTD. vs. DCIT, CIR. 9(2)	
Bench: B <u>9</u> 24-Oct- 2024 (Thursday)	<p>Assessee represented by: None Department represented by: P.P. Barman, Addl.CIT, Sr. DR. , Arijit Chakraborty, DCIT Circle 1(1) &amp; Prashant kundu, ITO, Ward,3(1)</p> <p>Mr. Arijit Chakraborty, DCIT Circle 1(1) &amp; Mr. Prashant Kundu, ITO, Ward 3(1), have personally <del>presented</del> <sup>absented</sup> and submitted that the assessment record regarding two of these cases was not traceable. In view of this, the case is adjourned to 9th January, 2025 for further consideration/arguments. The fact of non-submission of the record by the Department will be seen at the time of arguments.</p>
	 <b>SANJAY AWASTHI</b> ACCOUNTANT MEMBER
	 <b>SANJAY GARG</b> JUDICIAL MEMBER

9. Further, a perusal of the said order sheet entries show that there are hearings on 09.01.2025, 06.03.2025 & 28.03.2025. The status of the assessment records remains the same. A perusal of the statement of facts for both the years under consideration, which were the reason for calling for the records, read as under :-

*The appellant is a Private limited company registered in the year 1995, resident in India and engaged in the business of real estate development and construction. During the assessment year under consideration, the assessee filed its return of income on 29.09.2010 showing a total income of Rs. 43,07,150/-. The return was processed u/s 143(1) on 25.02.2011. Subsequently DIT (I&CI), Jaipur, asked for some information/documents related to the sale of property/land. All the papers/ documents as required were duly submitted. Later on, the A.O. reopened the assessment and initiated the proceedings u/s 147 without serving any notice u/s 148. The A.O. did not provide any reason for reopening of the assessment and issued notice u/s 142(1). The appellant asked the A.O. to provide the reason for reopening of assessment and raised its objection on the reopening. Time and again assessee raised its objection. But the Ld. A.O. did not reply to the objection raised nor passed any comment or order on the objection raised by the assessee and completed the assessment. The A.O. failed to follow the guidelines laid by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. The Ld. A.O. issued notices u/s 133(6) to several parties, which were duly complied by the concerned parties. The A.O. never rejected the documents submitted by the assessee nor did he object the transactions made during the year by the assessee.*

*During the course of assessment proceedings, the appellant furnished various details and supporting together with statement of accounts as required by the Learned A.O. While completing the assessment the Learned A.O. made various additions to the returned income on account of expenditure claimed.*

*Being aggrieved the appellant filed an appeal against the order of the A.O., before the CIT (Appeals), Kolkata-3. The Ld. CIT (A) did not apply his mind and treated the reopening as valid. The LD. CIT (A) even did not follow the guidelines laid by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd.*

*The appeal was filed by the assessee on 18.09.2015. However, till January 2021 no notice of hearing was received by the assessee. During covid situation several records of the assessee were mutilated, misplaced and/or lost. The assessee asked for adjournment of hearings. The assessee applied to the A.O. for supply of records and documents to prepare suitable reply and make submission. However, no records were provided by the department.*

*Ld. CIT (A) arbitrarily passed the order and confirmed various additions.*

10. As it is noticed that even after such a long time opportunity after opportunity having been granted to the revenue to prove its stand, the revenue has chosen not to provide the information. In absence of the details having been provided by the revenue, the Tribunal is left with no other option but to accept the averments made by the assessee. Once the averments made by the assessee are accepted, the notice issued u/s.148 of the Act has to be quashed as there is no other alternative. Since it is a matter of record that the Id.AO did not supply the reasons recorded for issuance of notice u/s.148 of the Act, in spite of several requests from the assessee's side. Consequently, the notice issued u/s.148 of the Act for both the assessment years stands quashed.

11. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 21/05/2025.

**Sd/-  
(SANJAY AWASTHI)**

लेखा सदस्य/ ACCOUNTANT MEMBER

**Sd/-  
(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कोलकाता** Kolkata; दिनांक Dated 21/05/2025

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,  
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata