

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

I.T.A No.5781/Mum/2025 - A.Y. 2019-20
I.T.A No.5782/Mum/2025 - A.Y. 2017-18

M/s Devisha Infrastructure Pvt Ltd, 5 th Floor, Militia Apartment, M.P. Road, Mazgaon, Mumbai-400 010 PAN : AACCD5192R	vs	ITO Ward 6(2)(2), Mumbai Room no.510, 5 th Floor, Aaykar Bhavan, M.K.Road, Mumbai.
APPELLANT		RESPONDENT

Assessee by : Shri Nishit Gandhi
Respondent by : Shri Umashankar Prasad (SR DR)

Date of hearing : 03/12/2025
Date of pronouncement : 17/12/2025

ORDER

Per: Anikesh Banerjee (JM):

These two appeals of the assessee were filed against the order of the National Faceless Appeal Centre(NFAC), Delhi [hereinafter, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the Assessment Years 2017-18 & 2019-20, date of order 21/08/2025. The impugned orders emanated from the order of the Learned Income-tax Officer, Ward-6(2)(2), Mumbai(in short, 'Ld.AO') for A.Y. 2017-18, under section 143(3) of the Act, date

of order 30/12/2019 and order passed by Assessment Unit, Income-tax Department passed u/s 147 r.w.s. 144B of the Act, date of order 15/02/2024 for A.Y. 2019-20.

2. The assessee has raised the following grounds of appeal:-

ITA No.5781/Mum/2025 (A.Y. 2019-20)

“1. On the facts and circumstances of the case and in law, the Ld. CTT(A) has erred by dismissing the appeal filed by the appellant and upholding the assessment order passed by the Ld. A.O. w/s 147 r.w.s 144B of the I. T. Act, 1961 without understanding the facts and circumstances of the case, since the same is grossly incorrect, invalid and bad in law.

2. On the facts and circumstances of the case and in law, the Ld. J.A.O. has erred by initiating the Inquiry Proceedings u/s 148A of the 1. T. Act, 1961 since the same was to be conducted in faceless manner and therefore, the notice issued u/s 148 of the 1. T. Act, 1961 is bad in law. The appellant relies on the decision of Hon'ble Bombay High Court in case of M/s Hexaware Technologies Ltd vs. ACIT, Circle 15(1)(2).

3. On the facts and circumstances of the case and in law, the Ld. A.O. at the time of taking approval u/s 151 of the I. T. Act, 1961 from Hon'ble PCIT, Mumbai-6 has violated provisions of section 282A of the 1. T. Act, 1961 since the form- Approval u/s 151 of the 1. T. Act, 1961 is not signed by the nor the name and designation of the specified authority is mentioned on such approval form. In this regard, reliance is placed on the decision of Hon'ble Allahabad High Court in case of Vikas Gupta vs. Union of India [2022] 142 taxmann.com 253 & Hon'ble Telangana High Court in case of M/s Bigleap Technologies and Solutions Pvt. Ltd. and Others vs. State of Telangana, W.P. no. 21101 of 2024.

4. On the fact and circumstances of the case and in law, the Ld. A.O. has erred by treating the amount of Rs. 10,23,08,500/- as cessation of liability u/s 41(1) of the 1. T. Act, 1961 and making addition of the same while passing the reassessment order without understanding the fact that, said amount was not trading liability and was never debited to Profit & Loss account and thus provisions of section 41(1) of the I. T. Act, 1961 are not applicable for the said transaction.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by confirming addition made by the Ld. A.O. by alleging that, the disputed land valued at Rs. 84,90,69,000/- was included in inventories in the year of insertion without verifying the fact that, the amount of Rs. 10,23,08,500/- was never debited to P & L Account or included in value of inventories.

6. On the facts and circumstances of the case and in law, if the addition was to be made by the Ld. A.O., then the same should have been made by the Ld. A.O. in the year in which such liability was booked by the appellant company.

7. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.”

ITA 5782/Mum/2025

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the appeal filed by the appellant and upholding the assessment order passed by the Ld. A.O. u/s 143(3) of the 1. T. Act, 1961 since the same is grossly incorrect, invalid and bad in law.

2. On the fact and circumstances of the case and in law, the Ld. A.O. has erred by making addition of Rs. 85,99,827/- while passing the assessment order without understanding the fact that, all the expenditure incurred by the appellant was capitalized and thus there were no repercussions for the year under consideration. Thus, the addition made and the action of the Ld. CIT(A) by dismissing the appeal and the upholding the order of Ld. A.O. is grossly incorrect, invalid and bad in law.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by confirming addition made by the Ld. A.O. by alleging that, the contention of the appellant is factually incorrect since the appellant has claimed expenses of professional fees amounting to Rs. 79,32,000/- while filing ITR without understanding the fact that, the appellant had capitalized such expenditure by increasing the value of closing WIP (Inventory) since, appellant is required to prepare the books of accounts as per applicable Accounting Standards and file the ITR accordingly.

4. On the facts and circumstances of the case and in law, the Ld. A.O. had issued a SCN on 25/12/2019 requiring the appellant to submit its reply on or before 27/12/2019 before 11:00 A.M. which is against the principle of natural justice since the appellant only had a period of 1 day to collect the documents and prepare and submit the reply. In this regard, reliance is 7253150

placed on the decision of **Hon'ble Bombay High Court in case of Madhuri Sameer Gokhale vs. Addl. Joint/ Deputy Asst. Commissioner of Income-tax/ Income-tax Officer, National Faceless Assessment Centre [2025] 172 taxmann.com 696 (Bombay)** and also on the decision of **Cheftalk Food and Hospitality Services (P) Ltd v. Income Tax Officer [2024] 165 taxmann.com 415 (Bombay)**.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the addition of Rs. 85,99,827/- made by the Ld. A.O. is grossly incorrect, invalid and bad in law, since the appellant had submitted details of expenses incurred.

6. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.”

ITA No.5782/Mum/2025, AY 2017-18:

3. The brief facts of the case are that the assessee is a private limited company and is engaged in business of real estate development as builder and investor. During the impugned assessment year, the assessee debited in P&L Account, under the head 'other expenses' amount to Rs.85,99,827/- which was finally added with the closing work-in-progress. But the Ld.AO during the assessment proceedings issued a SCN on 25/12/2019 requiring the assessee to submit its reply on or before 27/12/2019 before 11:00 A.M. The Ld.AO noted that the assessee has not filed the requisite documents and accordingly, the amount of Rs.85,99,827/- was added back with the total income of the assessee. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A), but the Ld.CIT(A)

upheld the addition made by the Ld.AO. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a paper book containing **pages 1 to 144** which is kept on record. The Ld.AR stated that in the P&L Account, the assessee booked 'other expenses' in the Note No.18, total amount to Rs.85,99,827/-. The expenses are made under following heads:-

"NOTE : 18

OTHER EXPENSES

	FY 31/03/2017	FY 31/03/2016
Particulars	Rs.	Rs.
<i>Rates & Taxes (ROC Filing Fees & Others)</i>	1,511.00	772,886.00
<i>Electricity & Telephone Expenses</i>	208,310.00	1,461,097.59
<i>Site Hex World Expenses</i>	10,800.00	634,826.00
<i>Repairs & Maintenance</i>	73,391.00	–
<i>Bank Charges</i>	3,172.00	4,101.16
<i>Insurance Charges</i>	–	24,388.00
<i>Professional Fees</i>	7,932,000.00	270,000.00
<i>Security Charges</i>	–	939,765.00
<i>Auditors' Remuneration – Audit Fees</i>	352,000.00	75,000.00
<i>Miscellaneous Expenses</i>	8,643.00	44,393.62
Total	8,599,827.00	4,726,457.37

Out of the total expenditure, the major component pertains to "professional fees" amounting to Rs.79,32,000/-, incurred towards legal and professional services. In respect of the said payments, the assessee duly deducted tax at source, the details whereof are annexed at **page 87** of the **APB**. However, the Ld. AO, without affording any proper opportunity to the assessee, disallowed the entire expenditure. It was further submitted that during the impugned

assessment year, there was no revenue from operations and, accordingly, the entire expenditure incurred in the course of business activities was capitalized as part of the construction cost of the project. Ignoring this material fact, the Ld. AO disallowed the entire amount of “other expenses.” The Ld. AR invited our attention to **APB** pages **96 to 108**, wherein the assessee had furnished all requisite documentary evidence in support of its claim. Nevertheless, without verifying the same, the Ld. AO proceeded to pass the assessment order. The Ld. AR further contended that the Ld. CIT(A) erroneously observed that the impugned amount was debited to the Profit & Loss Account. In this regard, our attention was drawn to **APB** pages **34 to 86**, enclosing the return of income for A.Y. 2017-18. On perusal thereof, it is evident that although the amount was initially debited to the Profit and Loss Account, the entire expenditure was ultimately capitalized as part of the construction of the project. The audited financial statements for A.Y. 2017-18 are placed on record at **APB** page **33**.

5. The Ld. DR supported and relied upon the orders of the revenue authorities.

6. We have heard the rival submissions and carefully perused the material available on record. The assessee is a real-estate developer and builder. During the impugned assessment year, the assessee incurred expenditure under the head “Other Expenses” amounting to Rs.85,99,827/-, clearly indicating that the expenses were incurred wholly and exclusively for business purposes. Out of the said amount, legal and professional expenses of Rs.79,32,000/- were incurred, on which due tax was deducted at source. From the record, it is evident that the Ld.

AO granted only a limited time for compliance with the statutory notices. Although the assessee furnished the requisite documents on different dates, the same were not examined, and the assessment order was passed without due verification. The Ld. CIT(A) observed that the addition was justified since the amount was debited to the Profit and Loss Account and, therefore, not part of work-in-progress. However, such observation was made without proper appreciation of the audited financial statements.

Considering the totality of facts and circumstances, we are of the view that the assessee was not afforded a reasonable opportunity for verification of its documentary evidence. Accordingly, the matter is remanded to the file of the Ld. Jurisdictional Assessing Officer (JAO) for the limited purpose of verification of “other expenses” amounting to Rs.85,99,827/-. Needless to say, the assessee shall be afforded a reasonable opportunity of being heard in the set-aside assessment proceedings. So, the appeal of the assessee is allowed for statistical purpose.

ITA No. 5781/Mum/2025, AY 2019-20

7. The Ld.AR argued and filed a paper book containing **pages 1 to 189** which is kept on record. The only issue agitated before the bench related to addition of a sum of Rs.10,23,08,500/- u/s 41(1) of the Act. The assessee company is engaged in business of construction of the immovable property, one such property is under development during the year was at New Mumbai. The assessee purchased the land from the party, M/s Blue Circle Infratech for an amount of Rs.84,90,69,000/-. It is also noted that the assessee is maintaining a running and current account with the party and related to these transactions of the land, the assessee has made the various payments to the party amount to

Rs.74,67,60,500/- . Only the balance retained which amount to Rs.10,23,08,500/- as outstanding liability in assessee's books of accounts. The Ld.AR invited our attention on the ledger account of the assessee with the parties which is annexed at **APB** page **140 to 148**.

8. A survey was conducted at the premises of the party and it is informed that the party has set off the 'trade payable' with the assessee and the balance amount was written off as 'bad debt' in the books of the party, M/s Blue Circle Infratech. The Ld.AR further argued that currently, the assessee and the party is under litigation and the matter of dispute in court. Copy of the petition is enclosed in **APB** at pages **122 to 139**. The Ld.AR further stated that the party has filed a winding up petition before the Hon'ble Bombay High Court in company petition No. 956 of 2015 dated 06/02/2018 for recovery of the balance amount. But the Hon'ble High Court had observed that the assessee is not a commercial insolvent and capable of making the payment. Thus, the assessee is ready to make the payment and had disbursed a further sum of Rs.3 crores for fulfillment of their commitment. So, the financial dispute between the party and the assessee is currently going on. At this moment, the assessee cannot settle down the alleged 'trade payable' with the party u/s 41(1) of the Act. The Ld. AR stated that the alleged liability is also continuing in FY 2023-24 related AY 2024-25 (**APB** pages **64 to 113**).

9. The Ld. AR argued that the revenue has not supplied the copy of ledgers and accounts related to setting of bad debt by the party. No, cross examination was also allowed. The addition was made only relying on the assessment order

U/s 143(3) of the Act of the party dated 30/08/2021 where the party had confirmed that said amount is no longer payable by assessee. The Ld. AR respectfully relied on the order of Hon'ble High Court of Delhi in **Commissioner of Income-tax-III v. Shri Vardhman Overseas Ltd** reported in [2011] 16 taxmann.com 350 (Delhi) held that:-

"17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31st March, 2002. The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgement in writing. It says where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgement was so signed. In an early case, in England, in Jones v. Bellgrove Properties [1949] 2KB 700, it was held that a statement in a balance sheet of a company presented to a creditor- share holder of the company and duly signed by the directors constitutes an acknowledgement of the debt. In Mahabir Cold Storage v. CIT [1991] 188 ITR 91/56 Taxman 4ZF, the Supreme Court held:

"The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt."

In several judgments of this Court, this legal position has been accepted. In Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma [1997] 67 DLT 13, S.N. Kapoor J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgement. In Larsen & Tubro Ltd. v. Commercial Electric Works [1997] 67 DLT 387 a Single Judge of this Court observed that it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgement within the meaning of Section 18 of the Limitation Act. In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P.) Ltd. [1998] 73 DLT 593, the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Co. (P.) Ltd. (I.A. No. 7987/2004, decided on 30/4/2007) and it was held that the acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the

purposes of Section 18 of the Limitation Act. In Ambica Mills Ltd. v. CIT [1964] 54 ITR 167 (Guj.), it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgement for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgement is made need not be addressed to the creditors. In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31st March, 2002 of the accounts of the sundry creditors amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

10. The Ld.DR argued and stands in favour of the revenue authorities. The Ld. DR stated that the matter in Hon'ble Bombay High Court is no more pending and the order was passed on FY 2018-19. The Ld. DR invited our attention to appeal order page 13, para 6.2.5, which is extracted below:-

"6.2.5. Thus, from the above facts, it is amply clear that the amount of Rs. 10.23 crore due to M/s Blue Circle Infratech has been written off by M/s Blue Circle Infratech, which being part of the land and building purchased, constructed by the appellant and the same amount being shown as the unsecured creditor by the appellant in its balance sheet having reached a finality that the appellant would not pay the impugned amount of Rs. 10.23cr. It is also noted that till date there is no claim made by M/s Blue Circle Infratech, no case or anything pending against appellant in this regard and the appellant has not submitted any proof of having made payment of the impugned amount to M/s Blue Circle Infratech. Therefore, the said amount squarely falls within the scope of cessation of liability under sec 41(1) of IT act, accordingly it is held that the addition made by the AO is correct and holds good. Therefore, the ground 1 is dismissed."

11. We have carefully considered the rival submissions and perused the material available on record. The sole issue for our adjudication is whether the outstanding liability of Rs.10,23,08,500/- standing in the books of the assessee towards M/s Blue Circle Infratech can be treated as cessation of liability under

section 41(1) of the Act. It is an undisputed fact that the assessee continues to reflect the said amount as a trade payable in its books of account and has not written back the liability. Merely because the creditor has written off the amount in its own books or claimed it as bad debt, the same cannot, by itself, lead to a conclusion that the liability has ceased in the hands of the assessee.

Further, the record clearly shows that the parties are embroiled in ongoing civil litigation, including a winding-up petition before the Hon'ble Bombay High Court, wherein the Court has categorically observed that the assessee is not commercially insolvent and is capable of making payment. The assessee has also demonstrated its bona fides by making further payments of Rs.3 crores. In addition, the liability continues to be reflected in the subsequent financial years, including F.Y. 2023-24 relevant to A.Y. 2024-25, which clearly negates the presumption of remission or cessation. It is well settled that for invoking section 41(1), there must be a unilateral act of remission by the assessee or a bilateral settlement leading to cessation of liability. In the present case, there is neither any waiver by the creditor accepted by the assessee nor any evidence of settlement extinguishing the liability. The addition has been made solely on the basis of the assessment order of the creditor, without furnishing supporting documents or affording an opportunity of cross-examination, which is contrary to the principles of natural justice.

In view of the above facts and legal position & respectfully relying the order of **Shri Vardhman Overseas Ltd** (supra), we are of the considered opinion that the conditions precedent for invoking section 41(1) are not satisfied. Accordingly, the addition of Rs.10,23,08,500/- made under section 41(1) of the Act is deleted, and the ground raised by the assessee is allowed.

12. In the result, appeal of the assessee **ITA No. 5781/Mum/2025** is allowed and **ITA No. 5782/Mum/2025** is allowed for statistical purpose.

Order pronounced in the open court on 17/12/ 2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Mumbai,दिनांक/Dated: 17/12/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
MUMBAI
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI