

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 33/ALLD/2018
Assessment Year: 2013-14

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| M/s. Aakar Housing Developers Pvt. Ltd. B-21/62 , Kamachha, Varanasi-221001, U.P. | v. | Assistant Commissioner of Income Tax Circle-2, M.A. Road, Varanasi, U.P. |
| PAN:AAHCA1616Q | | |
| (Appellant) | | (Respondent) |

| | |
|------------------------|-------------------------|
| Assessee by: | Shri Ashish Bansal Adv. |
| Revenue by: | Shri A.K. Singh Sr. DR |
| Date of hearing: | 24.08.2022 |
| Date of pronouncement: | 16.09.2022 |

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 33/ALLD/2018 for assessment year 2013-14, is directed against appellate order dated 08.11.2017 passed by learned Commissioner of Income Tax(Appeals), Varanasi (hereinafter called "the CIT(A)") in Appeal No. 19/ACIT/C-2/VNS/2016-17, the appellate proceedings had arisen before Learned CIT(A) from assessment order dated 18.03.2016 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act"). We have heard both the parties in Open Court proceedings through physical hearing mode.

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-tax Appellate Tribunal, Varanasi (hereinafter called "the tribunal"), reads as under:

"1. Because of additions of Rs.55,36,000/- received as advance against sale of stock in trade i.e flats is against facts.

2. *Because the advance deposit received against sale does not qualify for addition u/s 68 of Income Tax Act being nature of trade advance.*

3. *Because order passed is in contrary to the facts and against the principle of equity and natural justice.”*

3. The brief facts of the case are that the assessee is engaged in business of construction of residential flats at Varanasi. The assessee filed return of income declaring income of Rs. 30,02,510/- , on 30th September, 2013. The case was selected by Revenue for framing scrutiny assessment under Section 143(3) read with Section 143(2) of the 1961 Act. During assessment proceedings, the AO observed that the assessee has not given any details with regard to advances received amounting to Rs. 54,00,000/- in aggregate . The assessee was confronted by AO that no details are being provided with respect to advances received to the tune of Rs. 54 lacs and in absence of details thereof, the same shall be treated as income of the assessee from undisclosed sources and shall be treated as unaccounted money of the assessee in benami names . The AO issued notices under Section 133(6) of the Act to all the parties in whose names advances were standing for verification of the identity, genuineness and creditworthiness of persons in whose names the advances were standing. The AO observed that the notices sent to Miss Nandini Singh and Laxmieshwar Singh returned back unserved with the remark that no person by the name was resident of the village. The assessee submitted that the registry of the flats has been done in the next year but the sale deeds of these two persons were not produced by assessee for verification of the fact. The assessee submitted before the AO that advances received from those two persons were for sale of flats belong to the Landlord, and therefore should not be treated as received by the assessee. The AO

rejected the contentions of the assessee as no evidences to support the same were submitted by the assessee. The assessee was asked by AO to produce parties for verification otherwise the entire amount of advance shall be treated as unexplained cash credit u/s. 68 , and at this stage on 20th January, 2016, the assessee added 17 more names against the advances received to cover the advance of Rs. 54,00,000/-. The AO observed that the assessee has closing stock of only 3 flats with regard to Vinayaka Project , but assessee has shown to have received advance from 17 persons against three flats. The AO observed that the assessee could not take advance of 17 persons against the unsold stock of 3 flats. It was further observed by AO that no dates were mentioned against name of 10 persons from whom advances were taken , and there is no evidence of the fact of these persons having paid amount to the assessee, and for the remaining seven persons, the AO observed that date could not be changed as the assessee had already mentioned the dates of payments while submitting details earlier. The AO observed that the date of receipts mentioned were for the month of April and May, 2012 , but the copies of receipts enclosed were dated 31st March, 2013 as the receipts could not be given on a back date being serially numbered. The AO also observed that the payments were also shown to be received in cash but the paying capacity of the depositors could not be satisfied . The AO also observed that no confirmation from these persons to the effect that they have paid the advance was given except copies of their PAN Cards and Aadhar Cards. The AO observed that the assessee has failed to satisfy mandate of section 68 as the assessee failed to satisfy the identity and creditworthiness of the persons from whom advances were received as also the assessee failed to establish the genuineness of the transactions. The AO added the advance of Rs. 68,000/-

each received from Miss Nandini Singh and Mr. Laxmieshwar Singh as income of the assessee , as unexplained cash credit by invoking provisions of Section 68 of the Act, and further amount of Rs. 54,00,000/- being unverified advances were added by AO as income of the assessee being unexplained cash credit, by invoking provisions of Section 68 , vide assessment order dated 18.03.2016 passed by AO u/s 143(3) of the 1961 Act, as under:-

| S. No. | Name | Amount |
|--------|----------------------|-------------|
| 1 | Miss Nalini Singh | 68,000/- |
| 2 | Mr. Laxmishwar Singh | 68,000/- |
| 3 | Unverified Advance | 54,00,000/- |

While making aforesaid additions, the AO also relied upon following judicial precedents:

- a) Hon'ble Supreme Court judgment and order in the case of CIT v. P. Mohankala , (2007) 291 ITR 278(SC)
- b) Hon'ble Delhi High Court judgment and order in the case of Rakesh Kalia v. CIT, reported in (2006) 286 ITR 357(Del. HC)
- c) Hon'ble Allahabad High Court judgment and order in the case of Ram Lal Agarwal v. CIT, reported in (2006) 280 ITR 547 (All. HC)
- d) Hon'ble Punjab and Haryana High Court judgment and order in the case of Acron Finance Private Limited v. CIT, reported in (2011) 13 taxmann.com 69(P&H HC)

4. Aggrieved by aforesaid assessment framed by the AO, the assessee filed first appeal before Ld. CIT(A). The ld. CIT(A) issued several notices to the assessee but none attended on behalf of the assessee nor any adjournments were sought, except on 28th September, 2017 when adjournment application was

filed by the assessee. On 6th October, 2017, Shri Sunil Kumar attended and filed part submissions. The matter was again adjourned by Ld. CIT(A) for 13th October, 2017 and Shri Amit Sen Gupta, CA attended and case was discussed, and again request was made to adjourn the case. The hearing of the appeal was adjourned to 8th Nov., 2017, but none attended on behalf of the assessee on 8th November, 2017 nor any adjournment application was filed. The ld. CIT(A) observed that the assessee is a habitual defaulter keeping in view conduct of the assessee. The ld. CIT(A) referred to various judicial precedent and observed that the law will aid those litigants who are vigilant, not those who sleeps upon their rights. The ld. CIT(A) dismissed the appeal filed by the assessee, vide appellate order dated 08.11.2017, by holding as under:

" 4. However, to decide the appeal it was thought proper to go through the assessment record to see the submissions made by the assessee as well as material on record. The Grounds of Appeal are as under:

- 1. Because additions of Rs. 54,36,000/- is made u/s 68 is unjustified and bad n law.*
- 2. Because the advance deposits received against sale does not qualify for addition u/s 68 of Income Tax Act, 1961.*
- 3. That the order passed is in contrary to the facts and against the principle of equity and natural justice.*

5. A perusal of assessment reveals that the A.O. has made the addition u/s 68 on account of amounts received from various persons as under:

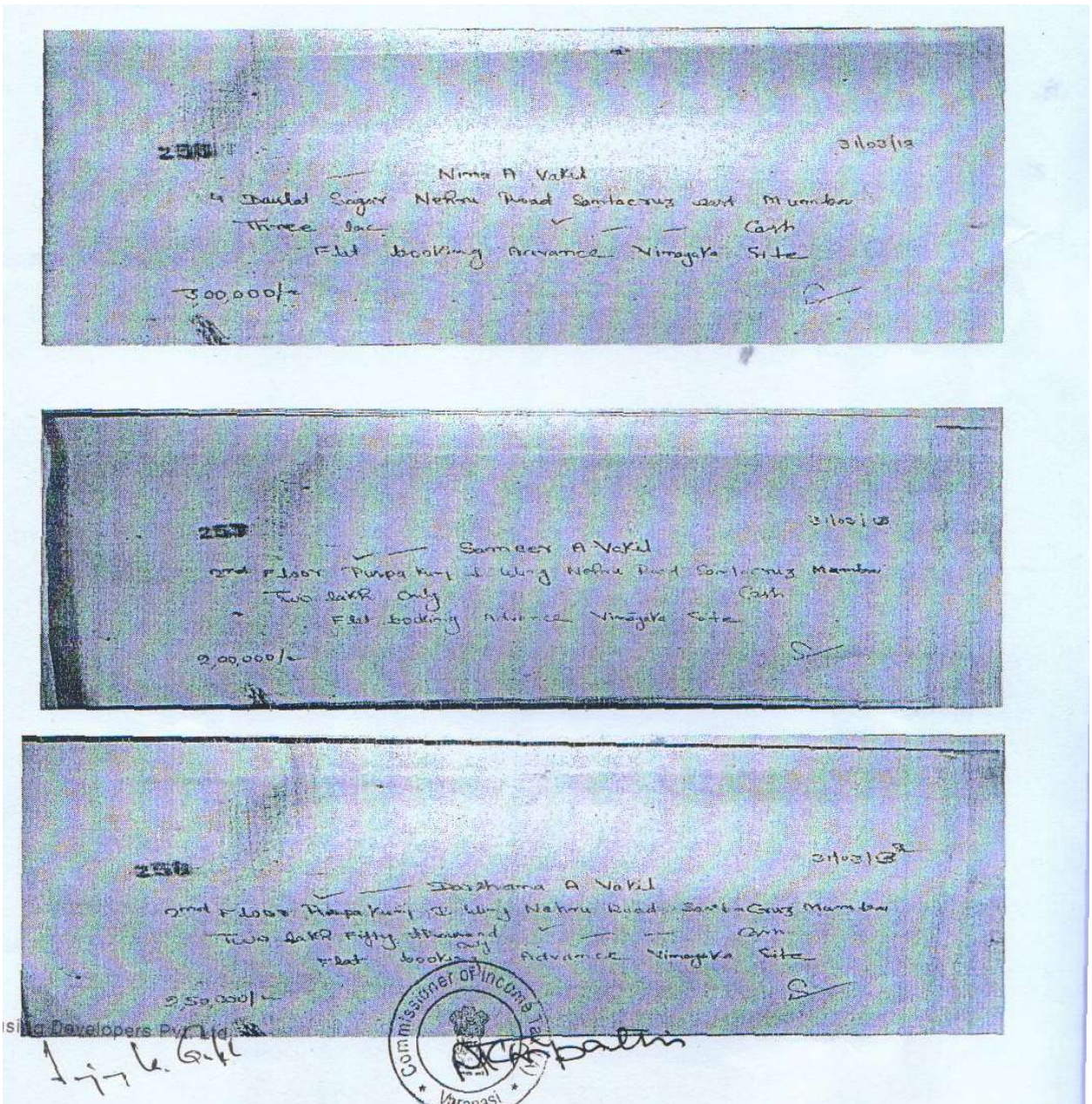
| S.No. | Name | Amount |
|-------|-----------------------|-------------|
| 1 | Miss Nalini Singh | 68,000/- |
| 2 | Mr. Laxmieshwar Singh | 68,000/- |
| 3 | Unverified Advance | 54,00,000/- |

6. Note-4 to the balance sheet as on 31.03.2013, contains details of 'other long term liabilities' (flat bookings) which has names of various persons including the name of the Ms. Nandini Singh, Mr. Laxmieshwar Singh and advanced from customers for flat

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bookings amounting to Rs. 68,000/-, 68,000/- and Rs. 54,00,000/- respectively received during the year under consideration. Vide order sheet entry point no.-6 dated 22.12.2015, the A.O. pointed out to the assessee that amount of Rs. 2,32,86,000/- has been shown (being other long term liabilities-flat bookings). He also noted that no details including addresses of the persons have been furnished and sought explanation of the assessee on the same. Vide order sheet entry dated 06.01.2016, the A.O. further noticed that details with regards to advance amounting to Rs. 54,00,000/- has not been filed and no evidence with regard to receipts of advance during the year have been filed. Vide its reply dated 18.01.2016, the counsel of the assessee submitted before the A.O. the list of the names of the persons from whom advances of Rs. 54,00,000/- have been received. The copy of the so called receipts issued for such advances were also submitted. The list of such persons as furnished by assessee counsel before the A.O. is as under:-

| | | |
|---|---------------------------|--------|
| a | Arvind N. Vakil HUF | 300000 |
| b | Arvind N. Vakil | 200000 |
| c | Nina A. Vakil | 300000 |
| d | Sameer A. Vakil | 200000 |
| e | Darshana A. Vakil | 250000 |
| f | Rakhee S Vakil | 250000 |
| g | Sonali A Vakil | 250000 |
| h | Anand Prasad | 250000 |
| i | Navneet Virender Singh | 400000 |
| j | Nikhil Ravindranath Singh | 400000 |
| k | Vijay P Vaje | 400000 |
| l | Babu Pandurang Vaje | 400000 |
| m | Bhupendra Rajendra Singh | 400000 |
| n | Santosh Sarayu Hari Sutar | 350000 |
| o | Saroj Rejendra Salian | 350000 |
| p | Santosh Viswakarma | 350000 |
| q | Durgesh Kumar Singh | 350000 |

It is seen that entire amounts of Rs. 54,00,000/- have been received in cash. The so called receipts are on plain papers without bearing the name of the company or the project for which the amounts were received and none of the receipts contains signature of the person from whom the amount was claimed to have been received. For the sake of reference three so called receipts are scanned below :



7. No agreement with these persons for flat bookings have been filed either before the A.O. or during the course of appellate proceedings. In the absence of any documents which can clearly show that the amounts were, infact received from these persons, the same clearly forms character of cash credit and the appellant has clearly failed to establish the creditworthiness and genuineness of such cash credit and accordingly, the addition made by the A.O. amounting to Rs. 54,00,000/- is confirmed.

8. Similarly, the appellant has not been able to establish the genuineness of the amounts received in the name of Ms. Nandini Singh and Laximeshwar Singh, Rs. 68,000/- each and accordingly, the addition of Rs. 1,36,000/ made by the A.O. is confirmed.

9. In the result, the appeal is dismissed.”

5. Aggrieved by the appellate order dated 08.11.2017 passed by Id. CIT(A), the assessee has filed second appeal with tribunal. The Learned counsel for the assessee opened arguments before the Division Bench of the tribunal . The Id. Counsel for the assessee submitted that booking advance to the tune of Rs. 54 lacs was received by Director of the company in cash in Mumbai from 17 person who booked flats in Vinayaka Project of the assessee situated at Varanasi ,which cash amount was deposited by said Director in Mumbai in the bank account of the assessee maintained with ICICI Bank. It was submitted that all the 17 bookings of flats against which aforesaid advance amount of Rs. 54 lacs was received were later cancelled by the applicants, and the entire amount of Rs. 54 lacs was refunded in cash in subsequent year to all these 17 applicants who had made bookings with the assessee. It was submitted that the AO made addition to the income of the assessee under Section 68 of the Act, and Id. CIT(A) confirmed the additions. Our attention was drawn to Para 3.5 onwards of the assessment order passed by AO and also to Para 6 of appellate order passed by Id. CIT(A). It was submitted that there was cash receipts from all these 17 persons aggregating to the tune of Rs 54,00,000/- and it was submitted that books of accounts were not rejected by AO/CIT(A). It was submitted that all the payments were received in cash and were refunded also in cash as all these 17 bookings were later cancelled, and the amount stood refunded in cash in the subsequent year. Our attention was drawn to Balance Sheet of the assessee which is placed in paper book at page number 16 , wherein said amount of Rs. 54 lacs was disclosed under the head

“Other Long Term Liabilities(Flat Booking)’. Our attention was also drawn to Page No. 24-25 of the paper-book , and it was submitted that this amount of Rs. 54 lacs was received from following persons and details were submitted before the AO , as under:

| S.No. | Name | Amount(In Rs.) |
|-------|---------------------------|----------------|
| a. | Arvind N. Vakil HUF | 3,00,000/- |
| b. | Arvind N. Vakil | 2,00,000/- |
| c. | Nina A. Vakil | 3,00,000/- |
| d. | Sameer A. Vakil | 2,00,000/- |
| e. | Darshana A Vakil | 2,50,000/- |
| f. | Rakhee S Vakil | 2,50,000/- |
| g. | Sonali A Vakil | 2,50,000/- |
| h. | Anand Prasad | 2,50,000/- |
| i. | Navneet Virender Singh | 4,00,000/- |
| j. | Nikhil Ravindranath Singh | 4,00,000/- |
| k. | Vijay P Vaje | 4,00,000/- |
| l. | Babu Pandurang Vaje | 4,00,000/- |
| m. | Bhupendra Rajendra Singh | 4,00,000/- |
| n. | Santosh Sarayu Hari Sutar | 3,50,000/- |
| o. | Saroj Rajendra Salian | 3,50,000/- |
| p. | Santosh Viswakarma | 3,50,000/- |
| q. | Durgesh Kumar Singh | 3,50,000/- |

Our attention was also drawn to Page 72 to 76 of the paper-book wherein details of flat bookings are placed , and page No. 85 to 87 of the paper-book, wherein bank statement of ICICI Bank are placed in which the amounts aggregating to Rs. 54 lacs stood deposited in cash during the period 25th April, 2012 to 16th May, 2012. It was submitted by Id. Counsel for the assessee that only three flats in this Vinayaka Project were unsold but booking of 17 flats was accepted from the aforesaid persons in cash in Mumbai , which cash of Rs. 54 lacs stood deposited in Mumbai in bank account maintained with ICICI Bank . It was submitted that certain landlords in the aforesaid Vinayaka project authorized the company to sell their flats in Vinayaka Project and

hence fresh booking was taken from 17 persons on behalf of the landlords although company only had inventory of 3 unsold flats in Vinayaka Project. Thus, it was submitted that the landlords wanted to sell their flats and the assessee sold these 17 flat on behalf of the landlords . It was submitted by Id. Counsel for the assessee that the assessee has now filed an Affidavit of Mrs. Sadhna Gupta , Director of the assessee company under Rule 10 and 29 of the Income-tax (Appellate Tribunal) Rules, 1963 along with supporting documents , which are placed on record in file. It was submitted that the assessee was having sufficient cash balance in hand on these days when cash stood deposited in bank and there was no need to show cash receipts against in-genuine bookings of flats. It was submitted that confirmations are sought from all these 17 persons who made booking of flats and paid cash as booking advance, and infact confirmation are received from most of these persons which are placed on record , and the same can be verified by authorities below. Our attention was drawn to Para 3.3 - 3.4 of the assessment order passed by AO with respect to addition of Rs. 68,000/- each made by AO and which stood later confirmed by Id. CIT(A) , with respect of the amount of Rs. 68,000/- each received from Miss. Nandini Singh and Mr. Laxmieshwar Singh. It was submitted that income of Rs. 68000 each received from aforesaid two persons, were disclosed in the subsequent year. It was submitted by Id. Counsel for the assessee that these two persons gave money for doing some extra work in their flats which the assessee did. Our attention was drawn to page no. 11-14 of the paper-book , which are ledger account's of these two parties in the assessee's books of accounts for the impugned assessment year as well for subsequent assessment year. Our attention was also drawn to Page No. 6 to 10 of the paper-book , and it was submitted that finishing work was

done in the flats of these two persons in the subsequent year , and the amount received in this year of Rs. 68000 each was booked as income in the subsequent year .The Id. Counsel for the assessee made prayers that additions to the tune of Rs. 68000 each as was made by AO with respect to amounts received from Ms. Nandini Singh and Mr. Lakshmieswar Singh be deleted . It was also submitted that with respect to additions of Rs. 54,00,000/- , the aforesaid additions should be deleted or in alternative the matter can be set aside to the file of AO for fresh adjudication . It was reiterated that an amount of Rs 54,00,000/- which was received as booking advance for booking of 17 flats, were refunded in cash in the subsequent financial year to all the 17 persons who earlier booked 17 flats in Vinayaka Project, as all the 17 booking were cancelled by the applicants.

5b. The Ld. Sr.DR on the other hand, submitted that there were two credit of Rs. 68,000/- each being amount given by Miss. Nandini Singh and Mr. Laxmieswar Singh, and further an aggregate amount of Rs. 54,00,000/- was received from seventeen different persons towards alleged booking of 17 flats in Vinayaka Project at Varanasi. It was submitted that Rs. 68000/- each was received from Miss. Nandini Singh and Mr. Laxmieswar Singh on 31.07.2012 , by cheque but that does not make it acceptable as being not chargeable to tax. Our attention was drawn to page No. 11 and 13 of the paper-book, where ledger account of these two persons in the books of accounts of the assessee are placed. It was submitted by Ld. Sr. DR that regular bills are not filed by assessee and merely quotations dated 31.5.2013 were filed by the assessee which are self made unilaterally by assessee and no third party quotations are filed , which are placed in paper book at page number 7 & 8, of the alleged work stated to have been done by the assessee

with respect to these two persons . It was submitted by ld. Sr. DR that merely filing quotation does not make the transaction genuine. It was submitted by ld. Sr. DR with respect to an aggregate amount of Rs. 54 lacs received from 17 persons allegedly for booking of seventeen flats in Vinayaka Project that the assessee has merely furnished the list of the names of the creditors/ persons from whom the booking amount was received in cash and no details were furnished, before the AO as well before ld. CIT(A) and the entire transaction of accepting bookings is in cash and these amounts were claimed to have been returned in the subsequent year in cash . It was submitted that both the transaction for receiving the booking amount as well returning/refunding of the booking advance is stated to be in cash, while no agreement was filed by the assessee before the AO as well as ld. CIT(A) , and no agreement is even filed before ITAT. It was submitted by ld. Sr. DR that the assessee was having unsold inventory of three flats in the Vinayaka Project , and how the assessee has accepted bookings from 17 persons for 17 flats, it was submitted that it is not possible at all. The Ld. Sr. DR submitted that it is claimed by the assessee that there is an agreement of the assessee with landlords in Vinayaka Project, but the assessee has not submitted any details whatsoever before AO as well the CIT(A) and also before the tribunal no such agreements with so called landlords are produced , and it was submitted that the genuineness of the transaction could not be proved by the assessee, as well the assessee could not prove creditworthiness of the creditors/persons who made bookings of the flats and paid Rs. 54 lacs to the assessee. The ld. Sr. DR would support the additions made and it was submitted that for the first time the assessee is producing an additional evidence before ITAT , which should not be admitted. The ld. Sr. DR would make prayers for confirming both the additions.

5c. The Ld. counsel for the assessee submitted in rejoinder that Section 68 of the 1961 Act has no application to the facts of the case, as the assessee has sold flats.

6. We have heard rival contentions and perused the material on record. We have observed that assessee is engaged in the business of construction of residential flats at Varanasi. The first issue before us for adjudication is with respect to additions made by AO with respect to an aggregate amount of Rs. 54 lacs claimed by the assessee to be received in cash from seventeen different persons towards booking advance amount for booking seventeen flats in Vinayaka Project at Varanasi. The said cash was claimed by assessee to be received in Mumbai by Director of the assessee company from the persons who booked these seventeen flats in Vinayaka Project(Varanasi) , and it is claimed by assessee that the said Director had deposited aforesaid cash of Rs. 54 lacs at Mumbai with ICICI Bank, between 25th April, 2012 to 16th May, 2012. The list of such seventeen persons who as per assessee claim gave Rs. 54 lacs for booking seventeen flats in Vinayaka Project(Varanasi), are as under:

| S.No. | Name | Amount(In Rs.) |
|-------|---------------------------|----------------|
| a. | Arvind N. Vakil HUF | 3,00,000/- |
| b. | Arvind N. Vakil | 2,00,000/- |
| c. | Nina A. Vakil | 3,00,000/- |
| d. | Sameer A. Vakil | 2,00,000/- |
| e. | Darshana A Vakil | 2,50,000/- |
| f. | Rakhee S Vakil | 2,50,000/- |
| g. | Sonali A Vakil | 2,50,000/- |
| h. | Anand Prasad | 2,50,000/- |
| i. | Navneet Virender Singh | 4,00,000/- |
| j. | Nikhil Ravindranath Singh | 4,00,000/- |
| k. | Vijay P Vaje | 4,00,000/- |
| l. | Babu Pandurang Vaje | 4,00,000/- |
| m. | Bhupendra Rajendra Singh | 4,00,000/- |

| | |
|------------------------------|------------|
| n. Santosh Sarayu Hari Sutar | 3,50,000/- |
| o. Saroj Rajendra Salian | 3,50,000/- |
| p. Santosh Viswakarma | 3,50,000/- |
| q. Durgesh Kumar Singh | 3,50,000/- |

It is further claimed by the assessee that none of the seventeen persons who booked the seventeen flats in Vinayaka Project (Varanasi) continued with the flats, and rather all these seventeen persons who booked these 17 flats cancelled all the seventeen flats and in the subsequent year the said booking advance of Rs. 54 lacs were refunded by assessee in cash to all these 17 persons who earlier booked 17 flats in Vinayaka Project(Varanasi). The assessee had unsold closing stock of three flats in Vinayaka Project(Varanasi) , when these 17 bookings were claimed to be accepted from 17 different persons. The assessee has claimed that the landlords(owners) in its Vinayaka Project(Varanasi) who earlier booked flat with it , had mandated assessee to sell their flats on their behalf , and it is claimed by assessee that against the mandate of these landlords(owners) in Vinayaka Project(Varanasi), the assessee accepted bookings from these seventeen persons for selling the flats owned by landlords/owners. It is pertinent to mention that even at the stage of tribunal as of now, the assessee has not disclosed the particulars of flats in Vinayaka Project (Varanasi) which were booked by these seventeen persons who have stated by assessee to have given cash of Rs. 54 lacs to the assessee. It is also pertinent to mention that no agreements with these 17 persons are produced even till the stage of tribunal as of now. It is further pertinent to mention that even uptill the stage of tribunal as of now, no cancellation agreement is produced by the assessee with these 17 persons cancelling their so called booking of 17 flats. Even the details of the seventeen landlords(owners) who gave mandate to the assessee to sell their flats in

Vinayaka Project(Varanasi), nor any agreement to that effect is furnished by the assessee. The amount of Rs. 54 lacs is claimed to be received by the assessee in cash and also the same is claimed to be refunded by assessee in cash, the onus is thus very heavy on the assessee. Even, the assessee at this stage also could not produce the bank statements, ITR etc. of the 17 persons who booked 17 flats in Vinayaka Project(Varanasi) with the assessee to prove the creditworthiness as well genuineness of these persons. Merely submission of Aadhar Card and PAN card is not sufficient , as the onus is very heavy on the assessee as the assessee is claiming that Rs. 54 lacs were received in cash from these 17 persons for booking 17 flats as against unsold stock of 3 flats in Vinayka Project at Varanasi, and further claim is made that none of these persons continued with booking and all bookings stand cancelled with claim that the entire Rs. 54 lacs was refunded by assessee . Non agreements or details of flats or cancellation deed is produced , nor any agreements with so called land lords is produced. In our considered view, the assessee is not able to discharge its onus as is mandated u/s 68 of the 1961 Act. The amount stood credited in its books of accounts, and it is for the assessee to satisfy as to identity and creditworthiness as well genuineness of the transaction. The assessee has now at this stage as late as in 23rd August, 2022, i.e. one day prior to hearing before tribunal on 24th August, 2022 has come up with an affidavit along with some confirmations purported to be from some of these persons who allegedly gave cash to assessee to book flats. The assessee was given sufficient opportunity of being heard by the authorities below and thereafter based on facts and circumstances of the case as the assessee was not able to discharge its onus as is cast u/s 68 of the 1961 Act, the additions were made , which later stood confirmed by the ld. CIT(A). The assessee did not co-

operated with the AO nor with Id. CIT(A) , as is emanating from the orders of authorities below, as complete details were never furnished. Even before us, the assessee could not prove the genuineness of transaction as well creditworthiness of the persons who gave cash to the assessee to the tune of Rs. 54 lacs for alleged booking of 17 flats. No evidences as to booking of flat by way of agreements , cancellation of flats and also agreements with the landlords who mandated assessee to sell their flats is produced. Even the cash receipt are dated 31/03/2013 with no mention of details of flat, while the cash is claimed by the assessee to be received in April/May 2012. Now, at this stage on 23.08.2022(i.e. one day prior to hearing) fresh evidences are filed by assessee such as affidavit and some confirmations , without permission of the Bench, as is mandated under Rule 29 of the Income-tax(Appellate Tribunal) Rules, 1963. We could have allowed the admission of additional evidence, but the entire facts and circumstances of the case including evidences sought to be produced, does not inspire our confidence in the theory set up the assessee as outlined above, which is highly improbable and we are not satisfied with the explanation submitted by the assessee. The contentions of the Id. Counsel for the assessee that Section 68 is not applicable to the facts and circumstances of the case, is rejected as the assessee is not able to disclose the true and correct sources of receipt of the amount of Rs. 54 lacs in cash, and we hold that this amount was from undisclosed sources as is an unexplained cash credit in the assessee's books of accounts which is hit by Section 68 of the 1961 Act. We are of the considered view that Section 68 of the Act creates a legal fiction which cast obligation on the assessee to explain to the satisfaction of the AO about nature and source of credit in case any amount is found credited in the books of the assessee maintained for any previous year. This creates a legal fiction

and in case the assessee did not offer explanation to the satisfaction of the AO as to the nature and source of credit of any amount found credited in the books of the assessee for any previous year by cumulatively satisfying the AO about the identity and creditworthiness of the creditor and about the genuineness of the transaction, the amount found credited in the books of the assessee shall be treated to be the income of the assessee as unexplained income under legal fiction created by Section 68 of the Act. The Section 68 of the Act created a legal fiction which does not require that the Revenue has to show the sources of the income before bringing the amount to tax since the amount is found to be credited in the books of the assessee in case the assessee has not offered explanation to the satisfaction of the AO. Thus, section 68 of the Act cast obligation on the assessee where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of credit thereof or the explanation offered by the assessee is found not satisfactory in the opinion of the AO, the sum so credited may be treated as income and charged to income-tax as income of the assessee of that previous year. The burden/onus is cast on the assessee and the assessee is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s. 68 of the Act as an income. The burden is very heavy on the assessee to satisfy cumulatively the ingredients of Section 68 of the Act as to identity and establish the credit worthiness of the creditors and genuineness of the transaction to the satisfaction of the AO, otherwise the AO shall be free

to proceed against the assessee company and make additions u/s. 68 of the Act as unexplained cash credit. The use of the word „any sum found credited in the books ' in Section 68 indicates that it is widely worded and the AO can make enquiries as to the nature and source thereof. The AO can go to enquire/investigate into truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of accounts and in case the AO is not satisfied with the explanation of the assessee with respect to establishing identity and credit worthiness of the creditor and the genuineness of the transactions, the AO is empowered to make additions to the income of the assessee u/s. 68 of the Act as an unexplained credit in the hands of the assessee company because the AO is both an investigator and adjudicator. Thus, in the instant case, we hold based on facts and circumstances of the case, that the assessee fails to satisfy the mandate of Section 68 as creditworthiness of these persons as well genuineness of the transactions could not be proved by the assessee, and we sustain the addition of Rs. 54 lacs as was upheld by Id. CIT(A). The assessee fails on this issue. We order accordingly.

6b. So far as the other two additions to the tune of Rs. 68000/- each being amount received from Mrs. Nandini Singh and Mr. Lakshmireshwar Singh by cheque which was credited in assessee's bank account, and the assessee has claimed that the said amounts were towards finishing work in the flats. It is claimed that the said finishing work was done in the subsequent year and the amount was offered for taxation by assessee in immediately succeeding year. The assessee has also filed quotation issued by it to these two persons for doing the finishing work . The complete name and addresses of these two persons are on record. In the facts and circumstances of case, we are of the

view that claim of the assessee requires verification, and the matter is restored back to the file of AO for fresh adjudication. We clarify that we have not commented on the merits of the issue. The AO shall provide proper and adequate opportunity of hearing to the assessee in set aside remand proceedings. We order accordingly.

7. In the result, the appeal of the assessee in ITA no. 33/Vns/2018 for ay: 2013-14 is partly allowed for statistical purposes. We order accordingly

Order pronounced on 16/09/2022 at Allahabad , U.P. in accordance with Rule 34(4) of Income-Tax (Appellate Tribunal) Rules, 1963

Sd/-

**[VIJAY PAL RAO]
JUDICIAL MEMBER**

Sd/-

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**

DATED: 16/09/2022

KD Azmi

Copy forwarded to:

1. Appellant – M/s. Aakar Housing Developers Pvt. Ltd., B-21/62, Kamachha , Varanasi-221005, U.P.
2. Respondent –Assistant Commissioner of Income Tax, Circle 2 , Varanasi
3. The ld. Sr.DR , ITAT, Varanasi, U.P.
4. CIT, Varanasi, U.P.
5. The CIT(A), Varanasi, U.P.
6. The Guard File