

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

I.T.A.No.6455/Del/2013
Assessment Year : 2007-08

I.T.A.No.6456/Del/2013
Assessment Year : 2008-09

DCIT,
Central Circle-11,
Room No. 364,
ARA Centre,
Jhandewalan Extn.
New Delhi.
(Appellant)

vs Metro Management Service Pvt. Ltd.,
L-60B, Malaviya Nagar,
New Delhi.
(PAN: AACCM1766A)

(Respondent)

Appellant by: S/Shri Atiq Ahmad, Sr. DR, Gajanand Meena CIT DR

Respondent by : None

Date of hearing: 19.8.2015

Date of pronouncement: 14.10.2015

ORDER

PER BENCH

These appeals by the revenue have been directed against the order of CIT(A)-XXXI, New Delhi both dated 19.3.2013 in Appeal No. 414/2013-14 & 415/2013-14 for AY 2007-08 and 2008-09 respectively.

ITA No.6455/D/2013 for AY 2007-08

2. The Revenue has raised following grounds in this appeal:-

“(1) The order of Ld.CIT (A) is not correct in law and facts.

(2) On the facts and in the circumstances of the case, the Commissioner of Income Tax (A) has erred in law and on facts in deleting the addition of Rs.2,26,00,000/- made by AO on account of investment in land from undisclosed income.

(3) On the facts and in the circumstances of the case, the Commissioner of Income Tax (A) has erred in law and on facts in deleting the addition of Rs.63,00,000/- made by AO Under Section.68 of the I T Act on protective basis.”

3. At the outset, it is relevant to mention that when the appeals were called for hearing, neither the assessee nor his representative appeared before us nor any adjournment applications were filed on behalf of the assessee. However, on careful perusal of the appeal files and relevant material placed on record before us, inter alia assessment orders, impugned orders of the CIT(A), we are of the view that these appeals can be disposed of in the absence of the assessee after hearing the ld. DR. Hence, we proceed to decide the appeals.

Ground No. 1 of the revenue

4. Ld. DR supporting the action of the AO submitted that the AO observed that the assessee share in cash payment of 34.70 crores for purchase of land is taken at Rs.2.26 crores which was consideration as investment in land from undisclosed income. Hence, to protect the interest of the revenue, a protective addition was made in the hands of the assessee and substantive addition was made in the hands of M/s Om Metal Developers Private Limited. Ld. DR

vehemently contended that the CIT(A) deleted the addition without any justified reason, hence, the same may be set aside by restoring that of the AO.

5. On careful perusal of the assessment order and impugned order, we note that the CIT(A) granted relief to the assessee with following observations and conclusion:-

“ 4.2 Ground No.2

4.2.1 The AR has made an addition of Rs. 2.26 crores towards appellants share in the cash paid by OM Metal Developers Pvt. Ltd. The relevant facts are mentioned at para 3 of the assessment order which is reproduced below:

During the course of search operation on 06/01/2011 an agreement to sale dated 0710812006 was found & seized from office premises of Shiv-Vani Group at F-315, Ground Floor, Lado Sarai, New Delhi vide page 135 to 146 of annexure A -5 of party B-14, Page 4 of annexure A-I seized from residence of R.K. Somani from his Malviya Nagar residence confirms that 10 acre of land was purchased by the Om Metal Group & Metro Management Services Private Limited (of Shiv Vani Group) at the rate of 5 crore per acres. However, only 10 acres was purchased for a consideration of Rs. 20.30 crores in the books of Om Metal Developers Private Limited. As per paper seized from residence of R K Somani shows consideration paid is 55 crores (i.e. 10 crores @5 crore per acre), the difference of Rs. 34.70 crores (i.e. 55 crore 20.30 crores) has been paid in cash. The assessee company M/s Metro Management Services Private Limited had 6.5% shares in M/s Om Metal Developers Private Limited; Hence the share of M/s Metro Management Services Private Limited in cash payment of Rs. 34.70 crores comes to 2.26 crores approx.

4.2.2 The AR had submitted before the AO that the actual purchase of the land was not done by the appellant. The purchaser was OM Metal Developers Pvt. Ltd. The amount paid by the appellant was all in cheque and that the same has been duly accounted in its books. It was submitted before the AO that the appellant had only paid Rs. 5.10 crores as loans to the said

OM Management Services Pvt. Ltd. towards its share in the property. The appellant also submitted confirmation from the said party before the AO. The appellant also substantiated its arguments on the lines that even by worst of the calculations the total amount paid, including the cash portion, works out to Rs. 75 crores. The assessee's share of 6.5% works out to 4.88 crores against the paid amount of 5.1 crores. Hence the assessee was not liable for any addition to its total income. The relevant paragraph containing AR's arguments made before the AO is reproduced below:

The assessee company is having only 6.5% share for which it had paid the amount of Rs. 5.10 crores through banking channel for its share. The 6.5% share of Rs. 55 crore works out to Rs. 3.58 crore (Approx) and even if the amount paid of Rs. 55 crores & advance of another 10 acre of land for Rs. 20 crores (Approx) is considered the total works out to Rs. 75 crores and the of land for Rs. 20 crores (Approx) is considered the total works out to Rs. 75 crores and the assessee company's 6.5% shares comes to Rs. 4.88 crores against the paid amount of Rs.5.10 crores.

4.2.3 The AO has accepted the appellant's arguments. He has observed that for the purchase of 10 acres of land the purchaser i.e. Om Metal Developers Pvt. Ltd. have paid Rs. 34.70 crores in cash and Rs. 20.30 crores by cheque. The relevant paragraph of the AO's conclusion in this regard is as under:

From the above it is clear that Rs. 20.30 crores has been paid through cheque and the balance amount of Rs. 34.70 crores (i.e. 55 crores - 20.30 crores has been paid in cash by the purchaser (M/s. Om Metal Developers Private Limited). The assessee company M/s. Metro Management Services Private Limited has 6.5% shares in M/s. Om Metal Developers Private Limited. The share of the assessee company in cash payment comes to Rs. 2.26 crores approximately.

4.2.4 The AO has however, made an addition of Rs. 2.26 crores on protective basis in order to protect the interest of Revenue.

4.2.5 I have considered the submissions of the AR on the issue. The appellant has been able to convince the AO that it had only made cheque payments to Om Metal Developers Pvt. Ltd. and no cash payment has been made by the appellant. The AO himself has given a finding that the cash payment has been made by Om

Developers Pvt. Ltd. Since the purchase of property is not in the name of the appellant company, in my view, there are not enough evidences to attribute "cash payment" to the appellant company. Further the AO also does not say that the cash payment was made by the appellant company. The AO merely says that the appellant's shares in the cash payment comes to Rs. 2.26 crores.

4.2.6 It is also noted that even if the amount paid, including the cash portion, on the above transaction is taken at Rs. 75 crores which includes Rs. 20 crore advance, for another 10 acre of land, the appellant's share in the said amount works out to much less than the amount paid by the appellant by cheque. The AO accepts that the cash payment has been made by Om Metal Developers Pvt. Ltd. Having done so, no purpose will be served by merely adding the amount on protective basis. The finding of the AO itself is against such addition. In view of this, the addition made on the issue on protective basis is hereby deleted."

6. From operative part of the said order, we observe that the CIT(A) noted that the appellant/assessee was able to convince the AO that it had only made cheque payments to M/s Om Metal and no cash payment has been made by the assessee company. The CIT(A) also noted that the cash payment has been made by M/s Om Metal and the property was not purchased in the name of present assessee and as such there is not enough evidence to allege 'cash payment' to the assessee and the AO also does not say that cash payment was made by the assessee. Furthermore, the CIT(A) also concluded that even if the amount paid, including cash portion, on the above transaction is taken at Rs. 75 crores (including Rs. 20 crores advance). For another 10 acre land, the extant assessee's share in the said amount worked out to much less than the amount paid by the assessee by cheque. In this situation, when the AO accepts that the

cash payment has been made by M/s Om Metal then protective addition in the hands of assessee is not sustainable and the same was correctly deleted by the first appellate authority i.e. CIT(A). We are unable to see any valid reason to interfere with the impugned order and we uphold the same on this ground. Accordingly, ground no. 1 of the Revenue being devoid of merits is dismissed.

Ground No. 2 of the Revenue

7. Apropos ground no.2 of the Revenue, we have heard arguments of Id. DR and also carefully perused the relevant material placed on record before us. Ld. DR submitted that the AO noticed that as per facts brought on record by the AO, Shri N.K. Jain was an entry operator who was involved in giving entries to various group concerns of Shri Vani Group which was also proved by the various pages of seized material. Ld. DR further pointed out that the substantial addition was made in the hands of Shiv Vani Oil & Gas Exploration Services Ltd., hence, protective addition was rightly made in the hands of the assessee who was beneficial owner of these transactions. Ld. DR vehemently contended that the CIT(A) granted relief to the assessee without any justified reason, hence, impugned order may kindly be set aside by restoring that of the AO.

8. On careful perusal of the impugned order, we noted that the CIT(A) granted relief to the assessee by observing as under:-

“4.3.4 It is noticed that the amount mentioned in the said page of the annexure against the appellant's name is very much

supported by credit entries III the appellant's bank account. At page 21 of their paper book the appellant has enclosed bank statement of the appellant maintained with ABN Ambro Bank (produced before the AO), wherein there are following entries in all adding up to 1,62,00,000.

Date	Description	Deposit
02-11-2006	By CLEARING - 673410 (BRABDURKE ROAD)	20,00,000.00
08-11-2006	By CLEARING - 673411 (BRABDURKE ROAD)	28,00,000.00
2-12-2006	By CLEARING - 673412 (BRABDURKE ROAD)	15,00,000.00

4.3.5 It has been explained that wherever there was cash element in the transaction with Mr. Jain, the appellant has duly included the same in their surrendered income. The details found at page 56 of B14.A14 are not having any cash element not accounted in the assessee's books. It has been further submitted that since Mr. Jain was maintaining the bank accounts at Kolkota, his name appears at the top of the page. However the amounts written against various names of the companies are not cash transactions but bank transactions duly reflected in the books and explained to the AO with all supporting documents during the assessment proceedings.

4.3.6 I find that none of the credit entries relate to any cash deposits. They are all either bank-to-bank transfers or cheque deposits. The narrations in the bank account give the details of the account nos. from where the amount has been received or the cheque numbers. I also observe that there appears to be no dispute about amounts having been received in the appellant's bank account through banking channels. The AO also admits in the assessment order that all these transactions have been duly reflected in the bank accounts of the appellant when he states that "unexplained transaction materialized through banking channel". However he holds that the source is not explained.

4.3.7 It is observed that in the assessment proceedings the complete books of accounts, bank statements & transactions were explained to the AO and no adverse inference was drawn by

the AO on the books of accounts & transactions mentioned therein.

4.3.8 The AO has added Rs. 63 Lakhs. The AR has submitted that the same represents share application amount received from group concern which is very much assessed by the same AO. The amount of Rs. 63 Lakhs was received from the NKP Holding Pvt. Ltd. on 3 different dates. Since the bank account was maintained by Mr. N. K. Jain his name appears at the top of the page. The source of the amount, is thus explained fully. Further the entries to this fact are also available in the bank account statement of the appellant company with Punjab National Bank on the respective dates. The AR had also submitted before the AO confirmation from NKP holding Pvt. Ltd., the copy of which has also been submitted in the paper book at Page No. 39. The AR has also enclosed copy of assessment order of NKP holding Pvt. Ltd. for A.Y. 2007-08 passed by the same assessing officer on 28.03.2013 and submitted that in the said order, the AO has not disturbed the total income returned by the AO.

4.3.9 Thus it is clear that the amount added by the AO was received from NKP Holdings Pvt. Ltd. a group concern which is also assessed to tax by the Assessing Officer. In the assessment order of NKP Holdings Pvt. Ltd. there is no adverse finding of the AO. Considering these facts, there is no ground for holding the amount as unexplained. Thus Rs. 63 lakh added on protective basis is hereby deleted.”

9. On bare reading of above operative part of the impugned order, we observe that the CIT(A) noted that wherever there was a cash element in the transaction with Mr. Jain, the appellant has duly included the same in the surrendered income. However, the details found at page 56 of B-14/A-14 (being seized material) were not having any cash element not accounted in the assessee's books. The CIT(A) has further observed that during the assessment proceedings, the complete books of accounts, bank statement and transactions were explained to the AO and no adverse inference was drawn by the AO

therein. The CIT(A) explicitly held that none of the credit entries relate to any cash deposit and they are either Bank to Bank transfers or cheque deposits and hence, undisputedly, alleged amounts were received by the assessee through banking channels which were also duly reflected in the bank accounts of the assessee. In this situation, the CIT(A) did not find himself in agreement with the conclusion of the AO that source of impugned amounts/entries is not explained.

10. While we analyse last operative paras of CIT(A), it is amply clear that the AO added Rs.63 lac received from NKP Holding Pvt. Ltd. (NKPH) on three different dates and source of the same was fully explained as the bank account was maintained by Shri N.K. Jain in his name which appeared in the copy of the bank statement. These entries were very well reflected in the bank statement of account with Punjab National Bank. The CIT(A) also noted that confirmation from NKPH was submitted before the AO during assessment proceedings and from the assessment order for AY 2007-08 passed in the case of NKPH, the AO has not disturbed the returned amount and the same has been accepted. In view of above noted facts, the CIT(A) rightly concluded that the amount added by the AO was received by the assessee from NKPH and when there is no adverse inference in the case of NKPH, the same cannot be held as unexplained in the case of assessee. Hence, we are in agreement with the conclusion of the CIT(A) that the protective addition in the hands of assessee is not sustainable and he

rightly directed the AO to delete the same. Accordingly, ground no. 2 of the revenue being devoid of merits is also dismissed.

ITA No. 6456/Del/2013 of the Revenue

11. The sole ground raised by the Revenue in this appeal reads as follows:-

“(4) The order of ld. CIT(A) is not correct in law and facts.

(5) On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.5,00,00,000/- made by the AO u/s 68 of the I.T. Act.”

12. Ld. DR submitted that the AO noticed that transactions at page 56 of Annexure -1 show that impugned transactions through Shri N.K. Jain, an entry operator, were bogus entry transactions financed by the assessee out of its undisclosed source of income as the source of funds for all these transactions through Mr. Jain, M/s Shiv Vani, a flagship company at the group, hence, substantive addition was made in the hands of M/s Shiv Vani and protective addition was made in the hands of the assessee.

13. Ld. DR also contended that the AO was quite correct and justified in making protective addition in the hands of the assessee as it was a beneficial owner of these transactions. Ld. DR vehemently contended that the AO was quite justified in making impugned addition pertaining to the alleged transaction related to the assessee pertaining to assessment year under consideration and rightly treated the same as unexplained transaction materialised through

banking channel wherein source was not properly explained. Ld. DR lastly submitted that the impugned order may be set aside by restoring that of the AO.

14. Ld. DR also contended that the AO was quite correct and justified in making protective addition in the hands of the assessee as it was beneficial owner of these transactions. Ld. DR vehemently contended that the AO was quite justified in making impugned addition pertaining to the alleged transaction related to the assessee pertaining to assessment year under consideration and rightly treated the same as unexplained transaction materialised through banking channel wherein source was not properly explained. Ld. DR lastly submitted that the impugned order may be set aside by restoring that of the AO.

15. On careful consideration of above submissions of the Revenue, at the outset, from bare reading of the impugned order, we noted that the CIT(A) granted relief to the assessee by observing as under:-

“ 4.2.4 It is noticed that the amount mentioned in the said page of the annexure against the appellant's name is very much supported by credit entries in the appellant's bank account. At page 21 of their paper book the appellant has enclosed bank statement of the appellant maintained with ABN Ambro Bank (produced before the AO), wherein there are following entries in all adding up to 1,62,00,000.

Date	Description	Deposit
04-09-2007	By CLEARING-454961 (BRABDURKE ROAD)	60,00,000.00
05-09-2007	By CLEARING – 454963 (BRABDURKE ROAD)	50,00,000.00
05-09-2007	By CLEARING – 454965 (BRABDURKE ROAD)	50,00,000.00
05-09-2007	By CLEARING – 454964 (BRABDURKE ROAD)	50,00,000.00
05-09-2007	By CLEARING – 454962 (BRABDURKE ROAD)	50,00,000.00
06-09-2007	By CLEARING – 454966 (BRABDURKE ROAD)	50,00,000.00
06-09-2007	By CLEARING – 454967 (BRABDURKE ROAD)	50,00,000.00
06-09-2007	By CLEARING – 454968 (BRABDURKE ROAD)	50,00,000.00
06-09-2007	By CLEARING – 454969 (BRABDURKE ROAD)	50,00,000.00
07-09-2007	By CLEARING – 454970 (BRABDURKE ROAD)	40,00,000.00

4.2.5 It has been explained that wherever there was cash element in the transaction with Mr. Jain, the appellant has duly included the same in their surrendered income. The details found at page 56 of B14.A14 are not having any cash element not accounted in the assessee's books. It has been further submitted that since Mr. Jain was maintaining the bank accounts at Kolkota, his name appears at the top of the page. However the amounts written against various names of the companies are not cash transactions but bank transactions duly reflected in the books and explained to the AO with all supporting documents during the assessment proceedings.

4.2.6 I find that none of the credit entries relate to any cash deposits. They are all either bank-to-bank transfers or cheque deposits. The narrations in the bank account give the details of the account nos from where the amount has been received or the cheque numbers. I also observe that there appears to be no dispute about amounts having been received in the appellant's bank account through banking channels. The AO also admits in the assessment order that all these transactions have been duly

reflected in the bank accounts of the appellant when he states that "unexplained transaction materialized through banking channel". However he holds that the source is not explained.

4.2.7 It is observed that in the assessment proceedings the complete books of accounts, bank statements & transactions were explained to the AO and no adverse inference was drawn by the AO on the books of accounts & transactions mentioned therein.

4.2.8 The AO has added Rs. 5,00,00,000/-. The AR has submitted that the same represents share application amount received from group concern which is very much assessed by the same AO. The amount of Rs. 5,00,00,000/- was received from the Macro Leafin Pvt. Ltd. on 10 different dates. Since the bank account was maintained by Mr. N. K. Jain his name appears at the top of the page. The source of the amount is thus explained fully. Further the entries to this effect are also available in the bank account statement of the appellant company with Punjab National Bank on the respective dates. The AR had also submitted before the AO confirmation from Macro Leafin Pvt. Ltd., the copy of which has also been submitted in the paper book at Page No. 24. The AR has also enclosed copy of assessment order of Macro Leafin Pvt. Ltd. for A:Y. 2008-09 passed by the same assessing officer on 28.03.2013 and submitted that in the said order, the AO has not disturbed the total income returned by the AO.

4.2.9 Thus it is clear that the amount added by the AO was received from Macro Leafin Pvt. Ltd. a group concern which is also assessed to tax by the same Assessing Officer. In the assessment order of Macro Leafin Pvt. Ltd. there is no adverse finding of the AO. Considering these facts, there is no ground for holding the amount as unexplained. Thus Rs. 5,00,00,000/- added on protective basis is hereby deleted."

16. In the light of conclusion of the AO and observations of the first appellate authority, we note that the CIT(A) has deleted the addition in the same line as was deleted in AY 2007-08 (Ground no. 2 of the revenue). The CIT(A) precisely noted that alleged amounts having been received through banking channel in the appellant's/assessee's bank account and all these transactions

have been duly reflected in the bank accounts of the assessee, specially when the AO had noted that unexplained transactions materialized through banking channels. Per contra, the AO held that the source was not explained by the assessee which is not in accordance with the facts of the case as the AO did not point or bring on record any adverse evidence of fact from the complete books of accounts, bank statements which were placed before him during assessment proceedings. The CIT(A) also rightly observed that since the bank account was maintained by Mr. N.K. Jain, the source of amount is thus explained fully. Furthermore, entries to these transactions were also available in the bank account statement of the assessee's account with Punjab National Bank. The CIT(A) also considered the confirmation from M/s Macro Leafin Pvt. Ltd., which was also placed before the AO, and copy of the assessment order passed in the case of Macro Leafin for AY 2008-09 wherein returned income has been accepted by the same AO and the AO has not disturbed disclosed taxable income of M/s Macro Leafin for the same financial period.

17. Lastly, we are inclined to hold that the CIT(A) correctly appreciated the relevant facts of the case and rightly held that amounts received by the assessee were received by the assessee from M/s Macro Leafin, a group concern which was also assessed by the same AO and when there is no adverse finding in the case of M/s Macro, there is no valid ground to treat the same amount as unexplained in the case of the assessee. Hence, CIT(A) was correct in deleting

the protective addition in the case of the assessee and we are unable to see any valid reason to interfere with the same and we uphold the conclusion of the CIT(A) on this sole issue. Accordingly, sole ground no. 1 of the revenue is dismissed being devoid of merits.

18. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 14.10.15.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 14th October, 2015
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT 4.CIT(A)
5. DR

Asst. Registrar