

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "E", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTNAT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 833/Mum/2015 (Assessment Year-2007-08)

DCIT, Central Circle-8(1), Room No. 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Shri Suresh Gaggar (HUF) 41/42, Gaurav Extension, Gokuldham, Goregaon (East), Mumbai-400063. PAN: AABHS7971P
(Appellant)		(Respondent)

Assessee by : Shri Manjunatha Swamy
(DR)

Revenue by : Shri Vijay Mehta(DR)

Date of hearing : 02.11.2017

Date of Pronouncement : 02.11.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue u/s 253 of the Income-Tax Act ("The Act") is directed against the order of Id. CIT(A)-47, Mumbai dated 24.11.2014 for Assessment Year (AY) 2007-08. The Revenue has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs 21,74,087/- on account of share transactions of Vakrangee Software Ltd without appreciating that the alleged transaction was a sham transaction and the assessee failed to establish purchase of shares."

2. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs 21,29,250/- towards purchase of shares of Garnet International Ltd without appreciating that the assessee failed to establish source of purchase."

3. The Appellant prays that the order of the CIT-(A), on the above grounds be set aside and that of the Assessing Officer be restored.
2. Brief facts of the case are that a search action under section 132 of the Act was conducted on 06.10.2010 in case of ARSS Infrastructure Project Ltd. and group concern. In the search, the case of assessee was also covered and search warrant was executed in his case under section 132 of the Act. A notice under section 153A was issued to the assessee for AY 2005-06 to AY 2010-11 on 14.02.2013 for filing return of income. In response to the notice, the assessee filed return of income on 22.02.2013 declaring total income of Rs. 15,56,741/-. The assessment was completed on 26.03.2013 under section 143(3) r.w.s. 153A of the Act. The Assessing Officer (AO) while framing assessment besides the other addition made the addition of Rs. 44,37,088/- on account of (Rs. 21,74,087/- plus Rs. 21,29,250/-) as unexplained investment. On appeal before the Id. CIT(A), the addition was deleted. Thus, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.
3. We have heard the Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the Revenue supported the order of AO and argued that the order of AO may be restored by reversing the order of Id. CIT(A). On the other hand, the Id. DR for the Revenue supported the order of Id. CIT(A) and argued that the addition was made by

AO without any incriminating material found during the course of search qua the addition. The Id. AR of the assessee further submits that he has already filed an application under Rule 27 of Income-tax (Appellate Tribunal) Rules 1963, for supporting the ground on which the Id CIT(A) granted relief to the assessee. On merit, it was argued that assessee filed a return of income under section 139(1) on 26.11.2007. The time limit for issuing notice under section 143(2) expired on 30.11.2008. The search & seizure action against the assessee was conducted on 06.02.2010. No addition can be made in the non-abated assessment. Addition can only be made in assessment order under section 153A or 153C only on the basis of incriminating material. It was argued that in assessee's group case, the similar addition has already been deleted by Co-ordinate Bench in assessee's group case of DCIT vs. Shri Ramakant Gaggar (ITA No. 1287 to 1290/Mum/2015) & in DCIT vs. Smt. Indra Gaggar (ITA No. 808, 1295, 1294, 1269 & 809/Mum/2015). In support of his further submission, the Id. AR of the assessee further relied upon the following decision:

1. All Cargo Global Logistics [374 ITR 645 (Bom)]
2. CIT v. Gurinder Singh Bawa [386 ITR 483 (Bom)]
3. CIT v. Kabul Chawla [380 ITR 573 (Del)]
4. Dy. CIT v. Shri Ramakant Gaggar in ITA Nos 1287 to 1291/Mum/2015 for A.Y.s 2006-07 to 2009-10 dated 21.12.2016
5. DCIT v. Smt. Indra Gaggar in ITA Nos 808,1295, 1294/Mum/2015 for 07 to 2008-09 dated 30.11.2016
6. Narpat Mehta v. ACIT CC 4(1), Mumbai in ITA Nos. 2151 and 2153/Mum/2015 for A.Ys. 2005-06 and 2008-09 dated 30.09.2016.
7. Suncity Alloys (P) Ltd. v. CIT [124 TTJ 674 (Jod)]
8. Atithi N. Pate I [ITA No. 43/Mum/2010 dated 22.08.2012]

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. The AO made the addition of value of cost on share of Vakrangee Software Ltd. of Rs. 21,14,087/- and addition of Rs. 21,29,250/- being purchase of Garnet International Ltd. holding that assessee has not produced any evidence of sale or purchase of share. Neither the purchase nor sale of share appeared in the bank statement and bank book filed by the assessee. We have seen that the assessee has explained before the Id. CIT(A) that assessee sold 9500 share of Vakrangee Software Ltd. through its broker, the Pals Overseas Pvt. Ltd. @ 228.85 per share for Rs. 21,74,087/-. Further, the assessee purchased 8500 share of Garnet International Ltd. @ 25.5 per share for Rs. 21,32,722/- after addition of share trading expenses and STT, the assessee paid Rs. 21,29,250+816+2656. The assessee also explained that as per regular trade practice, the assessee received net amount of Rs. 41,365/- being net amount of sale consideration. The Id. CIT(A) observed that all the details were furnished before the AO and assessee was not given opportunity to explain the nature of transaction and the AO made the addition without appreciating the practice of trade regularly adopted in such transaction. The assessee has proved the genuineness of the investment and the transaction were not unexplained and deleted the addition. We have seen that the Id. CIT(A) has passed the order after appreciating the fact in correct perspective. The Id. DR for the Revenue failed to bring any detailed material to our notice to

substantiate the ground of appeal. Even the Id DR failed to bring to our notice that the additions which was deleted by Id CIT(A) was made on the basis of incriminating material seized during the search. Hence, we do not find any merit in the ground no. 1 & 2 of the appeal filed by Revenue. The assessee has filed an application under Rule 27 supporting the order of Id. CIT(A). During the course of hearing, the Id. AR for the Assessee had principally agreed that in case, the appeal of the Revenue is dismissed, he would not press the application filed under Rule 27 of Income-tax (Appellate Tribunal) Rules. Considering the fact that we have dismissed the appeal of the Revenue. Thus, the application of assessee under Rule 27 of the Income-tax (Appellate Tribunal) Rules is treated as not pressed and the same is dismissed as not pressed.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 2nd day of November 2017.

Sd/-

(B.R. BASKARAN)
ACCOUNTNAT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 02/11/2017

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai