

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT  
AND  
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No. 3406/Del/2017  
Assessment Year: 2007-08**

**M/s Brahmaputra Realtors (P) Ltd., VS Dy. Commissioner of Income-tax  
Brahmaputra Housem, A-7, NH 8, Central Circle-17, New Delhi  
Mahipalpur Crossing, Mahipalpur.  
New Delhi.  
(PAN: AACCB5617P)**

(Appellant)

(Respondent)

Appellant by: S/Shri Gautam Jain, P.K. Kamal, Lalit Mohan  
Respondent by: Shri Ravi Kant Gupta, Sr. DR

Date of hearing: 26.3.2018  
Date of Pronouncement: 23. 04.2018

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 27.3.2017 in Appeal No 140/15-16 for assessment year 2007-08 passed by the learned Commissioner of Income-tax CIT(A)-36, New Delhi (for short hereinafter called as "the learned CIT(A)'), the assessee preferred this appeal.

2. Facts, in brief, are that the original return of income for the Asstt. Year 2007-08 was filed by the assessee on 13.10.2007 declaring nil income and it was processed u/s 143(1) of the Income-tax Act, 1961 ("the Act"). However, subsequently, search and seizure operation u/s 132 of the Act was conducted in Brahmaputra group of companies on 28.9.2010 during which various books of accounts and documents including some belonging to the assessee were found and seized. Notice u/s 153 read with section 153A of the Act and subsequently u/s 153A/153C of the Act was issued. Basing of certain documents in the form of Annexures A-6, A-7 and A-10 and also on the statement of one Mr. Sampath Sharma, Director, learned AO made an addition of Rs.10 lacs under section 68 of the Act on account of unexplained share capital. Assessee preferred an appeal before the Id. CIT(A), who by way of impugned order dismissed the same.

3. It is the submission of the learned AR that though the learned AO made Annexures A-6, A-7 and A-10 as the basis for making the addition, he failed to substantiate how these documents are incriminating the assessee so as to make the addition in their hands. Nowhere learned AO brought on record to connect these documents to the additions under the head "share capital" and even if the authority failed to notice that the said documents go unexplained to have any nexus with the addition in dispute or to show that those relate to any accommodation entries entered by the Brahmaputra group. Further, the additions in respect of the amounts mentioned in some of the documents were made in the case of another company M/s Brahmaputra Infrastructure Ltd. in the Asstt. Year 2009-10. The sum and substance of the argument of the learned AR is that the documents neither belong to nor pertain to the assessee and they do not establish any nexus as alleged between the contention of the department that

the assessee obtained the accommodation entries thereunder and the additions made in this case. For these reasons, it is contended that in so far as all the proceedings u/s 153C of the ACT are bad and even on merits, the addition is liable to be deleted.

4. According to the learned DR, during the course of search hard discs of computers were seized, which contain incriminating material and the recordings on the documents reflected accommodation entries obtained by the Brahmputra group, as such, the authorities below are justified in making addition and sustaining the same.

5. At the outset, learned AR submitted that the five documents relied upon by the learned AO in this matter were also relied upon by the revenue in the case of another group company i.e. M/s Brahmputra Finlease P. Ltd. ITA No.3332/Del/2017 and a coordinate bench of this Tribunal by order dated 29.12.2017 discussed the matter at length and found that the revenue failed to bring on record any cogent reasons to connect these documents with the additions of share capital and inasmuch as no material, much less incriminating, supporting the addition is available on record, the addition cannot be sustained and since as the documents neither belong to nor pertain to the assessee thereon by applying the principle laid down by the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla, 380 ITR 573, the bench held that no addition could be sustained.

6. We have perused the record. The assessment order reads that the Ld. AO placed reliance on five documents and also the statement of one Shri Sampath Sharma, Director, to reach the conclusion that the assessee obtained

accommodation entries. On a careful perusal of the description of the documents given in this matter with the documents relied upon in the case of Brahmaputras Finlease Co. (supra), we find that they are identical as demonstrated below:

Reference to documents in the case of M/s Brahmaputra Finlease P. Ltd. ITA No.3332/Del/2017	Reference to documents in the case of M/s Brahmaputra Realtors P. Ltd. ITA No.3406/Del/2017
<p>"Apart from, during the course of search operation in Brahmaputra Group of cases, carried out at premises A-7, Mahipalpur, New Delhi, the following incriminating documents were inter alia seized by party BA-5</p> <p>i. Page No. 23 of Annexure A-6 (a diary relating to F.Y. 2009-10)- on the back side\ of this page recording is made in the name of "Shri Shyam Trexim &amp; Fincom P. Ltd." against which Rs. 50 lakhs is written.</p> <p>ii. Page No. 1 of Annexure A-7 - on this page a recording of funds mentioning debit as well as credit of Rs. 25 lakhs in the name of Murari Lai Aggarwal dated 31.05.2008 and further comments of the payment of same amount by cash to Murari Lal Aggarwal (MLA) is made ITA No. 3332/Del/2017 iii. The back side of the above page 1 of Annexure A-7 mentions that Sarat Aggarwal was paid with cash of Rs. 30 lakhs bring back equal amount in other form. The date of noting is 04.06.2008.</p> <p>iv. Page 1 of Annexure A-10 - it contains a hand written extract of cash book containing entry of Rs. 5 lakhs in the main of M.L. Aggarwal. It also shows as debit of Rs. 3 lakhs in the name of Sarat Aggarwal. The entries are for the date 28.05.2008, the date of writing of this page.</p> <p>v. Page No. 4 of above Annexure A-10 contains record of 30 lakhs in the name Mr. A Singhal and M.L. Aggarwala dividing into Rs. 25 lakhs and 5 lakhs respectively. On this page</p>	<p>"Apart from, during the course of search operation in Brahmaputra Group of cases, carried out at premises A-7, Mahipalpur, New Delhi, the following incriminating documents were inter alia seized by party BA-5</p> <p>i. Page No. 23 of Annexure A-6 (a diary relating to F.Y. 2009-10)- on the back side\ of this page recording is made in the name of "Shri Shyam Trexim &amp; Fincom P. Ltd." against which Rs. 50 lakhs is written.</p> <p>ii. Page No. 1 of Annexure A-7 - on this page a recording of funds mentioning debit as well as credit of Rs. 25 lakhs in the name of Murari Lai Aggarwal dated 31.05.2008 and further comments of the payment of same amount by cash to Murari Lal Aggarwal (MLA) is made ITA No. 3332/Del/2017 iii. The back side of the above page 1 of Annexure A-7 mentions that Sarat Aggarwal was paid with cash of Rs. 30 lakhs bring back equal amount in other form. The date of noting is 04.06.2008.</p> <p>iv. Page 1 of Annexure A-10 - it contains a hand written extract of cash book containing entry of Rs. 5 lakhs in the main of M.L. Aggarwal. It also shows as debit of Rs. 3 lakhs in the name of Sarat Aggarwal. The entries are for the date 28.05.2008, the date of writing of this page.</p> <p>v. Page No. 4 of above Annexure A-10 contains record of 30 lakhs in the name Mr. A Singhal and M.L. Aggarwala dividing into Rs. 25 lakhs and 5 lakhs respectively. On this page</p>

the name of Sudarshan Casting P. Ltd. is also written.	the name of Sudarshan Casting P. Ltd. is also written.
During the course of search and post search investigation, the assessee of this group have not been able to explain the above entries satisfactorily. Though these entries are to be dealt with in relevant cases but this also proves the fact that this group is engaged in bring back their unaccounted/undisclosed income in the guise of share capital/share application money."	During the course of search and post search investigation, the assessee of this group have not been able to explain the above entries satisfactorily. Though these entries are to be dealt with in relevant cases but this also proves the fact that this group is engaged in bring back their unaccounted/undisclosed income in the guise of share capital/share application money."

7. On considering the above documents vide para 4.11, a coordinate bench of this Tribunal considered the relevance of these documents to the companies of Brahmaputra group and also the incriminatory nature of these documents inasmuch as the names of Shri Shyam Trexim and Fincom P. Ltd., Shri Murari Lal Aggarwal, Shri Sarat Aggarwal, and Shri A. Singhal are mentioned in these documents and nothing incriminating the assessee could be inferred from these documents. Relevant observations of the Tribunal are as follows:

*4.11 We find that the Item No. (i) contains recording in the name of "Shri Shyam Trexim & Fincom Pvt. Ltd". The Assessing Officer has nowhere brought on record how the said recording on the page relates to the addition in question of share capital. The Ld. CIT(DR) also could not explain as how the said recording was related to the addition in question made in respect of alleged unexplained share capital. She only stated that said recording on the page reflected accommodation entry obtained by the 'Brahmaputra Group' and but no documentary evidence regarding the claim that the document was incriminating qua the addition, are filed. In respect of the Items No. (ii) to (v), the Ld. counsel has submitted that additions in respect of the amounts mentioned in the document has been made in the case of another company namely "M/s Brahmaputra Infrastructure Ltd" in assessment year 2009-10. This fact was not controverted by Ld. CIT(DR). Thus, we find that no incriminating material qua the addition made is found during the course of search from the premises of the assessee. Accordingly, above contention of Ld. CIT(DR) are rejected. She also submitted that during the course of search,*

*hard disks of computers and others material were also seized which contained incriminating material. The Ld. CIT(A) failed to substantiate the claim either by the impugned assessment order or through any other documentary evidence. In the assessment order, there is no mention that any incriminating material is found in hard disk etc. Thus, this contention of Ld. CIT(A) is also rejected.*

8. Further, in respect of relevance and reliability of the statement of Shri Sampath Sharma, Director, the Tribunal observed as follows:

*4.19 We find that in the case of best infrastructure (India) private limited (supra), despite the admission of accommodation entry in statements under section 132(4) of the Act, the court held that the statement do not constitute as incriminating material. In the instant case, neither is there any statement of any accommodation entry operator claiming that any entry was not provided nor any director has admitted that assessee obtained accommodation entry. Thus, the case of the assessee is on better footing then the case of Best Infrastructure (I) P. Ltd (supra). In such facts and circumstances, respectfully following the decision of the Hon'ble Delhi High Court in the case of best infrastructure (India) private limited (supra), we do not have any hesitation to hold that the statement under section 132(4) of Sh. Sampat Sharma cannot be treated as incriminating material found during the course of search. In the result, we hold that addition of share capital in the year under consideration has been made without relying on any incriminating material found during the course of search.*

9. On a consideration of the entire material in the light of the law laid down in the case of CIT vs. Kabul Chawla reported in 380 ITR 573, the coordinate Bench of this tribunal concluded that, -

*4.20 In view of the above finding, both the conditions as completed assessment and no incriminating material, have been satisfied in the case, thus, no addition could have been made in the instant assessment year in view of the finding of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra). The grounds No. 1 and 1.1 of appeal are accordingly allowed.*

10. Since the facts of these two cases are identical and the observations of the Tribunal are very much applicable to the facts of this case also. In these circumstances, while respectfully following the reasoning and the conclusions reached by a coordinate bench of this Tribunal in the Brahmputra group case in

M/s Brahmputra Finlease P. Ltd. vs DCIT, ITA No.3332/Del/2017, we find it difficult to sustain the additions made. We, therefore, while allowing the grounds of appeal, direct the learned AO to delete the impugned additions.

10. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 23<sup>rd</sup> April, 2018.**

Sd/-

(G.D. AGRAWAL)  
PRESIDENT

Sd/-

(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Dated: 23<sup>rd</sup> April, 2018  
'VJ'

Copy forwarded to:

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

By order

Asstt. Registrar