

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5573/DEL/2016 [A.Y 2013-14]

The A.C.I.T Vs. M/s Navneet Kumar Sureka
Central Circle 3 R/o 8, Bougainvilla Avenue
New Delhi Western Green, Rajokari, N.H. -8
New Delhi

PAN : ANWPS 5531 K

ITA No. 6660/DEL/2016 [A.Y 2013-14]

The A.C.I.T Vs. Maurice Udyog Ltd
Circle 3 Room No. 107, Anand Jyoti Building
New Delhi Netaji Subhas Road, Kolkata

PAN : AABCM 9522 F

ITA No. 6661/DEL/2016 [A.Y 2013-14]

The A.C.I.T Vs. M/s Narayan Rajkumar Merchants Ltd
Circle 3 Room No. 107, Anand Jyoti Building
New Delhi Netaji Subhas Road, Kolkata

PAN : AA ECS 2238 K

[Appellant]

[Respondent]

Date of Hearing : 22.11.2018
Date of Pronouncement : 29.11.2018

Assessee by : Shri Ved Jain, Adv
Revenue by : Shri Raja Ram Saha, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above captioned three separate appeals preferred by the Revenue against three separate orders of the CIT(A)-23, New Delhi are in respect of three different assesseees for A.Y 2013-14. Since common issues are involved in all these appeals, these were heard together and are being disposed of by this common order for the sake of convenience and brevity.

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2. The only grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 1 crore made by the Assessing Officer on account of unexplained income u/s 69A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that during search and survey operations conducted at various premises of Mauria Udyog Ltd, incriminating documents relating to transactions undertaken by the

group with Amrapali Group of companies were seized. One such document which was a .xls file was extracted from Annexure A-2 Party P-17 from the residence of Shri Rohtash Kumar. Statement of Shri Rohtash Kumar was recorded u/s 13294) of the Act. The relevant portion of his statement is reproduced as under:

“Q No. 28. As per your answer to above question it is clear that he amounts mentioned against the noting “cash/cash payments cash received/paid by the Mauria Group/Bihariji Group from/to Aimarpali Group. The details of such payments is as follows

<u>Date</u>	<u>Amount</u>
28/11/2012	50,00,000
28/11/2012	50,00,000
19/10/2012	25,00,000
24/11/2012	25,00,000
11/12/2012	50,00,000
31/01/2013	50,00,000
01/02/2013	50,00,000
16/02/2013	1,00,00,000
21/02/2013	1,00,00,000
28/02/2013	1,00,00,000
11/03/2013	1,00,00,000
14/03/2013	1,00,00,000
22/03/2013	50,00,000

23/03/2013	50,00,000
30/03/2013	50,00,000

This shows that an amount of 9 Crores has been reed in cash and 50 lacs paid in cash by Bihariji Group/Mauria group from/to Amarpali Group. Do you agree with this? If so, comment on accounting of these transactions in the books of Bihariji/Mauria Group?

Ans Yes I agree that the above mentioned payments have been received/made in cash by Bihariji Group/Mauria Group from/to Amarpali Group. However, regarding its accounting I am not sure. Mr Navneet Sureka can only comment on it.”

4. On the strength of the statement of Shri Rohtash, the Assessing Officer formed a belief that Shri Rohtash himself admitted that the amounts that are mentioned in the .xls file are nothing but payments that have been made by different Amrapali Group companies to Mauria group company. The Assessing Officer was of the opinion that the case is squarely covered u/s 69A of the Act and accordingly, made an addition of Rs. 1 crore. The assessee carried the matter before the CIT(A).

5. The CIT(A), drawing support from the decision given by him in the case of M/s Bihari Ispat Udyog Ltd in Appeal No. 23/16-17, deleted the addition.

6. Before us, the ld. DR pointed out that the appeal in the case of M/s Bihari Ispat Udyog Ltd [supra] has been dismissed by the Tribunal for want of tax effect.

7. Before us, the ld. Counsel vehemently stated that though the additions have been made u/s 69A of the Act, the said provisions are not at all applicable to the facts of the case in hand. It is the say of the ld. AR that since the foundation itself is weak, the super structure must fall.

8. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

9. We have given thoughtful consideration to the orders of the authorities below. Before proceeding further, let us examine the provisions of section 69A of the Act which read as under:

"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the ⁴Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

10. A plain reading of the aforesaid section clearly shows that it is applicable in a case where the assessee is found to be owner of any money, bullion, jewellery or other valuable article. The facts of the case in hand show that the assessee was never found to be in possession of any real money. The addition having been made only on the strength of some notings found in some file extracted from the computer of Shri Rohtash, clearly establish that the provisions of section 69A of the Act do not apply. We agree with the contention of the Id. AR that the foundation itself is weak and the addition should not survive. However, the Assessing Officer made the addition on the strength of the statement of Shri Rohtash wherein he has admitted that Rs. 1 crore has been received. Exhibit 85 of the paper books reveals that on the date of receipt of the impugned amount, the same

was returned back to Amrapali Group by M/s Bihariji group. The entries of Rs. 50 lakhs each on 11.12.2012 and 01.02.2013 can be seen from the said Exhibit 85 of the paper book. This means that the date on which the alleged Rs. 1 crore was received, on the very same day the same was returned back.

11. More importantly, there is no mention of the assessee's name in the impugned document. The Assessing Officer has simply assumed that the reference to the impugned amount is in relation to the assessee. In our understanding, no addition can be made on the basis of presumptions and surmises. Assuming, yet not accepting that the amounts were received by the assessee, the same were returned back on the very same date as per Exhibit 85 of the paper book. Even on this count, addition is uncalled for.

12. In the result, the appeal filed by the Revenue is dismissed.

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13. First grievance relates to the deletion of addition of Rs. 3.28 crores made by the Assessing Officer on account of cash transaction with Amrapali Group.

14. Facts of this addition are identical to the facts considered by us in ITA No. 5573/DEL/2016 [supra]. For our detailed discussion therein, Ground No. 1 is dismissed.

15. Second grievance of the Revenue relates to the deletion of addition of Rs. 6 crores made by the Assessing Officer on account of unexplained share application money.

16. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has invested his share application money in the following two companies:

	<u>Shares</u>	<u>Amount</u>
i) M/s Nexus Commosales Pvt Ltd	29,95,000	2,99,50,000
ii) M/s Linkwise Marketing Pvt Ltd	29,95,000	2,99,50,000

17. The Assessing Officer further noticed that the aforesaid shares were sold by the assessee. After analysing the sale transaction, the Assessing Officer came to the conclusion that the amount of Rs. 6 crores that has been introduced as sale of shares is nothing but assessee's own unaccounted money and invoking the provisions of section 68 of the Act, made the impugned addition.

18. The assessee strongly agitated the matter before the CIT(A) and vehemently stated that Rs. 6 crores is the sale consideration of the shares of M/s Nexus Comosales Pvt Ltd and M/s Linkwise Marketing Ltd and, therefore, cannot be treated as unexplained cash credit u/s 68 of the Act.

19. After considering the facts and submissions, the CIT(A) observed as under:

"4.2:5 Further, on perusal of the facts of the case it is observed that the appellant company is a listed company and is amenable to the SEBI guidelines, the shares of NCPL & LMPL held by MUL are not investments but are in the nature of trading in shares, and the impugned transactions relate to sale of shares by the appellant company to third parties; the purchase of the shares of NCPL and LMPL by MUL or the

source of payments to NCPL & LMPL for purchase of these shares have not been doubted by the AO; the advances/sale proceeds against the sale of these shares were duly credited in the P&L account and profits therefrom offered in the income declared, and therefore these receipts do not constitute "cash credits" within the meaning of s.68 of the Act; the transactions involved with regard to the sale of shares by MUL were through banking channels and in spite of collating the bank accounts of various persons related to the source of payments by SHPL, PCPL & DMPL to MUL the AO has not brought on record any material found during the search or during post search/assessment proceedings so as to say that the source of the money utilized by SHPL, PCPL & DMPL for payments against the purchase of shares from MUL was in fact the unaccounted money of MUL routed through non-banking channels. I have also examined the confirmations of account, the bills of the sale of shares, the share transfer forms, the ITRs, audited accounts and the bank statements of SHPL, PCPL & DMPL submitted in the PB, also submitted before the AO with their various replies mentioned earlier in this order, and I do not find anything adverse so as to conclude that the source of the money utilized by PCPL, DMPL & SHPL for payments to MUL was in fact the unaccounted money of MUL. Even on consideration of the status of the impugned shares of NCPL and LMPL post sale by MUL, the shares were delivered to SHPL, PCPL & DMPL and if any

adverse inference on material evidence was necessitated it was to be considered in the hands of PCPL, DMPL & SHPL. Besides, from the assessment order it is apparent that the initial purchase of shares by MUL from NCPL & LMPL and source thereof have not been questioned by the AO and have apparently been accepted by the AO, and even if it is considered that the sale transactions were bogus and the sale proceeds represent unaccounted income of the appellant in keeping with AO's conclusion one has to consider as to what happened to the funds invested by the appellant for purchase of these shares initially which are accepted as explained by the AO since there is no adverse finding in this regard in the assessment order, and therefore even if the sale is bogus only the difference of sale proceeds and the initial initial investment could be unexplained. On the other hand the above details indicate that MUL purchased the shares of NCPL & LMPL on 01.03.2013 which were sold to PCPL, DMPL & SHPL within a short time between 02.03.2013 to 09.03.2013 thus suggestive of trading transactions for short term profit. From the audited accounts of MUL it is observed that out of the total revenue receipts of Rs.893,22,65,662/- receipts from trading in shares have been shown at Rs.529,17,12,498/- (as against Rs.895,97,98,703/- and Rs.642,90,81,504/- in the preceding year) which include the receipts from trading in shares of only Rs.6.00 crore from PCPL, DMPL & SHPL, which too is suggestive of the business of trading in shares by MUL,

the appellant company. Furthermore, I am also inclined to agree with the appellant's AR that the advances or the sale proceeds against the sale of shares held by MUL do not constitute "cash credits" within the meaning of s.68 of the Act as considered and applied by the AO, and even otherwise in view of the discussion herein above the explanation offered by the appellant/appellant's AR as mentioned above cannot be considered to be unsatisfactory in terms of the provisions of s.68 of the Act or the first Proviso to s.68 of the Act inserted w.e.f. 01.04.2013. The conclusion of the AO to treat the advances/sale proceeds of the shares as "cash credits" is misconceived, and the addition made on this account is not sustainable. I hold accordingly. The addition made on this account is therefore **deleted.**"

20. Before us, the ld. DR could not point out any factual error in the findings of the CIT(A). There is no dispute that the purchase of shares of the aforesaid companies has been accepted by the Assessing Officer. Assuming, yet not accepting that the sale consideration is bogus, then the question which has to be answered by the Assessing Officer is that where did the purchase money go since he has accepted the purchase of shares of two companies? Considering the facts of the case in hand in totality, we do not find any error in the findings of the CIT(A). This ground is also dismissed.

21. The last grievance relates to the deletion of addition of Rs. 5 lakhs made by the Assessing Officer.

22. The impugned addition has been made on the premise that the assessee has claimed rent payment expenditure to M/s Trinity Shipping and Allied Services Pvt Ltd. The Assessing Officer treated the same as not properly explained and made the addition.

23. The CIT(A) deleted the addition on finding that no payment of rent and hire charges were paid to M/s Trinity Shipping and Allied Services Pvt Ltd.

24. Before us, the ld. DR also could not demonstrate that the assessee has actually made any payment to M/s Trinity Shipping and Allied Services Pvt Ltd. That being the fact of the matter, no interference is called for. This ground is dismissed.

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25. The only grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 6 crores made by the Assessing Officer on account of unexplained share application money.

26. The underlying facts in this dispute are identical to the facts considered by us in ITA No. 6660/DEL/2016 [supra. For our detailed findings given therein, this ground is dismissed.

27. In the result, the appeal of the Revenue is dismissed.

28. To sum up, in the result, all the three appeals of the Revenue stand dismissed.

The order is pronounced in the open court on 29.11.2018.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th November, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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