

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

**Before Sh. N. K. Saini, Hon'ble Vice President  
and**

**Smt. Beena A. Pillai, Judicial Member**

**ITA No. 4655/Del/2015 : Asstt. Year : 2006-07**

**ITA No. 4656/Del/2015 : Asstt. Year : 2007-08**

**ITA No. 4657/Del/2015 : Asstt. Year : 2008-09**

**ITA No. 4658/Del/2015 : Asstt. Year : 2009-10**

**ITA No. 4659/Del/2015 : Asstt. Year : 2010-11**

**ITA No. 4660/Del/2015 : Asstt. Year : 2011-12**

**ITA No. 4661/Del/2015 : Asstt. Year : 2012-13**

Deputy Commissioner of Income Tax, Central Circle-19, New Delhi	Vs	Sh. Ajai Kalsi, Farm No. 9, Shivaji Marg, Westend Green, Rangpuri, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAZPK2263J</b>		

**CO No. 435/Del/2015 : Asstt. Year : 2006-07**

**CO No. 410/Del/2015 : Asstt. Year : 2007-08**

**CO No. 411/Del/2015 : Asstt. Year : 2008-09**

**CO No. 412/Del/2015 : Asstt. Year : 2009-10**

**CO No. 413/Del/2015 : Asstt. Year : 2010-11**

**CO No. 414/Del/2015 : Asstt. Year : 2011-12**

**CO No. 415/Del/2015 : Asstt. Year : 2012-13**

Sh. Ajai Kalsi, Farm No. 9, Shivaji Marg, Westend Green, Rangpuri, New Delhi	Vs	Deputy Commissioner of Income Tax, Central Circle-19, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAZPK2263J</b>		

**Assessee by : Sh. Pawan Bholusaria, CA &**

**Sh. Nippun Mittal, CA**

**Revenue by : Sh. Amit Katoch, Sr. DR**

<b>Date of Hearing : 05.12.2018</b>	<b>Date of Pronouncement : 05.12.2018</b>
-------------------------------------	---

## **ORDER**

### **Per Bench:**

The appeals by the department and the Cross Objections by the assessee are directed against the separate orders each dated 27.04.2015 passed by the learned CIT(A)-XXVII, New Delhi.

2. The appeals of the department and the Cross Objections of the assessee having common issues, were heard together, so, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. Grounds raised in ITA No. 4655/Del/2015 for the assessment year 2006-07 read as under:

*“1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that the overseas companies in which the assessee is shareholder/beneficial owner is not a resident in India under section 6(3)(ii) of the I.T. Act whereas on the basis of seized documents/e-mails and in various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal u/s 134(4) have admitted that the taxability of these companies lies in India and these companies are resident for the tax purposes u/s 6 of the IT Act.*

*2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and sources of revenue of all the overseas companies in which assessee is shareholder/beneficial owner are the Indian Companies.*

*3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the*

*substantial evidence in form of seized material, E-mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi, Sh. Anil Aggarwal and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.*

*4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.*

*5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that once an addition on substantive basis was made in the hands of the overseas companies treating them as residents in India u/s 6(3) of the IT Act, there was no reason or occasion or an issue to assess the same in the hands of the appellant on protective basis.*

*The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 394,07,64,987/- made by Assessing Officer.*

*6(a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

4. The identical grounds are raised in all other appeals by the department, the only difference is in the amount involved.

5. During the course hearing, the Id. Counsel for the assessee at the very outset stated that the issues under consideration are directly covered by the decision dated 19.11.2018 of this Bench of the ITAT in the case of DCIT, Central Circle-19, New Delhi Vs Smt. Mala Kalsi, Chanakya Puri, New Delhi in ITA No. 5028/Del/2015 and CO No. 380/Del/2015 for the assessment year 2008-09. It was also stated that the grounds raised in the said appeal and the appeals under consideration are identical, the only difference is in the amount involved and that the facts are identical in both the cases wherein the protective additions were made (copy of the said order dated 19.11.2018 was furnished which is placed on record).

6. In his rival submissions, the Id. CIT DR although strongly support the order of the AO but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

7. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that an identical issue having similar facts was a subject matter of the departmental appeal in ITA No. 5028/Del/2015 and CO No. 380/Del/2015 in the case of Smt. Mala Kalsi, wife of the assessee, for the assessment year 2008-09 wherein this Bench of the Tribunal in Paras 5 & 6 of the order dated 19.11.2018 has held as under:

*“5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that an*

*identical issue having similar facts was a subject matter of the departmental appeals in ITA Nos. 5026, 5027, & 5029 to 5032 (Delhi) of 2015 and CO Nos. 378, 379 & 381 to 384 (Delhi) of 2015 filed by the assessee for the Assessment Years 2006-07, 2007-08 and 2009-10 to 2012-13 wherein this Bench of the Tribunal in para 6 of the order dated 1.12.2017 has held as under:-*

*“We have heard both the parties and perused the relevant records available with us, especially the impugned orders. All the grounds in the revenue's appeal, in substance, relate to solitary issue of deletion of protective addition by the Ld. CIT (A). Therefore, the same are being considered together. We find that AO in the assessment order admitted that the entire amount which was added to the income of the assessee on "protective basis" was already assessed in the hands of the overseas companies on "substantive basis". It was further noted that the Assessing Officer did not consider the details filed by the assessee in the course of the assessment proceedings but made the assessment of the assessee on the basis of the assessment orders of the overseas companies and also that of her husband Sh. Ajay Kalsi. We further note that addition which was made on substantive basis in the hands of the overseas companies was also made in the hands of Sh. Ajay Kalsi on protective basis and also the same amount was added to the income of the assessee on protective basis. Therefore, addition of the same amount was made by the Assessing Officer in the hands of three persons i.e. (a) the overseas companies, (b) Sh. Ajay Kalsi and (c) Smt. Mala Kalsi which was unwarranted and unjustified. The additions made in case of the overseas companies u/s 6(3) is not relevant to the case of the assessee as she is only a shareholder, and was not entitled to derive any benefit. During the year under consideration the assessee did not derive any benefit for which she is liable to pay taxes thereon as per the Indian Tax*

*Laws. It is not out of place to mention that when addition was already made in the hands of the overseas companies on substantive basis treating them as residents in India, there is no justification for the Assessing Officer to make such an addition in the hands of a share holder on protective basis, when no benefit was derived by her from these companies to protect the interest of revenue. It is noted that without assessing the income of the assessee for the year under consideration, the Assessing Officer simply transferred the addition made in case 'of the overseas companies to the assessment order of Sh. Ajay Kalsi on the ground that he exercised control and management of the affairs of the overseas companies as laid down in section 6(3) of the I.T. Act 1961 without bringing on record a concrete and substantial evidence to prove his role. Based on the assessment of Sh. Ajay Kalsi, by virtue of being a 50% share holder in Multi Asset Holdings Ltd., the Assessing Officer made an addition of similar amount in case of the assessee meaning thereby that the Assessing Officer did not assess the income of the assessee based on the details filed in her return u/s 153A, but assessed the income of the overseas companies in her hands without any basis. We further note that in the case of the assessee's husband Sh. Ajay Kalsi, a protective addition was also made on identical facts. In that case Ld. CIT (A) vide his order dated 27.04.2015 in Appeal No. 346/14-15 discussed the facts pertaining to the protective addition in detail and deleted the entire protective addition made by the Assessing Officer in his case. Since, the facts of the assessee's case are similar to those of her husband, the reasons given by the Ld. CIT (A) in his above order in the case of Sh. Ajay Kalsi will apply mutatis mutandis in the case of the assessee also. Therefore, the addition made by the Assessing Officer on protective basis amounting to Rs. 3,71,32,83,664/- was rightly deleted by the Ld. CIT (A), which does not need any interference on our part,*

*hence, we uphold the action of the Ld. CIT (A) and reject the grounds raised by the Revenue.”*

*6. So respectfully following the aforesaid referred to order, we do not see merit in this appeal of the department.”*

So respectfully following the aforesaid referred to order, we do not see merit in this appeal of the department.

8. Since we have dismissed the appeals of the department, therefore, the cross objections which are in support of the impugned orders passed by the learned CIT(A) become infructuous and accordingly dismissed.

9. In the result, appeals of the department are dismissed and Cross Objections of the assessee are dismissed as infructuous.

(Order Pronounced in the Court on 05/12/2018)

Sd/-  
**(Beena A. Pillai)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 05/12/2018**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**