

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

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

**I.T.A. No. 6126/Del/2014
Assessment Year: 2008-09**

**Dy. Commissioner of Income-tax vs Shri Madhur Mittal,
Central Circle-22, New Delhi. C-691, New Friends Colony,
New Delhi.
(PAN: ADCPM2464P)**

**C.O. No.165/Del/2015
(In I.T.A. No. 6126/Del/2014)
Assessment Year: 2008-09**

**Shri Madhur Mittal, vs Dy. Commissioner of Income-tax
C-691, New Friends Colony, Central Circle-22, New Delhi.
New Delhi.
(PAN: ADCPM2464P)**

**I.T.A. No. 6124 & 6125/Del/2014
Assessment Years: 2007-08 & 2008-09**

**Dy. Commissioner of Income-tax vs Ms Urvashi Mittal,
Central Circle-22, New Delhi. C-691, New Friends Colony,
New Delhi.
(PN: ADCPM2440D)**

**I.T.A. No. 6127/Del/2014
Assessment Year: 2008-09**

**Dy. Commissioner of Income-tax vs Ms Puja Mittal,
Central Circle-22, New Delhi. C-691, New Friends Colony,
New Delhi.
(PN: ADCPM2465N)**

(Appellant)

(Respondent)

Assesseeby: S/Shri Ved Jain, Advocate,
Ashish Chadha, CA,
Ramesh Goyal, CA,
Kislaya Parashar, Advocate

Respondent by: MsParmita M Biswas, CIT, DR

Date of hearing: 08.01.2019

Date of Pronouncement: 10.01.2019

ORDER

PER BENCH

Challenging the orders passed by the learned Commissioner of Income-tax (Appeals)-III, New Delhi (for short hereinafter called as "the learned CIT(A)'), the revenue preferred these appeals in the cases of MR. Madhur Mittal (Asstt. Year 2008-09), Ms Urvashi Mittal (Asstt. Year 2007-08 & 2008-09) and Ms Puja Mittal (Asstt. Year 2008-09) against the separate orders passed. The assessee, Mr. Madhur Mittal has also filed a Cross Objection No.165/Del/2015 for the Asstt. Year 2008-09 challenging the additions confirmed by learned CIT(A).

2. Since all the three assesses belong to the Triveni group in respect of which the search operations were conducted on 28.9.2010 giving rise to the reassessments u/s 153A the Income-tax Act, 1961 ("the Act") and the grounds involved are more or less similar, we deem it just and convenient to dispose these of by way of this common order primarily with reference to the facts involved in ITA No.6126/Del/2014.

ITA Nos6126 /Del/ 2014 and CO No. 165 /Del/ 2015.

3. Original return of income was filed declaring a total income of Rs.2,82,271/- and subsequently, pursuant to the search that was conducted on 28.9.2010 in respect of Triveni group of which the assessee is also a part,

notice u/s 153A of the Act was issued and the assessee filed the return of income on 10.12.2012 declaring as total income of Rs.7,26,490/-. Learned AO added a sum of Rs.4,90,800/- which the assessee had declared as agricultural income on the ground that the agricultural land was in the name of the deceased father of the assessee at Dholpur and the assessee had not filed any proof regarding the agricultural activity carried out on the said land. Learned AO further added a sum of Rs.5,01,90,000/-u/s 68 of the Act in respect of the cash found credited in Axis bank and the cash flow statement filed by the assessee was a self serving document without any proof in support of various cash receipts. Learned AO further observed that the assessee had also filed the cash flow statement in earlier years from which opening balance was coming on but no explanation was given in earlier years too.

4. Challenging the action of the learned AO, assessee preferred an appeal before the learned CIT(A) and by way of the impugned order, learned CIT(A) deleted both the additions. Hence, the revenue is before us in this appeal stating that the learned CIT(A) should not have relied upon the cash flow statement which is merely a self serving document and the source of cash deposit was not explained before the learned AO; that the learned CIT(A) erred in placing reliance on the report received by the Officer of the Directorate of Income-tax (Systems) and which has checked the returns have been filed by the partners of contributing firm when merely filing of the income tax return is neither a conclusive proof of identity nor of creditworthiness nor of genuineness of the transaction.

5. It is the argument of the learned DR that the assessee did not file any proof regarding the agricultural activity carried out on the agricultural land or any sale bill of the agricultural produce and since the agricultural land stands in

the name of the deceased father of the assessee, learned AO is justified in adding the same.

6. Per contra, it is the submission of the learned AR that for a quite long time and more particularly from the Asstt. Year 1996-97, the assessee has been declaring agricultural income in their returns of income and the department has been accepting the same, as such, it has not been for the revenue to contend now that for want of evidence, such an amount has to be added back.

7. We have perused the record. Vide para Nos. 14 to 24 of the paper book, the assessee filed certain acknowledgements of income-tax returns and in all the years from 1996-97 to 2004-05, the assessee has been consistently declaring the agricultural income and it is not the case of the revenue that in any of the previous years, such an income was treated as the income from undisclosed sources. Learned CIT(A), therefore, rightly concluded that the khasrakhatauni indicating the annual lagan establishes that the land in dispute was put to agricultural use and the assessee has been consistently declaring the same in the return of income and the revenue has been accepting the same without raising any objection.

8. In the circumstances, reliance of the learned CIT(A) on the decision of the Hon'ble Apex Court in the case of Radhaswami Satsang vs CIT (1992) 193 ITR 321 (SC) in respect of the necessity of following the rule of consistency cannot be found fault with. On this aspect, the approach of the learned CIT(A) is perfect and needs to be confirmed. We accordingly decline to interfere with the same. Hence, ground No.1 of the appeal is dismissed.

9. Now coming to the addition u/s 68 of the Act, learned AO recorded that in the bank account of the assessee, an amount of Rs.5,05,90,000/- was found

credited and that the assessee had filed the cash flow statement for the year under consideration and also for earlier years, since no proof in support of various cash receipts was filed, such cash flow statements remain self serving document and no reliance could be placed. On this premise, learned AO proceeded to make the addition.

10. In appellate proceedings, learned CIT(A) looked into the contentions of the assessee and also found that besides the opening cash in hand, the assessee received Rs.2.05 crores from M/s Vivek Commodities, Rs.2.65 crores from M/s Mittal Tin Container Industry, Rs.1,30,500/- from Triveni Infrastructure Development Company Ltd. (TIDCO) and Rs.75 lacs from M/s Triveni Motors. Out of the four entities, the assessee is the promoter director of TIDCO and Triveni Motors, which entities are assessed by the very same AO having PAN AACCT3870A and AACFT0256B. Further, learned CIT(A) on a perusal of the financial accounts of TIDCO and Triveni Motors noticed that the TIDCO had shareholders fund of Rs.46.57 crore and loan funds to the tune of Rs.47.04 crore and Triveni Motors had a capital of Rs.2.89 crores and loan funds of Rs.5.35 crores. He, therefore, held that the identity, creditworthiness and genuineness of M/s TIDCO and M/s Triveni Motors is above any suspicion.

11. In respect of the other two entities, namely, M/s Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd., learned CIT(A) perused the copies of the income-tax return, balance sheet and profit and loss account, confirmation of accounts etc. It was submitted before the learned CIT(A) that the amounts from these two entities were received on account of pledging some of the shares of TIDCO, which were owned by the assessee pursuant to the share purchase agreement entered with those entities in view of the fact that the TIDCO was likely to come up with an IPO at a price band higher than

the 20% of the present value agreed upon. Basing on this, learned CIT(A) accepted the genuineness of the transaction with these two entities.

12. Besides this, learned CIT(A) had taken pains to scrutinize the income-tax returns and profit and loss account of these two entities, namely, M/s Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd. and found that both the partnership firms had shown nil income and there has been no activity worthwhile undertaken by them to show any profit earning apparatus. He further found that M/s Vivek Commodities with 17 partners and the capital of Rs.2.625 crores raised during the relevant previous year out of which they have paid a sum of Rs.2.05 crores to the assessee for purchasing the shares of TIDCO. Similarly, M/s Mittal Infrastructure Tin Containers Ltd. with 20 partners raised a capital of Rs.2.64 crores during the year and paid a sum of Rs.2.65 crores to the assessee for purchase of shares. On this, learned CIT(A) directed the assessee to prove the identity and creditworthiness of all the partners of these entities, in response to which the assessee submitted copies of return of income, computation sheet and balance sheet for each of the partners. Since these documents were submitted before the learned CIT(A) and were not available before the learned AO, learned CIT(A) transmitted the documents to the learned AO calling upon him to submit the report. Learned CIT(A) recorded that in spite of three reminders, there was no response from the learned AO. In those circumstances, learned CIT(A) in order to ascertain the authenticity of the return of income, identity and creditworthiness of each of the partners addressed a letter to the Directorate of Income-tax (Systems) and obtained the report. On analysis of the return and document, learned CIT(A) found that out of the 17 partners of M/s Vivek Commodities, the creditworthiness of one Harveer Singh was doubtful, as such, the learned CIT(A) confirmed his contribution to an extent of Rs.2,62,500/-.

13. Similarly, out of 20 partners of M/s Mittal Infrastructure Tin Containers Ltd., learned CIT(A) found the creditworthiness of three partners doubtful, namely, Gopal Dass Mangal, Sunder Gupta and one Rajni Mangal, who contributed a sum of Rs.41 lacs, as such, this amount was confirmed by the learned CIT(A) while deleting the rest of the amount.

14. Though the revenue assails this exercise conducted by the CIT(A) stating that the cash flow statement is a self-serving document and the report receipt from DIT (Systems) is conclusive proof of identity or creditworthiness or genuineness of the transaction, the revenue failed to establish before us as to what should be the proper course that should have been adopted by the learned CIT(A) in the given circumstances. Cash flow statement while always looks alike and it is for the learned AO to call for the documents, if any, he desires to verify to ascertain the correctness of the cash flow statement. As a matter of fact, learned CIT(A) not only stooped at the entity level of the contributors of the amounts but he went a little further and to call for the details to ascertain the identity and creditworthiness of the partners of the partnership firms and also the genuineness of the transactions.

15. The case of the assessee is that there was a proposal to issue IPO of TIDCO at a price band higher than 20% of the value which was agreed upon under share purchase agreement entered into between the Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd. Further the other two entities M/s TIDCO and Triveni Motors are the companies of the assessee and the learned CIT(A) mentioned the PAN of TIDCO and Triveni Motors and further noted that these two entities were also assessed by the same AO, as such, in view of the fact that the assessee being the promoter director of these two entities and assessment being done by the same AO,

identity and creditworthiness of these two entities is beyond the pale of any suspicion.

16. In so far as M/s Vivek Commodities and M/sMittal Infrastructure Tin Containers Ltd is concerned, learned CIT(A) verified the identity and creditworthiness of the individual partners of these two entities i.e. M/s Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd and having found that the creditworthiness of the one partner of M/s Vivek Commodities and three partners of M/s Mittal Infrastructure Tin Containers Ltd confirmed the addition to the extent of the money contributed by these partners with doubtful creditworthiness. When the learned CIT(A) transmitted the documents submitted by the assessee to the learned AO calling for the report, record speaks that there was no response from the learned AO in spite of three reminders. No explanation is forthcoming from the revenue even before us as to what prevented the learned AO to verify the documents to submit report if there is a serious objection on the identity and creditworthiness of such partners. In these circumstances, we are convinced that the reasoning of the learned CIT(A) that he addressed a letter to DIT (Systems) for the purpose of identity and creditworthiness of these partners and to proceed with the matter having analyzed the report and the documents submitted by the assessee. No other course was left open to the learned CIT(A) in view of the non response of the learned AO to the letter dated 22.5.2014 of the learned CIT(A). In these circumstances, we hold that the approach of the learned CIT(A) cannot be found fault with and the learned CIT(A) did the possible exercise that should have been done in the given circumstances. Learned CIT(A) reached the right conclusions and we do not find any reason to interfere with the same. Hence, we dismiss the revenue appeal and the CO of the assessee.

ITA 6127/Del/2014 (Puja Mittal):

17. This case relates to the addition of Rs.75 lacs and Rs.50 lacs received by the assessee from one Smt. Seema Rajesh Sharma and M/s Vivek Commodities. In respect of the amounts received from Smt. Seema Rajesh, the assessee explained before the learned CIT(A) that they have sold 10 lacs shares of TIDCO @ Rs.7.5 per share and received Rs.75 lacs but since the face value of the shares of TIDCO was Rs.10 and the shares were sold at Rs.7.5 per share, the assessee incurred a loss of Rs.25 lacs towards short term capital loss. The learned CIT(A) perused the bank statement of Smt. Seema Rajesh and found that there was substantial deposits in her bank account and income-tax return of Rs.18,54,579/- and Rs.15,92,134/- were filed for the Asstt. Years 2006-07 and 2007-08 and such returns of income were got verified from the Directorate of Income-tax (Systems).

18. In so far as the Vivek Commodities is concerned, as stated in the preceding paragraphs, the identity, creditworthiness and genuineness of transactions of all the partners of this entity was verified by the learned CIT(A) in depth and reached the right conclusion, as we have discussed in the preceding paragraphs. Since the learned CIT(A) on thorough verification of the particulars relating to the identity, creditworthiness and genuineness of the transactions reached a right conclusion, we do not find any reason to interfere with the same, hence, the ground of appeal in the case of Puja Mittal are dismissed.

ITA No. 6124 and 6125/del/2014.

19. Insofar as the assessee in these two matters, namely, Urvashi Mittal is concerned, learned AO found that there was a sum of Rs. 1,25,03,000/- for the assessment year 2007-08 and Rs. 75 lakhs for the assessment year 2008-09 in

the bank account and he made the addition thereof. Case of the assessee is that she received the amounts from Mittal Traders in pursuance of the share purchase agreement entered into between the said party and Mr Sumit Mittal and Mr Mathur Mittal and from Smt. Seema Rajesh Sharma on account of sale of 10 lakh shares of TIDCO at the rate of Rs. 7.50 per share.

20. Insofar as the amounts received from Mittal traders, the impugned order speaks that in order to prove the identity, creditworthiness and genuineness of the transaction the assessee submitted the copy of their returns of income and their balance sheet and profit and loss account, confirmation of accounts etc by explaining that on account of pledging of some of the shares of Triveni Infrastructure Development Company Ltd (TIDCO) which were owned by her, pursuant to the share purchase agreement entered with Mr. Mathur Mittal and Mr. Sumit Mittal, as TIDCO was likely to come up with an IPO at a price band higher than the 20% of the present value agreed upon by share purchase agreement and pledged deed. Upon going through the copy of the return of income and balance sheet of Mittal traders, Ld. CIT(A) found that this firm had shown nil income and balance sheet and profit and loss account filed with the return of income revealed that there was no business activity worthwhile undertaken meaning thereby "profit earning apparatus" was missing; and that Mittal Traders is a partnership concern of 20 partners and those partners had brought in a capital of Rs. 1,72,50,000/- in the year under consideration, out of which they Mittal Traders paid a sum of Rs. 1,21,50,000/- to the assessee for purchase of shares of TIDCO held by the assessee.

21. Ld. CIT(A), therefore, felt the need to verify the identity and creditworthiness of 20 partners as to the source of source. Ld. CIT(A) further recorded that Mittal traders during the assessment year 2007-08 had also

given a sum of Rs. 39 Lacs to the assessee's husband by name MrSumit Mittal for the purchase of shares of TIDCO out of the said capital of Rs. 1,72,50,000/- raised in that year under consideration and for that transaction learned AO had not considered the amount received from Mittal traders to be the source of cash deposit in MrSumit Mittal's bank account and accordingly learned AO made the identical addition in the assessment year 2007-08 in Sumit Mittal's hands also. Then the Ld. CIT(A) referred to the proceedings in the case of MrSumit Mittal, and by relying upon his findings in that case returned a finding that identity and creditworthiness of all the 19 partners out of 20 partners of Mittal traders who contributed Rs. 1, 64, 50, 000/-stood established.

22. We have gone through the order dated 7/8/2014 passed by the Ld. CIT(A) in appeal No. 115/13-14/CIT (A)-III in the case of Mr. Sumit Mittal for the assessment year 2007-08. In that order, after considering the copy of the returns of income, balance sheet and profit and loss account, and confirmation account etc., relating to the Mittal traders, in the light of the explanation for receiving the said amount by the assessee, Ld. CIT(A) recorded that genuineness of the transaction with Mittal traders was established. However on going through the copy of acknowledgement of income tax returns and on a perusal of the profit and loss account of Mittal traders, Ld. CIT(A) found that Mittal traders had shown nil income and balance sheet and a trading and profit and loss account revealed that there has not been any activity worthwhile undertaken by the firm meaning thereby "the profit earning apparatus" was not there; and that Mittal traders is a partnership concern having 20 partners and capital of Rs. 1,72,50,000/- was raised during the year from those partners, out of which a sum of Rs. 39 Lacs was paid to MrSumit Mittal.

23. Thereupon Ld. CIT(A) required assessee to prove the identity and creditworthiness of all the partners of Mittal traders and after considering the

copies of returns of income, computation sheet, balance sheet for each of the partners and seeking the remand report from the learned Ld. AO Ld. CIT(A) returned a finding that it was beyond a reasonable doubt that the identity and creditworthiness of 19 partners of Mittal traders who have contributed Rs.1,64,50,000/-was duly proved.

24. The order of the Ld. CIT(A) was challenged by the revenue before this Tribunal, and a coordinate bench of this Tribunal in ITA No. 6122 and 6123/Del/2014 for the assessment years 2007-08 in 2008-09 by order dated 12/7/2018 upheld the same. No reasons are assigned before us as to why should we take a different view from this one. We do concur with the Ld. CIT(A) in his finding in the impugned order for the AY 2007-08.

25. Insofar as the amount of Rs. 75,000/-received from Smt. Seema Rajesh Sharma, is concerned, according to the assessee this amount was received on account of sale of 10 lakh shares of TIDCO to her at the rate of Rs. 7.50 per share whereas the face value was Rs. 10, by suffering a loss of Rs. 25 Lacs and this short-term capital loss was claimed by them in their return of income filed on 31/3/2009, but since the said return was late the short-term capital loss was not pursued.

26. Impugned order for this year 2008-09 speaks that the Ld. CIT(A) had perused the bank statement of Smt. Seema Rajesh Sharma and found that she had substantial deposits in account and the return declaring an income of Rs.18,54,579/-and Rs. 15, 92, 134/-were filed for the assessment year 2006-07 and 2007-08. Ld. CIT(A) also got these returns of income verified from the Directorate of Income Tax (Systems) and satisfied himself that the identity, creditworthiness and genuineness of the transaction of the assessee with the Seema Rajesh Sharma was proved.

27. The reasoning adopted and the conclusions reached by the Ld. CIT(A) could not be controverted by the revenue with reference to any substantial material. Having regard to the facts and circumstances of the case we do not find anything reason to interfere with the orders of the Ld. CIT(A). Impugned order does not suffer any illegality or irregularity. We, therefore, decline to interfere with the impugned orders relating to these 2 years namely 2007-08 and 2008-09 and accordingly confirm the same.

10. In the result, appeals of the revenue as well as the CO of the assessee dismissed.

Order pronounced in the open court on 10th January, 2019.

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 10th January, 2019,
'VJ'

Copy forwarded to:

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

By order

Asstt. Registrar

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