

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**Kolkata Bench, Kolkata**

**(Bench – “B”)**

**BEFORE SHRI ABY. T. VARKEY, JUDICIAL MEMBER AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**I.T.A. No.490/Kol/2013**  
(Assessment year 2008-09)

D.C.I.T, C.C-VII, Kolkata	-Vs-	M/s. Iris Commercial Pvt. Ltd. [PAN : AAACI 5557 R]
(Revenue/Department)	..	(Assessee)

&

**I.T.A. No.493/Kol/2013**  
(Assessment year 2008-09)

D.C.I.T, C.C-VII, Kolkata	-Vs-	M/s. Bakliwal Finvest Pvt. Ltd. [PAN :AABCB 3321 R]
(Revenue/Department)	..	(Assessee)

&

**I.T.A. No.497/Kol/2013**  
(Assessment year 2008-09)

D.C.I.T, C.C-VII, Kolkata	-Vs-	M/s. Glamour Vanijya Pvt. Ltd. [PAN :AACCG 4252 H]
(Revenue/Department)	..	(Assessee)

&

**I.T.A. No.660/Kol/2013**  
(Assessment year 2008-09)

D.C.I.T, C.C-I, Kolkata	-Vs-	M/s. Star Trafin (P) Ltd. [PAN : AADCS 5989 A]
(Revenue/Department)	..	(Assessee)

&

**I.T.A. Nos.1197 to 1199/Kol/2013**  
 (Assessment years 2005-06 to 2007-08)

D.C.I.T, C.C-VII, Kolkata	-Vs-	M/s. Jaishree Commotrade Pvt. Ltd.  [PAN :AAACJ 7907 N]
(Revenue/Department)	..	(Assessee)

For the Revenue/Department	Shri A. K. Singh, CIT-DR.
For the Assessee	Shri Subash Agarwal, Advocate
Date of Hearing	25.03.2019
Date of Pronouncement	29.03.2019

**ORDER**

**Per Bench:**

The appeals filed by the Revenue in ITA Nos.490,493,497 & 600/Kol/2013 against the order of Commissioner of Income Tax [Appeals] Central-I, Kolkata against separate orders of assessment passed u/s 143(3) of the Income Tax Act (hereinafter referred to as the 'Act') on 31.12.2010 for the Assessment Year 2008-09. The appeals filed by the Revenue in ITA Nos.1197, 1198 & 1199/Kol/2013 against the orders of the Commissioner of Income Tax [Appeals] Central-I, Kolkata dated 31.12.2008, 30.12.2008 & 18.12.2009 for Assessment Years 2005-06, 2006-07, 2007-08 respectively.

2. The one common issue to be decided in all these appeals is as to whether the Id. CIT(A) was justified in deleting the addition made towards unexplained income on protective basis. The interconnected issue involved therein is as to

whether the Id. CIT(A) was justified in deleting the addition towards commission income in the hands of the respective assessees.

3. The appeal in ITA No.490/Kol/2013 in the case of M/s Iris Commercial Pvt. Ltd. is taken as the lead case and the decision rendered thereon would apply with the equal force on other assessees also herein except with variance in figures.

4. The brief facts of this issue are that pursuant to the investigation carried out by Directorate of Income Tax (Investigations), Kolkata ['DDIT(Inv.), Kolkata'], it revealed that some entities were involved in providing accommodation entries to various companies based in Mumbai, which in turn had used the said funds for payments to Madhepura Mercantile Co-operative Bank at Mumbai, which was said to be controlled by Shri Ketan Parekh. Since the assessee company was one of such entities, the statement of its director, Shri Kalikant Choudhury was recorded u/s 131 of the Act by DDIT(Inv.), Kolkata on 24.11.2006. In the said statement given on oath, Shri Kalikant Choudhury accepted that he had got cash of equivalent amount from the Mumbai based companies belonging to Shri Ketan Parekh and thereafter deposited the said cash into bank account of the assessee company and cheques were issued to the said companies. He also furnished the list of cheques so issued against cash that had been received by him. Although, Shri Kalikant Choudhury subsequently filed an affidavit retracting his statement, the Id. Assessing Officer did not accept the same on the basis of the enquiries conducted by the investigation wing on a test check basis, which revealed that cash was deposited in various bank accounts in different stages. According to Assessing Officer, this factual position substantiated the statement of Shri Kalikant Choudhury, Director of the assessee company, that cash was indeed received by the assessee company in lieu of cheques given to various companies belonging to

Ketan Parekh Group. The Id. Assessing Officer accordingly held that accommodation entries were given by the assessee company to various Mumbai based companies belonging to Ketan Parekh Group and since the accommodation entries so given during the previous year relevant to assessment year 2008-09 aggregated to Rs.6,78,91,341/-, he added the commission income @2% amounting to Rs.13,57,826/- to the total income of the assessee in the assessment completed for Assessment Year 2008-09 u/s 143(3) of the Act on 28.12.2010. In the assessment so made, the Assessing Officer also made an addition of Rs.6,78,91,341/- in the hands of the assessee company on protective basis observing that the unexplained income to that extent of cash given by the Mumbai based companies was assessable on substantive basis in the hands of the said companies for the cash given to the assessee company.

5. Against the order passed by the Id. Assessing Officer, appeal was preferred by the assessee company before the Id. CIT(A) and after considering the submissions made by the assessee as well as materials available on record, the Id. CIT(A) deleted the addition made by the Id. Assessing Officer to the total income of the assessee for Assessment Year 2008-09 on account of alleged accommodation entries given to the Mumbai based companies in the form of commission income @2% as well as further addition on account of protective basis for the following reasons given in Paragraphs 7 and 8 of his impugned order which are reproduced hereinbelow for the sake of convenience:

*“7. I have perused the appellate folder and considered the material placed on record. I find that in course of the appellate proceedings, my learned predecessor had tried to ascertain about the cases where substantive additions were made corresponding to the protective addition in the present case; and also, about the fate of the appeals in those cases. However, though a substantial period of over 17 months had already elapsed, nothing has been heard from the A.O. Notice u/s 250 was also served on the A.O on 19.12.2012, but none has appeared for the Department on the date of hearing, that is, on*

*24.12.2012. In this factual background, given the facts of the case and the findings of the A.O in his assessment order, and also, the decisions of the Id. CIT(A) as well as those of the Hon'ble Jurisdictional ITAT in the case of the appellant for the Assessment Years 2006-07 and 2007-08, the appeal is now being decided on the basis of the material available on record.*

*8. I have perused the relevant orders. I have also considered the submissions made on behalf of the appellant. I find that the issues involved in this appeal are covered by the orders of my learned predecessor as well as by those of the Hon'ble Jurisdictional ITAT. Respectfully following the decisions, it is to be held that the addition made by the A.O on account of unexplained income as well as on that of commission income is neither sustainable in law nor on facts. The addition of Rs.6,78,91,341/- and Rs.13,57,826/- is directed to be deleted. Ground Nos.2, 3 and 4 is allowed."*

6. Aggrieved by the said order of the Id. CIT(A) giving relief to the assessee for the year under consideration, the Revenue has preferred an appeal before the Tribunal.

7. At the time of hearing of these appeals fixed on 25.03.2019, Shri Subash Agarwal, Advocate, appeared on behalf of the assessee. Shri A. K. Singh, CIT DR, appeared on behalf of the Revenue.

8. We have heard the rival submissions. The main issues involved in this appeal relate to the deletion by the Id. CIT(Appeals) of the additions made by the Assessing Officer on account of alleged accommodation entries given to the Mumbai based Companies on protective basis and the deletion by the Id. CIT(Appeals) of the addition made by the Assessing Officer on account of commission income allegedly received by the assessee for giving accommodation entries. It is observed that the similar issues were involved in some other cases and all these cases were adjourned in the past and also blocked for some period for getting the information about the status or outcome of the cases where the similar amounts were added on substantive basis. In spite of sufficient time given to both

the parties, they have failed to furnish the said information. It is well settled that protective assessment is permissible in law and in case of a doubt or ambiguity about real entity in whose hands a particular income is to be assessed, the assessing authority is entitled to have recourse to make a protective assessment. As held by the Hon'ble Supreme Court in the case of *Lalji Haridas –vs.- ITO (43 ITR 387)*, the Officer may, when in doubt, to safeguard the interest of the revenue can assess it in more than one hand but this procedure can be permitted only at the stage of assessment. Protective assessment becomes redundant when the substantive assessment becomes final and if the substantive assessment fails, it is protective assessment which is to be treated as substantive. Keeping in view this corollary between the substantive assessment and protective assessment, an appeal against the protective assessment should ordinarily await the outcome of the substantive assessment so that the protective assessment can be in conformity with the substantive assessment. In the case of *CIT –vs.- Surendra Gulab Chand Modi (140 ITR 517)*, the appeal arising out of the protective assessment was disposed of by the appellate authority i.e. Tribunal vacating the protective assessment without waiting for the final outcome of the proceedings arising from the substantive assessment, which matter was pending in the Hon'ble Supreme Court. The Hon'ble Gujarat High Court held that the Tribunal was not justified in proceeding with the matter and in disposing off it instead of blocking it till the disposal of the matter pending in the Hon'ble Supreme Court in order to bring it in conformity with the view of the Hon'ble Supreme Court. The Hon'ble Gujarat High Court accordingly directed the Tribunal to keep the matter alive and pending awaiting the decision of the Hon'ble Supreme Court in the proceedings arising from the substantive assessment.

9. In the present case, the Id. CIT(Appeals) did not await the outcome of the proceedings arising from the substantive assessment and since the said information was not forthcoming even after a considerable period from the concerned assessing officer, he proceeded to dispose off the appeal arising from the protective assessments by his impugned order and deleted the addition made on protective basis without awaiting the final outcome of the proceedings arising from the substantive assessment. Keeping in view the decision of the Hon'ble Gujarat High Court in the case of CIT –vs.- Surendra Gulab Chand Modi (supra), we hold that the Id. CIT(Appeals) was not justified in deleting the addition made by the Assessing Officer on protective basis in the year under consideration without awaiting for the final outcome of the proceedings arising from this substantive assessment. We, therefore, set aside the impugned order of the Id. CIT(Appeals) on this issue and remit the matter back to him for keeping it alive and pending till the outcome of the proceedings arising from the substantive assessment.

10. As regards the issue relating to the addition made on account of commission income allegedly received by the assessee for giving accommodation entries, we find that this issue is consequential to the issue relating to the addition made on protective basis on account of accommodation entries allegedly given by the assessee-company to the Mumbai based companies. Since the said issue is remitted back by us to the Id. CIT(Appeals), we also remit the consequential issue relating to addition on account of commission income back to the Id. CIT(Appeals) for deciding the same afresh. Grounds Nos. 1 to 5 of the Revenue's appeals are accordingly treated as allowed for statistical purposes.

11. With regard to appeals of the Revenue in ITA Nos.1197 & 1198/Kol/2013 for Assessment Years 2005-06 & 2006-07, the Id. Assessing Officer had also made further addition of Rs.10,00,000/- and Rs.4,00,000/- respectively towards cash deposits treating it as unexplained cash and added the same to the total income of the assessee.

12. We find that the Id. CIT(A) had deleted this addition for the same reasoning given for additions made towards unexplained income added on protective basis and commission income @2% on the same unexplained income portion. Since, we have already remanded the issue towards unexplained money and commission income to the file of the Id. CIT(A) which was the basis for the Id. CIT(A) to delete the addition made towards cash deposits of Rs.10,00,000/- and Rs.4,00,000/- for Assessment Years 2005-06 & 2006-07 respectively, we deem it fit and appropriate in the interest of justice and fair play to remand this issue of addition towards cash deposits also to the file of Id. CIT(A) for fresh adjudication based on the final outcome of substantive appeal pending in Mumbai as directed hereinabove for the other grounds.

13. In the result, the appeals of the Revenue are allowed for statistical purposes.

**Order pronounced in the Court on 29.03.2019.**

**Sd/-**  
**[A. T. Varkey]**  
Judicial Member

**Sd/-**  
**[M. Balaganesh]**  
Accountant Member

**Dated : 29.03.2019**  
[RS, Sr.PS]

Copy of the order forwarded to:

1. Assessee –
  - a. M/s. Iris Commercial Pvt. Ltd., 47, Kali Krishna Tagore Street, Kol-7.
  - b. M/s. Bakliwal Finvest Pvt. Ltd., 47, Kali Krishna Tagore Street, Kol-7.
  - c. M/s. Glamour Vanijya Pvt. Ltd., 9, Mangoe Lane, Kol-1.
  - d. M/s. Star Trafin (P) Ltd., 4A, Ganpat Gangla Road, Kol-7.
  - e. M/s. Jaishree Commotrade Pvt. Ltd., 10A, Hospital Street, Kolkata – 700 072.
2. Revenue – D.C.I.T., CC-VII, Kolkata
3. CIT(A)- Kolkata.
4. CIT – , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy//

By Order

Assistant Registrar, Kolkata.