

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.890/Del/2014
Assessment Year: 2010-11**

ACIT, Central Circle-9, vs Harish Kumar Luthra,
New Delhi C-165, Pushpanjali Enclave,
Pitampura, New Delhi.
PAN: AFSPK5240H

**ITA No. 891/Del/2014
Assessment Year: 2010-11**

ACIT, Central Circle-9, vs Satish Kumar Luthra,
New Delhi C-165, Pushpanjali Enclave,
Pitampura, New Delhi.
PAN: AHHPK5236G

Appellant

Respondent

Assessee by Shri P.C. Yadav, Advocate

Revenue by Shri J.K. Mishra, Sr. DR

Date of Hearing 25.3.2019

Date of Pronouncement 04.4.2019

ORDER**PER K. NARASIMHA CHARY, JM**

These are two appeals filed by two assesseees against the orders both dated 29.11.2013 in Appeal Nos.398 & 399/13-14 passed by the Learned Commissioner of Income-tax(Appeals)-XXXII, New Delhi {"CIT(A)"} for Assessment Year 2013-14. Since the issue involved in both the appeals is same, we, for the sake of convenience, pass a consolidated order.

2. Brief facts of the case are that assesses in these two appeals are brothers and are engaged in the business of real estate. A search and seizure operation u/s 132/133A of the Income-tax Act, 1961 ("the Act") was conducted on the premises and the related persons/concern of Rama group of companies on 15.9.2010. During the course of search, a sum of Rs.8 crores were surrendered by both brothers, Rs.4 crores each, being the unaccounted income earned by them and utilized for re-purchase of the shares of group companies, viz., M/s Divine Vision Infra Estate P. Ltd. as well as M/s Rama Krishna Electro Components P. Ltd. at a discounted value. Though the transactions were conducted at an agreed mutual value between the parties, determined by various factors, however, in order to buy the peace of mind, the difference between the amount originally paid for subscribing the shares of the group companies through the outside companies and the discounted value at which the shares were later repurchased by the assesses were surrendered.

3. Subsequently, both the assesses filed their returns of income u/s 139 on 31.3.2011 declaring a sum of Rs.4,05,61,135/- and Rs.4,12,28,390/- respectively.

4. During the course of assessment proceedings, learned AO found that the total share capital and share premium introduced by the assesses in those two concerns were Rs.2 Crore and Rs.10 Crores respectively whereas the surrendered amount by them was Rs.8 Crores in total and, therefore, learned AO brought the difference of the value of the shares and the amount surrendered by the assessee, viz., Rs.2 Crores each.

5. Aggrieved by the said additions, assesses preferred appeals and submitted before the learned CIT(A) that the investment at Rs.12 Crores was made by one M/s R.S.Services P. Ltd. and the assessee re-purchased the same on mutually agreed terms at a discounted price which is far less than the surrendered amount but in order to purchase peace, the assessee surrendered Rs.8 Crores but without bringing any material on record either by examining the persons, who subscribed to the share of Ramakrishna group of companies at a premium or the persons from whom the assesses purchased such shares at a discounted price. It was further argued by the assessee before the learned CIT(A) that the learned AO does not dispute the statement of the assesses recorded u/s 132(4) of the Act to the effect that they have bought back the shares of Ramakrishna group of companies at a discounted price and on the other hand, in the assessment order, learned AO accepted the same. Without bringing any incriminating material on record on the face of the statement recorded u/s 132(4) of the Act, it is not open for the learned AO to make any addition in the hands of the assessee.

6 Learned CIT(A), after going through the observations of the learned AO in the assessment order, the appraisal report and other material available on record found that consistently the case of the assessee has been that they purchased the shares at a discounted price and not at the price at which they were issued and there is no material on record to suggest that the assessee paid any higher amount than what they claimed to have paid for purchase of the shares. Learned CIT(A) further found that except extracting the appraisal report prepared by the Investigation Wing of the Department in the case of Jagat and other group cases, the learned AO did not do any independent enquiry either by examining the persons connected with the issue or the re-sale of the shares or in connection with the apprehension that the assessee's himself paid some higher amount than the amount they have stated in their statement u/s 132(4) of the Act. Learned CIT(A), therefore, held that any addition made u/s 153A must have its basis on the incriminating material found as a result of search or post such inquiry conducted by the AO during the assessment proceedings and in the absence of any such material, it is not open for the learned AO to make any additions. On this premise, learned CIT(A) allowed the appeal and directed the deletion of the addition Rs.2 Crores each in the hands of the assessee.

7. Revenue is, therefore, in this appeal before us. It is the argument of the learned DR that vide letter dated 30.11.2013, learned AO specifically asked the assessee to furnish the details of balance Rs.4 crores and in the absence of any details furnished by the assessee, learned AO is justified in making the additions. According to the learned DR, learned CIT(A) should have considered this point while disposing of the appeal. It is further argued that if for any reason, learned CIT(A)

was of the considered opinion that certain persons connected either with issuance or re-sale of the shares were to be examined, it is incumbent upon him to examine them or to seek remand report from the AO on that aspect but without doing so, learned CIT(A) is not justified in deleting the addition. It is further submitted that there is incriminating material unearthed during the search which culminated into voluntary disclosure and it is not, therefore, correct for ld. CIT(A) to observed that there is no incriminating material to make addition u/s 132(4) of the Act. Lastly, it is submitted that ld. AO did not accept the statement of the assessee as true and, therefore, learned CIT(A) should not have relied upon the same.

8 Per contra, it is the argument of the learned AR that there are two limbs to transactions discussed by the AO vis-à-vis investment in shares, one is investment in the share of Ramakrishna group and the other is buy back of the shares of Ramakrishna group by the assessee vis-à-vis services for a sum of Rs.8 crores at a mutually agreed price. It is the submission of the learned AR that in so far as the investment at Rs.12 crores made by R.S. Services is concerned, it is not the subject matter of the present proceedings and what is the subject matter of the proceedings is the sale consideration paid by the assessee. He submits that though the issue value of the shares was Rs.12 Crore, due to certain factors, the transaction was concluded at a mutually agreed value between the parties in accordance with which the assessee spent Rs.8 Crore and it is always open for the trader to transfer the shares at a price less than the issue price or market price and in that transaction, the taxing authority cannot taken into consideration the market price or the issue price of the shares ignoring the real price that was paid. He submits that while following

the decision in the case of CIT vs A. Raman & Co (1968) 67 ITR 11 (SC) and approving the decision in the case of Sri Ramalinga Choodambikai Mills Ltd vs CIT (1955) 28 ITR 952 (Mad), the Hon'ble Apex Court in CIT vs Calcutta Discounts, 91 ITR 8 (SC) held that the taxing authority cannot take into account the market value of the case ignoring the real value fetched for the same. For these reasons, he prayed to dismiss the appeals.

9. We have gone through the record in the light of the submissions made on either side. Facts are straight and simple. The issue price of the shares was Rs.12 crores. However, according to the assesses, as per their statement recorded u/s 132(4) they bought back the shares at a discounted price and paid a sum of Rs 8 Crores which they surrendered during the search. Though the appraisal report prepared in the case of Jagat & Other group cases prepared by the Department was extracted by the learned AO very extensively in his order, no material is placed on record to show that the assesses have paid any higher amount than the one they have stated in their statement. As rightly observed by the learned CITA), the issue price of the shares has never been in dispute and it cannot be an incriminating material when there is nothing on record to suggest that assesses did not purchase the same at a discounted price.

10. As a matter of fact, learned AO in the last paragraph of page No.9 of his order referred to the fact that Ramakrishna group of companies had earlier allotted shares to various paper companies at Rs.100 per share (at a premium of Rs.90 per share), which were subsequently bought back by the assesses at a discounted value. Learned AO has no

material before him as to at what price the assesses purchased the same. However, the assesses stated in their statement u/s 132(4) of the Act that they purchased the same at Rs.8 Crore and surrendered the same @ Rs. 4 Crores each. On the face of this averment made by the assessee, we do not find anything on record to the contrary. Without gathering any material whatsoever to suggest that assesses paid the entire issue price to M/s R.S. Services P. Ltd., it appears that the learned AO asked the assessee to furnish the details of balance Rs.4 Crore. It is not the case of the assessee that they paid anything more than Rs.8 crore. In such a situation, the question of furnishing of details of balances Rs.4 crores does not arise at all. It at all assesses admit to have paid anything more than, it would have been reasonable for the learned AO to seek the details about such payment.

11. Unless and until, learned AO gathers any material to be placed on record that the assesses have paid anything more than Rs.8 crore for purchase of the shares worth Rs.12 crores at a discounted price, it is not open for the learned AO to draw an inference that the assesses made payment of Rs.12 crore and thereby bring Rs.4 crore to tax in view of the judgment of the Hon'ble Apex Court in the case of Calcutta Discounts (supra), it is always open for the traders to arrange their business transactions at a mutually agreed terms and the tax authorities cannot substitute the issue price or the market value of the shares whereas the consistent case of the assessee is that they purchased the shares at a discounted price at Rs.8 Crore. With this view of the matter, we do not find any illegality or irregularity in the findings of the learned CIT(A) and accordingly upheld the impugned orders. We find the appeals of the

revenue as devoid of merit and are liable to be dismissed, the appeals are dismissed accordingly

12 In the result, appeals of revenue are dismissed.

Order pronounced in the Open Court on 4th April, 2019.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 4th April, 2019

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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