

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1156/Del/2019
Assessment Year : 2013-14

M/s Surya Processed Food
Pvt.Ltd.,
2nd Floor,
19, Local Shopping Complex,
Near Pushpa Bhawan,
Madangir,
New Delhi – 110 062.
PAN : AAKCS7174G.
(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-8,
New Delhi.

(Respondent)

ITA Nos.1157/Del/2019 & 1158/Del/2019
Assessment Years : 2013-14 & 2014-15

M/s Surya Agrotech
Infrastructure Limited,
2nd Floor,
19, Local Shopping Complex,
Near Pushpa Bhawan,
Madangir,
New Delhi – 110 062.
PAN : AALCS3053M.
(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-8,
New Delhi.

(Respondent)

Appellants by : Shri Ved Jain, Advocate and
Shri Himanshu Agarwal, CA.
Respondent by : Shri S.S. Rana, CIT-DR.

Date of hearing : 16.04.2019
Date of pronouncement : 07.05.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

These appeals by the assesseees for the assessment years 2013-14 and 2014-15 are directed against the order of learned CIT(A)-24, New Delhi-24, New Delhi dated 7th January, 2019.

2. In all these appeals, common grounds have been raised. Therefore, they are all being taken up together for consideration. The grounds of appeal raised in the above appeals read as under :-

ITA No.1156/Del/2019 :-

"1. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi [‘the Ld.CIT(A)’], has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi (‘the Ld. Assessing Officer’) in upholding the addition of Rs.31,00,50,001 made u/s 68 of the Act on account of receipt of share capital.

2. That on facts and circumstances of the case and in law, the Ld.CIT(A), has erred in upholding the order of the Ld. Assessing Officer in upholding the addition of Rs.77,51,250/- made u/s 37 of the Act on account of alleged expenditure for commission incurred by the applicant company for channelizing the above share capital/share premium."

ITA No.1157/Del/2019 :-

"1. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi [‘the Ld.CIT(A)’], has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi (‘the Ld. Assessing Officer’) in upholding the addition of Rs.2,60,00,000/- made u/s 68 of the Act on account of receipt of share capital.

2. That on facts and circumstances of the case and in law, the Ld.CIT(A), has erred in upholding the order of the Ld. Assessing Officer in upholding the addition of

Rs.6,50,000/- made u/s 37 of the Act on account of alleged expenditure for commission incurred by the applicant company for channelizing the above share capital/share premium.”

ITA No.1158/Del/2019 :-

“1. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi [‘the Ld.CIT(A)’], has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi (‘the Ld. Assessing Officer’) in upholding the addition of Rs.13,31,50,000 made u/s 68 of the Act on account of receipt of share capital.

2. That on facts and circumstances of the case and in law, the Ld.CIT(A), has erred in upholding the order of the Ld. Assessing Officer in upholding the addition of Rs.33,28,750/- made u/s 37 of the Act on account of alleged expenditure for commission incurred by the applicant company for channelizing the above share capital/share premium.”

3. At the time of hearing before us, it is stated by the learned counsel that both the above assessee companies are part of group companies of Priya Gold group. That search and seizure proceedings under Section 132 of the Income-tax Act, 1961 were conducted on 16th December, 2014 in the case of Priya Gold group and its group companies which included both the companies under appeal before us. During the course of search, statement of Shri Shekhar Agarwal, Director of M/s Surya Food & Agro Limited, which is the flagship company of the group, was recorded under Section 132(4). In the said statement, he accepted that the said group has earned unaccounted income which has been routed as bogus share capital during the financial year relevant to assessment year 2013-14 and 2014-15. He also admitted that the same income would be surrendered in the respective assessment years. The group has surrendered the entire

undisclosed income of the group in its flagship company M/s Surya Food & Agro Limited by filing petition before the Settlement Commission. The additional income disclosed before the Settlement Commission was ₹49,12,73,399/-. In paragraph 12 & 13 of the application before the Settlement Commission, it was clearly mentioned that the profit made outside books by the applicant was utilized for making investment in the share capital of the group concerns. The assessee has also given the name of both the companies under appeal and the amount of share capital. That the Settlement Commission has admitted the above application and also passed the final order in which as against the income disclosed at ₹49.12 crores, the income settled was ₹55.77 crores. The assessee as well as Revenue both has accepted the order of the Settlement Commission and which has become final. In view of the above, no further addition for unexplained share capital in the hands of above two assessees is called for otherwise it would be double taxation of the same income.

4. Learned CIT-DR argued at length. He also furnished written submission, which is being reproduced below :-

"In the above case, it is humbly submitted as follows:

- 1. In statement on oath recorded u/s 132(4) on 17.12.2014, Sh. Shekhar Agarwal surrendered undisclosed income of Rs. 31 Cr. in F.Y 2012-13 and Rs. 15.91 Cr. in F.Y 2014-15.*
- 2. In revised return filed on 30.08.2016 assessee increased an amount of Rs. 2.6 Cr. in A.Y 2013-14 and Rs. 28.40 Cr. in A.Y 2014-15 on account of share application money. However, no taxes were paid thereon. In statement on oath recorded u/s 131(1) on 25.10.2016, Sh. Manoj Aggarwal, Director of assessee company, stated that all taxes will be paid by 30.09.2016 but were not paid.*

- 3. Detailed investigation was made with regard to investment made in M/s Subh Shree Investment Management P. Ltd. and M/s Neelkanth Vincom P. Ltd.(pages 4 to 19 of AO) which showed that the entire investment was on account of accommodation entries.*
- 4. As stated in para 4.9 of AO , statement of directors Sh. Navin Aggarwal and Sh. Manoj Aggarwal were recorded in which they stated that Sh. Shekhar Agarwal was responsible for managing the finance and accounts of assessee group.*
- 5. Statement of directors Ms. Beena Aggarwal, Chhavi Aggarwal and Nidhi Aggarwal were recorded in which they stated that they were dummy directors(pages 20 and 21 of AO).*
- 6. As stated in para 4.12 of AO, various incriminating documents were seized from premises of the assessee.*
- 7. As stated on page 30 of AO, Sh. Shekhar Agarwal admitted that unaccounted income earned through undisclosed sources was routed to the assessee company. No statutory register, minutes of meeting, share certificates and other documents were produced.*
- 8. As stated in para 4.19 of AO, bank statements of investor companies reflected immediate introduction and withdrawal of funds.*
- 9. As stated in page 37 of AO, summons were issued to Sh. Sudhir Satnaliwala but there was no compliance. Investigation Wing Kolkata examined Sh. Debashish Dutta who admitted providing accommodation entry to Priyagold group of companies.*
- 10. As stated in page 38 of AO, statement of dummy directors Sh Bijay Kumar Aggarwal & Sh. Prakash Doshi was recorded in which they admitted that they were directors of entry operator Sh Debashish Dutta for earning commission. Sh Pankaj Agarwal also admitted that he was a dummy director.*

11. *As stated in page 46 of AO, various incriminating documents pertaining to pre-planning were seized.*
12. *Various ban inquiries were conducted as discussed on pages 47 to 54 of Assessing Officer.*
13. *As stated in page 55 of AO, statement u/s 131(1) of dummy directors Sh. Dinesh Kumar Pandey was recorded in which he admitted that companies in which he or his wife were directors are dummy companies.*
14. *The assessee has failed to furnish justification for receiving such huge share premium.*

It is humbly submitted that the following decisions may kindly be considered with regard to validity of statement recorded u/s 132(4) of I.T.Act:

1. **B Kishore Kumar Vs CIT (62 taxmann.com 215, 234 Taxman 771) (Copy Enclosed)**
where Hon'ble Supreme Court dismissed SLP against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents.
B Kishore Kumar Vs CIT (52 taxmann.com 449) Madras High Court confirmed (Copy Enclosed)
2. **Bhagirath Aggarwal Vs CIT (31 taxmann.com 274, 215 Taxman 229, 351 ITR 143) (Copy Enclosed)**
where Hon'ble Delhi High Court held that an addition in assessee's income relying on statements recorded during search operations cannot be deleted without proving statements to be incorrect.
3. **CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi) (Copy Enclosed)**
where Hon'ble Delhi High Court held that where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under sec. 132(4)

admitting that said gift was bogus, impugned addition was to be confirmed.

4. Smt Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

5. M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-238-SC-IT) (Copy Enclosed)

where Hon'ble Supreme Court dismissed SLP challenging the judgment, whereby the High Court had held that statement made u/s 133A could be relied upon for purposes of assessment, in absence of any contrary evidence or explanation as to why such statement made was not credible.

M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-188-HC-MUM-IT) Bombay High Court confirmed (Copy Enclosed)

6. Greenview Restaurant Vs ACIT [2003] 133 Taxman 432 (Gauhati)/[2003] 263 ITR 169 (Gauhati)/[2003] 185 CTR 651 (Gauhati) (Copy Enclosed)

"From facts, it was clear that there was a delay on the part of the appellant and its partner in retracting the statements recorded. The attention of the Court had also not been drawn to any material on record to establish that any attempt was made on behalf of the appellant to prove the allegation of inducement, threat or coercion through the witnesses. Having examined the impugned orders rendered by the Tribunal with the reasonings in support of its finding against the complaint of threat, inducement or coercion, no good and sufficient reason was found to differ from it. In the facts and circumstances of the case, having regard to the materials on record, the appellant had failed to establish that the statements of its partner had been recorded in the course of the search by using coercion, threat or inducement. Hence, the contentions advanced by the appellant in that regard were dismissed and the

conclusion of the Tribunal on that count was affirmed.” [Para 9]

7. Raj Hans Towers (P.) Ltd. Vs CIT (56 taxmann.com 67, 230 Taxman 567, 373 ITR 9) (Copy Enclosed)

where Hon’ble Delhi High Court held that where assessee had not offered any satisfactory explanation regarding surrendered amount being not bona fide and it was also not borne out in any contentions raised before lower authorities, additions so made after adjusting expenditure were justified (SURVEY CASE).

8. PCIT Vs Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)

where Hon’ble Delhi High Court held that Where assessee surrendered certain income by way of declaration and withdraw same after two years without any satisfactory explanation, it could not be treated as bona fide and, hence, addition would sustain.

9. ACIT Vs Hukum Chand Jain [2010] 191 Taxman 319 (Chhattisgarh)

when assessee did not retract his statement immediately after search and seizure was over and in return also no explanation was offered for surrender of undisclosed income at time of search and seizure operations under section 132(4), it could be said that assessee had failed to discharge onus of proving that confession made by him under section 132(4) was as a result of intimidation, duress and coercion or that same was made as a result of mistaken belief of law or facts.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T.Act:

1. PCIT Vs NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC) (Copy Enclosed)

where Hon’ble Supreme Court reverse order of lower Authorities holding that where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company. Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish credit worthiness of investor companies stood discharged.

2. **PCIT Vs NDR PROMOTERS PVT LTD (2019-TIOL-172-HC-DEL-IT)**

where Hon'ble Delhi High Court held that a case involving make-believe paper work to camouflage the bogus nature of the transactions is to be treated as unexplained credit u/s 68.

3. **ITO Vs Synergy Finlease Pvt. Ltd (ITA No.4778/Del/2013)**

where Hon'ble ITAT Delhi held that where investor of share application money had nominal income and cheques had been received just before issue of cheques for share application money, creditworthiness was not proved and addition u/s 68 was sustained.

4. **Prem Castings (P.) Ltd. Vs CIT [2017] 88 taxmann.com 189 (Allahabad) (Copy Enclosed)**

where Hon'ble Allahabad High Court held that additions u/s 68 warrant being sustained where the identities & creditworthiness of investors in the assessee company are not established by the assessee & are also proved incorrect by the Department's Assessee Information System. In such circumstances, assessee cannot resist the additions on grounds that it did not have opportunity to cross-examine relevant witnesses. An assessee company cannot hide behind the shell of a corporate entity to feign ignorance regarding the identity of any person who invests in its share capital.

Prem Castings (P.) Ltd. Vs CIT 2018-TIOL-274-SC-IT (Copy Enclosed)

where Hon'ble Supreme Court held as follows:

"We do not find any merit in this petition. The Special Leave Petition is accordingly dismissed."

5. **CIT Vs MAF Academy (P.) Ltd (361 ITR 258) (Copy Enclosed)**

where Hon'ble Delhi High Court held that where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said transactions was to be added to assessee's taxable income under section 68 It was held as follows:

“53. In contrast to the above judgments, in the present case, the Assessee is a private limited company and in the factual matrix, we have held that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction. Though, in our considered opinion, none of the above judgments, referred to by the Assessee respondent, are applicable in the facts of the present case and in view of the findings recorded by us hereinabove.

54. In view of the above, we are of the view that the Assessee has not discharged the onus satisfactorily and the additions made by the Assessing Officer were justified and sustainable.”

6. CIT Vs Navodaya Castle Pvt Ltd [2014] 367 ITR 306 (Del) (Copy Enclosed)

where Hon'ble Delhi High Court accepted that since the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

“20. Now, when we go to the order of the Tribunal in the present case, we notice that the Tribunal has merely reproduced the order of the Commissioner of Income-tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its co-ordinate Bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT v. MAF Academy P. Ltd. [2014] 206 DLT 277 ; [2014] [361 ITR 258](#) (Delhi)). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

21. *In view of the aforesaid discussion, we feel that the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law."*

Navodaya Castle Pvt Ltd Vs CIT ([2015] 56 taxmann.com 18 (SC)/[2015] 230 Taxman 268 (SC)) (Copy Enclosed)
SLP of assessee dismissed by Hon'ble Supreme Court.

7. **Konark Structural Engineering (P.) Ltd. Vs DCIT [2018] 96 taxmann.com 255 (SC) (Copy Enclosed)**

where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons to shareholders under section 131 could not be served as addresses were not available, and, moreover, those shareholders were first time assesseees and were not earning enough income to make deposits in question, addition made by Assessing Officer under section 68 was to be confirmed; SLP dismissed.

Konark Structural Engineering (P.) Ltd. Vs DCIT [2018] 90 taxmann.com 56 (Bombay) (Copy Enclosed)

where Hon'ble Bombay High Court held that where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons served to shareholders under section 131 were unserved with remark that addressees were not available, and, moreover, those shareholders were first time assesseees and were not earning enough income to make deposits in question, impugned addition made by AO under sec. 68, was to be confirmed.

10 **PCIT Vs Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi) (Copy Enclosed)**

where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.

8. **Pratham Telecom India Pvt Ltd Vs DCIT (2018-TIOL-1983-HC-MUM-IT) (Copy Enclosed)**

where Hon'ble Bombay High Court held that mere production of PAN numbers & bank statements is sufficient enough to discharge the burden on taxpayer to escape the realms of Section 68.

9. **JJ Development Pvt Ltd Vs CIT (2018-TIOL-395-SC-IT) (Copy Enclosed)**

where Hon'ble Supreme Court held that when the assessee fails to provide a convincing explanation with regard to the cash credit before the AO and the same was accepted by the ITAT being a fact finding body, the same cannot be disputed further. Apex Court dismissed the Special Leave to Petition filed by the assessee.

10. **CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34) (Copy Enclosed)**

where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows:

"12. A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With

respect, it appears to us that there has only been a mechanical reference to the case-law on the subject without any serious appraisal of the facts and circumstances of the case.

13. We, therefore, answer the substantial question of law framed by us in the negative, in favour of the revenue and against the assessee. The appeal of the revenue is allowed with no order as to costs."

11. CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187) (Copy Enclosed)

where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68. It Was held as follows:

"41. In the case before us, not only did the material before the Assessing Officer show the link between the entry providers and the assessee-company, but the Assessing Officer had also provided the statements of Mukesh Gupta and Rajan Jassal to the assessee in compliance with the rules of natural justice. Out of the 22 companies whose names figured in the information given by them to the investigation wing, 15 companies had provided the so-called "share subscription monies" to the assessee. There was thus specific involvement of the assessee-company in the modus operandi followed by Mukesh Gupta and Rajan Jassal. Thus, on crucial factual aspects the present case stands on a completely different footing from the case of Oasis Hospitalities (P.) Ltd. (supra).

42. In the light of the above discussion, we are unable to uphold the order of the Tribunal confirming the deletion of the addition of Rs. 1,18,50,000 made under section 68 of the Act as well as the consequential addition of Rs. 2,96,250. We accordingly answer the substantial questions of law in the negative and in favour of the department. The assessee shall pay costs which we assess at Rs. 30,000/-."

12. CIT Vs N R Portfolio Pvt Ltd [2014] 42 taxmann.com 339 (Delhi)/[2014] 222 Taxman 157 (Delhi)(MAG)/[2014] 264 CTR 258 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding. It was held as follows:

"30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them."

5. In the rejoinder, it is stated by the learned counsel that the assessee is not retracting the statement given by Shri Shekhar Agarwal under Section 132(4) that the group had unaccounted income which is routed through the share capital. In fact, the income was earned in the flagship company viz., M/s Surya Food and Agro Limited which had the turnover of more than ₹500 crores a year. Therefore, the said company filed the petition before the Settlement Commission by disclosing its additional income. That in the appellant companies, it is only the application of that income. That these facts have been duly considered and accepted by the ITAT while granting stay to the appellant companies in its order dated 1st March, 2019. He further stated that in the assessment order, the Assessing Officer himself has mentioned at several places that it is the undisclosed income of the group which is invested in the form of bogus share capital. However, at the end, while making the addition, he took a different stand than what is stated in the whole body of the assessment order. He stated

that when the income has been taxed, its application cannot be taxed again otherwise it would amount to double taxation of income.

6. We have carefully considered the arguments of both the sides and perused the material placed before us. The limited question before us is whether the credit in the form of share capital in the companies under appeal before us can be considered to be application of undisclosed income of M/s Surya Food and Agro Limited who have declared such income before the Settlement Commission. Let us first see the stand of the Revenue i.e., the Assessing Officer. At the time of hearing before us, both the parties have agreed that the facts in all the above three appeals are identical and in fact, the assessment orders are also more or less identically worded. They have referred to only one assessment order i.e., assessment order in the case of M/s Surya Processed Food Pvt.Ltd. for assessment year 2013-14. Therefore, we will also refer herein below the said assessment order.

7. In paragraph 1 of the order, the Assessing Officer has mentioned as under :-

“Search and seizure proceedings under section 132 of the Income Tax Act, 1961, (hereinafter ‘the Act’) were conducted in the case of Priya Gold Group and its group concerns and residential/factory premises of partners, directors and proprietors of the group on 16.12.2014. The case of the assessee was also covered in operation u/s 132 of the Income Tax Act, 1961.”

8. Paragraph 2.2 of the order reads as under :-

“2.2 Sh. Shekhar Agarwal, one of the directors in the associated group companies, in his statement recorded on oath u/s 132(4) on 17.12.2014 has accepted that the undisclosed income on account of bogus share capital

money will be surrendered in the A.Y. 2013-14 and 2014-15, but the same has not been surrendered by the assessee company in its return u/s 153A of the Act. In reply to ques. no.25, Sh. Shekhar Agarwal stated that :

I accept the fact that our group has routed its unaccounted income earned through undisclosed sources amounting to ₹31 crore in F.Y. 2012-13 and ₹15.91 crore in F.Y. 2014-15 in its companies M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Limited through Kolkata based companies namely and M/s Subhshree Investment Management Private Limited, M/s Surya Vincom Private Limited and M/s Surya Vanijya Private Limited, M/s Garima Commerce Private Limited, M/s Lokenath Investments Consultants Private Limited respectively by way of share capital/share premium."

8.1 From the above, it is evident that the Assessing Officer himself has considered the Priya Gold group as one group and the assessee company being part of the same group. He relied upon the statement of Shri Shekhar Agarwal who is Director in the associated group companies. It was pointed out by the learned counsel that Shri Shekhar Agarwal is the Director in M/s Surya Food and Agro Limited i.e., the flagship company. In the statement, Shri Shekhar Agarwal accepted the fact that the group has routed its unaccounted income in the form of share capital in its companies M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Limited.

9. The Assessing Officer has again relied upon the above statement of Shri Shekhar Agarwal. Paragraph 4.11 of the order of the assessment order reads as under :-

"4.11 The statement on oath dated 16.12.14 of Shri Shekhar Agrawal, who was handling all the investment related issues of the Priyagold group of companies, was also recorded at the residence and the statement substantiates the fact that all the financial and investment related decisions were taken by Shri Shekhar Agarwal and

he is the key person handling investments and fund requirement in main companies of the group. Further questioning of Shri Shekhar Agarwal on the issue of accommodation entries taken by the Priyagold Group took place at the head office of the Priyagold Group.”

9.1 Thus, the Assessing Officer himself has recorded the finding that Shri Shekhar Agarwal was handling all the investment related issues of Priya Gold group of companies. It is further noted that he is the key person handling investments and funds requirements in the main companies of the group.

10. In paragraph 4.13, again the Assessing Officer has mentioned “*His statement reflects the fact that though Shri Shekhar Agarwal inter-alia looked after the decisions related to finance and general policy including decisions regarding assessment of funds requirement by the group companies, he was unable to furnish any reply to the questions regarding creditworthiness of investor companies, details of meetings with investor companies, due diligence followed in issuance of shares by the group, date of allotment of shares, face value and premium charged*”. Thus, the Assessing Officer admitted that Shri Shekhar Agarwal looked after the decisions relating to finance and general policy including the decision regarding funds requirement of the group companies.

11. At page 30 of the assessment order, the Assessing Officer, while relying upon the statement of Shri Shekhar Agarwal, has reproduced his statement. Question No.26 and answer thereto read as under :-

“Q.26 Since you have accepted the fact that your group has routed its unaccounted income earned through undisclosed sources amounting to ₹31 crore in F.Y. 2012-13 and ₹15.91 crore in F.Y. 2013-14 in its companies M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech

Infrastructure Limited through Kolkata based companies by way of share capital/share premium, please explain the modus operandi adopted by your group to route this unaccounted money.

Ans. I wish to state that our group had unaccounted funds available with it and wanted to introduce these funds into the books of accounts of our main companies. For this purpose I came in contact with Sh. Sudhir Satnaliwala, who assured the arrangement of bogus companies registered in Kolkata to introduce our unaccounted funds. The unaccounted funds were handed over in cash to one of the confidants of Sh. Sudhir Satnaliwala. Accordingly Sh. Sudhir Satnaliwala introduced these unaccounted funds into the books of our main companies namely M/s Surya Processed Food Pvt.Ltd. & M/s Surya Processed Food Pvt.Ltd. in the form of share capital/share premium through a layer of Kolkata based companies. However I am not aware about the exact modus operandi followed by Sh. Sudhir Satnaliwala to arrange these transactions."

11.1 From the above, it is evident that Shri Shekhar Agarwal repeatedly mentioned that it is the unaccounted income of the group which is routed through the share capital in M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Limited i.e., the companies in appeal before us.

11.2 The above statement of Shri Shekhar Agarwal has been relied upon by the Assessing Officer time and again. At page 31 of the assessment order, after considering the statement of Shri Shekhar Agarwal, the Assessing Officer concluded as below :-

"The above admission of Shri Shekhar Agarwal established beyond doubt that Priyagold group had unaccounted funds which were introduced into main companies of the group by routing of these funds through layers of bogus (jama kharchi) accommodation providing companies. This submission was reconfirmed by Mr. Shekhar Agarwal in his statement recorded during post-search proceedings on 29.01.15."

11.3 Thus, the Assessing Officer himself has concluded that Priya Gold group had undisclosed funds which were introduced into main companies of the group by routing of these funds through layers of bogus accommodation entries.

12. Again at page 38, the Assessing Officer, in paragraph 4.24, recorded the following finding :-

“All the above statements further establish the fact that all these companies based in Kolkata purportedly investing in Priyagold Group are nothing but paper companies and all the investments from them in Priyagold group concerns in the form of share capital/share premium are nothing but accommodation entries, which have been obtained by Priyagold group in its books by routing its own unaccounted money.”

13. In paragraph 4.26, the Assessing Officer concluded as under :-

“It is proved beyond any iota of doubt that this investment of over Rs.46.91 crores in the form of share capital/premium in various companies of Priyagold Group is nothing but an accommodation entry which has been obtained by routing its own unaccounted money in its books and is liable to be added in the hands of assessee group companies u/s 68 of the I.T. Act, 1961.”

13.1 Thus, the Assessing Officer has concluded that the investment of ₹46.91 crores in the form of share capital/premium in various companies of Priyagold Group is nothing but an accommodation entry and it is liable to be added in the hands of the assessee group companies. As per Assessing Officer himself, the share capital is liable to be assessed in the hands of the assessee group companies. From the above observation of the assessment order, it is absolutely clear that the stand of the Revenue was that the Priya Gold group had

undisclosed income which is routed in the form of share capital by obtaining accommodation entries from Kolkata based entry provider companies and the said share capital including premium is liable to be taxed in the hands of the assessee group companies.

14. In the context of this finding of the Assessing Officer, let us examine the application before the Settlement Commission and the order of the Settlement Commission in the case of M/s Surya Food and Agro Limited, which is the flagship company of the assessee group. The copy of the application before the Settlement Commission along with the annexures are produced in the paper book from page 36 onwards. The application is signed by Shri Shekhar Agarwal, Director of the said company. At page 4 of the application, the assessee has given the names of the group companies which read as under :-

S.No.	Name of the company
1.	M/s Surya Food & Agro Ltd.
2.	M/s Surya Agrotech Infrastructure Ltd.
3.	M/s Surya Processed Food Pvt.Ltd.
4.	M/s Surya Fresh Foods Ltd.
5.	M/s Surya Shopping Arcade Pvt.Ltd.
6.	M/s Surya Biscuit Industries (Proprietorship concern)
7.	M/s Surya Healthcare Industries (Prop. Concern)
8.	M/s Garima Commerce Pvt.Ltd.
9.	M/s Lokenath Investment Consultants Pvt.Ltd.
10.	M/s Surya Vincom Pvt.Ltd. (formerly known as M/s Neelkanth Vincom Pvt.Ltd.)
11.	M/s Subhshree Investment Management Pvt.Ltd.
12.	M/s Surya Vanijya Pvt.Ltd.

	(formerly known as M/s Labhdhan Mercantile Pvt.Ltd.)
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15. From the above, it is evident that it includes both the companies under appeal before us. In paragraph 4 Annexure-A of the application, there is full and true statement of facts and the manner in which the income has been derived. The relevant portion thereof is reproduced below:-

“IV. FULL & TRUE STATEMENT OF FACTS AND MANNER IN WHICH INCOME HAS BEEN DERIVED.

1. The applicant company is in the trade of manufacturing and sale of biscuits.

2. The applicant company is managed by Agarwal family called Agarwal Group for short. The head-man of family is Sh. Ballabh Prasad Agarwala. The business operations and executive functions of business of the applicant company are conducted by his youngest son Sh. Shekhar Agarwal.

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12. The applicant introduced a part of the profit made in the hedging transaction kept outside books, in the books of the group concerns in the form of entries taken as Share capital in the group concerns. Thus the profit made outside books by the applicant was utilized by it for making investments in the share capital of other group concerns.

13. The following are the amounts introduced in the shape of share capital of the group entities obtained from entry operators:-

S.No.	Name of Entity in which entry has obtained	Amount	Assessment Year
1.	Surya Processed Food (P) Ltd.	31,00,50,000	2013-14
2.	Surya Agrotech Infrastructure Ltd.	2,60,00,000	2013-14
3.	Surya Agrotech Infrastructure Ltd.	13,31,50,000	2014-15
	Total	46,92,00,000	

Entries were introduced in the above companies by allotting shares to the bogus shareholders as per list placed in Annexure 'C'. It is submitted that the entire bogus share capital was obtained by ploughing back money earned in hedging transactions in cash kept outside books.

14. Below is a table showing the turn over and the gross profit earned by the applicant as per books:-

Asstt. Year	Turn Over	Gross Profit	G.P. Rate
2009-10	3,80,95,14,651	68,54,42,867	17.99
2010-11	4,36,88,88,049	58,31,74,857	13.35
2011-12	4,73,68,11,191	87,91,34,327	18.56
2012-13	5,41,17,27,672	96,71,90,982	17.92
2013-14	6,39,80,48,593	1,11,61,57,254	17.45
2014-15	6,77,30,78,789	1,26,35,04,456	18.65
2015-16	7,18,85,42,615	1,36,45,98,055	18.98

A reference to the above chart would show that there is a variation in the G.P. rate over the years. It shows the volatility in the trade because of the prices of raw material, which are end product of agricultural sector and thus their prices are fluctuating depending on the season and weather. The applicant in order to save itself from fluctuations hedged the prices of raw material to maintain a reasonable gross profit at 19%.

The additional income by taking the gross profit at 19% will be as follows:-

<i>Asstt. Year</i>	<i>Turnover (Rs.)</i>	<i>G.P. @ 19% Amount (Rs.)</i>	<i>Gross profit as per books (Rs.)</i>	<i>Additional Income</i>
2009-10	3,80,95,14,651	72,38,07,784	68,54,42,867	3,83,64,917
2010-11	4,36,88,88,049	83,00,88,729	58,31,74,857	24,69,13,872
2011-12	4,73,68,11,191	89,99,94,126	87,91,34,327	2,08,59,799
2012-13	5,41,17,27,672	1,02,82,28,258	96,71,90,982	6,10,57,276
2013-14	6,39,80,48,593	1,21,56,29,233	1,11,61,57,254	9,94,71,979
2014-15	6,77,30,78,789	1,28,68,84,970	1,26,35,04,456	2,33,80,514
2015-16	7,18,85,42,615	1,36,58,23,097	1,36,45,98,055	12,25,042
<i>Total</i>				49,12,73,399

From the above it is seen that the additional income mentioned above covers the investment made by the applicant company in the shares of:-

- a) *Surya Processed Food Pvt.Ltd.*
- b) *Surya Agrotech Infrastructure Ltd.*

15. It would be seen that the additional income offered by the applicant earned from the hedging of raw material covers the undisclosed assets/application of funds found during the course of search and there is no other undisclosed asset found or application of funds by the group over and above the income offered. Thus the income offered by the applicant is full and true."

16. In Annexure-3 of the application, M/s Surya Food & Agro Limited has given the complete details of bogus share capital introduced in the group companies. The same read as under :-

*Surya Food & Agro Ltd.
List of bogus capital introduced by the applicant in group companies*

*Company name : Surya Processed Food Private Limited
Details of bogus shareholders*

<i>S.No.</i>	<i>Particulars</i>	<i>No. of Shares</i>	<i>Per share</i>	<i>Amount</i>	<i>Assessment Years</i>
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			<i>value</i>		
1	<i>M/s Subhshree Investment Management Pvt.Ltd.</i>	<i>42,22,973</i>	<i>37</i>	<i>1562,50,000</i>	<i>2013-14</i>
2	<i>M/s Surya Vincom Pvt.Ltd.</i>	<i>41,56,757</i>	<i>37</i>	<i>1538,00,000</i>	<i>2013-14</i>
<i>Total</i>		<i>83,79,730</i>		<i>3100,50,000</i>	

*Company Name : Surya Agrotech Infrastructure Ltd.
Details of Bogus Shareholders*

<i>S.No.</i>	<i>Particulars</i>	<i>No. of Shares</i>	<i>Per share value</i>	<i>Amount</i>	<i>Assessment Years</i>
1	<i>M/s Surya Vanijya Pvt.Ltd.</i>	<i>26,00,000</i>	<i>10</i>	<i>260,00,000</i>	<i>2013-14</i>
2	<i>M/s Garima Commerce Pvt.Ltd.</i>	<i>3,60,000</i>	<i>10</i>	<i>36,00,000</i>	<i>2014-15</i>
3	<i>M/s Surya Vanijya Pvt.Ltd.</i>	<i>126,30,000</i>	<i>10</i>	<i>1263,00,000</i>	<i>2014-15</i>
4	<i>M/s Lokenath Investment Consultants Pvt.Ltd.</i>	<i>3,25,000</i>	<i>10</i>	<i>32,50,000</i>	<i>2014-15</i>
<i>Total</i>		<i>159,15,000</i>		<i>1591,50,000</i>	

17. The above application is admitted by the Settlement Commission and the final order was passed on 8th June, 2018. The computation of income by the Settlement Commission under Section 245D(4) was as under :-

<i>Computation of Income u/s 245D(4)</i>					
<i>Name of the applicant</i>	<i>Asstt. Year</i>	<i>Total Income as per return (in Rs.)</i>	<i>Income disclosed u/s 245C(1) (in Rs.)</i>	<i>Income settled u/s 245D(4) (in Rs.)</i>	<i>Total income determined u/s 245D(4) (in Rs.)</i>
		<i>1</i>	<i>2</i>	<i>3</i>	<i>(1 + 3)</i>
<i>M/s Surya</i>	<i>2009-10</i>	<i>69,711,904</i>	<i>38,364,917</i>	<i>38,364,917</i>	<i>10,80,76,821</i>
	<i>2010-11</i>	<i>73,607,180</i>	<i>246,913,872</i>	<i>246,913,872</i>	<i>32,05,21,052</i>
	<i>2011-12</i>	<i>86,738,060</i>	<i>20,859,799</i>	<i>20,859,799</i>	<i>10,75,97,859</i>
	<i>2012-13</i>	<i>78,470,380</i>	<i>61,057,276</i>	<i>61,057,276</i>	<i>13,95,27,656</i>

Food & Agro Ltd.	2013-14	11,442,840	99,471,979	99,471,979	21,49,14,819
	2014-15	153,641,060	23,380,514	23,380,514	17,70,21,574
	2015-16	501,459,130	1,225,042	6,76,76,042	56,91,35,172
	Total	1,079,070,554	491,273,399	55,77,24,399	1,63,67,94,953

18. Thus, as against the income of ₹49.12 crores disclosed before the Settlement Commission, the additional income finally settled was ₹55.77 crores. With regard to application of income in the form of share capital in M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Ltd., the Settlement Commission declined to give any finding with the following order :-

“8.5.3 Another issue in this case is that the applicant is claiming that its Additional income has been invested in two other group companies to the tune of Rs.46,92,00,000/-. However, those two companies are not before the commission and hence this issue cannot be adjudicated by us.”

19. Thus, the Settlement Commission declined to give any finding with regard to the application of additional income disclosed before the Settlement Commission. We find that the ITAT in assessee’s own case, while considering the stay petitions by these two companies which are under appeal before us, in its order in Stay Application No.205 to 207/Del/2019, vide order dated 1st March, 2019, gave the following finding :-

“We have carefully considered the rival contentions and perused the orders of the lower authorities as well as the order of the settlement commission dated 8/6/2018. It is apparent that the disclosure has been made by the company who has earned the undisclosed income and routed in books through the petitioner companies as unaccounted share capital. The application of the income is taxed in the hands of the petitioner companies apparently it seems and sources of income is taxed in the

hands of Surya Food and Agro Ltd. Therefore prima facie the case of the assessee shows that there is a double addition, once the source of income and secondly the application of income. Therefore according to us the balance of convenience lies in favour of the assessee."

20. Learned DR has contended that the conclusion drawn by the ITAT in the order of stay is a wrong conclusion and should not be relied upon while deciding the appeals on merits. However, after considering the submissions of both the sides and the facts of the case and going through the orders of the lower authorities as well as Settlement Commission, we entirely agree with the above finding of the ITAT given in the stay petitions. From the assessment order, the relevant portion of which has already been reproduced above in this order, it is clear that the stand of the Assessing Officer throughout was that there was undisclosed income of the Surya Group which is routed in the form of share capital in the group companies by obtaining the accommodation entries from Kolkata based entry provider companies. Such share capital/share premium is liable to be added in the hands of the group companies. The flagship company of the group viz., M/s Surya Food and Agro Limited has already offered the additional income to the tune of ₹49.12 crores before the Settlement Commission, which the Settlement Commission has enhanced to ₹55.77 crores. The order of the Settlement Commission is accepted by both the parties and thus has become final. Before the Settlement Commission, the assessee has repeatedly stated, which we have already mentioned above while reproducing the relevant portion of the application before the Settlement Commission, that the undisclosed income which is being offered before the Settlement Commission has been applied by way of introduction in the shape of share capital to group entities viz., M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Limited. In paragraph 15 of the application before the Settlement

Commission, M/s Surya Food & Agro Limited has made it clear that *"there is no other undisclosed asset found or application of funds by the group"*. This statement made before the Settlement Commission has neither been found to be incorrect nor before us it has been shown that M/s Surya Food and Agro Limited has applied the undisclosed income offered before the Settlement Commission for acquisition of any other asset. In view of the above, we entirely agree with order of the ITAT passed in stay petition wherein the ITAT held that *"the disclosure has been made by the company who has earned the undisclosed income and routed in books through the petitioner companies as unaccounted share capital. The application of the income is taxed in the hands of the petitioner companies apparently it seems and sources of income is taxed in the hands of Surya Food and Agro Ltd. Therefore prima facie the case of the assessee shows that there is double taxation, once the source of income and secondly the application of income"*. We entirely agree with the above finding of the ITAT in the order passed in the stay petition filed by M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Ltd. In view of the above, since the income has already been taxed in the hands of M/s Surya Food and Agro Limited, the application of the said income in the form of share capital in M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Ltd. i.e., the appellants before us, cannot be taxed again. Accordingly, we delete the addition for unexplained share capital and allow ground No.1 in all the appeals.

21. With regard to ground No.2, both the parties admitted that this ground would be consequential to the decision in ground No.1. The Assessing Officer, apart from the addition on share capital, has also made further addition of alleged expenditure being commission for acquiring the accommodation entries in the form of share capital. Both the parties have agreed that if it is accepted that the investment in the

share capital was out of the undisclosed income of M/s Surya Food & Agro Limited, which is disclosed before the Settlement Commission, the same finding would be squarely applicable with regard to commission for arranging such accommodation entries. In view of the finding with regard to ground No.1, we hold that the addition for alleged expenditure on arranging the accommodation entries in the form of share capital is also made from the undisclosed income offered and settled by M/s Surya Food & Agro Limited before the Settlement Commission. Accordingly, ground No.2 of the assessee's appeals is allowed.

22. In the result, all the appeals of the assessees are allowed.

Decision pronounced in the open Court on 07.05.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **M/s Surya Processed Food Pvt.Ltd. and
M/s Surya Agrotech Infrastructure Limited,
2nd Floor, 19, Local Shopping Complex,
Near Pushpa Bhawan, Madangir,
New Delhi – 110 062.**
2. Respondent : **Assistant Commissioner of Income Tax,
Central Circle-8, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar