

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी ,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.71-72/Gau/2017**  
Assessment Years :2009-10 & 2010-11

DCIT, Circle-3, Aayakar Bhawan, Room No.714, 7 <sup>th</sup> Floor, G.S. Road, Guwahati-78005	<b>V/s.</b>	Shri Ratan Sharma 6 <sup>th</sup> Floor, Fatasil Ambari, Guwahati-781009 <b>[PAN No.AOMPS 7321 A]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

**ITA No.74 & 98/Gau/2017**  
Assessment Year :2013-14

DCIT, Circle-3, Aayakar Bhawan, Room No.714, 7 <sup>th</sup> Floor, G.S. Road, Guwahati-78005	<b>V/s.</b>	Shri Ratan Sharma 6 <sup>th</sup> Floor, Fatasil Ambari, Guwahati-781009 <b>[PAN No.AOMPS 7321 A]</b>
Shri Ratan Sharma 6 <sup>th</sup> Floor, Assam Ispat Complex, N.S. Road, Fatasils, Guwahati- 781009	<b>V/s.</b>	DCIT, Circle-3, Aayakar Bhawan, G.S. Road, 7 <sup>th</sup> Floor, Christian Basti, Guwahati781005
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri R.P. Agarwala, Sr. Advocate Shri Ramesh Goenka, Sr Advocate & Shri Amit Goenka, Advocate
राजस्व की ओर से/By Revenue	Shri Rabindro Singh, JCIT-DR
सुनवाई की तारीख/Date of Hearing	05-07-2019
घोषणा की तारीख/Date of Pronouncement	10-07-2019

**आदेश /ORDER**

**PER BENCH:-**

These four appeal(s) pertain to a single assessee, Shri Ratan Sharma. Relevant assessment year(s) are 2009-10, 2010-11 and 2013-14. The Revenue and assessee are in cross-appeal(s) in ITA No.74 & 98/Gau/2017 whereas the former has preferred ITA No.71 & 72/Gau/2017 arising against the Commissioner of Income Tax (Appeals)-2 Gauwahati's separate order; all dated 23.02.2017 passed in case Nos.Guwa-168,155 & 149 (assessment year-wise); respectively involving proceedings u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. We come to Revenue's appeal first involving various inter-connected identical issue. Its first substantive ground in ITA No.71/Gau/2017 pertaining to assessment year 2009-10 is that the Assessing Officer had rightly added the amount in question of Rs.4,55,48,806/- in assessee's hands on account of unexplained investment in M/s Platinum Alloys Pvt. Mr. Singh has taken us to page 6 para-9 of the assessment order indicating the Authorized Officer's questionnaire to the taxpayer during the course of search seeking explanation of his impugned investment. He strongly argues in favour of assessment findings that assessee had not adequately explained the source of the impugned investment which triggered the addition in the issue deleted in the CIT(A)'s findings as follows:-

*"5.4 I have considered the submissions made before me, I have also perused the assessment order and the remand reported sent by the Assessing Officer on this issue. The Assessing Officer in his remand report has stated that the addition was made as the appellant could not produce evidence in course of the hearing. He has further stated that he had no objection in admitting any fresh or additional evidence if the same was considered to be relevant for disposal of this issue.*

*5.5 A perusal of the MOU dated 19.01.2009, a copy of which has been filed by the appellant before me, shows that the said MOU was entered into by Shri Ratan Sharema on behalf of 'Satyam Group of Industries' and not in his individual capacity. From the documents produced before me which comprises of copies of the ledger accounts of M/s Platinum Alloys Pvt. Ltd. As appearing in the books of M/s SMS Smelters Ltd for the financial year 2008-09, 2009-10, 2010-11 and 2011-12, it is evident that the entire money invested by M/s SMS Smelters Ltd., in M/s Platinum Alloys Pvt Ltd. was by cheque. The appellant has further submitted before me copies of ledger accounts of Shri Rajesh Trehan, Smt. Dipti Apang and her*

*Associates Smt. Lechi Legi and Shri Kevin Apang in the books of M/s Platinum Alloys Pvt. Ltd. for the financial years in which the payments were cleared by M/s Platinum Alloys Pvt Ltd after receipt of funds from M/s SMS Smelters Ltd. The appellant in his statement recorded under section 131 of the Income Act 1961 on 17.04.2013 in reply to question no. 26 had also stated that the investment in M/s Platinum Alloys Pvt. Ltd. was made by his group/associates. He further stated that all the investments made were duly recorded in the books of accounts. It will, thus, be clear that the entire funds in M/s Platinum Alloys Pvt. Ltd. was invested by the appellant's group company M/s SMS Smelters Ltd and was duly accounted for in their books of accounts. It may be pertinent to mention here that Shri Neeraj Sharma, M/s Platinum Alloys Pvt. Ltd., and M/s SMS Smelters Ltd were all assessed by the same Assessing Officer. Therefore, the above facts could have been easily verified by the Assessing Officer at the time of making assessment from their assessment records. However, no such attempt appears to have been made. Further, observation made by the Assessing Officer that the appellant was not a director of M/s SMS Smelters Ltd is also not factually correct. From the print out from MCA portal produced by the appellant, I find that the appellant was a director in M/s SMS Smelters Ltd from 10.04.2003 to 19.04.2013 i.e. during the period when the aforesaid transaction had taken place.*

*Considering the facts of this case in totality I hold that there was no justification for the Assessing Officer to make the addition of Rs.4,55,48,806/- in the total income of the appellant. I, therefore, delete the aforesaid addition. This ground of appeal is, therefore, allowed."*

3. Learned Departmental Representative's vehement contention is that the CIT(A)'s above extracted findings that the impugned addition has been deleted in the CIT(A)'s findings without examining the suspicious circumstances as well the shareholding pattern of the investor entity. We find no reason to express our concurrence with Revenue's foregoing argument. It has come on record that it is not the assessee Shri Ratan Sharma but M/s SMS Smelters Ltd who has turned out to be the actual investor in M/s Platinum Alloys Pvt. The said entity has admittedly declared the impugned investment in its books of account. That being the case, we hold that Revenue's argument making a case of double addition in this taxpayer's hands are not liable be accepted. We make it clear that the clinching fact of M/s SMS Smelters Pvt.Ltd having made the impugned investment has gone un rebutted in the Revenue's pleadings. We therefore conclude that the CIT(A) has rightly deleted the impugned addition of Rs.4,55,48,806/- in assessee's case. The Revenue fails in its such first substantive ground.

4. Next comes agricultural income addition of Rs.1.75 lac made in the course of assessment and deleted in lower appellate proceedings. Case file

indicates that the assessee had duly placed on record his land ownership details owning 89 bighas to the extent of 1/4<sup>th</sup> share coming to 12-1/4 bighas. Learned senior counsel has pointed out that revenue authorities have been accepting similar agricultural income in all earlier assessment years. We adopt considering to uphold the CIT(A)'s findings therefore. The Revenue fails in its second substantive ground as well.

5. Lastly comes disallowance of interest of Rs.2,46,345/- paid to M/s HDFC Bank regarding assessee's house property. The Assessing Officer had invoked the impugned disallowance on account of assessee's failure in not having placed the corresponding details during search assessment in issue. The CIT(A) had sought a remand report. The assessee filed all interest payment details before the Assessing Officer which have nowhere been adversely commented in the remand report in question. We therefore uphold the CIT(A)'s findings deleting this interest expenditure disallowance as well. The Revenue's first appeal ITA No.71/Gau/2017 fails.

6. Next comes Revenue's second appeal ITA No.72/Gau/2017 for assessment year 2010-11. Its first substantive ground seeks to revive the Assessing Officer's action treating investment made in M/s Rajveer Hotel & Resorts Pvt. Ltd. amounting to Rs.1,00,00,000/- as unexplained in assessee's hands. We notice herein as well that it is not the assessee but his partnership firm M/s Satyam Coke made the impugned investment as per CIT(A)'s clinching findings in para-5.2 reading as follows:-

*"5.2 I have considered the submissions made before me and also perused the assessment order. I have also perused the remand report sent by the Assessing Officer.*

*A perusal of the documents filed by the appellant shows that the investment in M/s Rajveer Hotel & Resorts Pvt. Ltd was made by M/s Satyam Coke, a partnership firm where the appellant was also a partner. The investment by M/s Satyam Coke was made on 07.04.2009 and 24.09.2009 by DD/RTGS of Rs.50,00,000/- each. The investment made above is reflected in the bank statement of M/s Satyam Coke with Central Bank of India and HDFC Bank. The above remittances made by M/s Satyam Coke, are also reflected in the bank statement of M/s Rajveer Hotel & Resorts Pvt. Ltd with Bank of Baroda, Station Road, Sikar, Rajasthan. In the audited balance sheet of M/s Satyam Coke as on 31.03.2010, the said amount of Rs.1,00,00,000/- has been shown in Schedule-H under the head loans and advances. In the audited balance sheet of M/s Rajveer Hotel & Resorts Pvt. Ltd. As on 31.03.2010 the said amount of Rs.1,00,00,000/- received from M/s Satyam Coke*

*has been shown under the head "Un-secured Loans from others" in the name of Shri Ratan Sharma. The fact that the investment of Rs.1,00,00,000/- in M/s Rajveer Hotel & Resorts Pvt. Ltd. Was made by the appellant's Group/associates was also stated by the appellant in reply to Question No.27 of his statement dated 17.04.2013 recorded u/s. 131 of the Income Tax Act, 1961.*

*In view of the above stated facts, the source of investment of Rs.1,00,00,000/- made in M/s Rajveer Hotel & Resorts Pvt. Ltd. Stands clearly established. Therefore, the addition of Rs.1,00,00,000/- made by the Assessing Officer cannot be sustained. Hence, I delete the aforesaid addition. This ground of appeal is therefore, allowed."*

7. We concludes in these peculiar facts that Assessing Officer had wrongly added the amount in question in assessee's hand rather than the partnership firm in issue who has proved the entire source in the lower appellate proceedings. The impugned investment, can no more be treated as an unexplained are in assessee's case. We uphold the CIT(A)'s order deleting the impugned addition accordingly.

The Revenue's latter substantive ground seeking to revive unexplained agricultural addition of Rs.1,35,400/- is treated as covered going by our findings on the very issue in preceding assessment year. The Revenue's second appeal ITA No.72/Gau/2017 is also rejected.

8. The Revenue's third appeal ITA No.74/Gau/2017 for assessment year 2013-14 raises as many as five substantive grounds involving agricultural income addition of Rs,3,18,750/- and disallowance of interest payment of Rs.9,91,041/-, Rs.1,36,08,430/-, Rs.17,87,327/- & Rs.1,60,049/-; respectively. It transpires during the course of hearing that latter four substantive grounds pertaining to assessee's interest payments relate to various house properties. The Revenue's first substantive ground of agricultural income is covered as per our findings in earlier assessment year (supra). Latter identical issue of interest disallowance(s) has to follow suit since the assessee had not filed all the corresponding details during the course of assessment and same could be placed on record only during remand proceedings proving all the interest payments. We make it clear that there is not even a single plead in Revenue's grounds challenging correctness of all those interest payments particulars. We therefore reject the Revenue's last appeal ITA No.74/Gau/2017 as well.

9. Coming to the latter cross-appeal for assessment year 2013-14 ITA No.98/Gau/2017, Mr. Agarwala is fair enough in filing assessee's letter dated 03.07.2019 before us that he no more wishes for press for the same. This assessee's appeal 98/Gau/2017 is dismissed as not pressed therefore.

10. These Revenue's appeal(s) ITA No.71, 72 & 74/Gau/2017 are dismissed whereas assessee's cross-appeal ITA No.98/Gau/2017 is dismissed as not pressed.

Order pronounced in the open court 10/07/2019

Sd/-  
(लेखा सदस्य)  
( A.L.Saini)  
(Accountant Member)  
Guwahati,  
\*Dkp

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

दिनांक:- 10/07/2019 गूवाहाठी ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-Shri Ratan Sharma, 6<sup>th</sup> Floor, Fatasil Ambari, Guwahati-9
2. राजस्व/Revenue-DCIT, Circle-3, R.No.714, 7<sup>th</sup> Floor, Aayakar Bhawan, G.S. Road  
Guwahati-781005
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)  
आयकर अपीलीय अधिकरण,  
गूवाहाठी ।