

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA NOS. 5030 & 5031/MUM/2018

A.Ys : 2011-12 & 2012-13

DCIT, Central Circle-5(1),
Mumbai. (Appellant)

vs. M/s. Anand Rathi Advisors Ltd,
4th floor, Silver Metropolis,
Jai Coach Compound,
Opp. Bimbisar Nagar,
Goregaon (E), Mumbai-63.
PAN : AAACS6836P (Respondent)

Appellant by : Shri Anadi Varma, CIT-DR
Respondent by : Shri Vijay Mehta

Date of Hearing : 03/10/2019
Date of Pronouncement :20/11/2019

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER

These two appeals by Revenue are arising out of the separate orders of Commissioner of Income Tax (Appeals)-53, Mumbai in Appeal Nos. CIT(A)-53/IT-138/DCCC-5(1)/2016-17 and CIT(A)-53/IT-139/DCCC-5(1)/2016-17 dated 20.06.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle 5(1) Mumbai (in short DCIT/ITO/AO) for AYs 2011-12 and 2012-13 vide orders dated 31.03.2016 under section 153A r.w.s 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of the Revenue is against the order of CIT(A) deleting the addition made in the hands of the assessee in both the assessment years on protective basis. At the outset, the learned counsel for the assessee drew our attention to the ground raised by Revenue in assessment year 2011-12, which reads as under :-

“1. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) has failed to determine the year of taxability of the sum received at Rs.9,25,00,000/- being success based fees received by the assessee for managing the subscription of IPO ?”

Further, he drew our attention to the grounds raised in assessment year 2012-13, which reads as under: -

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition made on account of undisclosed income.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the difference between the amount received and repaid by the assessee at Rs.9,25,00,000/- was taxable in its hand as undisclosed income?”

3. The learned counsel for the assessee then took us through para 4.16, page 34 of the CIT(A)'s order for assessment year 2012-13 and stated that in this case the assessment was made on protective basis and substantive addition was made in the hands of Anand Rathi Capital Advisors Pvt. Ltd. for assessment year 2012-13 and even there was no indictment of assessee by SEBI in respect of the IPO of Dr. Datsons Laboratories Ltd. (DDL). He drew our attention to para 4.16 of CIT(A)'s order, which reads as under: -

“4.16 It is thus noticed that the assessing officer has made protective addition in this case but has categorically stated in the assessment order in the case of DDLL that there is no trail of funds to Anand Rathi group entities. He has disbelieved the allegations of Kannan Vishwanath. The AO has not found the allegations made by Kannan Kishwanath to be supported with evidence. The report of CFSL is not conclusive of the claim by Kannan Vishwanath that the RTGS forms and cheques were filled by Rahul Porwal and funds were transferred at his behest to entities specified by him. With no valid appeal filed, as on date the assessments in the case of DDLL, where substantive addition is made, has become final. The appellant has not been allowed cross examination of Kannan Vishwanath, Deepak Shenoy and Kishore Sridharan who had alleged that funds were siphoned from the IPO proceeds as per direction of Shri Anand Rathi. The amount found to have been received by M/s. Anand Rathi Capital Advisors Pvt. Ltd. is only Rs.1.50 crores from M/s. Bhawana Interiors, a common and recurring entity with which transactions were carried out by DDLL. Addition has already been made in the case of M/s. Anand Rathi Capital Advisors Pvt. Ltd. for AY 2012-13 by the Assessing Officer. This addition has been upheld in the appellate order dated No. CIT(A)-53/IT-157/DCCC-5(1)/2015-16 dated 21-02-2018. There is no indictment of the appellant by SEBI in respect of the IPO of DDLL. In light of the above, the protective addition made of Rs.77.35 crores is deleted. Ground of appeal no. 1 is allowed.”

4. Further, he drew our attention to para 4.15, page 24 of CIT(A)'s order for assessment year 2011-12, which reads as under: -

“4.15 It is thus noticed that the assessing officer has made protective addition in this case but has categorically stated in the assessment order in the case of DDLL that there is no trail of funds to Anand Rathi group entities. He has disbelieved the allegations of Kannan Vishwanath. The AO has not found the allegations made by Kannan Vishwanath to be supported with evidence. The report of CFSL is not conclusive of the claim by Kannan Vishwanath that the RTGS forms and cheques were filled by Rahul Porwal and funds were transferred at his behest to entities specified by him. With no valid appeal filed, as on date the assessments in the case of DDLL, where substantive addition is made, has become final. The appellant has not been allowed cross examination of Kannan Vishwanath, Deepak Shenoy and

Kishore Sridharan who had alleged that funds were siphoned from the IPO proceeds as per direction of Shri Anand Rathi. The amount found to have been received by M/s. Anand Rathi Capital Advisors Pvt. Ltd. is only Rs.1.50 crores from M/s. Bhawana Interiors, a common and recurring entity with which transactions were carried out by DDLL. Addition has already been made in the case of M/s. Anand Rathi Capital Advisors Pvt. Ltd. for AY 2012-13 by the Assessing Officer. This addition has been upheld in the appellate order dated No. CIT(A)-53/IT-157/DCCC-5(1)/2015-16 dated 21-02-2018. There is no indictment of the appellant by SEBI in respect of the IPO of DDLL. In light of the above, the protective addition made of Rs.9.5 crores is deleted. Ground of appeal no. 1 is allowed.”

5. When these were put to the Id. CIT-DR, he could not answer whether substantive addition has been made in the hands of Anand Rathi Capital Advisors Pvt. Ltd. for assessment year 2012-13 and upheld by the CIT(A). When a query was raised whether appeal relating to Anand Rathi Capital Advisors Pvt. Ltd. is filed or not, the Id. CIT-DR could not answer.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the addition is on protective basis and substantive addition has been affirmed in the hands of Anand Rathi Capital Advisors Pvt. Ltd. for assessment year 2012-13. As the Revenue could not point out whether any appeal is filed against the order of CIT(A) before the Tribunal in the case of Anand Rathi Capital Advisors Pvt. Ltd. for assessment year 2012-13, we confirm the order of CIT(A) and the appeals of the Revenue are dismissed. However, the Revenue is at liberty to get this order recalled in case they are able to establish that substantive addition has been deleted in the case of Anand Rathi Capital Advisors Pvt. Ltd. for assessment year 2012-13.

7. The facts are identical in AY 2011-12 also. In terms of the above, both the appeals of the Revenue are dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 20th November, 2019.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Date : 20th November, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai