

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
&  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.5357/DEL/2019  
Assessment Year 2007-08

Pushpak Infratech Pvt. Ltd., 61-C, Basement, Ber Sarai, Opp. JNU Campus, New Delhi.	v.	DCIT, Central Circle-11, New Delhi.
TAN/PAN: AAECF 0091R		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Smt. Sulekha Verma, CIT-DR		
Date of hearing:	16	10	2019
Date of pronouncement:	13	01	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Assessee against the impugned order dated 31.07.2014, passed by Ld. Commissioner of Income Tax (Appeals)-XXXI, New Delhi for the quantum of assessment passed u/s.153A for the Assessment Year 2007-08. In the grounds of appeal, the assessee has challenged the protective addition of Rs.20 lacs on account of share application money converted into unsecured loan.

2. The facts in brief are that a search and seizure operation u/s.132 was carried out in the business premises of M/s. Shiv Vani Group as well as the residential premises of the

Directors. The assessee-company was also covered under search action being a part of group companies of M/s. Shiv Vani Group. A notice u/s.153A was issued on 10.01.2012 and in response to which, return of income was filed at 'Nil' income. The Id. Assessing Officer has noted that during the course of search operation various documents were found on various premises of M/s. Shiv Vani Group wherein there were certain transactions mentioned in Annexure A-14 at page no.56 which was some kind of a working or summary of inter-corporate loans and amount received on sale of stock in investment. From the perusal of other seized documents, the Assessing Officer has noted following facts:

*"i. Page no 70 of annexure A-4, seized from office of Shiv Vani group at NBC Plaza, Saket, contains the summary account of Sh. N K Jain wherein details of payment received and transferred by N K Jain has been mentioned. On the basis of noting a sum of Rs. 14.83 crores has been surrendered as additional income in the hands of assessee in the Assessment Year 2009-10.*

*ii. Page no 6 of annexure A-1, seized from residence of Sh. R K Somani & employee in group wherein it is mentioned that "N. K. Jain CAL, and also shows cash sent on 09-01-2008. On this transaction Sh. R K Somani has surrendered commission of Rs. 300000/- against noting of 4.5 mentioned on the page.*

*iii. Page no 26 of Annexure A-18 contains capital and loan syndication by Sh. N K Jain with Mr. Hiralal Rathi & Sh. R K Somani for the period before 2001. The commission on transaction has been offered for taxation by Sh. R K Somani &*

*Sh. Hiralal Rathi in their hands in the relevant Assessment Year.*

*iv. The description on page no 26 of annexure A-18, shows noting as "Account of NK Jain" and commission has been mentioned @ 5.5% on capital, @ 3.5% on entry and (5) 5% on bills. Such a high rate of commission is not possible in normal course of business which also indicates the involvement of Sh. N K Jain for providing of accommodation entry.*

*v. The substantial cash payment by the assessee on account of commission to various brokers/entry operators is also appearing in the seized documents and surrendered during assessment/search."*

3. Thus, Assessing Officer held that the transactions mentioned specifically at page 56 of Annexure A-14 clearly show that this transaction has been done through Shri N.K. Jain, entry operator and is in the nature of accommodation entry transaction financed through M/s. Shiv Vani out of undisclosed sources of income. The source of fund for all these transactions through Mr. Jain belonged to M/s. Shiv Vani Oil and Gas Exploration Services Ltd., the flagship company of the group wherein substantive addition has already been made. However, Assessing Officer has again made protective addition of Rs.25,00,000/- in the hands of the assessee u/s.68.

4. Ld. CIT (A) has confirmed the protective addition to the extent of Rs.20 lacs, after observing and holding as under:

*“4.4 However, it is further noted that the assessee has not paid any interest on these amounts. Hence, the assessee’s submissions that it was a genuine transaction cannot be accepted. If the parties had made application for allotment of shares, there are no evidences to show that they agreed to get the same converted into loan. And there are also no evidence to show that they even agreed not to receive any interest on the amounts lying with the appellant. No one will forgo interest just like that and if at all the interest has been forgone, it was for the assessee to have led reasonable grounds for the same. It is however noted that one of the concerns namely Lyton Consultancy Pvt. Ltd. (who has given Rs. 5 lacs) is a group concern of the appellant and the genuineness of the transaction with the said party cannot be in doubt. In view of this, I do not consider that the appellant has been able to establish the genuineness of the transactions involving the said amount of Rs. 20 lacs. Considering all these factors I hold that there is merit in AO’s action in making addition to the extent of Rs. 20 lacs involving Rajesh Vanijya Pvt. Ltd. And Amit Goods & Suppliers Pvt. Ltd. Therefore, addition of Rs. 20 leas made on protective basis is hereby confirmed and the balance sum of Rs. 5 lacs is deleted.”*

5. On behalf of the assessee, written submission has been filed wherein the assessee has given its submission, mainly on merits stating that the assessee had submitted all the details relating to money received by it during the course of assessment proceedings and the entire onus u/s.68 had been discharged with regard to the share application money

received from following two parties for sums aggregating to Rs.20 lacs:-

<i>Name</i>	<i>Address</i>	<i>PAN</i>	<i>Amount</i>
<i>Amit Goods &amp; Suppliers Pvt. Ltd.</i>	<i>41, Shibtolla Street, Kolkata</i>	<i>AACCA1198E</i>	<i>10,00,000/-</i>
<i>Rajesh Vanija Pvt. Ltd.</i>	<i>21, Strand Road, Kolkata.</i>	<i>AABCR 6316C</i>	<i>10,00,000/-</i>
		<i>Total</i>	<i>20,00,000/-</i>

6. It has been further stated that money has been received through banking channels and all the details relating to these entities were furnished. The Assessing Officer without making any further inquiry has simply made the addition. When identity of the creditors along with income tax particulars and other details were available then onus cast upon the assessee stood discharged. In support, various judgments have also been relied upon.

7. On the other hand, ld. DR also has relied upon the judgment of Hon'ble Delhi High Court on merits of the additions, in the cases of **PCIT vs. NDR Promoters Pvt. Ltd., in ITA No.49/2018 order dated 17.01.2019 and PCIT vs. NRA Iron Steel Pvt. Ltd. in SLP (Civil) No. 29855/2018 order dated 05.03.2019.**

8. From the perusal of the impugned orders, we find that Assessing Officer has made addition of Rs.25 lacs on protective basis and substantive addition has been made in the hands of M/s. Shiv Vani Oil & Gas Exploration Services Ltd. Ld. CIT (A) too without ascertaining the fate of

substantive addition made in the case of M/s. Shiv Vani Oil & Gas Exploration Services Ltd. has confirmed the protective addition to the extent of Rs.20 lacs. There is no reference or whisper about substantive addition in the order of the Ld. CIT (A). Certainly protective addition cannot be sustained at the appellate stage. Under these circumstances, we are of the opinion that matter should be restored back to the file of the Ld. CIT (A), to ascertain the fate of substantive addition made in the hands of M/s. Shiv Vani Oil and Gas Exploration Services Ltd. and if such an addition has attained finality in that case, then no addition should be made in the case of the assessee. Ld. CIT (A) will provide due and effective opportunity of hearing to the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 13<sup>th</sup> January, 2020.**

Sd/-  
**[G.S. PANNU]**  
**VICE PRESIDENT**

DATED: 13<sup>th</sup> January, 2020

PKK:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

Assistant Registrar