

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.7713/Del/2018
Assessment Year : 2008-09**

DCIT, Central Circle-I, 7 th Floor, HSIIDC Building, Udyog Vihar, Phase-V, Gurugram, Haryana-122016	vs	M/s Frost Falcon Distilleries Ltd., C-654, New Friends Colony, New Delhi
		PAN-AAACF0434C
REVENUE		ASSESSEE

**ITA No.7946/Del/2018
Assessment Year : 2008-09**

M/s Frost Falcon Distilleries Ltd., C-654, New Friends Colony, New Delhi	vs	DCIT, Central Circle-I, 7 th Floor, HSIIDC Building, Udyog Vihar, Phase-V, Gurugram, Haryana-122016
PAN-AAACF0434C		
ASSESSEE		REVENUE

Assessee by	Sh.Vinod Kumar Bindal, CA Ms. Rinky Sharma, ITP
Revenue by	Ms. Nidhi Srivastava, CIT-DR

Date of Hearing	20.09.2021
Date of Pronouncement	07.10.2021

ORDER

Per Sanjay Garg, Judicial Member :

The captioned are cross appeals, one by the Revenue and other by the assessee, preferred against the order dated 04.09.2018 of the Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to 'CIT(A)'), Gurugram, for the Assessment Year 2008-09.

2. Since, the common issue has been raised in both the appeals, the same has been heard together and are being disposed of by this common order.

3. The brief, facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to 'the Act') was carried out at the premises of the assessee on 09.11.2011. Consequent to that, the assessment was framed u/s 153A of the Act for the year under consideration, vide assessment order dated 27.02.2014, wherein, the Assessing Officer made addition of Rs.5,50,00,000/- into the income of the

assessee u/s 68 of the Act on account of unaccounted money introduced into the assessee company by four parties in the form of share capital and share premium. The Assessing Officer held that the aforesaid investor companies were non-existent and paper companies through which the assessee introduced his own unaccounted money in the form of share capital and share premium.

4. Being aggrieved by the aforesaid order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A).

5. The Ld. CIT(A) deleted the addition made by the Assessing Officer in respect of three parties, however, upheld the addition of Rs.75 lakhs in respect of the share capital/share premium received by the assessee from one M/s Aachman Vanijya (P.) Ltd. The Ld. CIT(A) deleted the addition in respect of three parties observing that no incriminating material was found during the search action in respect of the investment made by the said three parties. Further, that the original assessment for the year under consideration stood completed on the date of search. He, in this respect relied upon the decision of the Hon'ble Delhi High

Court in the case of CIT vs Kabul Chawla (380 ITR 573)(Del.) and on the decision of the Co-ordinate Delhi Bench of the ITAT in the case of M/s Jaipuria Infrastructure Developers P. Ltd. vs ACIT in ITA No.5522 & 5523/Del/2015, wherein, it has been held that in case of completed assessments, no addition can be made in the absence of any incriminating material.

6. However, in the case of share capital/share premium received from M/s Aachman Vanijya (P) Ltd., the Ld. CIT(A) referred to the statement recorded of Sh. Kashi Prasad Chotia, director of M/s Aachman Vanijya (P) Ltd. during the survey action carried out at the premises of the said company, wherein, he had stated that he was only dummy director of the company and that M/s Aachman Vanijya (P) Ltd. was a paper concern and no genuine business activities were carried out by the said company. Further that the said company used to provide accommodation entries. The Ld. CIT(A) relied upon the decision of the Hon'ble Supreme Court in the case of CIT, Chennai vs S. Ajit Kumar (2018) 93 taxmann.com 294(SC), wherein it has been held that any material or evidence found/collected in survey, which has been

simultaneously made at the premises of a connected person, can be utilized while making the Block Assessment in respect of an assessee under Section 158BB read with Section 158 BH of the I. T. Act. He, therefore, confirmed the addition of Rs.75 lakh in respect of the share capital/share premium received by the assessee from the aforesaid company.

7. The Revenue, therefore, has come in appeal before us contesting the action of the Ld. CIT(A) in deleting the addition in respect of the remaining three parties amounting to Rs.4,75,00,000/- and whereas the assessee has come in appeal contesting the confirmation of addition of Rs.75 lakh in respect of share premium/share capital received from M/s Aachman Vanijya (P.) Ltd.

8. We have heard the rival contention and gone through the record. Admittedly, the original assessment in this case was already completed and not abated as on the date of search. It is also an admitted fact that no incriminating material was found in the premises of the assessee during the search action relating to the aforesaid share capital/share premium received by the

assessee. Now, the Ld. CIT(A) while deleting the addition in respect of the three parties has relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla (supra) and other High Courts, wherein, it has been held that in case of completed assessment, no addition can be made in the absence of any incriminating material. We do not find any infirmity in the order of the Ld. CIT(A) in this respect.

9. However, so far as the confirmation of addition by the Ld. CIT(A) in respect of share capital/share premium received from M/s Aachman Vanijya (P.) Ltd. is concerned, we find that the Ld. CIT(A) has relied upon the decision of the Hon'ble Supreme Court in the case of CIT, Chennai vs S. Ajit Kumar (supra), wherein, the Hon'ble Supreme Court has held that any material or evidence found/collected in a survey action which has been simultaneously made at the premises of a connected person can be utilized while making the Block Assessment in respect of an assessee under Section 158BB r.w.s. 158BH of the Act. The Hon'ble Supreme Court in this respect has held that the words "*and such other materials or information as are available with the Assessing*

Officer and relatable to such evidence” occurring in Section 158BB of the Act will cover the material found or collected in a simultaneous a survey action at the premises of the connected person. However, we note that the aforesaid proposition was laid down by the Hon’ble Supreme Court in relation to the Block Assessment made u/s 158BB r.w.s. 158BH of the Act. However, the said provisions of section 158BB and 158BH are not applicable for the assessment year under consideration. The assessment for the assessment year under consideration in this case has been framed under the provisions of section 153A of the Act, wherein, such words as referred to by the Hon’ble Supreme Court does not exist. Moreover, we find that the statement relied upon by the Ld. CIT(A) of one Sh. Kashi Prasad Chotia, dummy director of the M/s Aachman Vanijya (P.) Ltd. is otherwise not trustworthy and is not enough to make addition based solely on the said statement. Mr. Kashi Prasad Chotia in the survey action had stated that he was dummy director only, which means, he was not aware of the actual activity of the said company i.e. M/s Aachman Vanijya (P.) Ltd. He had further stated that he was not aware about the commission paid but the details of the commission earned could

be furnished by the Sh. Pramod Baid, who was the key person in the company. When he was asked as to what was the nature of business of M/s Aachman Vanijya (P.) Ltd., he replied that all such information in respect of M/s Aachman Vanijya (P.) Ltd. could be given by Sh. Pramod Baid only. Except the aforesaid statement of Sh. Kashi Prasad Chotia, no other incriminating material or evidence has been referred in the assessment order, in respect of survey action carried out in the case of M/s Aachman Vanijya (P.) Ltd.. The statement of said Sh. Kashi Prasad Chotia has not been confronted to the assessee. The Ld. Counsel for the assessee in this respect has relied upon the decision of the Hon'ble Supreme Court in the case of M/s Andman Timber Industries vs Commissioner of Central Excise, Kolkata in Civil Appeal No.4228/2006, order dated 02nd September, 2015, wherein, the Hon'ble Supreme Court has held that where the assessee had not been given an opportunity to cross examine the witness, who made statement such bald statement, cannot be made the sole basis to make addition. Since, the words "*and such other materials or information as are available with the Assessing Officer and relatable to such evidence*" do not find mention under the

provisions of section 153A of the Act and further it has been held time and again by the various High Court that addition can be made in case of completed assessment as on the date of search only on the basis of incriminating material found during the search action, hence, in our view, the action of the Ld. CIT(A) in confirming the addition of Rs.75 lakhs on the basis of sole statement of one dummy director, recorded during the survey action in case of that company, without confronting the same to the assessee, cannot be held to be justified. The impugned addition is, therefore, ordered to be deleted. In view of the above discussion, the appeal of the Revenue is hereby dismissed, whereas the appeal of the assessee is allowed.

10. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order was pronounced in the Open Court on 07/10/2021.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Delhi; Dated: 07/10/2021.

Shekhar

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI