

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

I.T.A. Nos. 2110 & 2111/Mum/2019
(Assessment years 2011-12 & 2012-13)

Dy. Commissioner of Income-tax, Central Circle 3(2), Mumbai	vs	Feathertouch Fashions P Ltd 2/27, A36, Patharwala Building 32/36, Anant Wadi, Mumbai-400 064 PAN : AABCF4777B
APPELLANT		RESPONDENT

Appellant by	None
Respondent by	Shri Achal Sharma, CIT DR

Date of hearing	01-12-2021
Date of pronouncement	08-12-2021

ORDER

Per Prashant Maharishi (AM)

01 These are the two appeals filed by the Deputy Commissioner of Income tax, Central Circle-3(2), Mumbai [The Learned AO] against the two separate appellate orders passed by The Commissioner of Income-tax (Appeals)-51, Mumbai [the Ld CIT (A)] both dated 29-01-2019 for assessment year 2011-12 and 2012-13 respectively, allowing appeal of the assessee.

02 The Id AO has preferred the following three grounds of appeal for assessment year 2011-12:

“1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.7,75,00,000/- on account of unaccounted investment and of Rs.18,75,500/- on account of unaccounted commission u/s 69C without considering the fact that the said entry is merely on accommodation entry and the assessee was a conduit for introducing unaccounted funds which has been proved beyond doubt.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred deleting the protective addition of Rs.7,75,00,000/- on account of unaccounted investment by observing that the investment reflected in the balance sheet is out of corresponding liabilities as the assessee company is not carrying any business actually and the said entry is unexplained.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the protective addition of Rs.7,75,00,000/- on account of unaccounted investment and of Rs.18,75,500/- on account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality.”

03 The Id AO has also preferred identical three grounds for assessment year 2012-13.

04 Both these appeals are having the common facts and identical issues, and therefore, both these appeals are disposed of by this common order.

05 The facts as culled out from the orders of the lower authorities for assessment year 2011-12, it is noticed that assessee is a company allegedly engaged in manufacturing of textiles. Original return of income declaring income of Rs. 4,80,730/- was filed on 29/09/2011,

which was processed under section 143(1) of the Act. Subsequently, a search was conducted in case of First Winner group on 11/08/2014 including the assessee. Notice under section 153A of The Income tax Act [The Act] was issued on 06/05/2015. In response to that notice, assessee filed return of income on 29/02/2016 at the same income as disclosed in the original return. Subsequently, the learned Assessing Officer noticed that assessee is merely a paper company as per the statement of one, Shri Rinku Patodia. The learned Assessing Officer also referred that during the course of search, the directors of the assessee, were found to be dummy, and they were only signing documents as per the direction of Shri Rinku Patodia. Assessee Company was also found to be a paper company. Shri Rinku Patodia is managing director of First Winner Industries Ltd, who in statement recorded under section 132(4) on 11/08/2014 and 12/08/2014 admitted that the directors in those companies are his employees / relatives or persons, who are merely for namesake are dummy directors.

06 The learned Assessing Officer noted that assessee has invested into share capital of several companies and which are merely accommodation entries. Accordingly, learned Assessing Officer noted that assessee has made an investment of Rs. 7.75 crores in some other companies. He also noted that Assessee Company is merely flouted for routing the bogus share application money and, therefore, the amount shown in share application money is nothing, but money belonging to Shri Rinku Patodia. The assessing officer further noted that the

substantive addition on receipt of bogus share application money has been added in the hands of the companies, viz. Rikosh Fashions Pvt Ltd, Bhagwat Textiles Pvt Ltd, Firstwinner Textiles (India) Pvt Ltd and Firstwinner Industries Pvt Ltd. Therefore, on the protective basis, he made an addition of Rs. 7.75 crores in the hands of the assessee. He further made an addition of market rate of commission @2.5% on routing of bogus share application money of Rs. 7.75 crores and thereby added a sum of Rs. 18,75,500/-.

07 Consequently, the assessment order under section 143(3) read with section 153A of the Income-tax Act, 1961 was passed on 29/12/2016 determining total income of the assessee at Rs. 7,98,56,230/- against the returned income of Rs. 4,80,730/-.

08 Aggrieved with the order of learned assessing officer, assessee preferred appeals before the learned Commissioner of Income tax (Appeals). The learned Commissioner of Income tax (Appeals) held that the substantive additions have been made in the hands of other companies. He further referred to the order of the learned Commissioner of Income tax (Appeals) in case of the those other companies, who received share application money and held that the additions have been confirmed in the hands of the parties, who are the beneficiaries of those accommodation entries. He held that when the substantive additions have already been confirmed by the learned Commissioner of Income tax (Appeals) in the hands of those parties, the protective additions in the hands of the assessee naturally do not survive. Therefore, he deleted the protective addition with respect to a

sum of Rs. 7.75 crores in the hands of the assessee. With respect to the addition under section 69C of the Act for expenses of commission etc on obtaining accommodation entries, he also deleted the addition in the hands of the assessee to the extent of Rs. 18.75 lakhs holding that such addition cannot also be upheld in the hands of assessee, on the same principle. He noted that the assessing officer has also made this addition on protective basis. Accordingly, he held that

- a. Addition are made in the hands of assessee on protective basis,
- b. All those assessees in whose cases the substantive additions have been made by the learned assessing officer have been confirmed by the learned Commissioner of Income tax (Appeals) in respective orders in appeals of those companies.
- c. Only with respect to the verification of some difference in amounts, he directed the learned assessing officer to verify the same.

09 The learned Assessing Officer is aggrieved with the order of learned Commissioner of Income tax (Appeals) and has preferred this appeal.

10 The learned Commissioner of Income tax(DR) submitted that as the appeals by the parties in whose hands the substantive additions have been made has not become final and, therefore, the learned Commissioner of Income tax (Appeals) should not have deleted these additions.

- 11 Despite notice, none appeared on behalf of the assessee. On earlier occasions also, when these matters are listed, the assessee remain unrepresented. In view of this, we proceed to decide the appeal on the merits of the case as per information available on record.
- 12 We have carefully considered the contentions raised by the learned CIT(DR) and considered the orders of the lower authorities. We find that assessee has been held to be an entry provider through which, the money has been routed for making investment in another companies. Therefore, the learned assessing officer, after carefully considering the facts of the whole transactions made addition in the hands of the real beneficiary on substantive basis and in the hands of the assessee, on protective basis. The addition in the hands of the beneficiary has been confirmed by the learned Commissioner of Income tax (Appeals) in their respective cases holding that the addition is required to be made in the hands of those companies, on substantive basis. The revenue have not shown us any evidence that the addition in the hands of those companies having survived for the reason that it should be taxed in the hands of this assessee. The learned Assessing Officer has also made addition u/s 69 C of the Act of expenses of obtaining the accommodation entry in the hands of the assessee, on protective basis. The expenditure of accommodation entries were also held to be the income of those assesses, who obtained accommodation entry and therefore, such expenditure is confirmed as unexplained expenditure of those beneficiaries. In view of this, the learned Commissioner of Income tax (Appeals), after carefully recording the order of the learned

Commissioner of Income tax (Appeals) in the hands of the beneficiaries, have deleted the addition in the hands of the assessee. There is no evidence that income belongs to this assessee and further stand of the revenue is that this assessee is only a paper company. Further, if at any moment, in the case of the beneficiaries, if it is held that the income belongs to the assessee and not to those beneficiaries, the provisions of Section 153 of the income tax act will come to the rescue of the revenue.

13 Therefore, We find no infirmity in the order of learned Commissioner of Income-tax (Appeals) in deleting the addition in the hands of this assessee, made on protective basis, when addition already made in the case of other assesses on substantive basis, have been confirmed.

14 In view of this, the order passed by the learned Commissioner of Income tax (Appeals) is confirmed and all the three grounds raised by the learned assessing officer are dismissed.

15 Accordingly, ITA No. 2110/Mum/2019 for assessment year 2011-12 is dismissed.

ITA No. 2111/Mum/2019

16 ITA No. 2111/Mum/2019 is filed by the learned Assessing Officer for assessment year 2012-13.

17 Facts clearly shows that the assessee filed return of income on 28/09/2012 at Rs. 3,17,380/-. This return of income, pursuant to search were assessed by order dated 29/12/2016 passed under section

143(3) read with section 153A of the Income-tax Act, 1961 wherein the addition of Rs.6.02 crores have been made in the hands of the assessee on protective basis and the same addition was made in the hands of the companies, who received the share application money suffered on substantive basis. A further addition of Rs. 15,05,000/- was also made in the hands of the assessee on protective basis on account of expenses u/s 69 C of the Act. Accordingly, the assessment order determined the total income of the assessee at Rs.6,20,22,380/- against the total income of Rs.3,17,380/-.

18 Assessee, aggrieved by the order of the assessing officer preferred appeal before the learned Commissioner of Income tax (Appeals), who deleted the addition in the hands of the assessee, on protective basis, for the similar reasons given by him in appeal of the assessee for assessment year 2011-12.

19 As the learned CIT(DR) has confirmed that there is no change in the facts and circumstances of the case, for the similar reasons given in deciding the appeal of the revenue for assessment year 2011-12, we dismiss appeal of the revenue for assessment year 2012-13 also for the reasons that addition on substantive basis has been confirmed in the hands of the beneficiaries, who got the share application money from the assessee company and, therefore, the protective addition in the hands of the assessee naturally do not survive.

20 Accordingly, ITA No. 211/Mum/2019 for assessment year 2012-13 filed by the learned assessing officer is also dismissed and the order of the learned Commissioner of Income tax (Appeals) is confirmed.

21 Accordingly, both the appeals filed by the revenue are dismissed.

Order pronounced on 08/12/2021.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dt : 08 /12/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

/True copy/

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

By Order

Asstt. Registrar, ITAT, Mumbai