

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND**

ITA NO. 2119/MUM/2019 (A.Y: 2012-13)

DCIT – Central Circle -3(2) Room No. 1913 Air India Building Nariman Point Mumbai – 400 021	v.	Sudama Textiles Trading's Pvt. Ltd., Room No. 4, Shivram Patel Chowk Hanuman Nagar, Kurar Village Malad (E), Mumbai - 400064 PAN: AAOCS4200K
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Hemant Chimanlal Leuva
Date of Hearing	:	14.09.2021
Date of Pronouncement	:	03.12.2021

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 51, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.01.2019 for the A.Y. 2012-13.

2. Grounds raised by the revenue are as under: -

"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the protective addition of ₹.6,25,00,000/- on account of unaccounted investment and of Rs 15,62,500/- on account of unaccounted commission u/s 69C without considering the act that the said entry is merely an 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 in law, the Ld.CIT(A) erred in deleting the protective addition of ₹.6,25,00,000/- 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 ₹.6,25,00,000/- on account of unaccounted investment and of ₹15,62,500/ on account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality."*

3. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, we proceed to dispose of this appeal on hearing Ld. DR on merits.

4. At the time of hearing, it is brought to our notice by Ld. DR that this is the appeal preferred by the revenue since the Ld.CIT(A) has deleted addition made by the Assessing Officer on account of unaccounted investment and unaccounted commission u/s. 69C of the Act with the following observation: -

"5.3.6 *It is observed that the AO has made the said additions of Rs. 6,25,00,000/in the hands of our assessee on protective basis by holding that the said investments in M/s Rikosh Fashions P Ltd. (Rs 1,00,00,000/-), M/s. Bhagwat Textiles P. Ltd. (Rs 1,00,00,000/-), M/s First Winner Textiles (India) P Ltd (Rs 2,25,00,000/-), M/s Solitaire Texfab& Traders Textiles P Ltd (Rs 1,00,00,000/-) and M/s Starwood*

Exports P Ltd (Rs.1,00,00,000/-) are unexplained. It is noted that the provisions of section 69 can be invoked if (i) the said investment is not recorded in the regular books and (ii) the assessee offers no explanation about the source or the explanation offered is not satisfactory. It is relevant to note that both these conditions are to be cumulatively satisfied. The Hon'ble Orissa High Court in the case of Aurobindo Sanitary Stores (276 ITR 549) has held that the primary condition to be satisfied before invoking the provisions of section 69 is that there should be a finding of the AO that the investments are not recorded in the regular books. In the instant case, there is no dispute that the said amount of investment is duly recorded in the regular books of accounts. The source of an investment which is reflected in the Balance Sheet is out of the corresponding liabilities shown in the Balance Sheet including the ones which got squared up and therefore cannot be treated as unexplained. Also, the corresponding additions have been made in the hands of M/s Rikosh Fashions P Ltd., M/s. Bhagwat Textiles P. Ltd., M/s First Winner Textiles (India) P Ltd., M/s Solitaire Texfab& Traders Textiles P Ltd and M/s Starwood Exports P Ltd. on substantive basis have been confirmed vide my orders in No.CIT(A)-51/IT-345/16-17 dated 20.11.2018, Appeal No CIT(A)-51/T312/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-341/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-344/16-17 dated 20.11.2018 and Appeal No.CIT(A)-51/T-343/16-17 dated 03.11.2017. Therefore, in principle, the action of the AO in making the said protective addition u/s 68 cannot be sustained.

5.3.7 similarly, the protective made by the AO u/s 69C of Rs.15,62,500/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investment of Rs 6,25,00,000/- also cannot be sustained in principle considering that the protective addition of unexplained investment itself has in principle been deleted and also because the corresponding substantive additions made u/s 69C by the AO in the hands of M/sRikosh Fashions P Ltd., M/s. Bhagwat Textiles P. Ltd., M/s First Winner Textiles (India) P Ltd., M/s Solitaire Texfab& Traders Textiles P Ltd and M/s Starwood Exports P Ltd. on substantive basis have been confirmed vide my orders in No.CIT(A)-51/IT-345/16-17 dated 20.11.2018, Appeal No CIT(A)-51/IT312/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-341/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-344/16-17 dated 20.11.2018 and Appeal No.CIT(A)-51/IT-343/16-17 dated 03.11.2017. However, as noted

earlier, the AO is directed to verify the facts in respect of the quantum of substantive and protective additions made related to M/s Rikosh Fashions P Ltd., and M/s Bhagwat Textiles P Ltd., and accordingly adopt the correct figure while computing the protective addition u/s 69C being the unexplained commission expenditure. Accordingly, ground Nos 1 to 3 of the appeal are partly allowed."

5. With reference to the above, Ld. DR submitted that Ld.CIT(A) deleted the addition overlooking the fact that assessee was a conduit for introducing unaccounted funds and he deleted with the observation that the investments reflected in the balance sheet is out of corresponding liability as the assessee company is not carrying any business in actual, therefore the above said entry is not explained. Further, he submitted that Ld.CIT(A) deleted addition without considering the fact that addition made on substantive basis has not reached finality. He prayed that the addition made by the Assessing Officer maybe sustained.

6. Considered the submissions of the Ld.DR and material placed on record, we noticed that the addition made by the Assessing Officer is not substantive but on protective basis and Assessing Officer proceeded to invoke provisions of section 69 of the Act. We observed that Ld.CIT(A) has dealt with this issue elaborately and deleted the addition considering the fact that it is wrong to invoke the provisions of section 69 of the Act when the assessee has brought on record the details of credit in their

Books of Accounts and also substantive addition also already been made in the hands of M/s. Rikosh Fashions P Ltd., M/s. Bhagwat Textiles P. Ltd., M/s.First Winner Textiles (India) P Ltd., M/s Solitaire Texfab & Traders Textiles P Ltd and M/s Starwood Exports P Ltd. Therefore, the protective addition made by the Assessing Officer is not maintainable. Hence, we do not find any infirmity in the finding of the Ld.CIT(A). Accordingly, appeal filed by the Revenue is dismissed.

Order pronounced on 03.12.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 03/12/2021
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum