

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.223, 224, 225, 226, 227, 228 & 229/Del./2021

Assessment Years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18

M/s. Kaksh Impex Pvt. Ltd., Shop No.205, Second Floor, Aggarwal City Mall Road No.44, Pitampura, Delhi North, Delhi – 110 034. PAN AADCK4856E	vs.,	The ACIT, Central Circle – 26, 2 nd Floor, ARA Centre, Jhandewalan Extn., New Delhi. PIN 110 055
(Appellant)		(Respondent)

ITA Nos.213, 214, 215, 216, 217, 218 & 219/Del./2021

Assessment Years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18

M/s. Paksh Marketing Pvt. Ltd., Shop No.205, Second Floor, Aggarwal City Mall Road No.44, Pitampura, Delhi North, Delhi – 110 034. PAN AAACP8091P	vs.,	The ACIT, Central Circle – 26, 2 nd Floor, ARA Centre, Jhandewalan Extn., New Delhi. PIN 110 055
(Appellant)		(Respondent)

ITA Nos.222, 221 & 220/Del./2021
 Assessment Years 2011-12, 2012-13 & 2013-14

M/s. Vrindavan Infra Developers Private Limited, 325, Vardhman Grand Plaza, Manglam Place, Sector-3, Rohini, Delhi – 110 005. PAN AACCV4222G	vs.,	The ACIT, Central Circle – 26, 2 nd Floor, ARA Centre, Jhandewalan Extn., New Delhi. PIN 110 055
(Appellant)		(Respondent)

ITA No.212/Del./2021
 Assessment Year 2016-17

M/s. Madhur Buildcon Private Limited, 325, Vardhman Grand Plaza, Manglam Place, Sector-3, Rohini, Delhi – 110 005. PAN AAFCM9969G	vs.,	The ACIT, Central Circle – 26, E-2, Room No.284, 2 nd Floor, ARA Centre, Jhandewalan Extn., New Delhi. PIN 110 055
(Appellant)		(Respondent)

For Assessee :	Shri Ramesh Goyal, C.A.
For Revenue :	Shri Surender Pal, CIT-DR

Date of Hearing :	17.11.2021
Date of Pronouncement :	18.01.2022

ORDER

PER R.K. PANDA, A.M.

The above batch of appeals filed by different assessees are directed against the separate orders dated 31.01.2020 of the Ld. CIT(A)-29, New Delhi, relating to A.Ys. 2011-12 to 2017-18 in the cases of M/s. Kaksh Impex Pvt. Ltd. and M/s. Paksh Marketing Private Limited, A.Ys. 2011-12 to 2013-14 in the case of M/s. Vrindavan Infra Developers Private Limited and for the A.Y. 2016-17 in the case of M/s. Madhur Buildcon Pvt. Ltd., New Delhi. Since identical grounds have been raised by all these assessees, therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First we take-up ITA.No.223/Del./2021 for the A.Y. 2011-12 in the case of M/s. Kaksh Impex Pvt. Ltd., as the lead case.

2.1. Facts of the case, in brief, are that the assessee company filed its original return of income on 28.09.2011 declaring income of Rs.16,130/- which was processed under section 143(1) of the I.T. Act, 1961. A search and seizure operation under section 132 of the I.T. Act, 1961 was carried-out on 27.04.2016 in Sanjay Bhandari/OIS Group of Cases. The case of the assessee company was also covered in the said search. Consequent upon the search, a notice under section 153A of the of the I.T. Act, 1961 was issued to the assessee on 20.02.2018 which was returned by the postal authorities with the remarks "Left". Thereafter, notice under section 153A of the I.T. Act, 1961 dated 06.08.2018 was again issued which was also received back with the remarks "Left". Therefore, the A.O. issued notice under section 142(1) of the I.T. Act, 1961 along with a questionnaire through the Inspector of his office duly fixing the date of hearing on 23.10.2018. The assessee filed the

return of income on 23.11.2018 for the A.Y. 2011-12 declaring income of Rs.16,130/- in response to notice under section 153A of the I.T. Act, 1961. The A.O. also issued show cause notice dated 17.12.2018 and served on the assessee.

2.2. The A.O. observed that during the course of search action under section 132 of the I.T. Act, 1961 carried out on 27.04.2016 at the registered address of M/s. Kaksh Impex Pvt. Ltd., M/s. Paksh Marketing Private Ltd., M/s. Madhur Buildcon Pvt. Ltd. and M/s Amarjeet Motors Private Ltd, i.e. at G-10/66, Ground Floor, Sector-15, Rohini, Delhi, it was found by the search party that it was a residential premises and no company was found to be running in the said address. It was occupied by a family as residence. Thus, the activities of these companies, if any, could not be verified. During the assessment proceedings also the assessee-company was found to be non-existent at the address given by the assessee. He observed that the assessee-company is a paper/shell company of Sh. Deepak Aggarwal, Sh. Vishnu Kumar Aggarwal and Sh. Bal Krishan

Singhania who are entry operators. Sh. Vishnu Kumar Aggarwal and Sh. Bal Krishan Singhania are residents of Kolkata. The assessee-company is indulged in taking accommodation entries in lieu of cash from various paper/shell companies of Sh Deepak Aggarwal and Sh. Vishnu Aggarwal and providing accommodation entries of unsecured loan and share capital to various beneficiaries in lieu of cash. The assessee-company has also provided accommodation entries to Sh. Sanjay Bhandari and his group companies.

2.3. During the course of assessment proceedings, bank statement of the assessee-company and KYC documents of the assessee was called for from DCB Bank, ING Vysya Bank and Yes Bank, New Delhi u/s 133(6) of the I.T. Act, 1961. On verification of bank statements, the A.O. noted that total deposits in bank account of the assessee are as under :

Kaksh Impex Pvt. Ltd.				
A.Y.	DCB Bank, A/c. No.	Yes Bank, A/c. No.	ING Vysya, A/c. No. 68301100019	Total
2011-12		2,33,25,348		2,33,25,348
2012-13			4,35,58,386	4,35,58,386 j
2013-14			2,19,41,246	2,19,41,246
2014-15	7,49,26,894		10,67,260	7,59,94,154
2015-16	2,53,56,892			2,53,56,892
2016-17	3,06,59,034			3,06,59,034
2017-18	4,09,94,038			4,09,94,038 J

2.4. The A.O. on verification of bank statements noted that the pattern of transactions are that the amount credited in account was immediately withdrawn from the bank either same amount or in parts. The debit/credit entries show that the assessee company has not been running any real business. The transaction pattern clearly shows that the assessee company has indulged in providing accommodation entries to various persons. Further, during the course of search action in the case of Sh. Sanjay

Bhandari and his group companies certain blank signed receipt of sale proceeds of shares and blank signed repayment receipt of advances given to Sh. Sanjay Bhandari and his companies were found. Sh. Sanjay Bhandari and his group companies have not sold shares of his companies but receipt of sale consideration was found and seized from the office of Sh. Sanjay Bhandari. Same way receipts were found of repayment of unsecured loan which clearly indicate that Sh. Sanjay Bhandari had given cash against share capital and unsecured loan received by his companies. According to the A.O, the share capital/unsecured loans are nothing, but, accommodation entries taken from the assessee and other group paper/shell companies of Sh. Deepak Aggarwal, Sh. Vishnu Kumar Aggarwal and Sh, Bal Krishan Singhania. From the perusal of the bank statement and transaction pattern the A.O. found that :

1. The assessee is only a paper company, no real business done by the assessee.

2. The assessee company is non-existent at the given address.
3. The assessee is indulged in providing accommodation entries to Sh Sanjay Bhandari and his companies.
4. Overall control on the assessee is of Sh. Vishnu Kumar Aggarwal, Sh Bal Krishan Singhania and Sh. Deepak Aggarwal.
5. The assessee had given blank signed receipt for sale proceed of shares in the name of M/s. Micromet ATI Pvt. Ltd. Though assessee has not received payment by cheque, it means the assessee has received cash against entry provided to M/s. Micromet ATI Pvt. Ltd. group company of Sh. Sanjay Bhandari.

2.5. In view of the above, the A.O. held that the assessee-company is only paper/non-existent company and indulged in providing accommodation entries. The assessee would have earned commission in cash for providing the

accommodation entries. The prevailing market rate of commission is 2% to 2.25% on the total credits in bank account of the assessee. Therefore, he made addition of Rs.4,66,507/- being commission @ 2% of total deposits in bank account amounting to Rs.2,33,25,348/-.

2.6. Before the Ld. CIT(A) the assessee apart from challenging the addition on merit, challenged the validity of assessment proceedings in absence of any incriminating material. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the A.O.

2.7. So far as validity of assessment proceedings are concerned, the Ld. CIT(A) dismissed the ground raised by the assessee by observing as under :

“4.1. By additional ground no.1 and 2, the appellant has challenged validity of re-assessment order on the grounds that there was no valid search in the case of appellant and no incriminating material was found during the course of search proceedings and

accordingly the orders passed u/s 153A are bad in law. However, on perusal of the remand report of the AO as well as material available on record, it is noticed that search warrant no. 5516 was duly issued in the name of Kaksh Impex Pvt Ltd for search on the premises located at G-10/66, Ground Floor, Sector-15, Rohini, Delhi. The same address was mentioned in the PAN database and IT Return of the appellant. I find that the copy of bank statement of appellant company with DCB Bank placed on record for the period from 01.04.2015 to 21.03.2016 also shows address of appellant company as G- 10/66, Ground Floor, Sector-15, Rohini, Delhi. The warrant was duly executed on 27.04.2016 as is evident from copy of Panchnama placed on record. Both the search warrant and panchnama were provided to the appellant and the same were not controverted in the rejoinder by the Ld. AR. Therefore, I hold that there was conduct of a search u/s 132 in the name and at the premises of the appellant. Accordingly I further hold that the AO had rightly initiated the proceedings u/s 153A.

4.1.1. As regards the claim of appellant that no incriminating material was found as a result of search conducted on appellant, I find that as result of search and seizure action in the case of Sh. Sanjay Bhandari/OIS Group, the department was in possession of information that the appellant being a shell entity was engaged in providing accommodation entries of share capital/loans etc. As a matter of fact, entities providing accommodation entries are those which are not engaged in genuine business activities and the search u/s 132 at the premises shown in the Income Tax records clearly revealed that the appellant company was not existing at the given address. In fact, that premises was a residential premises occupied by a family and hence the search action u/s 132 has proved that appellant company was a paper entity not doing any real business and engaged merely in providing accommodation entries. Therefore, I hold that this vital information is an incriminating material to initiate the assessment proceedings u/s 153A and making

consequential addition. Undisputedly, various blank receipts duly signed by the appellant company were found at the premises of Sh. Sanjay Bhandari and his group companies for receipt of sale proceeds of shares and repayment of loan. These documents also established that the appellant had already discharged its claim on the share capital/loans given through accommodation entries since the consideration in cash for the same had already been received by the entry providers. Under these facts and circumstances, the decisions relied upon by the Ld. A.R. become distinguishable on facts because in those cases particularly in the case of Kabul Chawla (Supra), there was no incriminating material found as a result of search. Accordingly, I uphold the basis of addition made u/s 153A. Hence additional ground no. 1 and 2 being without any basis are dismissed.”

2.8. So far as the merit of the addition is concerned, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

“4.3. Ground no. 5 to 9 are pertaining to assessment of 2% commission income on accommodation entries provided to various companies of Sanjay Bhandari Group. As already discussed in para 4.1 to 4.1.1. above, the appellant company was found to be a shell entity not carrying out any genuine business. The AO had examined the bank accounts for appellant company and noticed that the credits received in bank accounts were transferred immediately to beneficiaries. The AO has also identified certain beneficiaries of accommodation entries such as Sh. Sanjay Bhandari and his group companies i.e. M/s. Avaana Software & Services Pvt. Ltd., M/s. San tech IT Services Pvt Ltd., M/s. Santech Investments Pvt Ltd., M/s. OIS Aerospace Pvt Ltd., M/s. OIS Advanced Technology Pvt Ltd., M/s. Micromet ATI India Pvt Ltd., M/s. Offest India Solutions Pvt Ltd., M/s. Himalayan Helicorp Pvt. Ltd., M/s. S B Hospitality & Services Pvt Ltd. and M/s. Santech Energy System & Services Pvt Ltd. The addition on account of unexplained investment

has been made by the AO in the hands of these beneficiaries. It is also noticed that certain blank receipts duly signed by the appellant company, a sample of which is placed in para 13 of the assessment order, were found and seized in the case of Sh. Sanjay Bhandari Group. Through these, receipts, the appellant company had discharged its claim on shares/loans given to the beneficiaries namely Micromet ATI India Pvt Ltd, HB Hospitality and Services Pvt Ltd etc. These facts clearly establish that the appellant has provided only the accommodation entries of share capital/loans to the beneficiaries through its bank accounts. As a prevailing practice, commission on accommodation entries is charged by the entry provider and accordingly the AO has assessed 2% commission income on accommodation entry. Under these facts and circumstances, the decisions relied upon by the Ld. AR are not applicable in the case of appellant. Therefore, I do not find any infirmity in the order of AO assessing the commission income. Accordingly by the AO on this account in

respective assessment years Ground 5 to 9 are dismissed

3. Aggrieved by the Order of the Ld. CIT(A), the assessee is in appeal before the Tribunal, by raising the following grounds :

- “1. On the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals) and Ld. AO is bad both in the eye of law and on facts.*
- 2. That the Ld. CIT(Appeal) has grossly erred on the facts and in law in passing the impugned order without giving a sufficient and a proper opportunity to the assessee to be heard. The impugned order is passed in the violation of principles of natural justice.*
- 3. That the ld. AO has erred in the eyes of law and facts of the case in initiation of proceedings u/s 153A of the Act and framing assessment u/s 153A read with section 143(3)of the Act since no*

incriminating material was found as a result of search conducted on the appellant and therefore, both the notice and, assessment framed were without jurisdiction and, deserved to be quashed as such.

4. *That the Id.AO has erred in the eyes of law and facts of the case in initiation of proceedings u/s 153A of the Act and framing assessment u/s 153A read with section 143(3)/144 of the Act since there was no valid search initiated/conducted on the premises of the appellant, as accepted by the Id. AO in its assessment order that the no company was existent on such address and no search made on said premises.*
5. *Without prejudice to the legal grounds, that the Id. AO has erred in the eyes of law and facts of the case in making addition of Rs.4,66,507 and Ld. CIT(A) also erred in confirming AO's order and treating the company as paper/shell company*

engaged in providing accommodation entry only on the basis of mere presumptions, surmises and without any corroborative evidences.

6. *That the appellant craves leave to add, amend or alter any of the grounds of appeal before or the time of personal hearing or written submission”.*

3.1. Identical grounds have been raised by the assessee for other assessment years and the other assesseees for different assessment years. The amount of addition confirmed by the Ld. CIT(A) which is under challenge for different assessment years are as under :

M/s. Kaksh Impex Pvt. Ltd.,

A.Y.	ITA Number	Total Deposits In Bank	Addition @ 2%
201 1-12	ITA 223/DEL/2021	2,33,25,348.00	4,66,507.00
2012-13	ITA 224/D EL/2021	4,35,58,386.00	8,71,168.00
2013-14	ITA 225/DEL,/2021	2,19,41,246.00	4,38,825.00
2014-15	ITA 226/DEL/2021	7,59.94,154.00	15,19,883.00
2015-16	ITA 227/DLL/2021	2,53.56.892.00	5,07,138.00
2016-17	ITA 228/DE1./2021	3,06,59,034.00	6,13,180.00
2017-18	ITA 229/DEL/202 1	4,09,94,038.00	8,19,880.00
Total		26,18,29,098.00	52,36,581.00

*ITA.Nos.223 to 229/Del./2021, 220 to 222/Del./2021,
ITA.Nos.213 to 219/Del./2021 & 212/Del./2021
M/s. Kaksh Impex Pvt. Ltd., New Delhi & Others.*

M/s. Paksh Marketing Pvt. Ltd.,

A.Y.	ITA Number	Total Deposits in Bank	Addition @ 2%
2011-12	ITA 213/DEL/2021	2,48,67,238.00	4,97,345.00
2012-13	ITA 214/DEL/2021	2,39,74,895.00	4,79,498.00
2013-14	ITA 215/D EL/2021	9,01,500.00	18,030.00
2014-15	ITA 216/DEL/2021	98,21,181.00	1,96,424.00
2015-16	ITA 217/DEL/2021	52,90,491.00	1,05,810.00
2016-17	ITA 218/DEL/2021	1,25,34,531.00	2,50,690.00
2017-18	ITA 219/DEL/2021	95,03,120.00	1,90,062.00
	Total	8,68,92,956.00	17,37,859.00

M/s. Vrindavan Infra Developers Pvt. Ltd.,

A.Y.	ITA Number	Total Deposits In Bank	Addition @ 2%
2011-12	ITA 222/DEL/2021	6,47,65,182.00	12,95,304.00
2012-13	ITA 221/DEL/2021	17,12.32,897.00	34,24,658.00
2013-14	ITA 220/DEL/2021	1,08.60,1 10.00	2,17,202.00
	Total	24,68,58,189.00	49,37,164.00

M/s. Madhur Buildcon Pvt. Ltd.,

A.Y.	ITA Number	Total Deposits In Bank	Addition @ 2%
2016-17	ITA 212/DEL/2021	1,29.82,024.00	2,59,640.00
	Total	1,29.82,024.00	2,59,640.00

3.2. The Learned Counsel for the Assessee through his written submissions drew the attention of the Bench to the following year wise details of income of all four companies which are as under :

M/s. Paksh Marketing Pvt. Ltd.,

Asst. Year	Interest Income	Sale Turnover	Total Revenue	TDS Deducted
2011-12	3,01,783/-	—	3,01,783/-	30,129/-
2012-13	3,01,860/-	—	3,01,860/-	30,000/-
2013-14	3,00,000/-	—	3,00,000/-	43,350/-
2014-15	3.61.012/-	—	3,61,012/-	36,015/-
2015-16	6,72,329	—	6,72,329/-	56,260/-
2016-17	1 1,36,547/-	30,00,000/-	41,36,547/-	68,515/-
2017-18	17,95,964/-	57,14,290/-	75,10,254/-	1,09,398/-
2018-19	14.71,068/-	18,60,000/-	33,31,068/-	1,02,107/-
2019-20	14.54.422/-	15,73,825/-	30,28,247/-	1,00,000/-
2020-21	3,083/-	16,90,360/-	16,93,443/-	12,230/-
M/s. Vrindavan Infra Developers Pvt. Ltd. :-				
Asst. Year	Intcrest Income	Sale Turnover	Total Revenue	TDS Deducted
201 1-12	4,72.878/-	—	4,72,878/-	42,502/-
2012-13	7,88,255/-	—	7,88,255/-	23,204/-
2013-14	6,69,100/-	—	6,69,100/-	50,658/-
2015-16	1,20,000/-	—	1,20,000/-	12,000/-
2016-17	1,78,863/-	2,90.400/-	4,69,263/-	13,296/-
2017-18	1,47,320/-	10,68,750/-	12,16,070/-	14,732/-
2018-19	1,63,402/-	5,06,250/-	6,69,652/-	16,323/-

M/s. Kaksh Impex Pvt. Ltd.,

Asst. Year	Interest Income	Sale Turnover	Total Revenue	TDS Deducted
2011-12	3,01,637/-	—	3,01,637/-	30,129/-
2012-13	3,01,698/-	-	3,01,698/-	30,000/-
2013-14	6,30,41 1 /-	—	6,30,411/-	63,042/-
2014-15	9.52,050/-	—	9,52,050/-	1,04,879/-
2015-16	12,75,143/-	—	12,75,143/-	1,27,079/-
2016-17	19,05,568/-	25,70,046/-	44,75,614/-	1,55,245/-
2017-18	26.64,835/-	30,62,100/-	57,26,935/-	2,21,208/-
2018-19	32,99,849/-- ¹	63,90,000/-	96,89,849/-	2,84,985/-
2019-20	27,43,436/-	31,65,475/-	59,08,91 1 /-	2,29,181/-
2020-21	21,33,327/-	25.95,060/-	47,28,387/-	2,09,655/-

M/s. Madhur Buildcon (P) Ltd.,

Asst. Year	Interest	Sale	Total	TDS
2011-12	26.700/-	—	26,700/-	—
2012-12	15,500/-	—	15,500/-	—
2012-1 1	22.734.85/-	`	22,734.85/-	—
2014-15	63,370/-	—	63,370/-	6,337/-
2015-16	90,000/-	—	90,000/-	10,000/-
2016-17	41,485/-	4,02,350/-	4,43,835/-	4,444/-
2017-18	90,016/-	11,56,25	12,46,266/-	9,000/-
2018-19	8,084/-	6,48,900/-	6,56,984/,	802/-
2019-20	1.37,518/-	11,81,46	13,18,978/-	13,752/-

3.3. The Learned Counsel for the Assessee submitted that the conclusions arrived at by the A.O. and CIT(A) are totally wrong that the assessee companies have indulged in accommodation entries in lieu of cash from various paper/shell companies of Deepak Aggarwal & Vishnu Aggarwal. Referring to the following investment chart of all the companies for all the assessment years in case of companies relating to Mr. Deepak Aggarwal, he submitted that there were 10 companies and the four assessee companies had made investment only in one year to the tune of Rs.1,09,50,000/-.

M/s. Madhur Buildcon (P) Ltd., :- *NT = No Transaction

		Assessment Year					
S.	Name of Company	2011-12	2012-	2013-	2014-	2015-	2016-
1	Avaana Software & Services Pvt.	9,50,000	NT	NT	NT	NT	NT
2	Santech IT Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT
3	Santech Investments Pvt. Ltd.	NT	NT	NT	NT	NT	NT
4	Santech Energy System & Services	NT	NT	NT	NT	NT	NT
5	OIS Aerospace Pvt. Ltd.	NT	NT	NT	NT	NT	NT
6	OIS Advanced Technology Pvt. Ltd.	NT	NT	NT	NT	NT	NT
7	Micromet ATI India Pvt. Ltd.	50,00,000	NT	NT	NT	NT	NT
8	Offest India Solutions Pvt. Ltd.	NT	NT	NT	NT	NT	NT
9	Himalayan Helicorp Pvt. Ltd.	NT	NT	NT	NT	NT	NT
10	S B Hospitality & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT

M/s. Kaksh Impex Pvt. Ltd.,

*NT = No Transaction

S.	Name of Company	Assessment Year						
		2011- 12	2012- 13	2013- 14	2014- 15	2015- 16	2016- 17	2017- 18
1	Avaana Software & Services	NT	NT	NT	NT	NT	NT	NT
2	Santech IT Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
3	Santech Investments Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
4	Santech Energy System & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
5	OIS Aerospace Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
6	OIS Advanced Technology Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
7	Micromet ATI India Pvt. Ltd.	50,00,0	NT	NT	NT	NT	NT	NT
8	Offest India Solutions Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
9	Himalayan Helicorp Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
10	S B Hospitality & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT

M/s. Paksh Marketing Pvt. Ltd.,

* NT = No Transaction

s. No.	Name of Company	Assessment Year						
		2011- 12	2012- 13	2013- 14	2014- 15	2015- 16	2016- 17	2017- 18
1	Avaana Software & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
2	Santech IT Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
3	Santech Investments Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
4	Santech Energy System & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
5	OIS Aerospace Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
6	OIS Advanced Technology Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
7	Micromet ATI India Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
8	Offest India Solutions Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
9	Himalayan Helicorp Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT
10	S B Hospitality & Services Pvt. Ltd.	NT	NT	NT	NT	NT	NT	NT

M/s. Vrindavan Infra Developers Pvt. Ltd., :-

S. No.	Name of Company	* NT = No Transaction		
		Assessment Year		
		2011-12	2012-13	2013-14
1	Avaana Software & Services Pvt.	NT	NT	NT
2	Santech IT Services Pvt. Ltd.	NT	NT	NT
3	Santech Investments Pvt. Ltd.	NT	NT	NT
4	Santech Energy System & Services	NT	NT	NT
5	OIS Aerospace Pvt. Ltd.	NT	NT	NT
6	OIS Advanced Technology Pvt.	NT	NT	NT
7	Micromet ATI India Pvt. Ltd.	NT	NT	* NT
8	Offest India Solutions Pvt. Ltd.	NT	NT	NT
9	Himalayan Helicorp Pvt. Ltd,	NT	NT	NT
10	S B Hospitality & Services Pvt. Ltd.	NT	20,00,00	NT

3.4. He submitted that it cannot be said that these are accommodation entries, when there is no adverse evidence or any incriminating material in the possession of the AO. So the conclusion is totally wrong that the assessee is in the business of accommodation entries.

3.5. He further submitted that for the A.Ys. 2011-12, 2012-13, 2013-14, 2014-15 and 2016-17 nothing has been found from any enquiry or search carried-out in the case of the assessee that assessee was providing any

accommodation entry and the business carried-on by the assessee is sham or paper transaction. Hence the addition cannot be made on the basis of any hypothesis or presumption but it has to be based on evidences or material or enquiry conducted. He submitted that the addition here in this case was made purely on surmises and presumption that assessee might have earned 2% commission on accommodation entry. However, this approach is unsustainable in law and on facts since atleast, there has to be a concrete finding with material that assessee was found to be carrying out shady accommodation entry transaction.

3.6. The Learned Counsel for the Assessee submitted that the entire addition is based on some notional presumption of commission on accommodation entry. He submitted that first of all, the Department has to establish that assessee company was providing accommodation entry especially when during the course of search in the case of assessee nothing has been found that assessee was indulged in any kind of accommodation entry. If at all there was any information of third-party case then without

bringing on record as to what inference has been drawn against the assessee in those cases or any substantive addition have been made in those cases, notional addition cannot be made in the hands of the assessee. Referring to the decision of the Tribunal in the case of Amarjit Motor Finance Ltd., a sister concern, he submitted that identical addition made by the A.O. and sustained by the Ld. CIT(A) has been deleted by the Tribunal vide ITA.No.9215 to 9221/Del./2019 for A.Y. 2011-12 to 2017-18 order dated 29.01.2021. He accordingly submitted that this being a covered matter in favour of the assessee, the grounds raised by the assessee should be allowed.

4. The Ld. D.R. on the other hand heavily relied on the order of the Ld. CIT(A). He submitted that the grounds of appeal number. 2 of the assessee relates to the grievance that the CIT(A) has not given sufficient and proper opportunity to the assessee. Therefore, it is submitted that the matter may be set aside to the file of CIT(A) with the direction to decide the issue afresh after giving sufficient and proper opportunity to the assessee.

4.1. So far as grounds of appeal numbers.3 to 5, challenging the validity of proceedings under section 153A is concerned, he submitted that -

- i. The Warrant of Authorization u/s 132 of the Income Tax Act 1961, has the name of assessee included in it.
- ii. The Panchanama prepared on the premises of the assessee, dated 27.04.2016, has the name of the assessee included in it.
- iii. It is clear from the assessment order (Para 13 to 15) that during the course of search, certain blank signed receipt of sales proceeds of share and blank signed repayment receipt of advances, given to Sh. Sanjay Bhandari and his company, were found and seized. Therefore, incriminating material in respect of assessee company was found and seized during the course of search u/s 132.
- iv. Further enquiry with banks and related investigation also unearthed incriminating material

related to evasion of Income Tax. Bank accounts were found with DCB Bank, ING Vysya Bank & Yes bank, New Delhi. These bank accounts had deposits running into Crores of Rupees, from F.Y 2011-12 to F.Y 2016-17.

4.2. The Ld. D.R. accordingly submitted that it is clear that incriminating material was found against the assessee during the course of search and also during the related enquiries and investigations thereafter. The judgment of Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla, ITA.No.707/2014, dated 28.08.2015, is distinguishable and does not apply to the facts of this case. In support of his contention, the Ld. D.R. also relied upon the following Judgments :

- i. Filatex India Ltd. Vs CIT [2014] 49 taxmann.com 465 (Delhi).
- ii. CIT vs Chetan Das Lachman Das [2012] 254 CTR 392 (Delhi)
- iii. Smt. Dayawanti vs CIT [2017] 390 ITR 496 (Delhi).
- iv. Vinod Kumar Gupta vs DCIT, ITA No.1003/2017, Hon'ble Delhi High Court.

4.3. The Ld. D.R. accordingly submitted that in view of the above the grounds of appeal challenging the validity of proceedings under 153A of the Act, may kindly be dismissed. So far as merit of the addition is concerned, he relied on the order of the Ld. CIT(A).

5. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case made addition of Rs.4,66,507/- being commission @ 2% of total deposit of Rs.2,33,25,348/- in the 03 Bank accounts maintained by the assessee for the following reasons :

1. The assessee is only a paper company, no real business done by the assessee.
2. The assessee company is non-existent at the given address.

3. The assessee is indulged in providing accommodation entries to Sh Sanjay Bhandari and his companies.
 4. Overall control on the assessee is of Sh. Vishnu Kumar Aggarwal, Sh Bal Krishan Singhanian and Sh. Deepak Aggarwal.
 5. The assessee had given blank signed receipt for sale proceed of shares in the name of M/s. Micromet ATI Pvt. Ltd. Though assessee has not received payment by cheque, it means the assessee has received cash against entry provided to M/s. Micromet ATI Pvt. Ltd. group company of Sh. Sanjay Bhandari.
- 5.1. We find the Ld. CIT(A) upheld the action of the A.O, the reasons of which are already reproduced in the preceding paragraphs. We find an identical issue had come-up before the Tribunal in the case of Amarjit Motor Finance (P) Ltd., a sister concern, which was also subjected to search and addition was made by the A.O. estimating the income @ 2% of

the total bank deposits in various bank accounts. The addition so made by the A.O. was sustained by the Ld. CIT(A) and on further appeal by the assessee, the Tribunal vide ITA.Nos.9215 to 9221/Del./2019 order dated 29.01.2021 for the A.Ys. 2011-12 to 2017-18 deleted the addition by observing as under :

“DECISION

“14. We have heard that rival submissions and also perused the relevant finding given in the impugned orders as well as the material referred to before us. The entire basis of the additions which has been made in the impugned appeals are that;

- firstly, the assessee was found to be non-existing company at the time of search;*
- secondly, it is a paper/ shell company of Shri Deepak Agarwal, Shri Vishnu Agarwal and Shri Bal Krishna Singhania, who were entry operators and later two of them are residents of Kolkata;*
- thirdly, the assessee-company has indulged in taking*

accommodation entry in lieu of cash from various paper/ shell company of Shri Deepak Agarwal and Shri Vishnu Agarwal;

- *fourthly, during the course of search in the case of Shri Sanjay Bhandari and his group company certain blank signed receipt of sale proceeds of shares and blank signed repayment receipt of advances given to Shri Sanjay Bhandari and his company were found from his possession. The assessee had also given blank signed receipt to it, M/s. Mircomet ATI Pvt. Ltd. for sale proceeds of shares. Though assessee has not received any payment by cheque which was inferred as if the assessee has received cash against entry provided by the group company of Shri Sanjay Bhandari.*

15. *Based on the aforesaid premise, Assessing Officer has held that assessee is providing accommodation entries, for which assessee might have earned commission as per the prevailing market rate of 2% to 2.25% on the total credits on the bank account of the assessee. He has further observed*

that addition on account of accommodation entries taken by Shri Sanjay Bhandari and his group companies for which list of 10 companies have been given will be made in their hands, however what has been the fate of the assessments or additions made in hands of these companies has not been brought on record before us nor there is any whisper in the impugned appellate order or in the report submitted by the Assessing Officer, before us.

16. *From the perusal of the records, it is seen that, firstly the assessee-company is very old company incorporated way back on 4th April, 1991 and has been duly registered as NBFC with RBI. Since then Assessee Company has been regularly filing its return with Income Tax Department, under the Income Tax Act, Returns with ROC under the Companies Act and also before RBI, being NBFC. It has been regularly filing its return of income along with audited accounts. The balance-sheet as on 31st March, 2011 reflects share capital reserve and surplus of more than Rs. 20.65 crores. It has investments of more than Rs. 18.27 crores and loans and advances given for the business purpose was at Rs.2.43*

crore and cash and bank balance of approximately Rs. 10 lakhs. The interest income has been shown at Rs.19.65 lakhs. Same is the position in all the subsequent years' balance-sheets. Thus, it cannot be held that it is non-existing company having no real business.

17. Admittedly, during the course of search nothing incriminating or any iota of document has been found or seized from the possession of the assessee company. In fact, as per the assessment order itself nothing was found from the possession of assessee as no one was present at the premises. The entire premise has been drawn on the basis of certain information in possession with the Department from the search and seizure of group companies of Shri Sanjay Bhandari and from there it has been gathered that the assessee-company was engaged in some accommodation entry. If that is the case, then what information or material pertaining to the Assessee Company was found or unearthed which was handed over the Assessing Officer. Another allegation is that this company is controlled and used for accommodation entry purposes by Shri Deepak Agarwal and

Shri Vishnu Agarwal. The learned counsel has clarified that neither Shri Deepak Agarwal nor Shri Vishnu Agrawal are related to the assessee-company nor they were directors. Further, the document which has been referred in the assessment order has neither been found from the possession of the assessee nor it has been confronted to assessee nor any person was examined wherein the name of the assessee-company has been implicated. This material itself cannot be held to be found from the search conducted in the case of the assessee. In case, if such a material found from the search of a different person, then the same should have been considered there in that case or satisfaction should have been recorded in terms of 153C against the assessee. In so far as this matter is concerned it cannot be reckoned as an incriminating material to make assessment under section 153A. Moreover, this paper has been recovered from a third party and is purely a blank paper without any mention of year or any amount so this cannot be basis for any inference or addition. Nowhere, it has been brought on record that the assessee-company is a Benami of some other

group or individual. In that case also if any addition or any adverse inference at all could have been made then same should have been made in case of that person. Here, the entire addition is based on some notional presumption of commission on accommodation entry. First of all, the Department has to establish that assessee-company was providing accommodation entry especially when during the course of search in the case of assessee nothing has been found that assessee was indulged in any kind of accommodation entry. If at all there was any information of third-party case then without bringing on record as to what inference has been drawn against the assessee in those cases or any substantive addition have been made in those cases, notional addition cannot be made in the hands of the assessee.

18. *The contention of ld. CIT-DR is that the assessee-company was not found at the given address during the search, and itself constitutes an incriminating evidence cannot be upheld, because when an action has been taken under section 153A then the basic premise is that the*

addition has to be based on something found or unearth during the course of search in the case of the assessee for a particular assessment year especially in the case of unabated assessment. Here, in this case, the assessment for the Assessment Year 2011-12 to 2015-16 had attained finality. The period for the assessment year 2015-16 and 2016-17 nothing has been found from any enquiry or carried out in the case of the assessee that assessee was providing any accommodation entry and the business carry on by the assessee is sham or paper transaction, hence the addition cannot be made on the basis of any hypothesis presumption albeit it has to be based on evidences or material or enquiry conducted. The addition here in this case has purely been made on surmises and presumption that assessee might have earned 2% commission on accommodation entry. This approach is unsustainable in law and on facts. At least, there has to be a concrete finding with material that assessee was found to be carrying out shady accommodation entry transaction. Accordingly, we do not find any reason to uphold the alleged commission income in all the years.

19. *Apart from that, we find from the records as referred to at the time of hearing that the assessee was having regular income and revenue from operation in its return of income and audited accounts which for the year under appeal have been given as under :-*

Asstt. Year	Intt. Income	Sales Turnover	Total Revenue	TDS Deducted
2011-12	19,64,441/-	-	19,64,441/-	1,93,066/-
2012-13	12,65,995/-	-	12,65,995/-	1,25,639/-
2013-14	10,29,834/-	56,23,355/-	66,53,189/-	1,02,305/-
2014-15	1,08,69,552/-	5,78,662/-	1,14,48,214/-	9,45,550/-
2015-16	1,21,78,234/-	48,72,000/-	1,70,50,234/-	11,67,833/-
2016-17	1,15,53,420/-		1,15,53,420/-	11,17,565/-
2017- 18	1,12,90,225/-	80,88,952/-	1,93,79,177/-	5,32,537/-

20. *Thus, it cannot be held that assessee is paper company or was earning income was on the basis of alleged commission on accommodation entry.*

21. *In the result, the additions made in all the years are deleted and all the appeals of the assessee are allowed”.*

5.2. Since the facts of the present appeal are identical to facts of the case decided by the Tribunal in the case of Amarjit Motor Finance (P) Ltd., cited (supra), therefore, respectfully following the decision of the Tribunal in the abovementioned case, we hold that the assessee company cannot be said to be a paper company or was earning income on the basis of alleged commission on accommodation entry. We, therefore, set aside the order of the Ld. CIT(A) and direct the A.O. to delete the addition. The appeal filed by the assessee is accordingly allowed.

6. ITA.Nos.224, 225, 226, 227, 228 & 229/Del./2021

Assessment Years 2012-13, 2013-14, 2014-15,

2015-16, 2016-17 & 2017-18 - M/s. Kaksh Impex Pvt. Ltd., Delhi

ITA Nos.213, 214, 215, 216, 217, 218 & 219/Del./2021

Assessment Years 2011-12, 2012-13, 2013-14, 2014-15,

2015-16, 2016-17 & 2017-18 - M/s. Paksh

Marketing Pvt. Ltd., Delhi

ITA Nos.222, 221 & 220/Del./2021

Assessment Years 2011-12, 2012-13 & 2013-14

M/s. Vrindavan Infra Developers Private Limited, Delhi.

ITA No.212/Del./2021- A.Y. 2016-17

M/s. Madhur Buildcon Private Limited, Delhi.

7. After hearing both sides, we find the grounds raised by the respective assessees in the above appeals are identical to the grounds raised in ITA.No.223/Del./2021 for the A.Y. 2011-12. We have already decided the issue and the grounds raised by the assessee have been allowed. Following similar reasonings the appeals filed in the above cases are allowed.

8. In the result, the additions made in all these appeals are deleted and the appeals filed by the respective assessees are allowed.

9. To sum-up, all the appeals of the Assessees are allowed.

Order pronounced in the open Court on 18.01.2022.

Sd/-
[Ms. SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated 18th January, 2022.

VBP/-

Copy to

1.	The assessee
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.

*ITA.Nos.223 to 229/Del./2021, 220 to 222/Del./2021,
ITA.Nos.213 to 219/Del./2021 & 212/Del./2021
M/s. Kaksh Impex Pvt. Ltd., New Delhi & Others.*