

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 2509/DEL/2016 [A.Y 2008-09]

ITA No. 2510/DEL/2016 [A.Y 2009-10]

M/s Mili Marketinhg Pvt Ltd
H- 108, Connaught Circus
New Delhi

Vs.

The Dy. C.I.T.
Central Circle - 20
New Delhi

PAN: AABCM 7097 H

(Applicant)

(Respondent)

Assessee By : Shri V.K. Jain, CA

Department By : Shri Ishtyag Ahmed, CIT-DR

Date of Hearing : 27.01.2022

Date of Pronouncement : 27.01.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

Both the above captioned appeals by the assessee are preferred against the common order of the ld. CIT(A) - 2, New Delhi dated 29.01.2016 pertaining to Assessment Years 2008-09 and 2009-10.

2. Since the issues are common in both these appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both these appeals relates to the addition/disallowance made in the order framed u/s 153C of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] on the issue which has no nexus with the alleged material unearthed during the course of search operation.

4. The representatives of both the sides were heard at length, the case records carefully perused.

5. Briefly stated, the facts of the case are that a search and seizure operation was conducted in the Monnet group of cases including the assessee on 19.11.2010. During the course of search operations, certain documents belonging to the assessee were found and seized. Since the alleged documents pertained to the assessee, the Assessing Officer was convinced that provisions of section 153C of the Act

squarely apply and accordingly, notices were issued and served upon the assessee.

6. Assessment of Assessment Year 2008-09 was completed vide order dated 28.03.2013 wherein the short term capital gain of Rs. 1,57,78,318/- was assessed as business income.

7. A perusal of the assessment order shows that there is no reference to any incriminating material found during the course of search. In fact, the original assessment was framed vide order dated 13.12.2010 wherein short term capital gain was accepted as such. Therefore, in our considered opinion, in the assessment order framed u/s 153C of the Act, there has to be direct nexus between incriminating material found during the course of search qua the addition, devoid of which, the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *Kabul Chawla* 380 ITR 573 and *Meeta Gutgutia* 395 ITR 526 squarely apply.

8. Coming to the facts of Assessment Year 2009-10, we find that the assessee has returned short term capital loss on forfeiture of convertible share warrants which was accepted as such by order dated

10.09.2010 framed u/s 143(1) of the Act. However, in the order framed u/s 153C of the Act, the same was disallowed.

9. A perusal of the assessment order clearly shows that there is no nexus between the addition made in the assessment order and in the incriminating material found at the time of search. We further find that the Assessing Officer while making addition has heavily relied upon the findings given in the group company M/s Pavitra Commercial Ltd for Assessment Year 2009-10.

10. We find that this Tribunal, in the appeal of Pavitra Commercial ITA 5389/DEL/2012 has deleted the said disallowance. The findings of the Tribunal read as under:

"7.3. After hearing rival contentions, we hold as follows.

Hon'ble Delhi High Court in the case of [CIT vs. Chand Ratan Bagri](#) reported in 329 ITR 356 has held as follows.

"More importantly, the second issue as to whether the forfeiture of the convertible warrant amounted to a transfer within the meaning of s.2(47) of the said Act has now been made clear by the Supreme Court in the case of Mrs.Grace Collis (2001) 248 ITR 323 as also by the Karnataka High Court in BPL Sanyo Finance Ltd.

(2009) 312 ITR 63. We agree with the interpretation given by the Karnataka High Court in BPL Sanyo Finance Ltd. (supra) and we see no reason to take a different view. The restrictive meaning given to the word transfer by the Supreme Court decision in Vania Silk Mills P.Ltd. (1991) 191 ITR 647 has been over ruled by the larger Bench of the Supreme Court in the case of Mrs.Grace Collis (2001) 248 ITR 323.

In the present case, we find that the forfeiture of the convertible warrant has resulted in extinguishment of the right of the assessee to obtain a share in BLB Ltd. It is not a case where the asset itself has been extinguished or destroyed. A share in a company is nothing but a share in the ownership of the company. While the right of the assessee to share in the ownership of the company BLB Ltd. Stands extinguished on account of the forfeiture, the company, with all its assets, continues to exist. The forfeiture only results in one less shareholder. It is not as if the asset in which a share was being claimed was also extinguished. Thus, the second point urged by the Id.counsel for the Revenue is also not tenable.

In view of the foregoing reasons no substantial question of law arises for our consideration. The appeal is dismissed."

11. This order of the Tribunal has been upheld by the Hon'ble High Court of Delhi in ITA No. 782/2015. The relevant findings read as under:

"3. In the impugned order, the ITAT has relied upon the judgment of this court in CIT Vs. Chand Ratan Bagri [2010] 329 ITR 356 [Del] which holds that the share warrant is a capital asset. It is stated that the Revenue has not filed an appeal against the said judgment on account of the low tax effect.

4. Be that as it may, since the aforementioned judgment of this court holds the field, no substantial question of law arises in this appeal."

12. In light of the aforementioned judgments of the Tribunal and the Hon'ble High Court, we do not find any merit in the addition made in Assessment Year 2009-10.

13. Considering the facts of the captioned appeals in totality, both the assessment orders are quashed.

14. On merits also, the additions made in Assessment Year 2009-10 are deleted.

15. In the result, appeals of the assessee in ITA Nos. 2509 and 2510/DEL/2015 are allowed.

The order is pronounced in the open court on 27.01.2022 in the presence of both the representatives.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 27th January 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	28.1.2022
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	