

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 6744/MUM/2018 (A.Y: 2007-08)**

Income Tax Officer – 3(2)(1) Room No. 673, 6th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Indian Galvanics Cyrium Foils Ltd., 1009/1010, Maker Chamber-V Nariman point Mumbai - 400021  <b>PAN: AAACI3268D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA.NOs. 7274 & 7300/Mum/2019  
(A.Ys: 2008-09 & 2009-10)**

Income Tax Officer – 3(2)(1) Room No. 673, 6 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Indian Galvanics Cyrium Foils Ltd., 415, Raheja Chambers Nariman point Mumbai - 400021  <b>PAN: AAACI3268D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri A.K. Tibrewal</b>
<b>Department by</b>	<b>:</b>	<b>Shri R.A. Dhyani</b>
<b>Date of Hearing</b>	<b>:</b>	<b>17.03.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>22.04.2022</b>

## **ORDER**

### **PER S. RIFAUH RAHMAN (AM)**

1. These appeals are filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.09.2018 for the A.Y. 2007-08 and ITA.Nos. 7274 and 7300/Mum/2019 are filed against different orders Learned Commissioner of Income-tax (Appeals)-9, Mumbai dated 16.09.2019 for the A.Y. 2008-09 and 2009-10.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking ITA.No. 6744/MUM/2018 for Assessment Year 2007-08 as a lead case.

3. Revenue has raised following grounds in its appeal: -

#### *"A.Y. 2007-08 GROUNDS OF APPEAL*

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the AO has erred in making addition of Rs. 22,00,000 /to the returned income in terms of section 68 of the Act not being satisfied with the genuineness of credit.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.22,00,000/- holding that the appellant had discharged initial onus*

*to establish identity, creditworthiness and genuineness of the transaction and that the AO had not faulted the confirmations filed before him, the entire addition was merely based on suspicion regarding g BMPL which does not stand.*

*3. Whether on the facts and in the. circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.22,00,000/- without appreciating that specific information was received from the Investigation Wing, Mumbai stating that as per specific information received from the CBI, ACB, Mumbai, the assessee was involved in entering into bogus transaction with M/s. Basant Marketing Private Limited?*

*4. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.*

*5 The appellant craves leaves to amend, alter, delete or add grounds which may be necessary."*

**4.** Brief facts relating to the above grounds of appeal are, the assessee is closely held public company, filed its return of income for AY 2007-08 on 16.10.2007 declaring total income at Nil. The return was processed u/s.143(1) of the Act by accepting the return of income declared by the assessee. Subsequently notice u/s 148 was issued and served on the assessee. The assessee asked for the reasons for reopening and on supply of the reasons, the assessee filed its objection which was rejected. The Assessing Officer completed the assessment u/s 143(3) r.w.s 147 of the Act by making addition of ₹.22,00,000/- representing credit appearing in the books of account in the name of M/s Basant Marketing Pvt Ltd (BMPL), holding it as non-genuine being in the nature of accommodation entry.

**5.** Aggrieved with the above order, assessee preferred an appeal before CIT(A)-8, Mumbai. Ld.CIT(A) after considering the detailed submissions filed by the assessee and by relying on the decision of ITAT in the case of Sh. Harsh Dalmia (Director of the assessee company) in ITA No.7459/Mum/2016 dated 17.10.2017 and decision of CIT(A)-20, Kolkata in the case of M/s Basant Marketing Pvt Ltd dated 30.01.2015 gave relief to the assessee by deleting the addition made by the Assessing Officer holding as genuine loan transaction.

**6.** Aggrieved revenue is in appeal before us.

**7.** At the time of hearing, Ld.DR filed written submissions which is reproduced below:-

*"2. All the above three appeals by the Department came up for hearing before the Hon'ble Bench today (i.e. 17/3/2022). During the course of hearing the cases were heard and the Hon'ble Bench desires to have written submissions from the DR.*

*3. In this connection, it is stated that these cases were re-opened u/s. 147 of the Act on the specific information CBI-ACB office, Mumbai. The CBI conducted investigation in the case of Shri Arun Dalmia and Shri Harsh Dalmia and their dummy concerns. The CBI Anti-Corruption Branch, Mumbai, vide letter dated 21/12/2010, addressed to the DGIT(Inv.), Scindia House, Ballard Pier, Mumbai, sent a detailed report in RC No. 06/2010-Mum, regarding Accommodation Bills/Accommodation entry. A note (in RC. BA 1/2010//A0006), running into 7 pages, outline the modus operandi of the group in providing the accommodation entries. This note also*

*gives a list of companies/entities engaged in the accommodation entries. The present assessee's name appears at Sr. No. 8 as under:*

8	<i>Indian Galvanics Cyrium Foils Ltd.</i>	<i>Director Prabhakar Sharma</i>	<i>A L Saini PAN AADPS7328G</i>	<i>Jitendra Singh</i>
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4. *The A.O. has based the re-assessment order u/s. 147/143(3) on the basis of this report. The entire copy of the report was made available to the Ld. CIT(A). This report is now also submitted to the C Bench during the hearing on 17/03/2022.*

5. *It is, however, surprising to note that the Ld.CIT(A) has not at all considered this report, which is vital document, while deciding the appeal in favour of the assessee.*

*The appeal has been decided on other extraneous issues without considering the contents of this vital piece of information and hence it is opined that the Ld.CIT(A) has erred in allowing the appeal.*

*PRAYER: In view of the above facts, it is prayed that the impugned order(s) of the Ld.CIT(A) for all the three years may be either deleted/ordered in favour of Revenue or at least set aside to Ld.CIT(A) for fresh adjudication after duly considering the above mentioned report of the CBI-ACB, Mumbai. "*

4. Ld. AR of the assessee submitted written submissions which is reproduced below:-

*"Notes on Arguments before Hon'ble Income Tax Appellate Tribunal "C" Bench, Mumbai in the case of Indian Galvanics Cyrium Foils Ltd. - ITA Nos. 6744/Mum/2018, ITA No. 7274 & 7300/Mum/2019 for the Assessment Years 2007-08, 2008-09 & 2009-10 respectively. These appeals were filed by the Revenue.*

1. *The only issue, common to all the three appeals, relate to the order of Ld. CIT(A), Mumbai deleting the addition made by the Ld. Assessing Officer in respect of alleged unexplained cash credit under section 68 of the Act against the following amounts found credited in the name of Basant Marketing Pvt. Ltd.*

*Assessment Year 2007-08 Rs.22,00,000/-*

*Assessment Year 2008-09 Rs.23,29,000/-  
Assessment Year 2009-10 Rs. 53,50,000/-*

*2. The returns of income filed by the Assessee Company for all the aforesaid assessment years were accepted u/s 143(1) of the Act. The CBI, ACB, searched the business premises of Sri Arun Kumar Dalmia and his son Sri Harsh Dalmia on 24.02.2010. The search action was not related to income tax matters but was conducted in a different context. The CBI had taken away all the documents, books of accounts, supporting documents for the transactions entered into with various companies, bank statements, computers etc. from the business premises of Sri Arun Kumar Dalmia and Sri Harsh Dalmia.*

*2.1 Thereafter, the Joint director of CBI sent a note to the income tax investigation Wing vide letter dated 05.03.2010 advising it to investigate Shri Arun Kumar Dalmia and Sri Harsh Dalmia and their group companies for possible evasion of tax. The CBI thereafter hired the services of a chartered accountant to analyse the books of accounts, supporting documents for the transactions entered into by various companies, bank statements, etc not related to income tax matter but in connection with the investigation conducted by them in another matter. The chartered accountant in his report allegedly stated that "All these transactions appear to be false sale and purchase transactions."*

*2.2 It is worth to mention that neither the CBI nor the Chartered Accountant hired by CBI did carry out any independent inquiry with third parties to ascertain the truth and fairness of the documents scrutinised. The report of the CA was never confronted to Mr Arun Kumar Dalmia or Mr Harsh Dalmia or for that matter to any of the companies of the group to which the documents pertained to.*

*2.3 In continuation to the letter dated 05.03.2010, the Superintendent of Police, CBI, ACB, had sent another letter to the Investigation Directorate of the department, dated 21.12.2010 enclosing therewith the Chartered Accountants' Report and requested the Directorate to take necessary action at their end.*

*2.3.1 On receipt of the letter dated 21.12.2010, to the best of the promoters knowledge, the Investigation Directorate did carry out enquiries with selected parties who had responded to their notices*

*and submitted all the relevant details for their verification. They did not pursue further in the matter at their end. The Investigation Directorate did not feel it necessary to take any action on the observation of the Chartered Accountant contained in the Report submitted to the CBI. However, after a lapse of one year, they forwarded the report to the concerned assessing officers where all the records related to the companies are available and regular assessments are done. While the cases of some of the companies of the group were reopened for various assessment years to the extent permissible under law and where the proceedings were going on these observations were taken into account in their finalization.*

*2.4 One of the cases falling in the latter category was M/s. Basant Marketing Private Limited (BMPL), where for the assessment year 2010-11, the proceedings were going on before the DCIT CC XXVIII, Kolkata. Influenced by the communication received from the CBI through the Investigation Directorate of the department, he examined the accounts of that company. On the basis of the said examination, he termed the transactions entered into by it as unusual. He accordingly concluded that the said company does not really exist. Neither there is any basis for the transaction shown to have been concluded. As may kindly be seen, the action of the AO in the instant case of making the addition originated from the search and seizure action conducted by the CBI in February 2010.*

*2.4.1 The DCIT, CC-XXVIII, Kolkata forwarded information to the respective AO of the companies with whom the said M/s BMPL was having Loan transactions to take appropriate action in accordance with law. On receipt of the said information, the respective AOs reopened the assessments by issue of Notice u/s 148 of the Act to all the assesseees having transactions with BMPL, including the assessee company being Indian Galvanics Cyrium Foils Ltd. In pursuance to such information the AO assessing the respondent assessee company herein issued Notices u/s 148 of the Act for the Assessment Years 2007-08 to 2009-10. The AO of the Respondent Assessee herein was swayed by the information received by him from Investigation Wing and the report of the CBI, ACB, concluded that the aforesaid amounts referred to in Para 1 herein above, were not genuine being in the nature of accommodation entry, although he was satisfied about the identity of M/s BMPL. Please refer to Para 9 and 10 of the impugned assessment order for the AY 2007-08. The*

*AO therefore arrived at the belief that by acceptance of the said credit amounts, the income to that extent had escaped assessment. Consequently, in the assessment proceedings, on that account the AO proceeded to hold the credit as non-genuine and added it to the income of the respondent assessee herein in terms of section 68 of the Act.*

*2.5 M/s BMPL had filed an appeal before the CIT(A)-20, Kolkata, who based on elaborate submissions made before him, vide his order under Appeal No. 22/CIT (A)20/CC-2(2)/2009-10 dated 30th January 2015 reversed the finding of the AO. He categorically held that there is no material on record to hold that said company was involved in providing accommodation entry. Further, there is no material on record hold that the said company was fake and it did not actually exist. A copy of the said order is placed at Pages 33 to 58 of the Paper Book for AY 2007-08 and was also filed with Ld. CIT(A), Mumbai in support of the respondent assessee's claim.*

*3. The aforesaid facts of the case are borne out from the Order of the Ld. CIT(A) in the case of the respondent Assessee for the Assessment Year 2007-08. The entire facts of the case in respect of the CBI enquiry and the reopening thereafter were placed before the Ld. CIT(A).*

*3.1 The Ld. CIT(A) after considering all the facts and orders in the case of the BMPL and Sri Harsh Dalmia, who was one of the persons named in the report of the CBI, ACB allowed the appeal of the Respondent Assessee Company on merits.*

*3.1.1 The Ld. CIT(A)-20, Kolkata was of the view that the in the case of M/s BMPL, the returns of income were filed regularly. These were taken up for scrutiny and assessment orders u/s 143(3) of the Act were passed. In the said assessment order there is no finding of the said company having provided accommodation entries. This was also true in the relevant assessment year 2007-08 where an order under section 143(3) of the Act was passed on 07.12.2009, a copy of the said order is enclosed in the paper book for Assessment Year 2007-08 at page nos.31 to 32. The CIT(A) also took note of the fact that at no subsequent point the said assessment of BMPL was reopened to take a different view. In the circumstances it was submitted that without disturbing the settled finding in the case of*

*the creditor M/s BMPL in the assessment year 2007-08, it was not correct on the part of the AO to proceed with the assessment proceedings in the case of the respondent assessee in the corresponding year where there was no evidence that the creditor had provided accommodation entry.*

*3.2 Further, the Ld. CIT(A), Mumbai, while deleting the addition made u/s 68 of the Act, in the last para of Page 14 of his order, also referred to and relied on the Appellate Order in the case of Loan Creditor M/s BMPL in Appeal No. 22/CIT (A)20/CC-2(2)/2009-10 dated 30th January 2015 wherein the Ld.CIT(A)-20, Kolkata, in that case, reversed the decision of the AO and accepted both the existence and activities of BMPL. The copy of the said Appellate Order is enclosed in the paper book for Assessment Year 2007-08 at page nos.33 to 58.*

*3.2.1 The Ld. CIT (A) also took note of the fact that the decision of the CIT (A) in the case of M/s BMPL was accepted by the department both on merits as well as low tax implications and therefore the observations made by the AO of BMPL no longer remained relevant. The copy of the departmental communication stating that no further appeal has been undertaken by the revenue in the case of BMPL is enclosed at Page No.59 of the Paper Book of AY 2007-08.*

*3.3 The Ld. CIT(A) also relied on the order of the Ld. CIT(A) in the case of Sri Harsh Dalmia, who is one of the persons mentioned in the CBI report as well as one of the Directors of the Respondent Assessee, vide order No. CIT(A)-8/IT-753/14-15 dated 29.09.2016. The said appeal was also on the issue of Loan from BMPL and the issue was decided in favour of Harsh Dalmia. Further in that case, Hon'ble ITAT, Mumbai had dismissed the appeal filed by Revenue and confirmed the decision of Ld. CIT(A), Mumbai in ITA No.7459/Mum/2016 dated 17.10.2017. The copy of the said order is enclosed at Page Nos. 71 to 78 of the Paper Book for AY 2007-08.*

*4. Further the Ld. CIT(A) was in the knowledge of the report of the CBI, ACB and that the same has been considered by him as is evident from Para No.3.1.2 and 3.1.4 at pages 9 and 10 of the Ld.CIT(A)'s order wherein while dismissing the Assessee's Legal Ground in respect of the reopening under section 147 of the Act the Ld. CIT(A) mentions the said CBI report.*

5. *It is further submitted that similar additions in respect of the loan of BMPL on the basis of the CBI report was made in the following cases, wherein the Ld. CIT(A) had granted relief and the Hon'ble ITAT had dismissed the appeal filed by the revenue.*

- (i) *ITO Vs. Shri Harsh Dalmia - ITA No. 7459/Mum/2016 - Relevant portion of the Judgement is at Para 7 at Pages 77 & 78 of PB for AY 2007-08.*
- (ii) *M/s Mahan Industries Ltd. vs. DCIT - ITA No. 146/Mum/2016. Relevant portion of the Judgement is at Para 9 to 12 at Pages 68 to 69 of the PB for the AY 2007-08*
- (iii) *DCIT vs. Udaipur Properties & Finance Ltd. - ITA No. 6449/Mum/2017. Relevant portion of the Judgement is at Para 8 & 10 at pages 85 & 87 of the PB for the AY 2007-08.*
- (iv) *ITO vs. M/s Venktesh Securities Ltd. - ITA Nos. 1498 to 1501/Mum/2017. Relevant portion of the Judgement is at Para 5 & 6 at pages 92&99 of the PB for the AY 2007-08.*
- (v) *ITO vs. M/s Venktesh Securities Ltd ITA No. 1950 & 1951/Mum/2018. Relevant portion of the Judgement is at Para 6 &7 at pages 143 to 145 of the PB for the AY 2007-08.*

6. *The appeals in ITA Nos. 7274 & 7300/Mum/2019 for the Assessment Years 2008-09 & 2009-10 having identical issues."*

**5.** Considered the rival submissions and material placed on record. We observe that the Assessing Officer reopened the assessment based on the report from the Investigation Wing and made the addition of loan taken from BMPL as non-genuine. However, the co-ordinate bench has decided the similar issue in the case of M/s Venktesh Securities Ltd (ITA 1498 to

1501/Mum/2017) wherein similar addition was made relating to transaction with BMPL and in that case also revenue filed the appeal, the bench decided the issue as under: -

*"6. On appraisal of the above mentioned finding, we noticed that the AO has raised the addition in sum of Rs.1,70,37,750/- on account of non-genuine company of M/s. Basant Marketing Pvt. Ltd. The Commissioner appeals has already held in case of group company concerned M/s. Watermark Systems (India) Pvt. Ltd. for the A.Y. 2008-09 in Appeal No. CIT(A)-8/IT-407/14-15 as genuine company. The finding has been extracted by the CIT(A) in his order which has been mentioned above. The company has also been held as genuine company by the CIT(A)-20 Kolkata in his order of the A.Y. 2010-11 in case of M/s. Basant marketing Pvt. Ltd. The identity is not in dispute and in its books of account sufficient fund has been reflected. The bank statement also established its credit worthiness. The CIT(A) has relied upon number of cases mentioned in his order and arrived at this conclusion that the assessee has proved the identity, genuineness and credit worthiness of transaction, therefore, no addition can be raised hence allowed the claim of the assessee. The facts are not distinguishable at this stage also. There is no finding of any authority on record in which it has been held that M/s. Basant Marketing Pvt. Ltd. is not genuine company. The Department nowhere preferred the appeal against the judgment mentioned in the finding nor perverse finding is on record. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue."*

**6.** Respectfully following the above decision, we are inclined to accept the findings of the LdCIT(A) and we do not see any reason to disturb the findings, accordingly grounds raised by the revenue are dismissed.

7. Since the facts in other appeals are identical, the decision taken in ITA.No. 6744/Mum/2018 shall apply mutatis-mutandis to the other two appeals i.e. ITA.No. 7274 & 7300/Mum/2019. We order accordingly.

8. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 22.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 22.04.2022  
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**