

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.3391/Del/2012
ITA No.3392/Del/2012

Asst. Years: 2007-08
Asst. Years: 2008-09

ACIT, Central Circle, Ghaziabad	Vs.	Zodiac Transport Co.Pvt. Ltd., RZ 835A/1, Gali No. 188, Sadh Nagar, Palam Colony, New Delhi
PAN :AAACZ2139G		
(Appellant)		(Respondent)

ITA No.3560/Del/2012
ITA No.3561/Del/2012
ITA No.3562/Del/2012
ITA No.3563/Del/2012
ITA No.3564/Del/2012
ITA No.3565/Del/2012
ITA No.3566/Del/2012

Asst. Years: 2008-09
Asst. Years: 2003-04
Asst. Years: 2009-10
Asst. Years: 2004-05
Asst. Years: 2005-06
Asst. Years: 2006-07
Asst. Years: 2007-08

Zodiac Transport Co.Pvt. Ltd., RZ 835A/1, Gali No. 188, Sadh Nagar, Palam Colony, New Delhi	Vs.	ACIT, Central Circle, Ghaziabad
PAN :AAACZ2139G		
(Appellant)		(Respondent)

Appellant by	N o n e
Respondent by	Shri T Kipgen, CIT DR

Date of hearing	10.05.2022
Date of pronouncement	25.05.2022

ORDER**PER BENCH:**

This Bunch of nine appeals, seven by assessee and two by Revenue, arise out of separate orders of learned Commissioner of Income-Tax (Appeals), Meerut, pertaining to assessment years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10. While the appeals for assessment years 2003-04, 2004-05, 2005-06, 2006-07 and 2009-10 are only by the assessee, for assessment years 2007-08 and 2008-09, both assessee and revenue are in appeal.

2. The common grounds raised by assessee in all its appeals read as under:
 1. Because the action for upholding the order u/s. 143 r.w. 153A(b) is being challenged on facts and Law, since defeating the intention of the Provisions of section 143(3), 250 referring to 'after hearing', 'at the hearing', the opportunity not granted properly for a decision in accordance with law.
 2. Because according to Provisions of Section 153A/153C the sine-qua-non u/s.132 is material information in possession, whereas from the 'Material Facts' containing 'Material Particulars' the findings of facts emerge for no adverse material found for invoking and application of consequential search assessment proceedings.
 3. Because the findings of CIT(A) are being challenged on facts and Law, since 'None Material' found attributable to the search and already accounted, recorded, disclosed and declared transactions are being 'charged to tax' whereby action is contradictory to the settled proposition of Law for 'chargeability of Income found as a consequence of Search'.
 - 4.a) Because the findings of CIT(A) are being challenged on facts and Law, regarding invoking/applying the 'doctrine of lifting the corporate veil' and considering the investment in shares of SVP group as not genuine.
 - b) Because the findings of CIT(A) are being challenged on facts and Law, since the same have been found in the conclusions, whereas never flowing from the order sheet entry and or any Notice issued by CIT(A).

5. Because the findings of CIT(A) are being challenged on facts and Law, overlooking the confirmations and other documents filed to substantiate the share application money received from parties and further investing the same in shares of SVP group as not genuine.
6. Because the directions of CIT(A) are being challenged on facts and Law, for invoking provision of Section 40A(3) in respect of purchase of shares and other relevant transactions without any material on record.
7. Because the directions of CIT(A) are being challenged on facts and Law, for initiation of proceedings u/s. 2711A read with section 278B without any cogent material found during search and or any material on record during assessment proceedings.
8. Because the directions of CIT(A) are being challenged on facts and Law, directing competent authority under Money Laundering Act as well as the serious Fraud Investigation office which is outside the scope of Income Tax Act without any material on record.

3. Whereas, the grounds raised by the Revenue are as under:

1. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,55,19,800/- made as unexplained each credit u/s.68 of the IT Act, 1961, without appreciating the fact that the assessee could not prove with satisfactory details the source of the cash credits found in the assessee's account, and thus rendering the provisions of section 68 redundant.
2. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,55,19,800/- made as unexplained each credit u/s.68 of the IT Act, 1961 and directing the AO to assess the aforesaid cash credit in the hands of the respective beneficiaries on protective basis, without appreciating the fact that the cash credits were found in the books of account of the assessee company not in the books of account of the respective beneficiaries, and were not satisfactory explained by the assessee.
3. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,55,19,800/- made as unexplained each credit u/s.68 of the IT Act, 1961, without appreciating the fact that the A.O. was lawfully justified in treating the cash credit found in the assessee's books of account to be the undisclosed income of the assessee company, as the explanation offered by the assessee was not found to be satisfactory in the opinion of the Assessing Officer.

4. That the Ld. CIT(A) has erred in law and on facts in allowing assessee's appeal on merit, without considering the fact that the addition of Rs.1,55,19,800 made u/s 68 of the IT Act in the case of the assessee company was as a consequence of failure of the assessee to satisfactorily explain source of the credits in the books of account even after being given various opportunities during the course of assessment proceedings.
5. That the Ld. CIT(A) has erred in law and on facts in allowing assessee's appeal on merit and directing the A.O. to make protective addition in the hands of assessee company, instead of substantive addition without appreciating the fact that the onus of proving the source of credits in the assessee's account was on the assessee which it did not discharge during the course of assessment proceedings.
6. That the Ld. CIT(A) has erred in law and on facts in applying the ratio of decision of Hon'ble Supreme Court in the case of Smt. Tata Devi Agrawal Vs. CIT [1972] 88-ITR-323 [SC], even when this income was assessable in the hands of the assessee company as per provisions of section 68 of the IT Act 1961.
7. That the order of the Ld. CIT(A) deserves to be vacated and the assessment order passed by the A.O. be restore.
8. The appellant craves leave to amend any one or more of the grounds of the appeal as stated above as and when need for doing so may arise.

4. Since issues raised in all these appeals are common, as a matter of convenience, all the appeals have been clubbed together and are disposed of in a consolidated order.

5. Briefly the facts are, a search and seizure operation under Section 132(2) of the Income-Tax Act, 1961, was carried out in the cases of SVP Group concerns on 14.10.2008. Based on the seized material/information found in course of such search and seizure operation, proceedings under Section 153C of the Act were initiated against the assessee. In response to the notices issued under Section 153C of the Act, assessee filed its return of income. While

initiating proceedings under Section 153C of the Act against the assessee, the main focus was to ascertain the source of investment in unquoted shares. In this regard, assessing officer called upon the assessee to furnish details of investors with their addresses. However, as alleged by the assessing officer, the assessee did not furnish complete details and was non-cooperative. Based on seized material, the assessing officer found that a number of companies had advanced share application money to SVP Group concerns. The Assessing Officer ultimately concluded that an unwholly nexus existed between the shareholders and the SVP Group. He observed, from the sale value of the shares which were initially issued by the group to the tune of Rs.81.19 crores, were bought back at a very lessor price. On the aforesaid premises, assessing officer made additions at the hands of the assessee in different assessment years under consideration. The additions made by the assessing officer were contested by assessee by filing appeals before learned Commissioner (Appeals). After considering the submissions of the assessee and verifying the facts and material on record, learned Commissioner (Appeals) observed that the assessee appears to have been incorporated as a company to prove the existence of the shareholders and to take undue benefit of the ratio laid down in certain judicial precedents. He observed that the SVP Group appears to be engaged in colorable devices by resorting to dubious method for which it extensively used other corporate entities. He observed that as per the seized material, SVP Group entities

received share application money to the tune of Rs.93.63 crores during financial years 2002-03 to 2008-09. He observed that the main transactions were carried out by five flagship companies of SVP Group having real business and assets. Whereas, various other corporate entities like the assessee were used as conduits. He observed that these conduit companies simply received transfer of funds from 85 companies and immediately transferred such funds to the five flagship companies. Therefore, the entities like assessee did not generate any income from assessment years 2003-04 to 2009-10. Thus, ultimately, learned Commissioner (Appeals) held that the amount declared to have been invested by the assessee has to be assessed at the hands of the real beneficiaries i.e. the five flagship companies of SVP Group. Thus, he directed the assessing officer to delete the additions made at the hands of the assessee on substantive basis and to make such additions on protective basis, since, the substantive addition has to be made at the hands of the SVP group entities.

6. When these appeals were called for hearing, none appeared on behalf of the assessee. On perusal of record, it is seen, from the first date of hearing fixed for these appeals on 11.09.2019 till 9th May 2022, on none of the occasions, the assessee appeared to represent its case. Even, the assessee has never cared to seek any adjournment either. This, despite a number of opportunities provided to the assessee by issuance of hearing notices through registered post as well as through the Office of the learned Departmental Representative. Even though, the

orders of the proceedings of the Tribunal containing the order sheet entries starting from 27.10.2021 till 09.05.2022 were uploaded in the official web site, still the assessee remained absent. The aforesaid facts reveal complete lack of interest and apathy of the assessee in pursuing the present appeals. Since, these are very old appeals remaining pending for almost ten years, and, since sufficient opportunity has been granted to the assessee to represent its case, which the assessee has failed to avail, the Bench deems it appropriate to proceed with the hearing of the appeals ex parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.

7. We have heard the learned Departmental Representative and perused the material on record.

8. Submissions of the learned Departmental Representative are as under:

“2. The facts of the cases mentioned above is that a search & seizure operation u/s 132 of the IT Act was carried out on 14.10.2008 in the case of SVP Group of concerns in connection with the issue of providing share capital contribution to them. Along with the assessee company 11 other such companies were covered u/s 153C of the IT Act based on the materials seized from the premises of SVP Group of concerns with regard to investment in shares mainly in cash.

3. The Ld. CIT (A) in his order has held - *that the appellant company seems to have been incorporated as a company apparently to prove the existence of the shareholders and to take the undue benefit of Judicial pronouncement of the Hon'ble Supreme Court in the case of Lovely Export(P) Ltd. and Others, 216 CTR (195). However, the facts as described in details above are enough to lift the corporate veil and highlight the actual working of such companies. As the appellant did not earn any income and was only a conduit, the AO should have made any addition in the hands of the appellant company on a protective basis and substantive addition in the hands of the beneficiary company. It was in fact incumbent on the Investigation Wing of the department and the AO to have investigated the destination of the mounts in circulation so that the beneficiaries other than the SVP group, if any, were identified and acted against as per law.* The additions made under this head by the AO was deleted by the Ld.CIT(A) in his order.

4. As per direction of the Hon'ble Bench the details of appeals filed before the ITAT in the case of M/s SVP Builders (India) ltd. and SVP Developers Ltd. were ascertained from the web site of the ITAT and it was seen that vide ITA Nos. 5324 & 5325/Del/2014, 4239, 4240, 4241,4242,4243, 4244, 4248 & 4249/Del/2012 these orders have already been adjudicated by the Hon'ble G-Bench of the ITAT Delhi vide order dated 29th April, 2014 . The decision of the appeals disposed indicates 'partly allowed' in all the cases. The afore mentioned order passed by the Hon'ble Bench consist of 18 Appeals filed by 4 Appellant companies emanating out of respective orders of the CIT(A) and pertain to assessment year 2003-04 to 2009-10. Since the issues involved in all these appeals were common and connected these appeals were heard together and disposed in a common order.

At para 19, page 90 the Hon'ble Bench has held as under:

*Taking into consideration of all the above, we hold that the primary burden cast on the appellants stands duly discharged. The primary onus on the appellants is to judged on the basis of documentary evidence led by the appellants and facts and circumstances leading to the additions and on that basis, a reasonable view has to be taken whether the appellants have discharged the initial onus of establishing the identity of the shareholders, creditworthiness and genuineness of the transactions from the evidence gathered during the search proceedings, assessment proceedings and also first appellate proceedings, the independent existence of each of the shareholders stands established for the simple reason that all the shareholders are companies who have been assessed to tax. There is no material placed on record to show that the monies received as share capital were incomes of the appellants, The gamut of evidence does not leave any doubt in the discharge of primary burden of the appellants. In consideration of these observations, we hold that the share capital subscribed by 106 shareholders aggregating to Rs. 84.28 crores cannot be held as non genuine and added as income of the appellants under section 68 of the Act. In the result, additions made on this ground are deleted. **The grounds raised by the appellants on this issue are therefore allowed.***

However, with regard to the appeal of M/s SVP India Builders Ltd. the Hon'ble Bench at para 20.2 held as under:

We have perused the material on record. The Ld. CIT(A) has upheld the addition by holding that explanation of the appellant to be unsatisfactory. He has held as under:

"10.14 on the issue of additions of Rs. 29,40,500/-, assessee's explanations are found unsatisfactory by me. The papers have been seized from appellants possession, and, hence, onus is squarely on assessee to explain who authored it, what are the contents and how these are accounted in books of appellant or any other group entity. No such satisfactory explanation has been adduced even before the undersigned. In fact, the appellant has, apart from legal rhetoric to prove this issue. The appellant's explanation of manipulation's is

rubbish and is squarely rejected. In absence of any plausible details and explanation, this addition of Rs. 39,40,500/- is upheld”

20.3 we are in agreement with the above findings of CIT(A) and as such the additions made are upheld. The grounds raised by the appellants on this issue are therefore rejected.

5. The findings of the Hon'ble ITAT in the above mentioned order indicates that the additions made on substantive basis in the case of Five Vision Promoters Pvt. Ltd., SVP Developers Ltd. & SV Liquor (India) Ltd. have been deleted and the order of the CIT(A) on this issue reversed. In view of the above the appeal in the case of Zodiac Transport Company Pvt. Ltd. in the aforementioned ITA Nos. which were directed to be made on protective basis by the Ld. CIT(A) needs to be adjudicated to protect the interest of revenue.”

9. As could be seen from the aforesaid submissions of learned Departmental Representative, learned Commissioner (Appeals) had directed assessing officer to make the additions at the hands of the assessee on protective basis, since, according to him, substantive additions have to be made at the hands of the real beneficiaries i.e. the SVP Group entities. This is so because, according to learned Commissioner (Appeals), assessee is used as a mere conduit to facilitate transfer of money between the first layer of 85 companies used for parking on-money of the five flagship entities of SVP Group who are the real masterminds and running the entire show. It is also relevant to observe, assessing officer while making the additions at the hands of the assessee has accepted existence of the assessee company. He has also accepted the identity of the investors, except, for the cash source. The assessing officer has also held that the assessee has acted as a conduit channel. It has been brought to our notice by the learned Departmental Representative that, in the meanwhile, the Tribunal has decided the appeals of SVP Group entities in ITA No.4238/Del/2012 & Ors. dated

29.04.2014. A perusal of the aforesaid order of the co-ordinate Bench reveals that the Tribunal has granted partial relief while deciding the appeals. This being the factual position, to what extent the aforesaid decision of the Tribunal in case of SVP Group entities would influence the protective additions made at the hands of the assessee to make them substantive, needs to be examined. Therefore, due to the changed scenario because of the decision of the co-ordinate Bench in the case of SVP Group entities, referred to above, the issues arising in these appeals are restored back to the assessing officer for fresh adjudication. The assessing officer must analyze the order of the co-ordinate Bench in case of SVP Group entities (supra), to find out to what extent the substantive additions made at the hands of the SVP Group entities corresponding to the protective additions made at the hands of the present assessee have been reduced and accordingly proceed to make additions if warranted, on substantive basis at the hands of the present assessee. Needless to mention, before deciding the issues, assessing officer must extend reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

10. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open court on 25th May, 2022.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 25th May, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	13.05.2022
2.	Date on which the draft of order is placed before the Dictating Member:	17.05.2022
3.	Date on which the draft of order is placed before the other Member:	.05.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	23.05.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	24.05.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	25.05.2022
7.	Date on which the final order is uploaded on the website of ITAT:	25.05.2022
8.	Date on which the file goes to the Bench Clerk	25.05.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	