

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI ACCOUNTANT MEMBER &
PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 998/Mum/2020

(A.Y: 2011-12)

DCIT, CC-3(2) Central Range – 3 Room No. 1913, Air India Bldg, Nariman Point, Mumbai – 400021.	Vs.	M/s. Varad Vinayak Textiles P Ltd., 605, Business Classic, Chincholi Bunder Rd., Malad (W) Mumbai – 400064.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCV1777G		
Appellant	..	Respondent

Appellant by :	Shri. Achal Sharma. CIT DR
Respondent by :	None

Date of Hearing	25.05.2022
Date of Pronouncement	30.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai passed u/s 143(3) r.w.s 153A and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal.

1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the investment is recorded in books of accounts and hence provisions of section 69 cannot be invoked. However the

Ld. CIT(A) failed to appreciate that merely recording the entries in the books of accounts does not justify the character of genuineness and It is amply proved as per outcome of search proceedings that the entries are non-genuine.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that Mr. Rinku Patodia has admitted in his statement recorded during the course of search proceedings that the assessee group is involved in providing bogus accommodation entries and the assessee concern has been used as a conduit for layering/routing the introduction of unaccounted funds."

2. On perusal of the facts, the appeal was filed by the revenue on 07-02-2020 and the case was posted for hearing on 17.08.2021, 05.10.2021, 17.11.2021, 23.12.21, 27-01-22, 09-03-2022, 12-04-2022, and today i.e 25.05.2022, none appeared on behalf of the assessee on dates of hearing nor any application was filed for adjournment. On considering the facts and the action of the assessee in non appearance on date of hearing. The presumption is that the assessee is not inclined/interested to appear in the revenue appeal. Accordingly, we heard the Ld.DR submissions and decided the appeal based on the material information available on record.

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of Textiles. The assessee has filed the return of income on 23-09-2011 for the A.Y.2011-12 with a total income of Rs.6,03,860/- and the return of income was processed u/s 143(1) of the Act. There was search and seizure operations conducted in the case of M/s First Winner Group including the assessee. Subsequently, the Assessing Officer (A.O.) has issued notice u/s 153A of the Act. In compliance to notice, the assessee has filed the return of income on 23.02.2016 for the A.Y 2011-12 disclosing a total income of Rs.6,03,860/- and the notice u/s 143(2) and 142(1) of the Act are issued. The A.O found that the assessee is paper company as per the statement of Shri Rinku Patodia and discloses the list of promotion of companies. In the course of search, several paper companies having common directors, statement of the directors and non existing trade companies were traced. The A.O found that the assessee has made investments in the share capital of three companies aggregating to Rs.3.80 crores.

4. The A.O. has dealt on the transactions of the companies managed and controlled by Praveen jain, and the statement of Mr Rinku patodia and others/ directors u/sec132(4) of the Act. The Ld.AR of the assessee has

submitted the information supporting the investments and the A.O. has dealt extensively on the facts, submissions and the material information. The A.O has discussed on the facts and statements recorded observed that the substantial addition was made on receipt of share application money by the three entities/group concerns in their hands as bogus share application money. Therefore the A.O. has made addition of the investment in bogus share capital of Rs. 3,80,00,000/- on the protective basis. Further the A.O. has estimated commission charges on the accommodation/ bogus entries@ 2.5% of(Rs.3.80 crores) which worked out to Rs.9,50,000/- and assessed the total income of Rs. 3,95,53,860/- and passed the order U/sec143(3) r.w.s 153A of the Act dated 29-12-2016.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O and finally deleted the protective addition in the hands of the assessee considering the facts of substantive additions on account of unexplained share application money u/sec68 of the Act was up held in the hands of group/recipient companies and allowed the assessee appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the HonbleTribunal.

6. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the protective addition in the hands of the assessee considering the factual aspects of the substantive additions have been upheld in the case of the recipient/group concerns and supported the order of the Assessing officer.

7. We heard the Ld. DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has erred in holding the investments recorded in the books of accounts of the assessee u/s 69 of the Act and failed to appreciate that merely recording the entries does not justify the character of genuineness and further one of the director has admitted in the statement recorded that the investments are bogus transactions and CIT(A) also erred in deleting the protective addition overlooking the facts that substantive additions are upheld by the first appellate authorities and the group concerns/entities are in further appeal. At this juncture, we refer to the observations of the CIT(A), who has dealt on the submissions and the findings and granted the relief as held at page 6 to 9 Para 5.2 to 6 of the order, which is read as under:

GROUND - 1

"On the facts and the circumstances of the appellant's case and in law the Ld. Assessing Officer erred in making an addition of Rs. 3,80,00,000 /- by invoking the provisions of section 68 disregarding the evidences filed during the course of assessment proceedings."

During impugned year Ld. AO has made addition on account of investment made in shares of Rs. 3,80,00,000 /-. Details of Investment made are as under:

Sr. No	Name	Amount
1	Firstwinner Textiles (India) Pvt. Ltd	1,50,00,000/-
2	Bhagwat Textiles Pvt. Ltd.	80.00.000/-
3	Starwood Exports Pvt. Ltd.	1,50,00,000/-
	TOTAL	3,80,00,000/-

Ld. AO has added 2,30,000/- extra while computing total investment amount.

Name of the company	Amount added by Ld. AO	Actual amount invested during the year	Excess addition made by the AO	Increase in commission @ 2.5%
Starwood Exports Pvt Ltd	1,50,00,000/-	1,47,70,000	2,30,000	5,750
Total	1,50,00,000/-	1,47,70,000	2,30,000	5,750

Appellant has already submitted its own balance sheet and other financial statements with Ld. AO which clearly reflects sufficient worth of the appellant to invest in shares of above mentioned company. Appellant has filed various documents and details such as financial statements of person investing in shares of appellant, PAN of investors, CIN, Income tax return of all investors, Account confirmation, Bank statement highlighting investment amount received, annual return, board resolution as passed by investors for investment in shares of appellant.

Investments made by appellant were part of its strategic investment strategy to cement its position in market. Textile industry was growing and with a view to strengthen its market and for future expansion, critical decision of investment was made.

Ld. AO has ignored all submissions made by appellant and has made addition on account of investments made by the appellant in other company. Even source of such investments were clearly mentioned and was also established as per balance sheet of appellant still ignoring all facts of case, investment made by appellant was disallowed by Ld. AO. Further an estimated commission @ 2.5% was added to total which was totally baseless.

GROUND - 2

"On the facts and the circumstances of the appellant's case and in law the Ld. Assessing Officer erred in making addition on account of investment made without providing any opportunity to substantiate identity, genuineness and creditworthiness of the transaction during assessment proceedings.

Ld. AO during the assessment proceedings has asked for various details of investors in appellant's company. However, it may be noted that no details relating to companies in which investment is made by the appellant was asked. Appellant was never asked for any details relating to investment made by appellant.

Appellant has discharged its duty by providing details relating to source of funds which is also clearly reflected in balance sheet of appellant.

Thus, no opportunity was provided to appellant to substantiate the basis of investment made by the appellant. This is clear violation of principle of natural justice. Ld. AO in his assessment order dated 29.12.2016 in para 3.1 stated that principle of natural justice is followed. Extract of same is as below for your ready reference:

"It is relevant to mention here that the assessee was given due opportunity to put forth its reply. The principle of natural justice was always followed as evident from dates on record."

However, no details were asked by Ld. AO relating to investments made by the appellant, which clearly is violation of natural justice It is our plea before Hon'ble CIT that such assessment order should be rendered null and void.

GROUND - 3

"On the facts and the circumstances of the appellant's case and in law the Ld. Assessing Officer erred in making an estimated addition of Rs.9,50,000/- on account of alleged estimated commission @ 2.5 % for obtaining the alleged accommodation entry.

As per the facts of case, Ld. AO has asked for various details relating to parties to whom shares have been issued by the appellant. Appellant has discharged its duty by furnishing all details and documents such as financial statements of person investing in shares of appellant, PAN of investors, CIN, Income tax return of all investors, Account confirmation, Bank statement highlighting investment amount received, annual return, board resolution as passed by investors for investment In shares of appellant and substantiating the identity, creditworthiness and genuineness of all parties who has made investment in shares of appellant company.

No details relating to investment made by the appellant was asked during the assessment proceedings. However, Ld. AO has made addition of all investments made by the appellant company without taking into account the details and documents filed by the appellant company.

Thus, it is clear that Ld. AO has erred in making addition on account of investment made by the appellant without providing any opportunity to substantiate the genuineness of transactions. Such addition was a clear violation of principle of natural justice and such addition does not withstand in eyes of law. Therefore, alleged estimated commission @ 2.5% should also not withstand. Therefore, considering the above we inform that the parties is not only verifiable but also assessed to income tax with a sound net worth & have genuine transaction with the assessee through account payee cheque. Further no details relating to investment made by appellant was asked and addition of such investment made is against the principle of natural justice. Therefore, we humbly request for deletion of addition made by the Ld. AR.

5.3 The contentions of the assessee have been duly considered. The AO has made the substantive addition u/s 68 in M/s. Bhagwat Textiles P. Ltd., M/s. First Winner Textiles (India) P Ltd and M/s. Starwood Exports P. Ltd. on account of unexplained share application money and has made protective addition in the hands of the our assessee. The said substantive additions have been upheld by the undersigned in the hands of the corresponding relevant entities of the Group. It is further observed that the AO has made the said addition of Rs 3,80,00,000/- in the hands of our assessee on protective basis by holding that the said investments in M/s. Bhagwat Textiles P. Ltd., M/s. First Winner Textiles (India) P Ltd and M/s. Starwood Exports P. Ltd., 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 (li) 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 IT 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 investments are duly recorded in the regular books of accounts of our assessee. 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. If at all, an addition could have been made by the AO if the corresponding liability entry was examined and found to be non-genuine. Therefore, the action of the AO in making the said protective addition of Rs. 3,80,00,000/-, cannot be sustained. Moreover, the protective addition made by the AO u/s 69C of Rs 9,50,000/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investments also cannot be sustained considering that the protective addition of unexplained investments itself has been deleted. Accordingly, Ground Nos. 1 to 3 of the appeal are allowed.

6. *In the result, the present appeal is allowed.*

8. We find the CIT(A) has dealt on the facts, provisions of the Act and decision of substantive additions in the hands of the recipient/group companies. Further the Ld. DR could not convert the findings of the CIT(A) with any new cogent material or information to take different view considering the factual aspect of the substantive addition, which was upheld in the hands of the source provider/group companies and therefore the protective

addition cannot sustain in the hands of the assessee. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 30.06.2022.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 30.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)

ITAT, Mumbai