

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI****BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 4953/DEL/2019 (A.Y 2015-16)**

ACIT Room No. 322, ARA Centre, Jhandewalan Extension, New Delhi <b>(APPELLANT)</b>	Vs	Focus Industrial Resources Ltd. 104, Mukund House, Commercial Complex, Azadpur, New Delhi <b>PAN No. AAACF1838N (RESPONDENT)</b>
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<b>Appellant by</b>	<b>None</b>
<b>Respondent by</b>	<b>Ms. Sunita Verma, CIT DR</b>

<b>Date of Hearing</b>	<b>11.07.2022</b>
<b>Date of Pronouncement</b>	<b>21.07.2022</b>

**ORDER****PER YOGESH KUMAR US, JM**

This appeal is filed by the Revenue against the order dated 27/03/2019 passed by the CIT(A)-29, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

*"1 On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the protective addition of Rs. 3,96,34,793/- made on account of providing accommodation entries of LTCG.*

*2. That the grounds of appeal are without prejudice to each other.*

*3. That the appellant craves leave to ad, amend, alter or forgo*

*any ground(s) of appeal either before or at the time of hearing of the appeal.”*

3. Brief facts of the case are that, the assessee filed return of income u/s 139(1) of the Income Tax 1961 (hereinafter referred as to “Act”) declaring income of Rs. 10,22,000/- which was processed u/s 143(1) of the Act. A search and seizure operation u/s 132 of the Act was carried out on Mr. Sajan Kumar Jain and Sh. Pradeep Kumar Jindal group of cases on 18/11/2015. While examining the seized documents of searched persons, the A.O of the searched person came across with certain documents which were not belongs to the searched person, but belongs to the assessee, person on other than the searched person. Therefore, the said A.O recorded his satisfaction to that effect that action u/s 153C of the Act.

4. After the receipt of the satisfaction note, the A.O of the assessee also recorded his satisfaction that, the contents of the seized documents have bearing for determination of income of the assessee. Consequent to the notice u/s 153A read with 153C of the Act, the assessee filed return u/s 153C of the Act on 21/08/2017 declaring income of R. 10,22,000/-. Subsequently, notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued. The Ld. A.O on the basis of the statement of Sh. Sajan Kumar Jain and his family members found that, they have received accommodation entries in form of exempt long term capital gain from three front companies of Sh. Pradeep Kuman Jindal namely M/s Pawansut Holdigns Limited, M/s Delta Leasing & Finance Limited and M/s Focus Industrial Resources Limited listed on Bombay Stock Exchange (BSE).

5. Further, during the assessment proceedings the assessee has contended that, the commission on the amount has already been offered for taxation in the hands of Pradeep Kumar Jindal, an entry operator who also

controls/manages and runs the assessee Company. The entire amount of Rs. 3,96,34,793/- claimed as exempt LTCG by the entities namely Sh. Satish Dev Jain, Smt. Nisha Jain and Shri Anand Kumar Jain HUF has already been disallowed in their hands. Therefore, the Ld. A.O to protect the interest of the Revenue, made protective addition of Rs. 3,96,34,793/- in the hands of the assessee as long term capital gain has raised on sales of shares of the assessee Company and passed the assessment order on 29/12/2019.

6. Aggrieved by the assessment order dated 29/12/2019, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) allowed the appeal by making following observations:-

*“ The addition was made with reference to the credit entries into the bank account of the appellant. The Appellant has submitted that the impugned amount was received by it through layering from the group companies only and it was given to the beneficiaries. Therefore, making addition in the hands of the appellant was not justified. On perusal of the details, I find merit in the argument of the appellant, therefore, the A.O is directed to delete the addition.”*

7. Aggrieved by the order dated 25/03/2019, the Department of Revenue has filed the present Appeal on the grounds mentioned above.

8. None appeared for the assessee even after sending several notices, therefore, we constrained to decide the Appeal on hearing Ld. DR. The Ld. DR submitted that, the Ld.CIT(A) has erred in deleting protective addition of Rs. 3,96,34,793/- made on account of providing accommodation entries long term capital gain. Further submitted that, the Ld.CIT(A) while dealing with Ground No. 7 of the Grounds of Appeal before him, erroneously deleted the addition without their bring any material on record regarding the details of

substantive assessment. The order of the Ld.CIT(A) is non speaking and cryptic, therefore, prayed for setting aside the matter to the Ld.CIT(A)

9. We have heard the Ld. DR perused the material on record and gave our thoughtful consideration. During the assessment proceedings, the assessee has submitted that the commission on the said amount has already been offered for taxation in the hands of Sh. Prdeep Kuamr Jindal, an entry operator who also controls/manages and runs the assessee Company, therefore, the entire amount of Rs. 3,96,34,793/- claimed as exempt LTCG by three entries namely Satish Dev Jain, Smt. Nisha Jain and Sh. Anand Kumar Jain (HUF) has been already disallowed in their hands, but Ld. A.O has made protective addition of Rs. 3,96,34,793/- in the hands of the assessee Company. In the Appeal, the said addition has been deleted by the CIT(A) on the ground that, 'the impugned amount was received by the assessee through layering form the Group Companies only and it was given to the beneficiaries'. Therefore, making addition in the hands of the assessee was held to be not justified.

10. We find that, the Ld.CIT(A) without bringing on record any materials regarding what has happened in the case of substantive assessment in the appellate stage, deleted the addition in favour of the assessee. In our opinion, the approach of the Ld.CIT(A) is erroneous. Even before us, none appeared for the assessee to bring any such details regarding the fate of substantive assessment. Further, the Ld. DR has also not made it clear regarding what has happened in the case of substantive assessment. In view of the same, we are of the opinion that the issue deserves to be reconsidered by CIT(A) by bringing on record regarding the taxability of substantive assessments. Accordingly, the issue in hand is remitted to CIT(A) for fresh consideration in light of the above observations. Needless to say, the assessee shall be provided with opportunity of being heard. Accordingly, the grounds of Appeal of the Revenue are allowed for statistical purpose.

11. In the result, the appeal of the Revenue is allowed for statistical purpose.

**Order pronounced in the Open Court on this 21<sup>st</sup> Day of July , 2022**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated: 21/07/2022  
*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI