

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2120/Mum/2019

(Assessment Year 2011-12)

The Dy. Commissioner of Income
Tax, Central Circle 3(2)
Room No. 1913,
Air India Building,
Nariman Point,
Mumbai-400 021

(Appellant)

Vishnu Textile Trade P. Ltd.
A-21, Dhiraj Apatment,
Poddar Road, Malad (E),
Mumbai-400 064

Vs.

(Respondent)

PAN No. AABCK6554H

ITA No. 1877/Mum/2019

(Assessment Year 2012-13)

The Dy. Commissioner of Income
Tax, Central Circle 3(2)
Room No. 1913,
Air India Building,
Nariman Point,
Mumbai-400 021

(Appellant)

Varad Vinayak Textiles Pvt.
Ltd.

Vs.

Mezanine Office No.2
Sujata Chambers,
Narshi Natha Street,
Mumbai-400 064

(Respondent)

PAN No. AACCV1777G

Assessee by : None

Revenue by : Shri Manoj Kumar, CIT DR

Date of hearing: 19.07.2022

Date of pronouncement : 26.07.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals of different assessee but involving common issue , therefore same is decided by this common order.



02. ITA No. 2120/Mum/2019 in case of Vishnu Textile Trade P. Ltd. is filed by the Dy. Commissioner of Income Tax, Central Circle 3(2), (the learned Assessing Officer) Mumbai for A.Y. 2011-12 against the order of learned Commissioner of Income-tax (Appeals)-51, Mumbai [the learned CIT (A)]. The learned Assessing Officer has preferred the following three grounds of appeal:-

"1. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the protective addition of Rs 5,10,00,000/- on account of unaccounted investment and of Rs 12,75,000/- on account of unaccounted commission u/s 69C without considering the fact that the said entry is merely an accommodation entry and the assessee was a conduit for introducing unaccounted funds which has been proved beyond doubt.

2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the protective addition of Rs 5,10,00,000/- on account of unaccounted investment by observing that the investment reflected in the balance sheet is out of corresponding liabilities as the assessee company is not carrying any business actually and the said entry is unexplained.

3. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the protective addition of Rs 5,10,00,000/- on account of unaccounted investment and of Rs 12,75,000/- on

account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality”

03. Brief facts of the case shows that assessee is a company allegedly engaged in manufacturing in textiles. Originally, the return of income was filed on 23rd September, 2011. Further, search on 11th August, 2014 was conducted on First Winner Group including the assessee. Notice under Section 153A of the Act was issued on 6th May, 2015 and on 23rd February, 2016 original return was reiterated. It was found that assessee is a paper company as per statement of Mr. Rinku Patodia, who has promoted many paper companies for providing various account of accommodation entries. The statement of Mr. Rinku Patodia was obtained on 12th August, 2014 under Section 132(4) of the Income-tax Act, 1961 (the Act). Several other statements were also recorded which successfully proved that this company is a bogus company providing various account of accommodation entries to various parties. It was found that during this year, the assessee has invested in following companies:-

Investment in Sharemade during the year by M/s. Vishnu Textile Trade Pvt. Ltd. is given below:

Sr No.	Name	Amount
1.	Rikosh Fashions Pvt. Ltd.	1,85,00,000/-
2.	Bhagwat Textiles Pvt. Ltd.	1,00,00,000/-
3.	First winner Textiles (India) Pvt. Ltd.	1,75,00,000/-
4.	Solitaire Texfab & Traders Textiles Pvt. Ltd.	25,00,000/-
5.	Starwood Exports Pvt. Ltd.	25,00,000/-
	Total	5,10,00,000/-



04. The amount invested was ₹5.10 crores. As per the statements this was a bogus share capital issued to various companies. Accordingly, the learned Assessing Officer made an addition on the above sum and further, added commission at the rate of 2.5%. Accordingly, total income of the assessee was assessed at ₹5,28,50,650/-.
05. Assessee approached the learned CIT (A). The learned CIT (A) analyze all the five recipients of the benefit and deleted the addition of ₹5.10 crores as well as commission thereon. The reasons given by the learned CIT (A) are as under:-

"5.3 The contentions of the assessee have been duly considered. The AO has made substantive addition In M/s Solitaire Texfab & Traders Textiles P Ltd, M/s. Bhagwat Textiles P. Ltd., M/s. Starwood Exports P. Ltd., M/s Rikosh Fashions P Ltd. and M/s First Winner Textiles (India) P Ltd., on account of the accommodation entries received from concerns of Pravin Kumar Jain after routing/layering through the assessee and has made protective addition in the hands of the our assessee.

5.3.1 As regards the substantive addition of Rs. 25,00,000/- in M/s Solitaire Texfab Traders & Textiles P Ltd., the same has been adjudicated vide my order in appeal No CIT(A)-51/IT-354/16-17 dated 20.11.2018. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 25. In the said appellate order, the substantive additions u/s 68 made of Rs 1,60,00,000/- have been confirmed which

includes the addition related to our assessee of Rs 25,00,000/-.

5.3.2 Also, M/s Bhagwat Textiles P Ltd the AO has made the substantive u/s 68 of Rs 1,00,00,000/- and the same has been adjudicated vide my order in appeal No CIT(A)-51/IT-328/16-17 dated 03.11.2017. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 25. In the said appellate order, the substantive additions u/s 68 made of Rs 13,05,00,000/- have been confirmed which includes the addition related to our assessee of Rs 1,00,00,000/-.

5.3.3 As regards M/s First Winner Textiles (India) P Ltd, the AO has made the substantive addition u/s 68 of Rs 1,75,00,000/- and the same has been adjudicated vide my order in appeal No CIT(A)-51/IT-352/16-17 dated 03.11.2017. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 25. In the said appellate order, the substantive additions u/s 68 made of Rs 14,00,00,000/- have been confirmed which includes the addition related to our assessee of Rs 1,75,00,000/-.

5.3.4 The substantive addition of Rs. 25,00,000/- in M/s Starwood Exports P Ltd., the same has been adjudicated vide my order in appeal No CIT(A)-51/IT 330/16-17 dated 03.11.2017. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 25. In the said appellate order, the substantive additions u/s 68 made of Rs 10,10,00,000/- have



been confirmed which includes the addition related to our assessee of Rs 25,00,000/-. However, the assessee in course of the appellate proceedings, has brought to the notice that as per the Annual accounts of the assessee, the investment made by the assessee in M/s Starwood Exports P Ltd is of only Rs Nil. Thus, the assessee has contended that as against the substantive and corresponding protective additions of Rs. 25,00,000/-, the AO should have made substantive and protective additions of Rs Nil. The AO is also directed to verify this claim of the assessee and adopt the correct figure in respect of the protective addition in respect of M/s Starwood Exports P Ltd and also take appropriate action if required in the hands of M/s Starwood Exports P Ltd wherein the substantive addition has been made.

5.3.5 Similarly, the substantive addition of Rs. 1,85,00,000/- in M/s Rikosh Fashions Ltd., the same has been adjudicated vide my order in appeal No. CIT(A)-51/IT-355/16-17 dated 20.11.2018. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 25. In the said appellate order, the substantive additions u/s 68 made of Rs 4,75,00,000/- have been confirmed which includes the addition related to our assessee of Rs 50,00,000/-. However, the AO has made protective addition u/s 68 of Rs 1,85,00,000/- in the hands of the assessee. As noted earlier, the assessee has also pointed out that as per the Annual accounts of the assessee, the investment made by the assessee in M/s Rikosh Fashions P Ltd is of only Rs 50,00,000/- and



therefore, it has been contended that the said substantive and protective additions should have been made of Rs 50,00,000/- only. The AO is directed to verify this claim of the assessee and adopt the correct figure in respect of the protective addition in respect of M/s Rikosh Fashions P Ltd in the hands of our assessee and also take appropriate action if required in the hands of M/s Rikosh Fashions P Ltd. wherein substantive addition has been made.

5.3.6 It is observed that the AO has made the said additions of Rs. 5,10,00,000/- in the hands of our assessee on protective basis by holding that the said investments in M/s Solitaire Texfab Traders & Textiles P Ltd. (Rs 25,00,000/-), M/s Bhagwat Textiles P Ltd. (Rs. 1,00,00,000/-), M/s Starwood Exports P Ltd. (Rs. 25,00,000/-), M/s Rikosh Fashions P Ltd (Rs 1,85,00,000/-) and M/s First Winner Textiles (India) P Ltd (Rs 1,75,00,000/-) 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 (ii) 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 ITR 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



investment is duly recorded in the regular books of accounts. 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 and therefore cannot be treated as unexplained. Also, the corresponding additions have been made in the hands of M/s Solitaire Texfab Traders & Textiles P Ltd, M/s Bhagwat Textiles P Ltd., M/s Starwood Exports P Ltd., M/s Rikosh Fashions P Ltd and M/s First Winner Textiles (India) P Ltd on substantive basis have been confirmed vide my orders in Appeal No CIT(A) 51/IT-354/16-17 dated 20.11.2018, Appeal No. CIT(A)-51/IT-328/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-330/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-355/16-17 dated 20.11.2018 and Appeal No.CIT(A)-51/IT 352/16-17 dated 03.11.2017. Therefore, in principle, the action of the AO in making the said protective addition u/s 68 cannot be sustained.

5.3.7 Similarly, the protective addition made by the AO u/s 69C of Rs 12,75,000/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investment of Rs 5,10,00,000/- also cannot be sustained in principle considering that the protective addition of unexplained investment itself has in principle been deleted and also because the corresponding substantive additions made u/s 69C by the AO in the hands of M/s Solitaire Texfab Traders & Textiles P Ltd, M/s Bhagwat Textiles P Ltd., M/s Starwood



Exports P Ltd., M/s Rikosh Fashions P Ltd and M/s First Winner Textiles (India) P Ltd on substantive basis have been confirmed vide my orders in Appeal No CIT(A)-51/IT-354/16-17 dated 20.11.2018, Appeal No. CIT(A) 51/IT-328/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-330/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-355/16-17 dated 20.11.2018 and Appeal No.CIT(A)-51/IT-352/16-17 dated 03.11.2017.However, as noted earlier, the AO is directed to verify the claim of the assessee in respect of the quantum of substantive and corresponding protective addition related to M/s Rikosh Fashions P Ltd & M/s Starwood Exports P Ltd and accordingly adopt the correct figure while computing the protective addition u/s 69C being the unexplained commission expenditure. Accordingly, ground Nos. 1 to 3 of the appeal are partly allowed.”

06. The learned Assessing Officer is aggrieved and has preferred this appeal.
07. Despite notice, none appeared on behalf of the assessee and therefore, the issue has decided on the merits of the case as per information available on record.
08. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer.
09. We have carefully considered the learned Departmental Representative. In this case, the assessee is found to be a conduit company providing accommodation entries to various parties. Names of entry operators are also



mentioned in the assessment order and the statements are also recorded wherein they have categorically stated that all these entries are accommodation entries. During the year, this company invested in five different companies as share capital amounting to ₹5,10,00,000/-. The learned Assessing Officer made an addition of the accommodation entry amount as well as the concerned commission in the hands of the assessee on productive basis. The learned CIT (A) deleted the addition on protective basis for the reason that on substantive basis these incomes have been taxed in the hands of all the beneficiaries. Naturally when the substantive addition is confirmed by the appellate authorities, we do not find any reason to dislodge the finding of the learned CIT (A) in deleting the addition in the hands of this assessee on protective basis.

010. Therefore, ground nos. 1 and 2 of the appeal of the learned Assessing Officer does not have any merit, hence, dismissed.

011. Further, with respect to ground no. 3, we do not find any reason to not to reverse the finding of the learned CIT (A) in deleting the commission income of ₹12,75,000/- at the rate of 2.5% of the accommodation entry. Assessee is undisputedly an accommodation entry provider and therefore, the commission income requires to be added in the hands of the assessee. Accordingly, ground no. 3 of the appeal is allowed.



012. Accordingly, appeal filed by the learned Assessing Officer is partly allowed.

ITA No. 1877/Mum/2019
Assessment Year: 2012-13
In the case of
DCIT
Vs.
VARAD Vinayak Textiles Pvt. Ltd.

013. This appeal is by the learned Assessing Officer against the order of the learned CIT (A)-15, Mumbai dated 29th January, 2019, wherein the appeal filed by the assessee against the order passed by learned Assessing Officer under Section 143(3) of the Act read with section 153 of the Act dated 29th December, 2016 wherein assessee was found to be an accommodation entry provider and therefore, the addition of ₹7 crores as well as commission income at the rate of 2.5% amounting to ₹17,50,000/- were added in the hands of the assessee. The original return filed by the assessee at ₹3,48,130/- on 28th September, 2012.

014. The facts of this case are identical to the facts in ITA No. 2120/Mum/2019.

015. Before the learned CIT (A), the addition in the hands of the assessee with respect to the accommodation entry, made on protective basis stood deleted for the reason that addition in the hands of the beneficiaries were made on substantive basis and same were confirmed by the learned CIT (A). In view of this, we do not find any infirmity in the order of the learned CIT (A) in deleting the



addition of ₹7 crores in the hands of the assessee made on protective basis, where the addition of substantive is upheld in the hands of beneficiary. Accordingly, ground nos. 1 and 2 of the appeal of the learned Assessing Officer are dismissed.

016. As the assessee is found to be a accommodation entry provider, the deletion of the addition of the commission income in the hands of the assessee is not proper. Accordingly, the order of the learned CIT (A) to that extent is reversed. Ground no. 3 of the appeal of the learned Assessing Officer is allowed.

017. In the result, appeal of the learned Assessing Officer is partly allowed.

018. Both the appeals are partly allowed.

Order pronounced in the open court on 26.07. 2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.07.2022
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai