

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. Nos. 7619/DEL/2018 (A.Y 2012-13)

DCIT, Central Circle : 5, New Delhi. (APPELLANTS)	Vs.	M/s. NCML Industries Ltd., 1818, Naya Bazar, Delhi – 110 006. PAN No. AAACN4248A (RESPONDENTS)
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I.T.A. Nos. 7620/DEL/2018 (A.Y 2013-14)

DCIT, Central Circle : 5, New Delhi. (APPELLANTS)	Vs.	M/s. NCML Industries Ltd., 1818, Naya Bazar, Delhi – 110 006. PAN No. AAACN4248A (RESPONDENTS)
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I.T.A. No. 7795/DEL/2018 (A.Y 2012-13)

M/s. NCML Industries Ltd., 1818, Naya Bazar, Delhi – 110 006. PAN No. AAACN4248A	Vs.	DCIT, Central Circle : 5, New Delhi.
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Assessee by :	N o n e;
Department by:	Ms. Rinku Singh, [CIT] – D. R.;

Date of Hearing	27.07.2022
Date of Pronouncement	02.08.2022

ORDER

PER YOGESH KUMAR U.S., JM

2. Aggrieved by the order dated 04/09/2018 and 26/04/2016 respectively passed by the CIT(A)-XXV for the Assessment Year 2012-13 and 2013-14, the Department of Revenue has filed ITA No. 7620/Del/2018 and ITA No. 7620/Del/2018. The cross appeal in ITA No. 7796/Del/2018 for Ay 2012-13 has been filed by the Assessee against the order dated 04/09/2018 passed by the CIT(A)-XXV. Since, the issues involved in the above Appeals are similar, the above Appeals are heard together.

3. The Revenue has raised the following grounds of appeal in I.T.A. No. 7619/DEL/2018.

“1. That the order of the Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of unexplained share capital amounting to Rs. 65.74 crores.

3. On the facts and circumstances of the case, the CIT(A) has erred in ignoring the findings of inquiry conducted during search and assessment proceedings, wherein it was established that the investor companies were mere paper companies.

4. Ld. CIT(A) erred by ignoring the concrete facts brought out by the assessing officer but the same could not be rebutted by the assessee and taking plea of cross examination of a person used only as peripheral evidence which had only corroborative value.

5. *Ld. CIT(A) erred in deleting the addition without remanding the matter to the AO, if circumstantial evidence was to be considered as deciding factor (though used as peripheral evidence only in the assessment order) in matter and factual findings were ignored.*

6. *On the facts and circumstances of the case, the CIT(A) has erred in holding that the seized documents which show expense related to share capital is not incriminating without any credible explanation by the assessee on the same.*

7. *The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

4. The Revenue has raised the following grounds of appeal in I.T.A. No. 7620/DEL/2018 :

“1. *That the order of the Ld. CIT (Appeals) is not correct in law and on facts.*

2. *On the facts and circumstances of the case, the CIT (A) has erred in deleting the addition of bogus purchase of husk amounting to Rs. 15,47,489/-*

3. *On the facts and circumstances of the case, the CIT (A) has erred in ignoring the findings of inquiry conducted during search and assessment proceedings, wherein it was established that M/s. Samrat Traders did not have capacity to supply husk.*

4. *On the facts and circumstances of the case, the CIT (A) has erred in holding that the payments through banking channel is sufficient to establish genuineness of purchases.*

5. *On the facts and circumstances of the case, the Ld. CIT (A) erred in deleting the addition of undisclosed sales amounting to Rs. 12,84,56,873/-.*

6. *On the facts and circumstances of the case, the Ld. CIT (A) erred in accepting the claim of the assessee of deleted invoices without any documentary submissions by the assessee.*

7. *On the facts and circumstances of the case, the Ld. CIT (A) has failed to appreciate the fact that the assessee has been giving inconsistent replies with respect to this ground. In spite of clear findings in the assessment order, the Ld. CIT(A) has erred in accepting the assessee's contention without any reasonable explanation.*

8. *The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*“

5. The assessee has raised the following grounds of appeal in I.T.A. No. 7795/DEL/2018 :

“1. *That the Id. CIT (Appeal) has erred in not quashing the impugned assessment order , which was passed by the Id. A.O. on the strength of notice u/s 143(2) issued by him on 05.01.2016, thereby not appreciating that the notice u/s 143(2) could had been issued within six months from the end of the financial year in which ITR was filed and thus the notice u/s 143(2) issued on 05.01.2016 was barred by limitation.*

2. *That the Id. CIT (A) has erred in not quashing the*

impugned assessment order, thereby not appreciating that the assessment proceedings were not pending as on the date of search & seizure operation carried out on 30.09.2013 and thus were not abated.

3. That the Id. CIT(A) has erred in not deleting the addition of Rs.2,76,57,276/- which was made by the A.O. on account of alleged cash receipts, without issuing any show cause notice to the assessee:

Though the Id. CIT(A) has formed a view that Rs.2,76,57,276/- represented the unrecorded sales and thus addition on account of income arose on such unrecorded sales may be estimated by applying the G.P. rate of 3.06%, yet he was confirmed the addition of Rs.2,76,57,276/- with the remarks: "The appellant has submitted vide para 45 of its written submissions dated 05.01.2018, that it has no objection if the declared and accepted G.P. Rate of 3.06% is applied to estimate the profit on such assured receipts/sales. The same is accordingly held to be sustainable alongwith the source capital to earn such profits".

[Note: Para 45 was under the heading "without prejudice"]

6. None appeared for the assessee even after providing sufficient opportunities, having considered the same, we are of the opinion that, the assessee is not interested to contest the Appeals. Therefore, after hearing the Ld. DR, we proceed to decide the Appeals.

7. ITA No. 7619/Del/2018 & ITA No. 7620/Del/2018 (filed by the Revenue).

Brief facts of the case are that, a search and seizure operation conducted at the premises of the assessee on 30/09/2013. During the course of assessment proceedings, the A.O has asked the assessee to identify and capacity of the person from whom it had received money towards share capital/share premium and also asked to produce all such persons before the A.O. Based on the material on record and the reply of the assessee, the Ld. A.O has passed the assessment order for Assessment Year 2012-13 in following manners_

<i>" Income as per assessment made u/s 143(3)</i>	<i>Rs. 31,22,75,890/-</i>
 <i>Add:-</i>	
<i>1. Deposits in books of accounts in Shape of share capital added u/s 68</i>	<i>Rs. 65,74,00,000/-</i>
<i>2. Unaccounted cash receipts</i>	<i>Rs. 2,76,57,276/-</i>
<i>3. Unaccounted cash payments</i>	<i>Rs. 2,17,600/-</i>
	<i>Rs. 68,52,74,876/-</i>
	<i>Rs. 99,75,50,766/-</i>

And for the Assessment Year 2013-14, the assessment order came to be passed on 31/03/2016 by making following additions:-

<i>Income as per return</i>	<i>64,24,50,130/-</i>
 <i>1. Deposits in books of accounts in Shape of share capital added u/s 68 As per para 5.10</i>	
	<i>Rs. 25,74,49,980/-</i>
 <i>2. Bogus purchase of husk as per</i>	
 <i>Para 6.4</i>	<i>Rs. 15,47,489/-</i>
<i>3. Bogus purchases as per para 7.4</i>	<i>Rs. 12,85,050/-</i>
 <i>4. Undisclosed sales as per para 8.5</i>	<i>Rs. 72,62,930/-</i>

5. Undisclosed sales as per para 9.9	Rs. 12,84,56,873/-
6. Undisclosed Sales of Bi-products As per para 10.5	Rs. 2,63,991/-
7. Undisclosed Cash Sales As Para 11.5 Rs.68,58,638/-	
8. Undisclosed Purchases as per Para 12.1	Rs. 38,83,341/-
9. Undisclosed sales and purchase to C.P. Ent AGRA As per Para 13.2	RS. 10,68,025/-
10. Disallowance u/s 40A (3) as per para 14.6	Rs. 21,25,381/-
11. Unaccounted cash payments As per 15.2	<u>Rs. 4,00,000/-</u>
	<u>Rs. 41,06,01,698/-</u>
	<u>Total income Rs. 1,05,30,51,828/-</u>

8. The above assessment orders, the assessee has preferred the Appeals before the CIT(A) against the above additions/disallowance made by the Ld. A.O for Assessment Year 2012-13 & 2013-14. The Ld.CIT(A) vide orders dated 04/09/2018 (AY 2012-13) and 19/09/2018 (A.Y 2013-14), partly allowed the Appeal by sustaining the certain addition made by the A.O.

9. Aggrieved by the order dated 04/09/2018 and 19/09/2018, the assessee has preferred the present Appeals on the grounds mentioned above.

10. The Ld. DR submitted that, the issue in respect of very same search and the Assessment made thereon for Assessment Year 2009-10 and 2010-11 was already subject to the scrutiny of this Tribunal and the issue has been decided against the assessee by the Coordinate Bench of the Tribunal vide order dated

30/06/2022 in ITA No. 4276 & 4277/Del/2017. Therefore, submitted that, the present Appeals are also deserves to be dismissed by following the principles of consistency.

11. We have heard the Ld. DR, perused the material on record and gave our thoughtful consideration. On going through the materials on record, we find that there is no change in facts and circumstances to the Assessment order made in the Assessment Year 2009-10 and 2011-12 and to that of the year under consideration. The Coordinate Bench of the Tribunal in ITA No. 4276 & 4277/Del/2017 has decided the issue against the assessee by allowing the Appeal of the Department. The relevant extracts of the same are as under:-

“6. Giving thoughtful consideration to the matter on record it can be observed that it is not disputed that the Assessee is one of the group companies of NCML Group upon which search was made. It appears that the ld CIT(A) has led too much emphasis on the fact that the Assessee is part of NCML Group, but the Assessee was not beneficiary of four companies from which the funds for relevant year were allegedly infused by Shri Anand Sharma. The bench is of considered opinion that when the Assessee is part of NCML group and the search was conducted on the group as a whole then the onus was on the Assessee to establish that the share capital premium accounted in the books was from a valid source other than the companies operated by Shri Anand Sharma. The ld CIT(A) also failed to consider that the ld AO had rightly referred to incriminating documents recovered from hard disk which corroborated his findings that the share capital was created by accommodation entries. Also form other notes that payments to the Broker in different years was made from Unaccounted Cash. The tenor of findings of the ld CIT(A) indicates that he proceed into a presumption of innocence of the

Assessee as to if the incriminating documents and the result of the enquiry of the ld AO were to establish the facts beyond reasonable doubt.

7. Thus, the grounds of appeal by the revenue are sustained. The appeal is allowed exparte and the orders of the ld CIT(A) for the relevant assessment years are set aside and that of Ld AO restored.”

12. By respectfully following the order of the Coordinate Bench (supra), we are of the opinion that the Grounds of Appeal of the Revenue deserves to be allowed. Thus, the order of the Ld. CIT (A) for the year under consideration are set aside and that of Ld. A.O restored.

13. In the result, the Appeal of ITA No. 7619/Del/2018 and 7620/Del/2018 are allowed for statistical purpose.

ITA No. 7795/Del/2018

14. In view of binding decision in ITA No. 4276 & 4277/Del/2017 (A.Y 2009-10 & 2010-11) dated 30/06/2022, wherein the very same search and seizure was under question which has been already decided in favour of the Revenue and against the assessee by upholding the additions. Further, we have followed the said order in deciding the Revenue's Appeals for the Assessment Year 2012-13 and 2013-14 (supra). Therefore, Ground No. 1 to 3 including the grounds of Appeal raised by the assessee in so far as non receipt of show cause notice is not tenable. Further, the assessee neither appeared nor produced any document/material to substantiate the claim of the assessee in support of his grounds of appeal. Therefore, we deem it fit to dismiss the Grounds of Appeal

of the assessee. Accordingly, the Appeal filed by the assessee is dismissed ex-parte.

Order pronounced in the open court on 2nd August, 2022

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

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

Dated : 02/08/2022

**R. N* Sr. PS*

Copy forwarded to :

1. Appellants
2. Respondents
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI