

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2114/MUM/2019
Assessment Year: 2011-12
&
ITA No. 2115/MUM/2019
Assessment Year: 2012-13**

DCIT-CC-3(2), Central Range-3
Room No. 1913, Air India
Building, Nariman Point,
Mumbai-400021.

Appellant

Attractive Exports Pvt. Ltd.,
36, 2nd floor, 67 Bhuleshwar Tank
Building,
Mumbai-400064.
PAN No. AAHCA 3901 C
Respondent

**ITA No. 2116/MUM/2019
Assessment Year: 2011-12
&
ITA No. 2117/MUM/2019
Assessment Year: 2012-13**

DCIT-CC-3(2), Central Range-3
Room No. 1913, Air India
Building, Nariman Point,
Mumbai-400021.

Appellant

Alankit Exports Pvt. Ltd.,
36, 2nd floor, 67 Bhuleshwar Tank
Building,
Mumbai-400064.
PAN No. AAHCA 3902 B
Respondent

**ITA No. 999/MUM/2020
Assessment Year: 2012-13**

DCIT-CC-3(2), Central Range-3
Room No. 1913, Air India
Building, Nariman Point,

M/s Angarika Multitrading P. Ltd.,
Shop No. 4, Tapovan View CHS Ltd.,
Pathan Wadi, Malad (E),

Vs.



Mumbai-400021.

Mumbai-400097.

Appellant

**PAN No. AAJCA 2422 J
Respondent**

Revenue by : Ms. Shailaja Rai, CIT-DR
Assessee by : None

Date of Hearing : 11/08/2022
Date of pronouncement : 26/08/2022

ORDER

PER OM PRAKASH KANT, AM

These appeals by the Revenue are directed against separate orders passed by the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'the Ld. CIT(A)'], for relevant assessment years. As common issues-in-dispute are involved in these appeals same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First, we take up the appeal in ITA No. 2114/M/2019 (Attractive Exports Pvt. Ltd.) for assessment year 2011-12. The grounds raised by the Revenue are reproduced as under :



1. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the protective addition of Rs 4,75,00,000/- on account of unaccounted investment and of Rs 11,87,500/- 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 4,75,00,000/- 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 4,75,00,000/- on account of unaccounted investment and of Rs 11,87,500/- on account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality*

3. At the outset, we may like to mention that despite notifying none attended on behalf of the assessee. The notice was sent through registered post as well as duly served by the Inspector of the office of the Income Tax Department by way of affixture. The



said service report forwarded by the Assessing Officer is placed on the file. Therefore, the appeal was heard *ex-parte* qua the assessee after hearing arguments of Ld. Departmental Representative (DR).

4. Briefly stated, facts as culled out from the order of the lower authorities are that assessee concern, which was indirectly controlled by Shri Rinku Patodia (Dummy Director), used for the purpose of lowering/routing/introducing the unaccounted funds by taking accommodation entries from concerns of Shri Pravin Kumar Jain. The Assessing Officer during scrutiny proceedings observed that the assessee has been used as a conduit for lowering/routing the introduction of unaccounted funds in M/s Solitaire Texfab & Traders Textiles P. Ltd. (₹25,00,000/-) ; M/s Bhagwat Textiles Pvt. Ltd. (₹1,00,00,000/-) ; M/s Starwood Exports Pvt. Ltd. (₹2,50,00,000/-) and M/s Rikosh Fashions Pvt. Ltd. (₹1,00,00,000/-) totally aggregating to ₹4,75,00,000/- from concerns of M/s Pravin Kumar Jain. The Assessing Officer



accordingly made substantive additions u/s 68 in the hands of the M/s Solitaire Texfab & Traders Textiles Pvt. Ltd., M/s Bhagwat Textiles Pvt. Ltd., M/s Starwood Exports Pvt. Ltd. and M/s Rikosh Fashions Pvt. Ltd. on account of unexplained share application money and made protective addition in the hands of the assessee. The Assessing Officer also made addition for commission @ 2% for obtaining sale accommodation entries on protective basis in the hands of the assessee. The Ld. CIT(A) deleted the addition observing 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. and M/s Rikosh Fashions 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 he 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 Similarly, the substantive addition of Rs. 2,50,00,000/- 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 2,50,00,000/-.

5.3.4 Similarly, the substantive addition of Rs. 50,00,000/- 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 1,00,00,000/- 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 the substantive addition has been made.

5.3.5 It is observed that the AO has made the said additions of Rs. 4,75,00,000/- 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. 2,50,00,000/-) and M/s Rikosh Fashions P Ltd (Rs 1,00,00,000/-) 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. and M/s Rikosh Fashions PLtd 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 and Appeal No.CIT(A)-51/IT-355/16-17 dated 20.11.2018. Therefore, in principle, the action of the AO in making the said protective addition u/s 68 cannot be sustained.

5.3.6 Similarly, the protective addition made by the AO u/s 69C of Rs 11,87,500/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investment of Rs 4,75,00,000/- 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. and M/s Rikosh Fashions 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 and Appeal No.CIT(A)-51/IT 355/16-17 dated 20.11.2018. 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 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."

5. We have heard submissions of the Ld. DR and perused the relevant material on record. We find that substantive addition made by the Assessing Officer has already been upheld by the Ld. CIT(A) in respective cases and therefore, he is justified in deleting the protective addition made by the Assessing Officer in the hands of the assessee. The addition in respect of same item cannot be made in the hands of two assessee. The Appellate Authority is required to decide on the basis of evidence and give finding, in which case the addition has to be made. The Ld. CIT(A) in the case has accordingly deleted protective addition. We do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The appeal of the Revenue is accordingly dismissed.

5.1 The grounds raised in the remaining appeals being identical to ground raised in ITA No. 2114/M/2019, therefore, same are decided *mutatis mutandis*.



6. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court in 26/08/2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 26/08/2022
Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai