

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

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &  
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2121/MUM/2019 (A.Y.2011-12)

DCIT-CC 3(2), Mumbai Central Range-3, Room No.1913, Air India Building, Nariman Point, Mumbai	vs	Geeta Gopal Synthetic P Ltd 111/113, Sindh Cloth Market Vithalwadi, Kalbadevi, Mumbai-400 064 <b>PAN : AAACG5401A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	None
Department represented by	Shri Ashok Koli – (CIT DR)

Date of hearing	01/06/2022
Date of pronouncement	29/08/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

This appeal has been filed by the Revenue as against the order of the Ld. Commissioner of Income-tax (Appeals)-51, Mumbai dated 29/01/2019 passed under section 250 of the I.T. Act, 1961 which pertains to assessment year 2011-12.

2. As there was no representation on behalf of the assessee, we proceed to dispose of the appeal by hearing the learned departmental representative and on perusal of the materials available on record.

3. The brief facts are that the assessee filed its return of income for A.Y. 2011-12 on 29/09/2011 declaring total income of Rs.7,87,860/-. A search

under section 132 of the Act was conducted in the First Winner Group on 11/08/2014 alongwith the assessee company. During the course of search, it was observed that several group companies were paper companies having dummy directors. A statement under section 132 was recorded from Rinku Indrakumar Patodia on 11/08/2014 and 12/08/2014 who has accepted that M/s Solitaire Taxfab P Ltd, M/s Bhagwat Textiles, M/s Star Wood P Ltd, M/s Rikosh Fashions P Ltd and M/s First Winner Textiles India P Ltd had obtained accommodation entry for share application money of Rs.4,50,00,0000/- which was said to be routed through the assessee company which was a conduit for introducing the unaccounted funds by way of accommodation entries from concerns of Shri Pravinkumar Jain, an entry operator. It was stated that the assessee company was not carrying out any business activity. The Assessing Officer passed the assessment order under section 143(3) r.w.s. 153A dated 29/12/2016 making a protective addition of Rs.4,50,00,0000/- being the unaccounted investment made by the assessee in the above mentioned companies. Further to this, the Assessing Officer made a protective addition of Rs.11,25,000/- under section 69A on account of unaccounted commission estimated at 2.5% for the purpose of accommodation entries. Aggrieved by this, the assessee was in appeal before the Ld.CIT(A). The Ld.CIT(A) deleted the said protective addition on the ground that the substantive addition was confirmed in the hands of Solitaire Textfab 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 (Rs.1,50,00,000/-) vide order in Appeal No.CIT(A)-51/IT-354/16-17 dated 20.11.2018. The revenue is in appeal before us on the deletion of the said addition by the Ld.CIT(A) on the ground that the addition made on substantive basis has not reached its finality.

4. The Ld.departmental representative contended that the Ld.CIT(A) has erred in deleting the protective addition by not considering that the addition made on substantive basis is yet to reach its finality and relied on the decision of Assessing Officer.

5. Having heard the Ld.DR and perused the materials on records, it is evident that the protective addition of Rs.4,50,00,000/- has been made in the hands of the assessee on unaccounted investment made in 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 and protective addition of Rs.11,25,000/- made under section 69C on unaccounted commission payment estimated @2.5% for obtaining the accommodation entries. There is no denial of fact with regard to the accommodation entries provided by the assessee to the said concerns. The issue pertains to the fact that when addition made on substantive basis is confirmed, whether protective addition on the same should be sustained or not? It is stated that the Assessing Officer has made the said addition of Rs.4,50,00,000/- in the hands of the assessee on protective basis by holding that the said investments in 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 are unexplained. The Ld.CIT(A) has relied on the decision of Hon'ble Orissa High Court in the case of Aurobindo Sanitary Stores 276 ITR 549 (Oris) which has held that the primary condition to be specified before invoking the provisions of section 69 is that there should be a finding of the assessing officer that the investments are not recorded in regular books. The assessee company has duly recorded the said amount of investment in its regular books of account and the source of investment in the balance-sheet is out of the corresponding liabilities shown in the balance-sheet wherein the

same cannot be treated as unexplained investment. The Ld.CIT(A) has also held that the corresponding additions have also been made in the hands of the concerned companies mentioned (supra). The said additions have been confirmed by the Ld.CIT(A). We do not find any infirmity in the order of the Ld.CIT(A) in deleting the said protective addition under section 68 on the ground that the substantive addition has been confirmed. On this observation, we dismiss this ground of appeal filed by the revenue.

6. Ground 2 pertains to unaccounted estimated commission @2.5% on accommodation entry under section 69C was deleted by the Ld.CIT(A) on the ground that the protective addition on unaccounted investment itself has in principle been deleted and that the corresponding substantive addition made under section 69C has also been confirmed in the hands of the said concerns. On this ground, the Ld.CIT(A) has deleted the said protective addition made on unaccounted estimation commission. The Ld.CIT(A) has directed the Assessing Officer to verify the claim of the assessee in respect of the quantum of substantive and corresponding protective addition related to Starwood Exports P Ltd, M/s Rikosh Fashions P Ltd and thereby adopt the correct figures while computing the protective addition under section 69C of the Act on unexplained commission expenditure. We uphold the order of Ld.CIT(A) on this ground.

7. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced in the open Court on 29<sup>th</sup> August, 2022.

Sd/-

sd/-

<b>(PRASHANT MAHARSHI)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 29/08/2022

Pavanan

**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,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**