

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA Nos.965, 966 & 967/M/2022
Assessment Years: 2011-12, 2012-13 & 2013-14**

M/s. Satyapal Kundanlal Khera, D-1, Geeta Prakash, 4 Bunglows, J.P. Road, Andheri (West), Mumbai – 400 009 PAN: AABPK8308C	Vs.	ACIT 17(1), Room No.117, 1 st Floor, G-Block, Kautilya Bhavan, BKC, Mumbai - 400051
(Appellant)		(Respondent)

**ITA No.1217/M/2022
Assessment Year: 2012-13**

ACIT 17(1), Room No.117, 1 st Floor, G-Block, Kautilya Bhavan, BKC, Mumbai - 400051	Vs.	M/s. Satyapal Kundanlal Khera, D-1, Geeta Prakash, 4 Bunglows, J.P. Road, Andheri (West), Mumbai – 400 009 PAN: AABPK8308C
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 12.09.2022/13. 09.2022
Date of Pronouncement : 27 .09. 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid interconnected cross appeals bearing common question of law and facts are being taken up for disposal by way of composite order.

2. Appellant M/s. Satyapal Kundanlal Khera (hereinafter referred to as the assessee) and appellant ACIT 17(1), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned order, even dated 11.03.2022, passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment years 2011-12, 2012-13 & 2013-14 on identical grounds except the difference in amount of addition/disallowance (grounds of assessee are taken from A.Y. 2011-12) inter alia that:

Grounds of Assessee

“1. On the facts and in the circumstances of the case and in the law, the learned CIT (A) has erred in confirming additions of the Rs.44,21,392.25 made by the AO being the amount of full sale proceeds of shares considering as unexplained cash credit under section 68;

2. On the facts and in the circumstances of the case and in the law, the learned CIT (A) has erred passing the appellate order against the appellant without adhering to the principles of natural justice

3. The appellant craves leave to amend, alter, substitute or modify any of the above grounds or add a fresh ground as and when considered necessary either before or at the time of hearing prior to disposal of the appeal by the Hon’ble Tribunal.”

Grounds of Revenue

“1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO ignoring the fact that the assessee is a beneficiary of accommodation entry in form of penny stocks.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee wherein the assessee has taken accommodation entry for routing its unaccounted cash in the books of account by claiming bogus long term capital gain/loss through transaction in penny stock M/s. Diamant Infrastructure Ltd.

3. The appellant craves leave to amend or alter or add a new ground which may be necessary.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of information received from ADIT(Inv.), Mumbai vide letter dated 20.03.2018 regarding enquiries conducted in the penny scrips namely M/s. SVC Resources Ltd. vis-à-vis. providing bogus accommodation entries of long term capital gain (LTCG)/short term capital gain (STCG)/business losses, survey on the premises of operators, key persons related to the aforesaid scrips it was established that scrip of M/s. SVC Resources Ltd. is a penny scrip and has been used by the operators/entry or entry provider to provide exemption LTCG/STCG/business loss for the purpose of bringing unaccounted cash in the books of account or to create fictitious loss to avoid payment of due taxes on the income. It was noticed that in A.Y. 2011-12 assessee allegedly purchased scrips of M/s. SVC Resources Ltd. to the tune of Rs.1,96,150/- for a consideration of Rs.30,07,519.9 and out of which sold 67700 scrips for Rs.44,21,392.25. Accordingly assessee reopened the assessment after issuing notice under section 148 of Income Tax Act, 1961 (for

short 'the Act') by recording reasons after taking necessary approval under section 151(1) of the Act. Then statutory notice under section 142(1) was issued along with questionnaire which was duly served upon the assessee calling upon various details. However, neither assessee in person nor anybody on his behalf has put in appearance nor furnished any detail called for and consequently Assessing Officer (AO) proceeded to frame the assessment ex-parte under section 144 read with section 147 of the Act. AO proceeded to make the addition to the tune of Rs.44,21,392.25, Rs.39,52,052.51 & Rs.87,636/- for A.Y. 2011-12, 2012-13 & 2013-14 respectively by treating the scrips of M/s. SVC Resources Ltd. and Holding Industry Ltd. treated by the assessee as penny stock and the gain shown by the assessee is nothing but accommodation entry by routing its unaccounted cash in the books of accounts without paying any tax being the LTCG claimed as exempt.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal for A.Y. 2011-12 and partly allowed the appeal for A.Y. 2012-13 & 2013-14. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals.

5. Notices were sent for the service of assessee firstly on 14.07.2022 and then on 05.08.2022 for putting in appearance on 04.08.2022 and 12.09.2022 through registered cover, reportedly not received back served or unserved and as such presumed to have been served upon the assessee. Since a period of more than one

month has already elapsed assessee is deemed served but none appeared on behalf of it. Consequently, the Bench decided to dispose of the aforesaid appeals on the basis of documents available on record and with the assistance of the Ld. D.R. for the Revenue.

6. I have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. So far as appeal pertaining to A.Y. 2011-12 is concerned, admittedly assessee has not put in appearance before the AO despite issuance of notices and consequently AO framed the assessment under section 144 read with section 147 of the Act. It is categorically recorded in the impugned order by the Ld. CIT(A) that though the assessee was issued notice on 18.01.2021 and 24.11.2021 the assessee has not preferred to file his submissions. But for A.Y. 2012-13 & 2013-14 assessee filed the submissions which have been considered by the Ld. CIT(A) to decide appeal pertaining to A.Y. 2011-12 also.

8. Assessee in his submissions filed in A.Y.2012-13 & 2013-14 contended that no opportunity of being heard was given to him and requested to set aside the case to AO. Moreover, in his submissions before the AO the assessee claimed that he has no knowledge about the activities or finances of the M/s. SVC Resources Ltd. and the appeal has been disposed of by the Ld. CIT(A) merely on the basis of generic findings that the case of the assessee is based upon the paper entries, which are used to launder unaccounted money. Even

the AO has not investigated the matter by associating M/s. SVC Resources Ltd. in the investigation to reach at the logical conclusion. In other words, I am of the considered view that this is a case of no investigation and the assessment has been framed without conducting any enquiry from the available sources nor the assessee has been associated by using coercive method of getting his service affected. So framing of the assessment by the AO under section 144 read with section 147 of the Act for A.Y. 2011-12 and confirming the same by the Ld. CIT(A) is not sustainable in the eyes of law as the issue involved is required to be decided once for all by providing an opportunity of being heard to the assessee.

9. So far as appeals for A.Y. 2012-13 filed by the assessee as well as Revenue are concerned, again AO framed the assessment ex-parte due to alleged non appearance of the assessee section 144 read with section 147 of the Act by treating the scrips of M/s. SVC Resources Ltd. and Holding Industry Ltd. purchased by the assessee as a penny stock which is not a genuine transaction but merely bogus entries to evade the payment of taxes. When impugned order dated 11.03.2022 passed by the Ld. CIT(A) annexed with assessee's appeal vis-a-vis. Revenue's appeal is examined the same are different orders on facts because in the impugned order passed by the Ld. CIT(A) annexed with assessee's appeal bearing No.966/M/2022 in para 4.5 Ld. CIT(A) dealt with the scrip of M/s. SVC Resources Ltd. whereas in the Revenue's appeal bearing ITA No.1217/M/2022 in para 4.2 there is not a whisper of scrip of M/s. SVC Resources Ltd. rather Ld. CIT(A) dealt with the scrip of M/s. Diamant Infrastructure Ltd. (DIL).

Moreover, the Ld. CIT(A) has deleted the addition made by the AO just by returning cryptic findings without calling any remand report from the AO who has framed the assessment under section 144 read with section 147 of the Act, without conducting any enquiry.

10. In A.Y. 2013-14 so far as addition of Rs.87,636/- made by the AO by treating the scrip of M/s. SVC Resources Ltd. as penny stock and gain shows by the assessee as accommodation entry for routing its unaccounted cash in the books of account without paying any tax being the LTCG claimed as exempt is concerned, the Ld. CIT(A) has confirmed the addition by returning following *findings*:

“4.10. As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what I have done. In my considered view and for the detailed analysis set out in assessment order and earlier in this order, the alleged sale-purchase transactions of the assessee cannot be held to be genuine on the peculiar facts and circumstances of this case. As the genuineness of transactions stands rejected, the addition under section 68 is required to be confirmed.

Thus the addition under section 68 of Rs87636 is hereby confirmed as the nature and source of the same is not proved and on the test of human probabilities, the transaction is held to be non-genuine and thus addition is confirmed.

5. *Appellant has taken the ground in written submissions that income was already shown as business income. The appellant was asked to furnish the following details vide notice dated 24/11/2021:*

"Please furnish the following details:-

- 1) Please furnish copy of return filed.*
- 2) Also furnish copy of share sales account showing receipt of sale from SVC Resources Ltd."*

But the appellant did not furnish the same Since the nature and source of the transaction is not proved, the said receipt is required to be taxed under section 68 and no deduction from the said receipt can be allowed as no expenditure including the purchase price claimed to be paid by the appellant can be said to be related to the receipt

credited and added to total income. The related ground is dismissed. However, since the said receipt is being added ^ under section 68, the related net transactions of the said receipt, that is profit, if disclosed by the appellant in his business income or part of taxable income in any way, will have to be reduced after complete verification only by the assessing officer.

5.2. Ground no. 4 is related to computation of income. In the assessment order AO has taken total income as per Return as Rs.Nil. It is seen that the appellant has shown loss in the Return. The same may be recomputed as per direction in para 5 and may be adjusted if permissible as per law. The Ground 4 is thus allowed.”

6. The appeal is partly allowed.”

11. However, the Ld. CIT(A) while dealing with the contention of the assessee made in the written submissions that the income has already been shown as business income, but no evidence is there to prove this issue has been brought on record. But the Ld. CIT(A), even after recording the fact that no evidence has been furnished by the assessee, proceeded to decide the issue in favour of the assessee by holding that “since the said receipt is being added under section 68 of the Act the related net transactions of the said receipt i.e. profit, if disclosed by the assessee in his business income or part of the taxable income in any way, will have to be reduced after complete verification by the AO” without any enquiry or without having any document on record.” These findings are not sustainable in the eyes of law. So in these circumstances, I am of the considered view that this appeal is also liable to be remitted back to the Ld. CIT(A) to decide afresh after making complete enquiry/calling remand report from the AO by providing opportunity of being heard to the assessee.

12. In view of what has been discussed above, I am of the considered view that appeal bearing ITA No.965/M/2022 for A.Y. 2011-12 filed by the assessee is remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee. However, appeal bearing ITA Nos.966 & 967/M/2022 for A.Y. 2012-13 & 2013-14 respectively filed by the assessee as well as Revenue's appeal for A.Y. 2013-14 are remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

13. Resultantly, appeals of assessee as well as Revenue are allowed for statistical purposes.

Order pronounced in the open court on 27.09.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 27.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.