

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI OM PRAKASH KANT, AM**

आयकरअपीलसं./ I.T.A. No. 5704/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2011-12)

| | | |
|--|----------------------|---|
| DCIT CC- 3(2), R. No. 1913, 19 th floor, Air India Building, Nariman Point, Mumbai-40 021 | बनाम/ Vs. | M/s Mangalkalash Trading Pvt. Ltd. F-702, Nandanvan CHS Ltd. Link Road, Kandivali(w), Mumbai400 067 |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFCM8158F | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|--|---|-------------------------|
| अपीलार्थीकीओरसे/ Appellant by | : | Shri T. Shankar, Ld. DR |
| प्रत्यर्थीकीओरसे/ Respondent by | : | None |
| सुनवाईकीतारीख/ Date of Hearing | : | 06.09.2022 |
| घोषणाकीतारीख / Date of Pronouncement | : | 06.09.2022 |

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the revenue against the impugned order dated 27.07.2018, passed by Ld. CIT(A)-51, Mumbai for the quantum appeal of assessment passed u/s 143(3) r.w.s. 153A for AY 2011-12. The revenue has taken the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in protective addition of Rs. 6,25,00,000/- on account of unaccounted investment and of Rs. 15,62,500/- on account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality.*

Thus, the revenue has challenged the deletion of protective addition.

2. From the perusal of the assessment order, it is seen that a search was conducted in the case of First Winner Group on 11.08.2014 in which assessee was also included. The Ld. AO after detail discussion held that assessee was a paper entity of Shri Rinku Patodia, established only for the purpose of routing the bogus share application money. Accordingly, the AO has made substantive addition for Rs. 6,25,00,000/- on the receipt of bogus share application money in the case of Bhagwat Textile Ltd., First Winner Textiles (India) Pvt. Ltd. and Starwood Exports Pvt. Ltd., and consequently made protective addition in the case of assessee. He also made protective addition of Rs. 15,62,500/- on ad hoc commission @ 2.5% for routing bogus share application money.

3. Ld. CIT(A) had deleted the protective addition on the ground that already he has confirmed the substantive addition in the hands of M/s Bhagwat Textile Ltd., M/s First Winner Textiles (India) Pvt. Ltd. and M/s Starwood Exports Pvt. Ltd. The observation of Ld. CIT(A) reads as under:-

5.3 The contentions of the assessee have been duly considered. The AO has made the substantive addition u/s 68 in M/s First Winner Industries P Ltd (Rs 4,00,00,000/-), M/s Bhagwat Textiles P Ltd (Rs 1,75,00,000/-) and M/s Starwood Exports Pvt Ltd (Rs 50,00,000/-) totally aggregating to Rs 6,25,00,000/- on account of unexplained share application money and has made protective addition in the hands of the our assessee.

5.3.1 As regards the said substantive addition of Rs. 4,00,00,000/- in M/s First Winner Industries P Ltd., the same has been adjudicated vide my order in appeal No CIT(A)-51/IT-363/16-17 dated 27.07.2018. The operative part of the said order is from Para 6.3.1 to 6.3.26 at pages 13 to 26. In the said appellate order, the substantive additions u/s 68 made of Rs 16,00,00,000/- have been confirmed which includes the addition related to our assessee of Rs 4,00,00,000/-.

5.3.2 Similarly, the said substantive addition of Rs. 1,75,00,000/- in M/s Bhagwat Textiles P Ltd (Rs 1,75,00,000/-), 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 16,00,00,000/- have been confirmed which includes the addition related to our assessee of Rs 4,00,00,000/-.

5.3.3 Also, the said substantive addition of Rs. 50,00,000/- in IWs Starwood Exports Pvt 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 50,00,000/-.

*5.3.4 It is observed that the AO has made the said additions of Rs. 6,25,00,000/- in the hands of our assessee on protective basis by holding that the said investments in M/s First Winner Industries P Ltd. (Rs. 4,00,00,000/-), M/s Bhagwat Textiles P Ltd. (Rs. 1,75,00,000/-) and M/s Starwood Exports P Ltd. (Rs. 50,00,000/-) 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 of Rs 6,25,00,000/- 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 First Winner Industries P Ltd., M/s Bhagwat Textiles P Ltd and M/s Starwood Exports P Ltd on substantive basis have been confirmed vide my orders in Appeal No CIT(A)-51/IT-363/16-17 dated 23.07.2018, Appeal No. CIT(A)-51/IT-328/16-17 dated 03.11.2017 and Appeal No.CIT(A)-51/IT-330/16-17 dated 03.11.2017. Therefore, the action of the AO in making the said protective addition u/s 69 cannot be sustained. Similarly, the protective addition made by the AO u/s 69C of Rs 15,62,500/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investment of Rs 6,25,00,000/- also cannot be sustained considering that the protective addition of unexplained investment itself has been deleted and also because the corresponding substantive addition made u/s 69C in the hands of M/s First Winner Industries P Ltd., M/s Bhagwat Textiles P Ltd and M/s Starwood Exports P Ltd., has also been confirmed vide my orders in Appeal No CIT(A)-51/IT-363/16-17

dated 27.07.2018, Appeal No. CIT(A)-51/IT-328/16-17 dated 03.11.2017 and Appeal No. CIT(A)-51/IT-330/16-17 dated 03.11.2017. Accordingly, ground Nos 1 to 3 of the appeal are allowed.

4. In view of the above findings and observation of Ld. CIT(A) that, once the substantive addition has been confirmed by him, then the protective addition has no legs to stand. Accordingly, the ground raised by the revenue is dismissed.

5. In the result, the appeal filed by the revenue stands **dismissed.**

Orders pronounced in the open court on 6th September, 2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 06/09/2022

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**