

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 2118/MUM/2019
Assessment Year: 2011-12**

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

Vs.

Sudama Textile Trading P. Ltd.,
Room No. 4, Shivram Patel
Chowk, Hanuman Nagar, Kurar
Village, Malad (E),
Mumbai-400064.

PAN No. AAOCS 4200 K

Appellant

Respondent

Assessee by : None
Revenue by : Mr. Rakesh Garg, CIT-DR

Date of Hearing : 13/10/2022
Date of pronouncement : 18/10/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against the order dated 29.01.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-51, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds :



1. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the protective addition of Rs 7,50,00,000/- on account of unaccounted investment and of Rs 18,75,000/- 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 7,50,00,000/- 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 7,50,00,000/- on account of unaccounted investment and of Rs 18,75,000/- on account of unaccounted commission u/s 69C without considering the fact that the addition made on substantive basis has not reached its finality*

2. In the grounds raised, the Revenue is aggrieved with deletion of protective addition of ₹7,50,00,000/- and corresponding commission of ₹18,75,000/- on the said unaccounted investment.



3. At the outset, we may like to mention that despite notifying for several times neither anyone attended on behalf of the assessee nor any adjournment was sought. The notices sent through registered post on 09.02.2022, 02.05.2022 and 09.06.2022 have returned back. In view of the same, on the last occasion i.e. 27.07.2022, the Bench directed the Ld. DR to serve the notice on the assessee for hearing dated 13.10.2022. The Ld. DR has filed a report of service of the notice by affixture. Said report is placed on record. In the circumstances, we were of the opinion that assessee was not interested in responding the appeal and therefore same was heard ex-parte qua the assessee after hearing the arguments of the Ld. DR.

4. The only issue in the appeal is with respect to deletion of protective addition by the Ld. CIT(A). The relevant finding of the Ld. CIT(A) is reproduced as under:

"5.3.5 It is observed that the AO has made the said additions of Rs. 7.50,00,000/- in the hands of our assessee on protective basis by holding that the said investments in M/s Rikosh Fashions P Ltd. (Rs 25,00,000/-),



M/s. Bhagwat Textiles P. Ltd. (Rs 1,75,00,000/-), M/s First Winner Textiles (India) P Ltd (Rs 1,50,00,000/-) and M/s First Winner Industries P Ltd. (Rs 4,00,00,000/-) 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 Rikosh Fashions P Ltd., M/s. Bhagwat Textiles P. Ltd., M/s First Winner Textiles (India) P Ltd and M/s First Winner Industries P Ltd. on substantive basis have been confirmed vide my orders in No.CIT(A)-51/IT-855/16-17 dated 20.11.2018, Appeal No CIT(A)-51/IT-328/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-352/16-17 dated 03.11.2017 and Appeal No.CIT(A)-51/IT-363/16-17 dated 27.07.2018. 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 ₹18,75,000/- being the unaccounted estimated commission @ 2.5% on the accommodation entry of the said investment of Rs 7,50,00,000/- 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 us 69C by the AO in the hands of M/s Rikosh Fashions P Ltd., M/s. Bhagwat Textiles P. Ltd., M/s First Winner Textiles (India) P Ltd and M/s First Winner Industries P Ltd. on substantive basis have been confirmed vide my orders in No.CIT(A)-51/IT-355/16-17 dated 20.11.2018, Appeal No CIT(A)-51/IT-328/16-17 dated 03.11.2017, Appeal No.CIT(A)-51/IT-352/16-17 dated 03.11.2017 and Appeal No.CIT(A)-51/IT-363/16-17 dated 27.07.2018. However, as noted earlier, the AO is directed to verify the facts in respect of the quantum of substantive and protective additions made related to MIs Rikosh Fashions P Ltd. and accordingly adopt the correct figure while computing the protective addition us 69C being the unexplained commission expenditure. Accordingly, ground Nos. 1 to 3 of the appeal are partly allowed.”

5. We find that the Ld. CIT(A) has sustained the addition in the hands of the four entities i.e. M/s Bhagwat Textile P. Ltd., M/s First Winner Textile (India) P. Ltd. and M/s First Winner Industries P. Ltd. on substantive basis and therefore, he has deleted the addition in the hands of the assessee which was made on protective basis.



5.1 We are of the opinion that protective assessments are framed by an Assessing Officer mainly where the Assessing Officer is not sure enough in whose hands income is chargeable to tax or which year the income is chargeable to tax. Main purpose of the making protective assessment is to protect from action in the hands of the other person or other assessment year becoming barred by limitation. But when the substantive assessment made by the Assessing Officer is upheld by the Ld. CIT(A), then he is not justified in confirming the protective assessment in the case of another assessee. The Ld. Appellate Authority has to take a judicious call as to in whose hand addition has to be upheld and the Revenue has also to take up a stand as in whose hands the income has to be assessed. Same income cannot be sustained in the hands of the two persons, first on substantive basis and secondly on protective basis. In the circumstances, 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 grounds of appeal raised by the Revenue are accordingly dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court in 18/10/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 18/10/2022

Dragon Legal/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