

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 469/Mum/2018

(Assessment Year 2007-08)

ITA No. 470/Mum/2018

(Assessment Year 2008-09)

DCIT
Central Circle-5(1)
R.No. 1928,
19th Floor,
Air India Building,
Nariman Point,
Mumbai-400021

(Appellant)

Vs.

M/s Jogia Properties Ltd.
324, Master Mind-IV
Royal Palms,
Aarey Milk Colony
Goregaon (E),
Mumbai-400065

(Respondent)

PAN No. AAACJ9910H

CO No. 193/Mum/2018

(Arising in ITA No. 469/Mum/2018 A.Y. 2007-08)

CO No. 194/Mum/2018

(Arising in ITA No. 470/Mum/2018 A.Y. 2008-09)

M/s Jogia Properties Ltd.
324, Master Mind-IV
Royal Palms,
Aarey Milk Colony
Goregaon (E),
Mumbai-400 065

(Appellant)

Vs.

DCIT
Central Circle-5(1)
R.No. 1928,
19th Floor,
Air India Building,
Nariman Point,
Mumbai-400 021

(Respondent)

ITA No. 466/Mum/2018

(Assessment Year 2007-08)

ITA No. 467/Mum/2018

(Assessment Year 2008-09)

DCIT
Central Circle-5(1)
R.No. 1928,
19th Floor,
Air India Building,
Nariman Point,
Mumbai-400 021

(Appellant)

Vs.

M/s Vedisa Properties Ltd.
324, Master Mind-IV
Royal Palms,
Aarey Milk Colony
Goregaon (E),
Mumbai-400 065

(Respondent)



PAN No. AABCV3199B

CO No. 191/Mum/2018

(Arising in ITA No. 467/Mum/2018 A.Y. 2008-09)

CO No. 190/Mum/2018

(Arising in ITA No. 466/Mum/2018 A.Y. 2007-08)

M/s Vedisa Properties Ltd.

324, Master Mind-IV

Royal Palms,

Aarey Milk Colony

Goregaon (E),

Mumbai-400065

(Appellant)

Vs.

DCIT

Central Circle-5(1)

R.No. 1928,

19th Floor,

Air India Building,

Nariman Point,

Mumbai-400021

(Respondent)

Assessee by : Shri Vijay Mehta, AR

Revenue by : Shri Achal Sharma, CIT DR

Date of hearing: 12.09.2022

Date of pronouncement: 27.10.2022

ORDER

PER BENCH:

01. This is the bunch of 4 appeals filed by Assessing officer and 4 cross objections filed by Assessee for two Assessment years i.e. AY 2007-08 and 2008-09 where in Id. CIT [A] has deleted the addition in the hands of these two Assessee namely Jogia properties Limited and Vidisha Properties P Ltd on the solitary basis that addition in the hands of these two entities made u/s 68 with respect to share capital by the Id. AO deserves to be deleted because the addition has been confirmed in the hands of Shree Global Tradefin Limited.



02. In case of Vidisha properties Limited ,ITA No. 466/Mum/2018 is filed by the Dy. Commissioner of Income Tax, Central Circle 5(1), Mumbai (the learned Assessing Officer) for A.Y. 2007-08 against the order passed by the Commissioner of Income-tax (Appeals)-53, Mumbai [the learned CIT (A)] raising following grounds of appeal: -

"1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has justified in deleting the protective additions in this case considering that the issue of substantive addition in the case of Shree Global Tradefin Limited has not reached finality?"

03. The only ground of appeal is that the learned CIT (A) has deleted the addition in the hands of the assessee considering that the issue of substantive addition in the case of Shree Global Tradefin Limited has not reached the finality.

04. Identical issue is also there in the appeal of Revenue for A.Y. 2008-09 in case of Vidisha properties Limited and for AY 2007-08 and 2008-09 in case of Jogia Properties Limited as captioned above.

05. Assessee has raised cross objection for both these years challenging the reopening of the assessment raising following grounds for A.Y. 2007-08:-

"1. On the facts and circumstances of the case the appellant prays that the initiation of reassessment



proceedings and consequently passing reassessment order is bad in law and contrary to the provisions of Income Tax Act, 1961. The appellant prays that the reassessment order passed by the Learned Assessing Officer and confirmed by the Learned CIT (Appeals) may be cancelled.

2. On the facts and circumstances of the case the appellant prays that notice issued u/s. 148 is bad in law and conditions of Section 147 are not satisfied. The appellant prays that the notice issued u/s. 148 is bad in law and consequently the order passed in reassessment proceedings may be cancelled.

3. On the facts and circumstances of the case the appellant prays that on the same set of facts which were submitted during the assessment proceedings u/s. 143(3) r.w.s. 153C, the Learned Assessing Officer has changed his opinion and has concluded that income has escaped assessment. The appellant prays that the reassessment order passed by the Learned Assessing Officer may be set aside as it is bad in law.

4. On the facts and circumstances of the case the appellant prays that the Lower Authorities have rejected the objection raised by the appellant in the reassessment proceedings without dealing with the issues raised therein. The appellant prays that the reassessment order passed by the Learned Assessing Officer may be set aside as it is bad in law.



5. On the facts and circumstances of the case the Learned Assessing Officer has wrongly relied upon the statement of Mr. Om Hari Halan, Mr. Mukesh Choksi and Mr. Babulal Agarwal to conclude that income chargeable to tax has escaped assessment. The primary condition, that there should be live link between the information available, is absent and hence the notice issued u/s. 148 is bad in law. The appellant prays that the reassessment order passed by the Learned Assessing Officer may be set aside as it is bad in law.

6. The Respondent craves leave to add, alter or amend the grounds of appeal which are without prejudice to one other."

06. Similar Cross Objections are filed by both assessee in all these four appeals by Id. AO.
07. The brief facts of the case in Vidisha properties Limited for A.Y. 2007-08 shows that assessee is a company who filed its return of income on 22nd October 2007 declaring nil income from its alleged business of property development. Search was conducted by the investigation wing in Jogia group on 4th March 2010. Therefore, notice under Section 153A of the Act was issued to the assessee wherein the return of income was filed on 26th February 2011 declared nil income. Subsequently, on 26th December 2011 the assessment order under Section 153A read with section 143(3) of the Act was passed on determining the total income of the assessee at ₹2 crores. Subsequently, on the basis of information received from the investigation wing



the case of the assessee was reopened and notice under Section 148 of the Act was issued on 21st March 2014. Vide letter dated 2nd April 2014, the assessee reiterated the income filed on 26th February 2011.

08. The fact shows that a survey under Section 133A of the Act was conducted in the loyalty group and Jogia group on 19th December 2012 by the Investigation Wing. Assessee was found to have invested of ₹2 crores as share application money in Shree Global Trade fin Limited. The source of the above money was said to be receipt by the assessee from 26 different companies amounting to ₹43.50 crores. All these 26 companies are found to be managed by one accommodation entry provider Mr. Mukesh Choksi, whose statement was recorded under Section 132(4) of the Act on 25th November 2009 and 26th November, 2009 wherein he admitted that he has running over 40 companies and none of these companies are doing any business but providing accommodation entries. The Directors of the assessee company were confronted about the above statement wherein the learned Assessing Officer confirmed that they have generated the unaccounted income and same is invested in Shree Global Trade fin Pvt. Ltd. Subsequently, information was also received that assessee has taken accommodation entries from Shree Pravin Kumar Jain of ₹2 crores from one Alok Diamond Industries Ltd. on various date. Therefore, the assessment proceedings commenced. The assessee was confronted with several findings during the survey and various revelations coming out of the statement of the



entry operator. The assessment order was passed under Section 143(3) read with section 147 of the Act wherein the addition of ₹2 crores was made as unexplained cash receipt and ₹6 lacs as the commission. Accordingly, the total income of the assessee was assessed at ₹2,06,00,000/-.

09. Assessee aggrieved with that order preferred the appeal before the learned CIT (A), who passed the combined order / consolidated order for A.Y. 2007-08, 2008-09, and 2009-10 in case of the assessee. For A.Y. 2007-08, the learned CIT (A) accepted the contention of the learned Authorised Representative that similar addition under Section 68 of the Act is made in the case of Shree Global Tradefin Pvt Ltd, whose appeals were pending before the learned Commissioner of Income-tax (Appeals). He held that while the amounts received through these entities are not genuine and creditworthiness is not there of the fifty-four entries, there is almost one to one correspondence between the amount received by the 14 entities and subsequent amount received through them by the Shree Global Tradefin Ltd. As Shree Global Tradefin Limited is the ultimate beneficiary who has received the money. Therefore, it is only logical that the amount is assessed in the hands of Shree Global Tradefin Limited. The learned Assessing Officer was queried on this, and he has reported that the addition in case of Jogia group 8 cases be treated as protective addition. Therefore, the learned CIT (A) was of the view that the addition must be made only in the hands of the Shree Global Tradefin Pvt. Ltd. since the

Jogia group entities are merely conduit entities and the money was raised and brought in for Shree Global Tradefin Pvt. Ltd. Similarly, the appellate orders are passed in those appeals also holding the same. The same view has taken in the case of Shree Global Tradefin Limited by the learned CIT (A). Accordingly, he deleted the addition under Section 68 of the Act of ₹2 crores in the hands of the assessee. The learned Assessing Officer aggrieved and is in appeal before us.

010. The learned Departmental Representative vehemently submitted that it is not an addition made on protective basis as nothing is mentioned in the assessment order. He reiterated that the provision of Section 68 of the Act clearly applies in the case of the assessee. Therefore, the learned CIT (A) clearly to fall into error in deleting the addition.
011. The learned Authorized Representative vehemently relied upon the order of the co-ordinate Bench in case of Cikura Properties Ltd. in ITA No.457/Mum/2018 and CO No.181/Mum/2018 dated 6th August 2020 and submitted that on identical facts and circumstances, the appeal of the Revenue as well as the CO of the Assessee were dismissed. He also referred to paragraph no. 9 of that order wherein the order of the learned CIT (A) on identical basis was upheld.
012. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also



considered the orders of Coordinate bench cited before us.

013. Admittedly, the facts clearly shows that assesses i.e. divisa properties Limited and Jogia Properties Limited are a company wherein from A.Y. 2007-08 till 2009-10 sum of ₹43.50 crores is received as share application money which in turn has been deposited as share capital in another company Shree Global Tradefin Pvt. Ltd.

014. During the year, assessee i.e. Vidisha Properties Limited has received ₹2 crores on various dates from Alok Diamond Industries Ltd. which is a company controlled and managed by Mr. Pravin Jain. Naturally, the above sum is found to be credited in the books of accounts of the assessee for which no satisfactory explanation is available with respect to the creditworthiness and genuineness of the transaction and therefore, the addition was made under Section 68 of the Act.

015. The learned CIT (A) deleted the above addition under the pretext that the above sum has been added in the hands of Shree Global Tradefin Pvt. Ltd. He therefore vide Para no. 8.29 has held as under:-

"8.29. The AR has also contended that similar addition u/s 68 is made in the cases of the Shree Global Tradefin Ltd. (SGTL) whose appeals are pending before me. While the amounts received through these entities are not genuine and credit worthiness is not there of the 54 entities, there is almost one to one correspondence between amount

received by 14 entities and amount received through them by SGTL SGTL is the ultimate beneficiary who has received the money. Hence, it is only logical that the amount is assessed in the hands of SGTL. The assessing officer was queried on this and he has reported that the additions in the case of Jogia Group 8 cases be treated as protective addition. I am of the view that the additions must be made only in the hands of Shree Global Tradefin Pvt. Ltd. since the Jogia Group entities are merely conduit entities and the money was raised and brought in for Shree Global Tradefin Pvt. Ltd. Simultaneously, appellate orders are passed in those appeals also holding the same. The same view has been taken in the appellate orders of even date in the case of the appeals in SGTL before me."

016. In the next paragraph, he held that the amounts received as share application money at a premium during the year fails the test of creditworthiness and genuineness. Despite holding so, he deleted the addition in the hands of the assessee.
017. The identical issue arose in the case of Cikura Properties Ltd. in ITA No.457/Mum/2018 for A.Y. 2009-10 dated 6th August, 2020, wherein in paragraph no. 3.2 it is stated that the Tribunal deleted the addition in the hands of Shree Global Tradefin Limited in ITA No.7310 to 7313/Mum/2017 dated 15th October, 2018 where there is no finding by the co-ordinate Bench that the income is belonging to the present assessee i.e. Cikura Properties



Ltd. Thereafter, in paragraph no.9 the co-ordinate Bench held that in their considered opinion protective addition has to go as the substantive addition was deleted on merits. Therefore, they did not find any merit in the appeal of the learned Assessing Officer.

018. We find that as recorded in paragraph no.3.2 that in case of Shri Global Tradefin Private Limited, the addition is deleted. On careful reading of the order of the Bench in case of Shri Global Tradefin Limited dated 15th October 2018, we find that the co-ordinate Bench quashed the reassessment order in case of that assessee and further the addition was deleted in the hands of that company because source of source is not required to be established.

019. It is very interesting to read several paragraphs of the order of the co-ordinate bench in case of Shree Global Tradefin Limited, which shows that the addition in the hands of that assessee was deleted for the reason that the money coming from this assessee is supported by the source of this assessee, therefore addition in the hands of ShreeGlobal Tradefin was explained and hence deleted. At page no.246 of that order clearly points that even in the hands of 9 companies [where assessee is also one of those companies], the source of the funds have been explained as emanating from these companies. Therefore, the addition was deleted in the hands of Shree Global Tradefin Limited.



020. We find that a strange dichotomy in the reasons given for deletion of addition in the hands of Shree Global Tradefin Limited and deletion of additions by the learned CIT (A) in the hands of the assessee. Para no 8.29 of order of Id CIT [A] merely said that he queried the Id AO on this aspect. But he ignored provision of section 68 of the Act.
021. There is no evidence available with Id CIT [A] to state that both these companies are conduit. If that be so ,he should have invoked provisions of other laws which he is dutybound to invoke. But he rests his this finding only for deletion of addition in the handsof the assessee.
022. It is not an issue of protective addition as well as substantive addition but it is an issue that in whose books money is credited. Apparently, the money is credited in the books of account of the assessee; therefore, the provision of Section 68 of the Act should have been decided in the hands of assessee. The learned CIT (A) is also clearly fell into error in holding that section 68 of the Act addition would be in the hands of only the beneficiary.
023. There is no finding in the assessment orders that these additions were made in the ahnds of these two assesses on protective basis. Therefore it is unusual for CIT [A] to hold so. He has merely relied upon the statement of Id AO quoted by Id AR in
024. We find that Section 68 of the Act does not talk about any beneficiaries but is added in the hands of each and every



person where Assessee fails to prove identity, creditworthiness and genuineness of the transaction to the satisfaction of the learned Assessing Officer. It is deemed income in the hands of the assessee who fails to explain nature and source of the same before the AO. Deeming fiction applies in the hands of the person in whose book's sums are credited. There it ends, such deeming fiction cannot travel to other assessee for satisfying ingredients of section 68 of the Act as held by Id. CIT [A] in this case. Therefore, this addition needs to be tested u/s 68 in the hands of the assessee irrespective of the fact whether the sum is added in the hands of other assessee or not or beneficiaries are different. There is no concept of beneficial ownership of income u/s 68 of the act. Importing the same in section 68 is in clear violation of simple provisions of that section.

025. In view of this, we set aside the whole issue in the appeal of the learned Assessing Officer back to the file of the learned Assessing Officer with a direction to the assessee to prove identity and creditworthiness of the deposits as well as the genuineness of the transactions. The learned Assessing Officer should examine the claim of the assessee in light of various statements of entry operators recorded during the course of survey and search and there after decide the issue afresh in accordance with law. Needless to say initial onus would be on the assessee to prove the cash credit to the satisfaction of Id. AO. The learned Assessing Officer may carry out the inquiry as well as examination of various persons, if found proper, either



directing assessee or by use of powers vested in him, before deciding the issue afresh.

026. In the result, the solitary ground of appeal of the learned Assessing Officer is allowed with above directions.

027. As the CO of the assessee on identical facts as covered in CO No.181/Mum/2018 in other appeals was dismissed without adjudicating the grounds raised by the assessee. We also restore the Cross Objection to the file of the learned Assessing Officer.

028. In the result, for AY 2007-08, in case of Vedisa Properties Ltd, ITA No. 466/Mum/2018 filed by the learned Assessing Officer and CO No. 190/Mum/2018 filed by the assessee are allowed with above directions.

029. ITA No. 467/Mum/2018 and CO No. 191/Mum/2018 for A.Y. 2008-09 in case of Vidisha Properties Limited [same assessee] are also disposed of with similar directions as the facts in that case also are similar except the amount of addition being ₹23.75 crores under Section 68 of the Act.

030. Identical issue is involved in ITA No.469/Mum/2018 for A.Y. 2007-08 in case of Jogia Properties Ltd, where the addition under Section 68 of the Act is ₹4 crores and CO in ITA No. 193/Mum/2018 is also having similar grounds. The appeal of the learned Assessing Officer is allowed with the similar direction as given in case of A.Y. 2007-08 of Vedisa Properties Ltd. and CO are also disposed of with the same direction. Accordingly, the appeal of the learned



Assessing Officer and CO of the Assessee is partly allowed for statistical purposes with above direction.

031. ITA No. 470/Mum/2018, the facts are similar to other appeals except the amount of addition under Section 68 of the Act of ₹20,75,00,000/- and in CO no.194/Mum/2018 raised on similar grounds, in absence of any change in the facts of the appeal of the learned Assessing Officer and CO of the assessee are allowed with similar directions for statistical purposes.

032. In the result, all the four appeals filed by the learned Assessing Officer and CO filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 27.10.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.10.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar



Income Tax Appellate Tribunal, Mumbai