

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 1765/MUM/2022
(Assessment Year 2013-14)

ITA No. 1764/MUM/2022
(Assessment Year 2010-11)

ITA No. 1767/MUM/2022
(Assessment Year 2008-09)

DCIT Central Circle-7(2)
Room No. 655, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai- 400 080

Vs.

Netalter Software Ltd
5, 2nd Floor, Jalaram
Niwas, Ganesh Gawade
Road, Mulund (West),
Mumbai- 400 080

(Appellant)

(Respondent)

PAN No. AACCN1053B

Assessee by : Shri. Rajiv Khandelwal, CA
Revenue by : Dr. Mahesh Akhade, CIT DR.

Date of hearing: 10.11.2022
Date of pronouncement: 21.11.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are three appeals filed by DCIT Central Circle 7(2) Mumbai (The Ld. AO) for A.Y. 2008-09, 2010-11 and 2013-14 in case of Netalter Software Limited[Assessee]

against the appellate order pass by CIT(A) 49, Mumbai [the Id. CIT (A)] on 28.04.2022.

02. Identical ground of appeal is raised in all these appeals as under:

ITA No. 1765/MUM/2022

(Assessment Year 2013-14)

"i. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deciding that the assessment u/s 153C was done solely on the basis of statement recorded under section 132(4) of the Act by ignoring the fact that statement recorded under section 132(4) of the Act has an evidentiary value and is an incriminating material on the basis of which the revenue can rely to do additions in case of the assessee.

ii. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has failed to discuss the merits of the case wherein the assessee has brought its unaccounted income into its books of account."

ITA No. 1764/MUM/2022

(Assessment Year 2010-11)

"i. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deciding that the assessment u/s 153C was done solely on the basis of statement recorded under section 132(4) of the Act by ignoring the fact that statement recorded under section 132(4) of the Act has an evidentiary

value and is an incriminating material on the basis of which the revenue can rely to do additions in case of the assessee.

ii. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has failed to discuss the merits of the case wherein the assessee has brought its unaccounted income into its books of account."

ITA No. 1767/MUM/2022
(Assessment Year 2008-09)

"i. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deciding that the assessment u/s 153C was done solely on the basis of statement recorded under section 132(4) of the Act by ignoring the fact that statement recorded under section 132(4) of the Act has an evidentiary value and is an incriminating material on the basis of which the revenue can rely to do additions in case of the assessee.

ii. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has failed to discuss the merits of the case wherein the assessee has brought its unaccounted income into its books of account."

03. The facts show that, assessee is a company showing its business of software development filed its original return of income for A.Y. 2008-09 on 18.09.2008 at ₹ Nil. Subsequently, search under section 132 of the Act took place in Thakkar and Ashar group on 05.07.2017.

Subsequently, notice u/s 153C was issued on 26.09.2019 in response to which return of income was filed on 12.12.2019 at ₹ Nil.

04. At the time of search survey was also carried out at the office of the assessee and no such company was found to be existing. Somebody else was found residing at that place. On perusal of the financials, it was found that assessee has received a share premium of ₹ 05,53,59,100/- during the assessment year. One of the Director Shri. Kirit Nagda in his statement on oath admitted that the share valuation was not genuine. When another Director Mr. D.A. Thakkar was confronted with the above statement, he expressed ignorance. Based on this, the AO issued show cause notice that why the share premium of ₹5.50Crores should not be added as unexplained cash credit.
05. Assessee in reply submitted that presently though there is no business activity conducted by the assessee. Further, during the year only ₹02,26,71,075/- is received and cumulative balance as on 31.03.2018 is ₹ 05,50,53,100/-. Assessee submitted name, address, PAN, cheque details of the share application receipt was shown. Assessee also stated that, statement of Mr. Kirit Nagda is in incorrect as he is only an Independent Director and does not know the day to day affairs of the company. It was stated that, Shri. D.A. Thakkar was not at all a director. It was also stated that Shri. Kirit Nagda has acted fraudulently, and his statement cannot be relied upon. The assessee referred to

that statement. It was stated that in the end, company is in the business of software development and developed various software products. It has No. of applications and is planning of public issue and 'Draft Red Herring Prospectus' was also filed with SEBI.

06. The learned AO rejected the submission of the assessee and held that the company does not have any substance as well as the investors namely 15 companies are also bogus and therefore, he made an addition of ₹05,50,53,100/- by assessment order u/s 143(3) r.w.s. 143C of the Act on 31.12.2019.
07. Assessee aggrieved with the assessment order preferred an appeal before CIT(A), 49, Mumbai who held that the addition is made in the hands of the assessee only on the basis of statement of Shri. Kirit Nagda and Mr. D.A. Thakkar. He held that as on the date of search impugned A.Y. was concluded assessment which could have been disturbed only based on the incriminating material found during search. As the statement cannot be considered as incriminating material, the addition made by the Ld. AO is without any incriminating material, hence, the addition was deleted. Several judicial precedence was relied upon. Accordingly, by the appellate order dated 28.04.2022 the addition was deleted.
08. On identical facts and circumstances for A.Y. 2010-11 return of income filed on 17.09.2010 at ₹Nil was assessed u/s 153C by assessment order dated 31.12.2019 making the addition of ₹2,76,00,000/- with respect to the 4

individuals found investing in share capital of the company and on appeal by order dated 28.04.2022. Same was deleted in absence of any incriminating material.

09. Similarly, for assessment year 2013-14, basis on our return of income filed on 23.09.2013 at ₹01,64,79,070/- was assessed at ₹43,45,931/- wherein the addition of ₹ 02,08,25,001/- was made with respect to loan received from 3 entities during the year which were deleted on appeal before the learned CIT(A) by order dated 28.04.2022 in absence of incriminating material.
010. Therefore, for this reason for all these years, the learned AO is in appeal. The Departmental Representative supported the order of the Ld. AO and submitted that statement of Mr. Kirit Nagda is an incriminating material and therefore, the Ld. CIT(A) is not correct in deleting the addition.
011. The learned authorized representative vehemently supported the order of the Ld. CIT(A).
012. We have carefully considered the rival contentions and pursued the order of the lower authorities. All three above assessment orders were concluded assessment at the time of search. Therefore, these assessments can only be disturbed only if incriminating material is found during the search. In this case, admittedly there is no material with respect to the addition made were found during search . The only reason for making the addition is statement of one Shri. Kirit Nagda who accepted that the loans and



share capital are not genuine. The assessee stated that Mr. Kirit Nagda is an Independent Director and does not know about day-to-day activities of the assessee company. Even otherwise, merely on the statement of a third party, addition could not have been made. Hon'ble Delhi High Court has categorically held in case of Best Infrastructure Limited [397 ITR 82] that statement of a third party cannot be considered as incriminating material for making addition in the hands of the assessment. Similar Views are expressed by hon Bombay High court in CIT V Rakesh Ramani 94 taxmann.com 461 , Honourable Madras High court in CIT v Jaya Lakshmi Ammal 390 ITR 189 and Honourable Andhra Pradesh High court in CIT V Ramdas Motor Transport Limited 238 ITR 177 [AP] Further, even the statement do not have any connecting material with the addition made. In view of this, we do not find any merit in all these three appeals filed by the learned AO.

013. Accordingly, the order of the learned CIT(A) in all these three appeals are confirmed.

014. All three appeals of the learned AO are dismissed.

Order pronounced in the open court on 21.11.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Mumbai, Dated: 21.11.2022

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