

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **105, 106, 107, 108, 109, 110 &  
111/CHNY/2022**

निर्धारण वर्ष/Assessment Years: 2007-08 , 2008-09, 2009-10,  
2010-11, 2011-12, 2012-13 & 2013-14

**Lokesh Secfin Pvt. Ltd.,**  
No.6/13, North Avenue,  
Kesavaperumalpuram,  
Chennai – 600 028.

**The ACIT,**  
Vs. Central Circle - 2(3),  
Chennai.

**PAN : AAACL 2189C**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri B. Ramakrishnan, FCA  
: Shri Guru Bashyam, CIT

सुनवाई की तारीख/Date of Hearing

: 02.11.2022

घोषणा की तारीख/Date of Pronouncement

: 25.11.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

All these seven appeals by the assessee are arising out of, one common order of the Commissioner of Income Tax (Appeals)-19, Chennai for the assessment years 2007-08 to 2012-13 in ITA Nos.336, 337, 192, 193, 398 & 194/2019-20 dated 10.01.2022 and

one separate order for assessment year 2013-14 in ITA No195/2019-20 dated 10.01.2022. The assessments were framed by the ACIT, Central Circle 2(3), Chennai for the assessment years 2007-08 to 2013-14 u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961, (hereinafter 'the Act') vide orders of even date 30.03.2015.

**ITA Nos.105, 106, 109, 110 & 111/CHNY/2022**

2. The common issue in this set of 5 appeals in ITA Nos.105, 106, 109, 110 & 111/Chny/2022 is as regards to the order of CIT(A) confirming the returned income, as declared by assessee in its returns of income as 'income from unexplained sources' in assessment years 2007-08, 2008-09, 2011-12, 2012-13 & 2013-14. Apart from confirming the returned income in assessment years 2011-12 & 2013-14, the CIT(A) also confirmed the action of AO in making investments of Rs.2,19,26,760/- in assessment year 2011-12 and Rs.2,00,000/- in assessment year 2013-14 by the assessee company in the share capital of SBQ Steels Ltd., as 'income from unexplained sources'.

3. At the outset, the Id.AR for the assessee simply made submission that that AO made addition in these five years what is returned income i.e., in AY 2007-08, the returned income is

Rs.23,819/-, in AY 2008-09, the returned income of Rs.29,000/-, in AY 2011-12, the returned income of Rs.74,700/-, in AY 2012-13, the returned income of Rs.37,560/- and in AY 2013-14, the returned income of Rs.21,940/- was added by the AO and confirmed by the CIT(A). He stated that this income was already disclosed by assessee in the original return for assessment years 2007-08, 2008-09, 2011-12 & 2012-13 and hence, double addition should not be sustained. As regards to assessment year 2013-14, the Id.AR has made no arguments. To this preposition, the Id.CIT-DR could not make any argument but, he argued that once assessment is open, it has to be added.

4. Having heard rival contentions, we noted that a search u/s.132 of the Act was conducted in the SBQ Steel group of cases i.e., RKKR Steel Ltd., group of cases on 26.09.2012. Consequently, notice u/s.153A of the Act was issued and assessments were completed u/s.143(3) r.w.s.153A of the Act on 30.03.2015. In these assessment years, assessee has filed original returns of income before the search and declared the returned income, which was again reiterated or re-declared while filing returns of income in response to notice u/s.153A of the Act. We noted that the admitted position is that in original returns, in these years, the assessee has

returned this income and hence, the same cannot be added in these assessments. There cannot be double addition and hence, we delete these additions and allow this common ground for these five appeals. We direct the AO accordingly.

5. Coming to ITA Nos.109 & 111/CHNY/2022, the assessee had challenged the addition of investment made in share capital of SBQ Steels Ltd., by AO as unexplained income u/s.68 of the Act, for assessment year 2011-12 at Rs.2,19,26,760/- and for assessment year 2013-14 at Rs.2,00,000/-.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that a search action u/s.132 of the Act was undertaken in the assessee's group cases i.e., SBQ Steels Ltd., and RKKR Steels Ltd., as well as another group of cases Growell Hire Purchase and Finance Ltd., on 26.09.2012. During the course of search, certain incriminating material was found from the premises of SBQ Steels Ltd., i.e., the details of investment in share capital of its group company, the SBQ Steels Ltd., of Rs.2,19,26,760/- in assessment year 2011-12 and Rs.2,00,000/- in assessment year 2013-14 and the AO after considering the enquiry conducted by the investigation wing and that these investments are

out of sale proceeds of alleged share from shell companies of Kolkata, providing accommodation entries on commission basis, the

AO noting the following facts confirmed the addition:-

- (i) The assessee did not have the share capital and share premium. Their existence was not proved beyond doubt.
- (ii) The assessee did not have the capacity to command share premium as it did not have any asset backing of any kind and income of scale.
- (iii) The existence of share investments were not proved beyond doubt. Hence, the claimed sale proceeds are receipts originated from unknown sources. The only evidences were photo copies of self-made computer printed invoices whose genuineness was not proved.
- (iv) The erstwhile Directors were never produced before this office. No contact particulars, communication details were furnished. Hence, these so called Directors are only name lenders who could not be traced.
- (v) The assessee as well as its group companies did not explain how they came to know each other. Only vague replies were furnished. Hence, genuineness of the claimed business transactions, was not proved.
- (vi) Further No capital gains were ever offered. If these companies were really dealing in share investments, particularly as unquoted equities were not exempt from tax, the requisite evidences to prove the cost as well as sale price valuations must have been kept. Lack of them only point to the fact such activities were not carried out in reality.
- (vii) Complete financial documents for earlier years (beyond A.Y:2007-08) were not furnished to evidence the scale of the activities of the assessee and other similar companies.
- (viii) The alleged share holder companies as well as companies whose share investments were statedly held were all un-listed companies based at Kolkata and many share the same address.

24. In view of the above, it is held that the assessee company is only a shell/paper company. As the explanation offered by the assessee as well its group concern M/s. SBQ Steels Ltd., are not satisfactory, as described above, the claim of receipt of sale proceeds of share investments are not considered genuine. They are assessee's income from un disclosed sources. Hence, this sum of Rs.2,19,26,760/- is charged to the income of the assessee for the year. As the assessee could not establish whether any business activity was carried out, the claim of loss is disallowed/income returned is held as the income

undisclosed sources and accordingly the total income and tax payable are computed as below:

Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO.

6.1 Now before us, nothing was produced to prove that the investment in shares of SBQ Steels Ltd., of Rs.2,19,26,760/- in AY 2011-12 and Rs.2,00,000/- in AY 2013-14 is out of the explained investment. Since the assessee could not produce anything before us, this common issue in both the years is dismissed. The orders of the lower authorities on this issue are confirmed.

7. Accordingly, the appeals of the assessee for the assessment years 2007-08, 2008-09, & 2012-13 are allowed and for assessment years 2011-12 & 2013-14 are partly allowed.

### **ITA Nos.107 & 108/CHNY/2022**

8. The first common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in confirming the addition of returned income of Rs.35,940/- for assessment year 2009-10 and Rs.70,330/- in assessment year 2010-11.

9. At the outset, the Id.AR for the assessee simply made submission that that AO made addition in these two years what is returned income. That is, in AY 2009-10, the returned income of Rs.35,940/- and in AY 2010-11, the returned income of Rs.70,330/-, was added by the AO and confirmed by the CIT(A). He stated that this income was already disclosed by assessee in the original return for assessment years 2009-10 & 2010-11 and hence, double addition should not be sustained. To this preposition, the Id.CIT-DR could not make any argument but, he argued that once assessment is open, it has to be added.

10. Having heard rival contentions, since we have decided the issue for earlier years in para 4 above, taking a consistent view that there cannot be double addition and hence, we delete these additions and allow this common ground for these two appeals also. We direct the AO accordingly.

11. The second issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.16.19 crores in assessment year 2009-10 and Rs.45.24 crores in assessment year 2010-11, on account of investments made in

share capital of SBQ Steels Ltd., treating the same as 'income from undisclosed sources'.

12. Brief facts are that for these two assessment years, the assessee company made investments in the share capital of SBQ Steels Ltd., amounting to Rs.16.19 crores and Rs.45.24 crores out of the sale proceeds of investment sold by assessee in other companies. The assessee before us, before CIT(A) and before AO pleaded the following:-

“a) Income returned cannot be treated as income from undisclosed sources. In support of this the appellant furnished the audited financials of the appellant company and had submitted the bank statement reflecting the investment.

b) In the written submission it has been claimed that the appellant company sold its investments held in various unquoted securities and claimed that the documentary proof like bank statement and the annual statement filed with ROC were duly submitted to the AO. It has been pleaded that the document and submissions were not considered by the AO. In addition to the above the appellant has filed the detailed written submission by submitting the various issues already narrated in the grounds of appeal.

c) The addition in this case was made on protective basis and the addition in the case of M/s SBQ Steels Ltd was made substantively. The Commissioner of Income Tax (Appeals) has deleted the addition in the case of M/s SBQ Steels Ltd. It has been pleaded that the addition made in M/s SBQ Steels Ltd as substantive basis was deleted, the addition made in the hands of the appellant on protective basis requires to be deleted.

But, the CIT(A) noted that the investigation wing as well as the AO brought on record, how the assessee company had chosen to invest in share capital of SBQ Steels Ltd., and other companies after the

director's family members became director of the assessee company and its concerns. The AO noted that the shell companies controlled by the sub-entry operators through whom the assessee alleged to have sold the shares of other concerns and made investment in SBQ Steels Ltd. According to CIT(A), the assessee has received these investments from these operators who provided accommodation entries to various beneficiaries for a commission of 30 paise per Rs.100 and hence, he confirmed the additions made by AO by holding that the assessee has produced only bank statement and has not discharged the burden imposed u/s.68 of the Act, in regard to identity, creditworthiness and genuineness of transaction. Aggrieved, assessee came in appeal before the Tribunal.

14. Now before us, the Id.AR for the assessee filed paper books containing the details of investments sold by assessee and made investment made in equity capital of SBQ Steels Ltd for the relevant assessment years 2009-10 & 2010-11. The assessee has filed various paper-books containing the following details:-

Sl. No.	Particulars
1	Break-up of Investments made by each company
2	Financial Statements of M/s.Ojasvi Motor Finance Private Limited for AY 2012-13
3	Financial Statements of M/s.Chandan Credits Limited for AY 2009-10
4	Financial Statements of M/s.Fateh Leasing and Finance Private Limited for AY 2010-11

5	Financial Statements of M/s.Gugnani Leasing & Hire Purchase Private Limited for AY 2011-12
6	Financial Statements of M/s.Rai Shares & Securities Private Limited for AY 2009-10
7	Financial Statements of M/s.Rai Shares & Securities Private Limited for AY 2011-12
8	Financial Statements of M/s.Rajiv Shares & Securities Private Limited for AY 2009-10
9	Financial Statements of M/s.RKKR Holdings Private Limited for AY 2009-10
10	Financial Statements of M/s.RKKR Holdings Private Limited for AY 2011-12
11	Financial Statements of M/s.RKKR Holdings Private Limited for AY 2012-13
12	Financial Statements of M/s.Shantananda Steels Private Limited for AY 2012-13
13	Financial Statements of M/s.SBQ Steels Limited for AY 2010-11
14	Financial Statements of M/s.SBQ Steels Limited for AY 2012-13
15	Financial Statements of M/s.SBQ Steels Limited for AY 2013-14

When these papers were confronted, the Id.CIT-DR also filed paper-books consisting of 1000's of pages and 6 - 7 in numbers too and he also drew our attention to only one of the Revenue's paper-book wherein the AO's report in pages 1 to 35, wherein complete details of the entire group is filed. When it was pointed out to Id.AR for the assessee, the Id.AR as well as Id.CIT-DR stated that neither the report of the AO nor the evidences filed by the assessee before us were examined by neither AO nor CIT(A) and in such circumstances, we are left with no alternative except to remand this common issue of both the years to the file of the AO for fresh adjudication after considering the financial statements, bank accounts of the assessee

company and the bank account of the company to whom the assessee has sold the investments, from where the assessee has liquated the capital and made investment in SBQ Steels Ltd. These facts need a total verification and at this stage, it is not possible to verify the same. Hence, these two appeals are set aside and matter remanded back to the file of the AO for fresh adjudication on this issue. Accordingly, these appeals are partly-allowed for statistical purposes.

15. In the result, the appeals filed by the assessee in ITA Nos.105, 106 & 110/CHNY/2022 are allowed, ITA Nos.109 & 111/CHNY/2022 are partly allowed and ITA Nos.107 & 108/CHNY/2022 are partly allowed for statistical purposes.

Order pronounced in the open court on 25<sup>th</sup> November, 2022 at Chennai.

Sd/-  
(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(महावीर सिंह)  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated, the 25<sup>th</sup> November, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त) अपील(/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |