

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.468 /Mum/2018
(A.Y.2009-10)**

DCIT, CC-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400 021	Vs.	M/s Vedisa Properties Limited, 324, Master Mind- IV, Royal Palms, Aarey Milk Colony Goregaon East, Mumbai - 400 065
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCV3199B		
Respondent	..	Appellant

**ITA Nos.471/Mum/2018
(A.Y.2009-10)**

DCIT, CC-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400 021	Vs.	M/s Jogia Properties Limited, 324, Master Mind- IV, Royal Palms, Aarey Milk Colony Goregaon East, Mumbai - 400 065
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACJ9910H		
Respondent	..	Appellant

**C.O. No.192/Mum/2018
(Arising Out ITA No.468/Mum/2018)
(A.Y.2009-10)**

Vedisa Properties Limited, 324, Master Mind- IV, Royal Palms, Aarey Milk Colony	Vs.	DCIT, CC-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point,
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Goregaon East, Mumbai – 400 065		Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCV3199B		
Respondent	..	Appellant

C.O. No.195/Mum/2018
(Arising Out ITA No.471/Mum/2018)
(A.Y.2009-10)

Jogia Properties Limited, 324, Master Mind- IV, Royal Palms, Aarey Milk Colony Goregaon East, Mumbai – 400 065	Vs.	DCIT, CC-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACJ9910H		
Respondent	..	Appellant

Appellant by :	Vijah Mehta
Respondent by :	Achal Sharma

Date of Hearing	10.11.2022
Date of Pronouncement	30.11.2022

आदेश / O R D E R

Per Bench:

Both the appeals filed by the assessee in the case of Vedisa & Jogia Properties and Cross Objection Nos. 192 & 195/Mum/2018 are based on identical facts on similar issue, therefore, for the sake of convenience all these appeals are adjudicated together by taking the ITA No. 468/Mum/2018 as lead case and its finding will be applied mutatis mutandis to ITA No.471/Mum/2018. The revenue has raised the following grounds before us:

“Without on the facts and in the circumstances of the case and in law, the Ld. 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 Ltd. has not reached finality.”

2. The fact in brief is that return of income declaring income of Rs. nil was filed u/s 139(1) of the Act on 24.09.2009. The search action u/s 132(1) of the Act was conducted in the case of Jogia Group on 04.03.2010. In response to notice u/s 153A, the return of income was filed on 26.02.2011 declaring total income of Rs. Nil. The assessment u/s 143(3) r.w.s 153A of the Act was completed on 26.12.2011 determining the total income of the assessee at Rs.7,75,00,000/-. Subsequently, provision of Sec.147 of the Act was invoked on the basis of information received from the investigation wing and notice u/s 148 of the Act dated 21.03.2014 was served on 28.03.2014. In response the assessee vide letter dated 02.04.2014 requested the A.O to treat return filed u/s 153A filed in response to the notice issued u/s 148 of the Act. The fact related to issuing of notice u/s 148 of the Act is that survey action u/s 133A of the Act was conducted in the Loyd & Jogia Group on 19.12.2012 by the investigation wing of the department. It was found that during the assessment year 2009-10 the assessee had invested an amount of Rs.17,75,00,000/- as share application money in M/s Shree Global Tradefin Ltd. During the survey it was seen that the assessee had received money from the following companies during the assessment year 2007-08 to 2009-10. The detail given in the assessment order is reproduced as under:

Sr. No.	Name of the company	Amount (in Rs.)
1.	M/s Artillage Bio-innovations Ltd.	3,70,00,000
2.	M/s Bay Inland Finance Pvt. Ltd.	25,00,000
3.	M/s Bhaskar Fund Management Pvt. Ltd.	1,00,00,000
4.	M/s Clifton Securities Pvt. Ltd.	95,00,000
5.	M/s Delton Exim Pvt. Ltd.	1,00,00,000
6.	M/s Doldrum Investment and Finance Pvt. Ltd.	1,85,00,000

7.	M/s Gateway Computers Pvt. Ltd.	1,95,00,000
8.	M/s Gromore Fund Management Co. Pvt. Ltd.	2,00,00,000
9.	M/s Gyaneshwar Trading & Finance Pvt. Ltd.	3,20,00,000
10.	M/s Ispat Sheets Ltd.	3,20,00,000
11.	M/s Kirti Electro System Pvt. Ltd.	1,00,00,000
12.	M/s New Outlook Securities Ltd.	35,00,000
13.	M/s Nicco Securities Pvt. Ltd.	35,00,000
14.	M/s Novelty Traders Limited	2,50,00,000
15.	M/s Oshin Investment & Fin Pvt. Ltd.	1,90,00,000
16.	M/s Shakti Ispat Products Pvt. Ltd.	1,85,00,000
17.	M/s Shivilaxmi Exports Ltd.	35,00,000
18.	M/s Sidh Housing Development Co. Ltd.	3,80,00,000
19.	M/s Stocknet International Ltd.	1,25,00,000
20.	M/s Super Finance Limited	25,00,000
21.	M/s Tricon Business Pvt. Ltd.	2,00,00,000
22.	M/s WilcoFinexim Pvt. Ltd.	50,00,000
23.	M/s Alka Diamond	2,00,00,000
24.	M/s Javda India Impex Ltd.	2,00,00,000
25.	M/s Terry Towel Ind Ltd.	2,75,00,000
26.	M/s Yash V Jewels Ltd.	1,55,00,000
	Total for AYs 2007-08 till 2009-10	43,50,00,000

It was also found that most of these companies from whom the assessee had received the funds were managed by Shri Mukesh Choksi C.A. whose statement was recorded u/s 132(4) on 25.11.2019 and 26.11.2019. During the course of search and in the case of Mahasagar Securities Pvt. Ltd. wherein he admitted that he was running over 40 companies and all these companies were engaged in the business of issuing of bogus share application money. In his statement he had also stated that accommodation entries were provided to the assessee in lieu of cash received from Shri Babulal Aggarwal M.D. of Loyd Group. During the course of survey proceedings the director of the group accepted the above facts and accepted that unaccounted income generated was invested in Shree Global Tradefin Ltd. During survey statement of Shri Om Hari Halan was also recorded on 19.11.2012 and he admitted that he solely controlled all the 14 companies including Jogia Proprietary group concern. He admitted that funds were routed through these companies to Make investment in Shree Global Tradefin Ltd. Further

statement of Shri Mukesh Choksi C.A was also recorded u/s 131 on 16.01.2013 and during the survey proceedings he admitted that he had arranged accommodation entries in the form of unsecured loan to Jogia Group concern on the instruction of Shri Babulal Aggarwal from Loyd Group. Therefore, the assessee was show caused to explain that why sum of Rs.17,75,00,000/- should not be added in the hands of assessee. The assessee explained that assessment u/s 153A r.w.s 143(3) was already completed in its case. Out of share application money of Rs.17,75,00,000/-, the share application money to the extent of Rs.10 crores was considered as genuine and balance share application money of Rs.7.75 crores received from 5 parties were taxable in the hands of the assessee u/s 68 of the Act by the assessing officer. It was further submitted that it had already submitted the relevant detail during the proceedings u/s 153A of the Act. However, the A.O has not agreed with the assessee. He referred the statement of Shri Om Hari Halan stating that he was unable to prove the genuineness and creditworthiness of the various companies. He also stated that assessee company could not establish the genuineness of the investor companies. Shri Mukesh Choksi in his statement on 19.12.2012 admitted that he had arranged accommodation entries in the companies of Jogia Group including the assessee company against the equivalent amount of cash received through different companies. However, on protective basis the AO added the entire amount of Rs.17.75 crores u/s 68 to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has adjudicated the appeal for assessment year 2007-08 to A.Y. 2009-10 in the combined order dated 17.11.2017 and deleted amount of addition by common finding of ld. CIT(A) as reproduced 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 SOTL. The assessing officer was queried on this and he has reported that the additions in the case of Jogin 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.”

The Id. CIT(A) has mainly held that logically the said amount has already assessed on substantive basis in the hands of Shree Global Tradefin Ltd. and the Jogia Group entities were merely conduit entities for routing the money to Shree Global Tradefin Ltd.

4. During the course of appellate proceeding before us the Id. D.R. has supported the order of Assessing officer.

On the other hand, the Id. Counsel contended that impugned share application has already been assessed in the hands of Shree Global Tradefin Pvt. Ltd. on substantive basis since only the impugned money was routed through the assessee company for ultimately making investment in the Shree Global Tradefin Ltd. The Id. Counsel also submitted that Shri Babulal Aggarwal and Shri Om Hari Halan has categorically admitted that unaccounted money was brought into Shree Global Tradefin Pvt. Ltd. The Id. Counsel has also supported the order of Id. CIT(A).

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated supra, that all the 14 companies including Jogia Proprietary Group and assessee company were opened to

route the funds from the investing company to Shree Global Tradefin Ltd. As per survey action u/s 133A conducted in the case of M/s Loyd Steel Industry Ltd. and Jogia Group Company, the assessee was one of the company through it the funds were routed to invest share application money in M/s Shree Global Tradefin Ltd. Shri Babulal Aggarwal has given cash to Mukesh Choksi to obtain accommodation entries of share capital from the concern of Mukesh Choksi which was routed through 14 concern including the assessee in turn invested in M/s Shree Global Tradefin Ltd. Shri Mukesh Choksi admitted in his statement that accommodation entries through his 40 companies were provided in lieu of cash received from M/s Babulal Aggarwal M.D. of M/s Loyd Group. The ld. CIT(A) has discussed at para 8.4 of his order that M/s Shree Global Tradefin Ltd. has received credit from 14 entities including the assessee. At para 8.5 of his finding the ld. CIT(A) discussed that amount was received from 54 entities of Mukesh Choksi to the 14 entities (including the assessee) closely associated with Shree Global Tradefin Ltd. and ultimately the amount was invested in the Shree Global Tradefin Ltd. At para 8.9 of the order the ld. CIT(A) elaborated that assessee and other entities of Jogia Group were merely conduit for transferring money to Shree Globale Tradefin Ltd. almost immediately. At para 8.3 ld. CIT(A) stated that Shri Babulal Aggarwal and Shri Om Hari Halan admitted for bringing the unaccounted money into Shree Global Tradefin Ltd. We find that on similar fact and identical issue the coordinate bench of the ITAT, Mumbai had adjudicated the cases of other group companies listed along with assessee in the 14 companies i.e. Cikura Properties Ltd. Archive Reality Development Ltd. ad Reva Properties Ltd. The relevant part of the decision of ITAT in the case of

DCIT Vs. Archive Reality Development Ltd. vide ITA No. 456/Mum/2018 dated 06.07.2022 is reproduced as under:

“22. Coming to the grounds raised by the revenue, considered the rival submissions and material placed on record, we observe that the assessee is a group company of Jogia Group and invested a sum of ₹.43.5 Crores. The assessee received the equivalent sum from 25 companies as share application money and passed on the same to M/s. Shree Global Tradefin Ltd. immediately as advance which was later on converted into share capital. The Assessing Officer as well as CIT(A) recorded a finding that 25 companies who invested in the assessee company are included in the list of said 53 investor companies which have advanced money to 14 companies including the assessee and same amount has been transferred by all 14 companies including the assessee to one company namely M/s.Shree Global Tradefin Ltd. Thus, the amounts have been transferred by 14 companies including assessee to M/s. Shree Global Tradefin Ltd., and the flow of funds are clearly evident and discernible. As such, there is no doubt as to the source of money. The Assessing Officer added ₹.43,50,00,000/- u/s 68 of the Act on protective basis in the hands of the assessee and simultaneously similar addition of ₹.43,50,00,000/- was made to the income of Shree Global Tradefin Ltd. on substantive basis on the ground that source of money was not proved. The Assessing Officer also added to the income of the assessee, commission @ 3% on the total investments in Shree Global Tradefin Ltd., and accordingly addition of ₹.1,30,50,000/- was also made. Both these additions were deleted by ld.CIT(A) by holding that the assessee is a pass through entity whereas the addition was confirmed in the hands of M/s. Shree Global Tradefin Ltd. Pertinent to note that in the appellate proceeding, the Tribunal deleted the addition in the case of Shree Global Tradefin Ltd., in ITA No. 7310 to 7313/Mum/2017, vide order dated 15.10.2019 and there is no finding by the Coordinate Bench that the said amount of ₹.43.50 Cr belongs to the present assessee. We note from the perusal of the order of coordinate bench that the addition in the case of M/s. Shree Global Tradefin Ltd. has been deleted on merit. We observe form the submissions that the Coordinate Bench has considered the similar issue in the case of Chikura Properties ltd., in ITA.No. 457/Mum/2018 dated 06.08.2020 adjudicated as under: -

“.....Thus, the coordinate bench has not given any finding that the money belongs to the assessee. We also note that both the authorities below have recorded a findings of fact that there is one to one nexus between the funds received from 25 companies and advanced to M/S Shree Global Tradefin Ltd and the assessee is merely a conduit. As stated elsewhere in this order that in the case of the assessee, the addition was made on protective basis. The protective addition is always made whenever there is a doubt about the correct entity or correct assessment year. Thus, where there is a doubt as to whom the income belongs to, the addition is made in the hands of two persons, i.e. on substantive basis in the hands of one person and on protective basis in the hands of the other person. The protective addition would become substantive, only and only if substantive addition is deleted by the appellate authority on the ground that the

income belonged to the person in whose hands protective addition has been made. The protective addition does not survive if the substantive addition has been confirmed or substantive addition has been deleted on merits. In the present case before us the addition was made on protective basis while on substantive basis it was made in the case of M/S Shree Global Tradefin Ltd. The said substantive addition was deleted by the coordinate bench vide order dated 15.10.2015 passed in ITA No. 7310 to 7313/Mum/2017 dated 15.10.2018 on merits. In our considered opinion the protective addition has to go as the substantive addition was deleted on merits. We do not find any force in the arguments/written submissions of the ld. DR that where substantive addition is deleted the protective has to be restored to the AO as in the case of M/S Shree Global Tradefin Ltd assessment has not attained finality. We are therefore inclined to dismiss the appeal of the revenue by upholding the order of CIT(A)."

23. *Respectfully following the above said decision, we are also inclined to decide the issue in favour of the assessee and against the revenue Accordingly, the ground raised by the revenue is dismissed."*

The ITAT, Mumbai in the other group case of similar fact and issue in the case of DCIT vs. Reva Properties Ltd. vide ITA No. 458, 459 & 460/Mum/2018 dated 08.08.2022 has held as under:

"17. So far as the original ground of appeal is concerned, we notice that the identical issue has been decided by the coordinate bench in the case of Cikura Properties Ltd. wherein it has been held by the coordinate bench as under: -

"9. We have heard the rival contentions and perused the materials placed before us including the written submissions by both the sides and impugned order passed by ld. CIT(A). The undisputed facts are that the assessee is a group company of Jogia Group and invested a sum of Rs. 43.50 Crores in M/s. Shree Global Tradefin Ltd. The assessee received the equivalent sum from 25 companies as share application money and passed on the same to M/s. Shree Global Tradefin Ltd. immediately as advance which was later on converted into share capital. The A.O. as well as CIT(A) recorded a findings that 25 companies who invested in the assessee company are included in the list of said 53 investor companies which have advanced money to 14 companies including the assessee and same amount has been transferred by all 14 companies including the assessee to one company M/s. Shree Global Tradefin Ltd. Thus, the amounts have been transferred by 14 companies including assessee to M/s. Shree Global Tradefin Ltd., and the flow of funds are clearly evident and discernible. As such, there is no doubt as to the source of money. The AO added 43,50,00,000/- u/s. 68 of the Act on protective basis in the hands of the assessee and simultaneously similar addition of Rs. 43,50,00,000/- was made to the income of Shree Global Tradefin Ltd. on substantive basis on the ground that source of money was not proved. The A.O. also added to the income of the assessee, commission @ 3% on the

total investments in Shree Global Tradein Ltd., and accordingly addition of Rs. 1,30,50,000/- was also made. Both these additions were deleted by ld. CIT(A) by holding that the assessee is a pass through entity whereas the addition was confirmed in the hands of M/s. Shree Global Tradefin Ltd. Pertinent to note that in the appellate proceeding, the Tribunal deleted the addition in the case of Shree Global Tradefin Ltd., in ITA No. 7310 to 7313/Mum/2017, vide order dated 15.10.2019 and there is no finding by the Coordinate Bench that the said amount of Rs. 43.50 Cr belongs to the present assessee. We note from the perusal of the order of coordinate bench that the addition in the case of M/s. Shree Global Tradefin Ltd. has been deleted on merit. Thus, the coordinate bench has not given any finding that the money belongs to the assessee. We also note that both the authorities below have recorded a finding of fact that there is one to one nexus between the funds received from 25 companies and advanced to M/s. Shree Global Tradefin Ltd. and the assessee is merely a conduit. As stated elsewhere in this order that in the case of the assessee, the addition was made on protective basis. The protective addition is always made whenever there is a doubt about the correct entity or correct assessment year. Thus, where there is a doubt as to whom the income belongs to, the addition is made in the hands of two persons, i.e. on substantive basis in the hands of one person and on protective basis in the hands of the other person. The protective addition would become substantive, only and only if substantive addition is deleted by the appellate authority on the ground that the income belonged to the person in whose hands protective addition has been made. The protective addition does not survive if the substantive addition has been confirmed or substantive addition has been deleted on merits. In the present case before us the addition was made on protective basis while on substantive basis it was made in the case of M/s. Shree Global Tradefin Ltd. The said substantive addition was deleted by the coordinate bench vide order dated 15.10.2015 passed in ITA No. 7310 to 7313/Mum/2017 dated 15.10.2018 on merits. In our considered opinion the protective addition has to go as the substantive addition was deleted on merits. We do not find any force in the arguments/written submissions of the ld. DR that where substantive addition is deleted the protective has to be restored to the A.O. as in the case of M/s. Shree Global Tradefin Ltd., assessment has not attained finality. We are therefore inclined to dismiss the appeal of the revenue by upholding the order of CIT(A).”

18. *Since the issue involved in the present appeal filed by the Department are identical, therefore, respectfully following the above decision, the appeal filed by the Department is dismissed.”*

Respectfully following the above decisions and the fact that substantive additions has been adjudicated on merit in the case of M/s Shree Global

Tradefin Ltd. we don't find any merit in the appeal of the revenue, therefore the same stand dismissed.

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6. As the facts and the issue involved in this appeal are the same as supra in ITA No. 471/Mum/2018, therefore, applying the same findings mutatis mutandis, this appeal of the revenue is also dismissed.

C.O. 192 & 195/Mum/2018

7. Both the Cross Objection are based on similar issue and identical fact, therefore both the C.O. are adjudicated together.

8. Vide the cross objection the assessee has challenged the validity of reopening of assessment u/s 148 of the Act. In ground No. 2 of Cross Objection the assessee contended that notice issued u/s 148 was bad in law and condition of Sec. 147 were not specified. In Ground No. 3 of the Cross Objection it was submitted that A.O has changed his opinion since on same facts issues were concluded u/s 143(3) r.w.s 153C of the Act. In Ground No. 4 of Cross Objection the assessee contended that lower authorities had rejected the objection raised by the assessee in the reassessment proceedings without dealing with the issue raised by the assessee. In Ground No. 5 of the Cross Objection it is contended that the A.O wrongly relied upon the statement of Mr. Om Hari Halan, Mukesh Choksi and Babulal Aggarwal. The assessee has also furnished the copies of document i.e application for inspection dated 25.06.2018, A.O letter dated 12.07.2018, 13.03.2014, copy of Addl.CIT letter dated 18.03.2014 etc.

On the other hand, the ld. D.R has supported the order of ld. CIT(A) on this issue.

9. We have considered the rival submission and material placed on record and the recent decision of the ITAT in the case of group company of the assessee M/s Reva Properties Ltd. Vs. DCIT Vide C.O. No. 182-184/Mum/2018 dated 08.08.2022. Following the said decision we have already considered the issue on protective addition and substantive addition and adjudicated it in favour of the assessee and against the revenue, therefore, we are of the considered view that issue raised by the assessee in the Cross Objection become infructuous at this stage, therefore, we inclined to dismiss the ground raised by the assessee in the cross objection.

10. In the result, the appeal filed by the revenue are dismissed and the Cross Objection filed by the assessee also dismissed.

Order pronounced in the open court on 30.11.2022

Sd/-

(Amit Shukla)
Judicial Member

Place: Mumbai
Date 30.11.2022
Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.