

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 1469/DEL/2022 [A.Y. 2013-14]

M/s Pegasus Integrated Systems P Ltd  
16-D, Community Centre, Basant Lok  
Vasant Vihar, New Delhi

Vs. The A.C.I.T.  
Central Circle - 13  
New Delhi

PAN: AAGCP 7905 C

(Applicant)

(Respondent)

Assessee By : Shri Gaurav Jain, Adv  
Ms. Shweta Bansal, CA

Department By : Shri T.P. Kipgen, CIT- DR

Date of Hearing : 30.01.2023

Date of Pronouncement : 01.02.2023

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 26, New Delhi dated 02.06.2022 pertaining to Assessment  
Year 2013-14.

2. The grievances of the assessee read as under:

1. *The learned CIT(A) erred in law and on facts of the case the order passed by the assessing officer is bad, both in the eyes of law as the return of income for this assessment year was filed on 30/09/2013 which had been processed u/s 143(1) of the Act on 18/04/2014 with no notice u/s 143(2) of the Act and thus, this was a completed and not abated assessment year as on the date of search on 23/07/2015 and no addition could be made in absence of any incriminating material found during the course of search. Thus, the impugned assessment order is bad in law ab initio and must be so declared.*

2. *The learned CIT(A) erred in law and on facts in confirming the addition made by the Assessing Officer in respect of increase in share capital of the assessee to Rs. 2,00,00,000/- u/s 68 of the Act by ignoring that the said shareholder a group company has also been assessed by the same AO at the same time accepting sources of the said investment in its hands. Thus, the addition made on surmises and conjectures must be deleted.*

3. *The learned CIT(A) erred in law and on facts in confirming the addition made by the Assessing Officer in respect of unsecured loan of Rs. 10,00,000/- u/s 68 of the Act by ignoring that the said lender a group company has also been assessed by the same AO at the same time accepting sources of the said investment in its hands. Thus, the addition made on surmises and conjectures must be deleted.*

4. *The learned CIT(A) erred in law and on facts in confirming the addition made by the Assessing Officer in respect of unexplained expenditure of Rs. 2,10,000/- u/s 69C of the Act by*

*ignoring that no evidence of such expenses was found and the amounts were received from a group company, also been assessed by the same AO at the same time accepting sources of the said investment in its hands. Thus, the addition made on surmises and conjectures must be deleted.*

*5. The learned CIT(A) erred in law and on facts in Confirming the disallowance made for preliminary expenses of Rs. 80,861/- by ignoring the submissions and information placed on record. Thus, the addition made on surmises and conjectures must be deleted.*

*The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*

3. At the very outset, the ld. counsel for the assessee stated that the additions made by the Assessing Officer in the impugned assessment order are dehors of any incriminating material found at the time of search and, therefore, the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Kabul Chawla 380 ITR 573 squarely apply.

4. Per contra, the ld. DR vehemently stated that the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla [supra] is subjudice before the Hon'ble Supreme Court and

moreover, the facts of the case in hand do not support the decision relied upon by the ld. counsel for the assessee.

5. We have given thoughtful consideration to the orders of the authorities below.

6. Briefly stated, the facts of the case are that the assessee filed its return of income on 30.09.2013 for the impugned Assessment Year. Return was processed u/s 143(1) of the Act vide intimation dated 18.04.2014. Since the return was filed on 30.09.2013, notice u/s 143(2) of the Act was supposed to be served on or before 30.09.2014 to take return for scrutiny. Since no notice was issued and served, assessment stood completed for the impugned Assessment Year.

7. Search and seizure operation was conducted on 23.07.2015 and on subsequent dates, in different business and residential premises of Shri Deepak Agarwal and Shri Mukesh Kumar and other group of cases based at Delhi. It came to the knowledge of the department that this group is found to be a group of entry operators providing accommodation entries to beneficiaries.

8. The case of the assessee company was also under section 132 of the Act as one of the beneficiaries. Statement of the director of the assessee company was also recorded during the course of search and seizure operation and afterwards.

9. Statutory notices were issued and served u/s 153A of the Act, pursuant to which, the assessee filed its return of income declaring total income of Rs. 16,760/-. During the course of scrutiny assessment proceedings, the Assessing Officer sought clarification from the assessee in respect of share capital of Rs. 2 crores received from another group company TMR Projects [P] Ltd.

10. The statement of the director of the assessee company Shri Maninder Singh Sahni was recorded u/s 132(4) of the Act in which the director accepted that during the relevant previous year, TMR Projects Pvt Ltd was not doing any business and colourable transactions were effected through account of TMR Projects Pvt Ltd showing purchase and sales without any actual business using the services of entry providers Shri Mukesh Kumar and Shri Deepak Agarwal.

11. Drawing support from the statement of Shri Maninder Singh Sahni, the Assessing Officer concluded that the assessee could neither explain successfully the credit entry of Rs. 2 crores being share application money received from TMR Projects Pvt Ltd nor it could explain the credit of Rs. 10 lakhs from the same company. Having come to the conclusion that the assessee failed to discharge the onus cast upon it by provisions of section 68 of the Act, the Assessing Officer made addition of Rs. 2.10 crores u/s 68 of the Act and made further addition of Rs. 2.10 lakhs being alleged commission on obtaining accommodation entry of Rs. 2.10 crores.

12. Additions were challenged before the ld. CIT(A) but without any success.

13. We have given thoughtful consideration to the orders of the authorities below. The contention of the ld. counsel for the assessee is that the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Kabul Chawla [supra] squarely apply on the facts of the case. We have carefully gone through the assessment order. Except for the statement of Shri Maninder Singh Sahni, there is not even a whisper of any incriminating material found at the time of search.

Statement of Shri Maninder Singh Sahni has been extracted by the Assessing Officer in the body of his assessment order at pages 4 to 6. Question Nos. 28 and 29 and reply thereto are relevant for the issues under consideration and read as under:

**“Question.28.**

*Please provide the details of party wise purchases made under TMR Projects Pvt. Ltd. Specifying gross amount of purchase per party and substantiate the genuineness of the item claimed to have been purchased? Do specify and explain the sources of funds used for such purchases? Show the evidence with regard to the receipt of the goods used for such purchases as no such evidences have been found during the course of search operation of your office premises D-16, 1st & 2nd Floor, Basant Lok conducted on 23.07.2015 and today. It is also brought to your kind notice that the entities from which the purchase are claimed to have been made like Surya Metalloys Pvt. Ltd. , Rathi Steel Trading Company , Duke Sponge and. Iron Pvt. Ltd., Oyesler Steel and Iron Pvt. Ltd., Startle. Construction Pvt. Ltd., Daze Construction Pvt. Ltd., Bhavya Residency Pvt. Ltd., Tyagi Portfolio management Pvt. Ltd. etc are the entities which are being controlled and managed by Mr. Mukesh Kumar, Mr. Deepak Aggarwai i and their associates, Mr. Nem Chand Gupta and Mr. Rajender Dixit for providing accommodation entries through bank accounts maintained in the name of such entities. These entities have been found to be non existing and without any actual business activities of any sort, except for maintaining the j j bank accounts for layering accommodation entries.*

Answer

*A chart showing details of purchase and sale transactions carried out in M/s TMR Projects Pvt. Ltd. during the F.Y. 2012-13, 2013-14 and 2014-15 is being submitted for your kind perusal. At the very outset, it is clarified that all such sale and purchase transactions are carried out with the aid of Mr. Mukesh kumar and not only the purchase transactions as mentioned by our goodself in the question. It is clarified that Mr. Mukesh Kumar through Mr. Deepak Agarwal approached us and offered his services to undertake trading activities under the banner of our company. It was also offered that he will utilize his expertise to carry out trading transactions of various commodities which will result in income to the extent of 0.5% to 1% of the value of transactions as gross margin. In fact, the entire activity of trading transactions was carried out by him wherein the assessee company derived gross margin and after meeting the indirect expenses, the same was offered to tax. It is further reiterated that entire activity of trading was undertaken by the assessee company as per direction of Mr. Mukesh Kumar with a view to earn income. The entire activity of purchases and sales including generation of sales invoice and procurement of purchase bills was performed by him. All the parties wherefrom/ to purchases and sales were made as mentioned above belonged to him. It is also clarified that he use to collect receipts from sales and got payments made against purchase through bank accounts and none of the transactions was ever undertaken except through normal banking channel.*

*With regard to delivery of goods purchased and transportation used, it is again reiterated that all such transaction were carried out at the behest of Mr. Mukesh Kumar resulting into income to*

*the assessee company. Presuming without admitting, in case our goodself has any concern regarding genuineness of such transactions as conducted by Mr. Mukesh Kumar, then also no negative inference should be taken against the assessee company since the income if any, as generated from such activity has already been offered to tax. The return of income for the A.Y. 2015-16 is still to be pending and due for filing by 30.09.2015. / hereby undertake to disclose the income earned from such activity in the return of income to be filed for the A. Y. 2015-16.*

**Question 29.**

*Your reply to the previous question that it was Mukesh Kumar who was actually controlling the affair's and bank account of your company M/s TMR Projects P. Ltd. for alleged purchases and sale entries through the entities controlled, and managed by him in itself is an admission that there was no actual purchase and subsequent sale of any item took place as claimed. As such why it cannot be inferred that you are also his associate in the accommodation providing scandal?*

**Answer.**

*At the very outset it is clarify that Mukesh Kumar through Deepak Agarwal offered his services to carry out trading activities under the banner of my company M/s TMR Projects P. Ltd. Entire activities of purchase and sales including generation of invoices was performed by him, however banking transactions in the form of receipt of RTGS and payments through RTGS has been performed by director of the company. The bank account was also operated under the signature of Director. Other services of Mr. Mukesh Kumar are restricted to the extent of trading and generation of invoices as mentioned above in reply to Q. . It is*

*further clarified that I as well as my company is not associated with Mr. Mukesh Kumar and Mr. Deepak Agarwal in any manner. Even the sale and purchase transactions have been performed and payments were receipt and made at one level only and there is no involvement of any third party at any level.”*

14. A careful reading of the statement shows that there is nothing incriminating found or said by Shri Maninder Singh Sahni nor any adverse inference has been drawn by him in his statement. As mentioned elsewhere, the assessee had filed its return of income on 30.09.2013 accompanied by statement of account, which means that transaction of share application money of Rs. 2 crores and loan of Rs. 10 lakhs from TMR Projects Pvt Ltd must have been reflected in the return of income so filed. Therefore, it cannot be said that only after search and seizure operation filed, the Revenue came to know about share application money received by the assessee as there is no such mention in the body of the assessment order or in the body of the order of the first appellate authority.

15. We have the benefit of the assessment order of TMR Projects Pvt Ltd for Assessment Year 2013-14. The said assessment order is framed u/s 143(3) of the Act after thorough scrutiny and in the said assessment order, the same statement of Shri Maninder Singh Sahni has

been extracted which has been made the basis for making additions. In the entire assessment order framed after thorough scrutiny, there is no whisper about the transaction of Rs. 2.10 crores between TMR Projects Pvt Ltd and the assessee relating to the share application money and the loan.

16. Assessment of TMR Projects Pvt Ltd was completed by making addition of Rs. 15.07 lakhs being 1% of the commission earned on providing accommodation entries relating to sales. That addition was also deleted by this Tribunal in ITA No. 5771/DEL/2018 vide order dated 15.09.2021 wherein the Tribunal observed that addition is dehors of any incriminating material and the ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla [supra] squarely apply.

17. Since Rs. 2.10 crores has come from TMR Projects Pvt Ltd and since no addition has been made in the hands of the “giver” for want of incriminating material, the same transaction cannot be accepted as based upon any incriminating material in the hands of the “taker”, i.e the assessee.

18. Moreover, facts on record show that TMR Projects Pvt Ltd has received money from Tyagi Portfolio (P) Ltd and Mokul Overseas (P) Ltd and the loan received from Tyagi Portfolio (P) Ltd has been refunded by TMR Projects Pvt Ltd subsequently during the F.Y. itself. Therefore, on merits also, additions do not survive.

19. Be that as it may, facts clearly suggest that the ratio laid down by the Hon'ble High Court of Delhi in the case of Kabul Chawla [supra] squarely apply.

20. It would be pertinent to refer to the judgment of the Hon'ble Delhi High Court in the case of Kavita Agarwal 144 taxmann.com 404. The relevant observations of the Hon'ble High Court read as under:

*“ However, CIT(A) relying upon the statement of Sh. Madlto Gopal Agarwal confirmed the addition made by the AO and dismissed the appeal vide order dated 17<sup>th</sup> July, 2018. The assessee being aggrieved by the dismissal filed an appeal before ITAT. The order of the IT AT is a common order which has been passed in respect of six assessees pertaining to same search. The lead appeal determined by the IT AT is in the case of Shri Gopal Agarwal, however, no challenge to the said appeal is pending before this Court. It is stated by the learned counsel that the appeal may be in the process of filing or listing before the Registry.....*

8. *We have perused the statement dated 3<sup>rd</sup> August, 2015 and the contents of the letter dated 31<sup>st</sup> July, 2015, both authored by Sh. Madho Gopal Agarwal. There is no reference to M/s KGN Industries Limited in either of the said documents. No other material found during search pertaining to M/s KGN Industries Ltd. has been placed on record. The Revenue has not placed on record any incriminating material which was found as a result of the search conducted on the assessee herein. It is also the contention of the assessee that there was no surrender by her unlike Sh. Madho Gopal Agarwal and she, therefore, specifically disputed that any notice under section 153A of the Act could have been initiated against her. The said facts are not disputed by the counsel for the Revenue.*

9. *On the date of search, admittedly, the assessment with respect to the AY under consideration 2011-12 admittedly stood completed. Since no assessment was pending for the relevant AY 2011-12 on the date of search and no incriminating material was found during the course of search, the issue is covered in favour of the assessee by the judgment of this Court in the case of Kabul Chawla (supra) and Pr. CIT v. Meeta Gutgutia [2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526/295 CTR 466 (Delhi)....”*

21. Again, in the case of Agson Global (P) Ltd 134 taxmann.com, the Hon'ble Delhi High Court held as under:

*“11. Therefore, having regard to the aforesaid observations made in Kabul Chawla case (supra) the only aspect that the Tribunal had to examine was whether the statement made by Mr Arpesh Garg, Managing Director of the assessee under section 132(4) of*

*the Act and the photocopies of the documents found during the search and seizure action constituted incriminating material.*

*11.1 The Tribunal, in our view, has correctly analysed the statement of Mr Arpesh Garg. The statement does not allude to the fact that the assessee had introduced “unaccounted money ” in the form of share capital/share premium through investor .entities. The retraction letter, as noted by the Tribunal, also did not advert to the introduction of investment of money in the assessee in the form of share capital/share premium.*

*11.3. Thus, having regard to the aforesaid, we concur with the view of the Tribunal that assessments concluded in respect of Ays 2012-2013, 2013-2014 and 2014-2015 under section 143(3) of the Act could not be disturbed, as no incriminating material was found.*

*11.4 Besides this, on merits, the Tribunal, after detailing out in paragraph 76 of the impugned order the trail of the money received from various entities in the form of share capital/share application money, concluded that the assessee had been able to place before the A.O. sufficient documentary evidence which established that the money which the assessee had paid to the investor entities was routed back to it in the form of share capital/share premium. ”*

22. Considering the facts of the case in light of the judicial decisions referred to hereinabove, we have no hesitation in quashing the assessment order and directing the Assessing Officer to delete the impugned additions.

23. In the result the appeal of the assessee in ITA No. 1469/DEL/2022  
Is allowed.

The order is pronounced in the open court on 01.02.2023.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 01<sup>st</sup> February, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	