

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.2113/M/2019
Assessment Year: 2014-15**

Jt. Commissioner of Income Tax(OSD), Central Circle – 5(1), Room No.1926, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Sanman Trade Impex Ltd., Veritas House, 70, Mint Road, Fort, Mumbai – 400 001 PAN: AADCS2973A
(Appellant)		(Respondent)

**CO No.33.M/2021
(Arising out of ITA No.2113/M/2019)
Assessment Year: 2014-15**

M/s. Sanman Trade Impex Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400 001 PAN: AADCS2973A	Vs.	Jt. Commissioner of Income Tax(OSD), Central Circle – 5(1), Room No.1926, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Tapan Doshi, A.R.
Revenue by : Smt. Somogyan Pal, D.R.

Date of Hearing : 02 . 03 . 2023

Date of Pronouncement : 31 . 03 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

Aforesaid appeal filed by the appellant Jt. Commissioner of Income Tax(OSD), Mumbai (hereinafter referred to as Revenue) and the cross objection filed by the cross objector M/s. Sanman Trade Impex Ltd. (hereinafter referred to as the assessee) bearing common question of law and facts are being disposed of by way of composite order in order to avoid repetition of discussion.

2. The Revenue and the assessee by filing the present appeal and cross objections respectively sought to set aside the impugned order dated 25.01.2019 passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] on the grounds inter-alia that:

Grounds of appeal of Revenue (ITA No.2113/M/2019)

“1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 2,46,95,532/-, being accommodation entry obtained in the nature of bogus long term capital gains by the assessee. which fact was also concurred in the appellate order by the Id. CIT(A) that the assessee indulged in accommodation entries.?”

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 12,34,777/-, being unaccounted commission paid for arranging accommodation entry which is in the nature of bogus long term capital gains in patent violation of the infringement of the provisions of the Act.?”

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A), without prejudice to the above had erred in not rectifying the mistake of restricting the addition in the case of the assessee only to the extent of 5% of alleged accommodation entries undertaken by the assessee group as profit earned on unaccounted sales. The Id. CIT (A) also erred in not appreciating the fact that the huge amount of accommodation entry undertaken by the assessee group itself reflected the profit earned through unaccounted sales undertaken by the assessee in the course of deleting the additions?”

4. *Whether on the facts and in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) erred in deleting the addition made in the assessment order, by merely relying on the submissions of the assessee that the funds generated through accommodation entry were directly/indirectly routed to the assessee company without providing any opportunity of being heard or for verifying the submissions made by the assessee in the course of appellate proceedings, which is arbitrary and against the interests of the principles of natural justice.?*

5. *Whether on the facts and in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) erred in sustaining the protective addition of only 5% of GP margin on alleged unaccounted sales in the case of the assessee company "Hazel Mercantile Ltd" while on the other hand according relief of - entire addition of Rs. 2,46,95,532/- which is arbitrary and against the interests of the principles of natural justice.?*

6. *Whether on the facts and in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) erred in not appreciating that the accommodation entries undertaken by the assessee represented the final income earned by the assessee company, thereby confirming only the protective additions.?*

The appellant prays that the order of Commissioner of Income Tax (Appeal) on the above ground be set aside and that the DC be restored. The appellant craves, leave to amend or alter any grounds or add a new ground, which may be necessary. Last date for filing second appeal is 05.04.2019. However, the appeal should be filed immediately."

Grounds of appeal of assessee (CO No.33/M/2021)

“1. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in making additions in the Assessment Order passed u/s.153A/C r. w. s. 143(3) of the Act on issues not based on any incriminating material found during the course of search.*

2. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in disallowing the claim for exempt Long Term Capital Gains made by the Appellant in the return. of income amounting to Rs.2,46,95,532/-without appreciating the facts and circumstances of the case and position of law.*

3. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in treating the exempt LTCG are allegedly non genuine and*

adding the same u/s.68 of the Act without appreciating the facts and circumstances of the case and position of law.

4. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in considering the facts and circumstances of the case by not providing an opportunity for cross examinations of third parties whose statements were relied upon.*

5. *The respondent craves leave to add, amend, alter or delete the said ground of appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company during the year under consideration has shown income under the head “income from business” and “profession”, income from capital gains and income from other sources. On the basis of original return filed by the assessee declaring total income of Rs.1,31,210/- assessment was framed at the total income of Rs.3,32,961/- under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) after making disallowances under section 14A of the Act. Thereafter, search and seizure operation was carried out under section 132 of the Act on Veritas group, Shri Nitinkumar Dindayal Didwania, promoter of the company and his family members on 10.09.2015. The assessee was also searched under section 132 of the Act. The main allegation against the assessee was that they are taking accommodation entries in the form of bogus Long Term Capital Gain (LTCG) by selling the share of various scrips such as Rander Corporation Ltd., Blue Circle Services Ltd. Dhanleela Investments & Trading Ltd., Mishka Finance and Trading Ltd. etc. through a fraudulent scheme of tax evasion and money laundering. On the basis of seized documents/cash related to the assessee, notice under section 153A was served upon the assessee and in

response thereto the assessee filed the return declaring total income at Rs.20,83,060/-. Then notices under section 143(2) and 142(1) were served upon the assessee who were duly represented, filed necessary details. The AO while examining the genuineness of the transaction of LTCG proceeded to hold that the assessee has invested in shares of an unknown non descript company by way of preferential allotment and the financials of such company did not justify the investment made by the assessee and the assessee failed to provide the reasonable justification for making such investment. The AO also observed that the assessee has utilized unaccounted cash to obtain the aforesaid bogus LTCG as admitted by various accommodation entry providers. For providing accommodation entry in the nature of bogus LTCG they have charged a commission of 5% and thereby rejected the claim of exemption under section 10(38) of the Act made by the assessee by making addition of Rs.2,46,95,535/-. The AO also made addition of Rs.12,34,777/- being 5% of Rs.2,46,95,532/- on account of the commission @ 5% for providing bogus LTCG entry to the assessee by Mr. Natwar & Girish Jhaveri as per their statement. The AO also made addition of Rs.84,620/- under section 14A of the Act and thereby framed the assessment under section 143(3) read with section 153A of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) both the Revenue as well as the assessee have come up before the Tribunal by way of filing the present appeal and cross objections respectively.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. We have perused the order passed by the Ld. CIT(A) qua the addition made by the AO disallowing the claim of exemption for LTCG of Rs.2,46,95,532/- and further addition of Rs.12,34,777/- @ 5% of the LTCG as unaccounted commission expenses which he has deleted in view of the decision made in case of Hazel Mercantile Ltd. in whose hand the addition is upheld on substantive basis by returning following findings:

“15.2. I have considered the submissions of the appellant carefully. The facts & submissions being similar to AY 2012-13, as discussed in detail in paras 4.1 to 4.3 of this order, Grounds of Appeal No.1 & 6 are, therefore, dismissed.

16.1. Grounds of appeal no.2, 3 & 4 are on the merits of the addition made by disallowing the claim of exemption for long term capital gains of Rs.2,46,95,532/- and further addition of Rs. 12,34,777/- at the rate of 5% of the exempt long term capital gains earned during the year as unaccounted commission expenses incurred for earning the said exempt income. Grounds No.7 & 8 have also been raised that opportunity of cross examination of third parties whose statements were relied upon were not provided and that the statement recorded u/s.132(4) was retracted and the AO further erred in only partially relying on the statement recorded u/s.132(4) and ignoring the statement explaining the source of funds being in the form of unaccounted sale of stocks of the appellant company.

16.2. I have considered the submissions of the appellant carefully. The facts & submissions being similar to AY 2012-13, as discussed in detail in paras 5.2 to 5.7 of this order, grounds of appeal no 2, 3, 4, 7 and contention regarding retraction in ground 8 are dismissed. However, the addition made by disallowing the claim of exemption for long term capital gains of Rs.2,46,95,532/- and further addition of Rs.12,34,777/- at the rate of 5% of the exempt long term capital gains earned during the year as unaccounted commission expenses incurred for earning the said exempt income is deleted in view of the decision in the case of M/s Hazel Mercantile Limited in whose hands the addition is upheld on

substantial basis and ground of appeal no 8 regarding the AO not considering the explanation regarding source of cash. Hence these grounds are treated as partly allowed as above. The appellants and the other relevant entities in the VERITAS group will pass correctional accounting entries in all the concerned entities to reflect this position.”

6. Now the Ld. A.Rs for the parties to the appeals further brought to the notice of the Bench that since in case of Hazel Mercantile Ltd. wherein addition of LTCG and unaccounted commission was upheld by the Ld. CIT(A) on substantive basis has since been set aside by the Tribunal vide order dated 23.01.2023 in ITA No. 1899/Mum/2019 (A.Y. 2010-11), ITA No. 1900/Mum/2019 (A.Y. 2011-12), ITA No. 1901/Mum/2019 (A.Y. 2012-13), ITA No. 1902/Mum/2019 (A.Y. 2013-14), ITA No. 1903/Mum/2019 (A.Y. 2014-15) & ITA No. 1904/Mum/2019 (A.Y. 2015-16) and case has been remitted back to the Ld. CIT(A) to decide afresh by passing a speaking order, present appeal and cross objections are also required to be set aside to the Ld. CIT(A) to decide afresh along with case of Hazel Mercantile Ltd.

7. We have perused the order passed by the co-ordinate Bench of the Tribunal in case of Hazel Mercantile Ltd. (supra) which has been set aside to the Ld. CIT(A) reasoned out of same search and belonging to Shri Nitinkumar Dindayal Didwania, Director of Hazel Mercantile Ltd. and assessee company by returning following findings:

“030. In case of Hazel Mercantile Limited Bogus LTCG is Rs 16.04 Cr, whereas addition because of GP is merely Rs. 6.02 Cr, which is not even enough to cover Bogus LTCG in the same company, how the other entities unaccounted income is subsumed in that is not made clear by the LD CIT (A).

031. Therefore, all the grounds of appeal of the Revenue are set aside back to the file of the learned CIT (A) to give a reasoned finding how the amount of Long Term Capital Gain earned by the assessee is

subsumed in gross profit addition made in the hands of Hazel Mercantile Ltd. Thus, ground nos.1 to 6 of the appeal of the learned Assessing Officer are allowed.”

8. So in view of the above, we are of the considered view that since the Tribunal has already set aside the case of Hazel Mercantile Ltd. (supra) to Ld. CIT(A) to decide afresh, on the basis of which addition made in this case was deleted, the present appeal and cross objections are required to be decided by the Ld. CIT(A) afresh in view of the findings returned by the co-ordinate Bench of the Tribunal in Hazel Mercantile Ltd. (supra).

9. Resultantly, the present appeal filed by the Revenue and the cross objections filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 31.03.2023.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.03.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.