

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

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

ITA No. 2421/DEL/2022 [A.Y. 2015-16]

The Dy. C.I.T.
Central Circle - 20
New Delhi

Vs.

Shri Sanjay Singhal
83, Sunder Nagar
New Delhi

PAN: ABMPS 1773 M

ITA No. 2422/DEL/2022 [A.Y. 2015-16]

The Dy. C.I.T.
Central Circle - 20
New Delhi

Vs.

Sharp Corp Ltd
Plot No. 9, Sharp House
1st Floor, LSC Gujranwala Town
Sagar Centre, New Delhi

PAN: ABMPS 1773 M

(Applicant)

(Respondent)

Assessee By : Shri Vinod Bindal, CA
Ms. Rinki Sharma, ITP

Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 11.04.2023

Date of Pronouncement : 17.04.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two appeals by the Revenue are preferred against two separate orders of the Id. CIT(A) - 27, New Delhi dated 12.07.2022 pertaining to Assessment Year 2015-16.

2. Since the underlying facts in issues are identical in both these appeals, they are disposed of by this common order for the sake of convenience and brevity.

3. Grievances of the Revenue in ITA No. 2421/DEL/2022 read as under:

“1. The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee by holding the statement of Sh. Naresh Kumar Aggarwal, Director of M/s Rajlaxmi Commodities to be unreliable by holding his statement as inconsistent and contradictory in various parts.

2. The Ld. CIT(A) has erred on facts and in ignoring the fact that it's commonplace that the value of the actual physical transactions and the ones taken on the derivatives market don't match up.

3. *The Ld. CIT(A) has erred on facts and in law ignoring that to hedge a physical trade, a trader must take positions in/executes multiple derivatives trade involving multiple strike prices and multiple expiries resulting in value of derivatives trade being substantially higher than the value of hedged physical trades.*

4. *The Ld. CIT(A) has erred on facts and in law in deleting the addition in the hands of Sh. Sanjay Singhal by holding that the access to USR-3 code was available to many people, including the employees of M/s Rajlaxmi Commodities, ignoring the significant fact that the orders were still being placed on the directions of Sh. Sanjay Singhal.*

5. *The Ld. CIT(A) has erred on facts and in law in ignoring that Sh. Naresh Kumar Aggarwal has categorically stated that any profit/loss in the trades were settled by actual movement of funds.*

6. *The Ld. CIT(A) has erred on facts and in law by stating that a profit of Rs. 11,35,85,032/- was made in the transactions, thus there was no motive for taking accommodation entries, but, in actuality, there was a loss of Rs. 11,35,85,032/- in the concerned AY.*

7.
 - (a) *The Order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

 - (b) *The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

4. Peculiar facts are that a search and seizure, and survey operation u/s 132/133A of the Income-tax Act, 1961 [the Act, for short] were conducted by the Investigation Wing of the department on 07.04.2017 in Sharp group of cases. The premises of the assessee were also covered and, accordingly, statutory notices were issued and served upon the assessee.

5. During the course of survey operation u/s 133A of the Act conducted at the premises of M/s Rajlaxmi Commodities Pvt Ltd on 29.12.2015, it was found that M/s Rajlaxmi Commodities Pvt Ltd has allocated different User IDs to different persons including Sharp Group in the name of Shri Babu Lal Jangid as User ID USR-3.

6. The Assessing Officer records that on the direction of Shri Sanjay Singhal, Managing Director of Sharp Group of Companies, Shri Naresh Aggarwal, director, allocated User ID USR -3 to Shri Babu Lal Jangid who is employee of Sharp Group of cases for making commodity trading in the name of 3 Sharp Group under direct supervision of Shri Sanjay Singhal.

7. The Assessing Officer further records that Shri Naresh Aggarwal has stated in his statement recorded on 31.12.2015 that during the F.Y. 2014-15 Shri Sanjay Singhal has earned profit/loss of Rs. 11,35,85,032/- by using User ID USR-3 in the name of his employee Shri Babu Lal Jangid.

8. The Assessing Officer has extracted the statement of Shri Naresh Aggarwal at pages 8 to 26 of his assessment order and taking a leaf out of the statement of Shri Naresh Aggarwal, recorded on 31.12.2015 made strong assertions that the assessee has opened User ID USR 3 for commodity trading in the name of his employee Shri Babu Lal Jangid and made huge commodity trading on MCX/NCDEX during F.Y. 2014-15 and loss of Rs. 11.35 crores, which is not recorded in the books of account in any of Sharp group of companies or in the hands of the assessee Shri Sanjay Singhal.

9. The Assessing Officer further alleged that loss earned by the assessee Shri Sanjay Singhal has been covered up by him by making payment to M/s Rajlaxmi Commodities Pvt Ltd, which has not been accounted for in the books of account neither in the Sharp group of companies nor in the hands of Shri Sanjay Singhal.

10. The assessee was show caused to explain the entire transaction.
11. The assessee filed detailed reply which has been extracted by the Assessing Officer in his assessment order at pages 29 to 32.
12. The reply of the assessee was simply rubbished by the Assessing Officer who proceeded by making strong allegation based upon his surmises and conjectures and came to the conclusion that provisions of section 69A are applicable in the case of the assessee and proceeded by making substantive addition of Rs. 11,35,85,032/- in the hands of Shri Sanjay Singh and to protect the interest of the revenue, protective addition was made in the hands of Sharp group u/s 69A r.w.s 115BBE of the Act.
13. Additions were challenged before the ld. CIT(A) wherein the first challenge was in respect of assessment framed u/s 153A r.w.s 143(3) of the Act on the ground that a completed assessment could not have been reopened, as no incriminating material was found during the course of search.

14. Second challenge was in respect of invoking provisions of section 69A of the Act. Evidentiary value of statement of Shri Naresh Aggarwal was also challenged.

15. It was strongly contended that the impugned transactions have not been undertaken in the name of the assessee at MCX portal but have been undertaken by the said company in its own name in its proprietary account and loss or profit arising thereon has been recorded in the books of account and return of income of M/s Rajlaxmi Commodities Pvt Ltd. It was brought to the notice of the Id. CIT(A) that these transactions were neither undertaken in the name of the assessee nor have been recorded in the books of account of the assessee nor loss has been claimed in the return of income by the assessee. Thus, the assessee has not taken accommodation entries of loss.

16. After considering the facts and submissions, the Id. CIT(A) found that the assessment order is based on the statement of Shri Naresh Aggarwal and transaction sheet USR -3 which was obtained during the course of survey at the premises of M/s Rajlaxmi Commodities Pvt Ltd on 29.12.2015, whereas the date of search is 07.04.2017, which means

that the statement relied upon by the Assessing Officer was recorded almost two years prior to the date of search.

17. The Id. CIT(A), on the facts of the case raised strong objections on the veracity of the statement of Shri Naresh Aggarwal and came to the conclusion that the same cannot be relied upon.

18. In so far as transaction sheet USR-3 is concerned, the Id. CIT(A) was of the firm belief that ownership of the transaction does not depend as to who executed the transaction at the Exchange or who has access to User ID which is normally the broker, his employee or approved user. The transaction neither belongs to the user nor the person who has executed the transaction on the Exchange as they all are working on the instructions of their client.

19. If the client code of M/s Rajlaxmi Commodities Pvt Ltd was used at the time of executing the transactions at MCX, then the profit/loss would belong to M/s Rajlaxmi Commodities Pvt Ltd and not to any other person.

20. The Id. CIT(A) categorically held that the transactions as per transaction sheet USR 3 code cannot be considered as unaccounted as income from the same transaction for the A.Y under consideration has been accepted by the department as income of M/s Rajlaxmi Commodities Pvt Ltd. Therefore, this sheet itself cannot be considered as incriminating material.

21. The allegation of accommodation entry has also been dismissed by the Id. CIT(A) who found that there is no motive behind taking accommodation entry. The Id. CIT(A) was of the opinion that generally assessee take accommodation entry either to reduce his taxable income or to bring back his unaccounted income into business whereas in the case in hand, the assessee has not filed his return of income declaring any loss.

22. The Id. CIT(A) concluded by holding that since the transactions are not in the name of the assessee, the assessee cannot claim the benefits arising from such transactions.

23. The allegation by the Assessing Officer that there was cash transaction between the broker and the assessee was also rejected by the Id. CIT(A) who found that during the course of search on 07.04.2017 and also during the course of survey on 30.12.2015 in the premises of the assessee and broker, no such evidence indicating cash receipt or payment was found.

24. The Id. CIT(A) finally concluded by holding that addition of Rs. 11,35,85,032/- cannot be made on substantive basis in the hands of Shri Sanjay Singhal nor on protective basis in the hands of Sharp Group.

25. Before us, the Id. DR strongly supported the findings of the Assessing Officer and once again heavily relied upon the statement of Shri Naresh Aggarwal which is extracted in the body of the assessment order.

26. Per contra, the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

27. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the substantive as well as protective additions have been made u/s 69A r.w.s 115BBE of the Act. Therefore, it would be pertinent to understand the provisions of section 69A of the Act, which read as under:

“Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

28. A perusal of the above section shows that it can be invoked only when the assessee is found to be owner of any money, bullion, jewellery or any other valuable article and such money, bullion, jewellery or valuable article is not found recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of the said asset or, explanation offered is not

satisfactory in the opinion of the Assessing Officer, then such asset is deemed to be the income of the F.Y in which such asset is found.

29. A bare perusal of the assessment order clearly shows that no money, bullion, jewellery or valuable article was found during search conducted on 07.04.2017 which is F.Y. 2017-18 relevant to A.Y 2018-19. Then, we fail to understand how the provisions of section 69A have been invoked for A.Y 2015-16 which is under consideration because u/s 69A of the Act, addition can be made in the year in which asset etc is found and since no such asset was found during the course of search, section 69A of the Act cannot be applied to the alleged loss.

30. The entire assessment is based upon the statement of Shri Naresh Aggarwal, which is extracted in the body of the assessment order itself.

31. We have carefully perused each and every question therein. We find that there is not even a whisper about Shri Sanjay Singhal, the assessee. In fact, for every specific question relating to the impugned transaction, Shri Naresh Aggarwal stated that he is not aware of the same and correct person is Shri Padam Chand Gupta and surprisingly,

Shri Padam Chand Gupta was never examined by the Assessing Officer. The transaction sheet extracted in the body of the assessment order shows that it pertained to M/s Rajlaxmi Commodities Pvt Ltd and not to the assessee. Therefore, if any person needs to be questioned about the impugned loss is M/s Rajlaxmi Commodities Pvt Ltd and not the assessee.

32. We are of the considered view that the entire addition has been made merely on surmises and conjectures and hypothesis. Moreover, we fail to understand how the statement recorded on 29.12.2015 is relevant for the search conducted on 07.04.2017. In fact, in his statement itself, in reply to question Nos. 22 and 24, Shri Naresh Aggarwal has categorically stated that all transactions were recorded in the books of account of M/s Rajlaxmi Commodities Pvt Ltd and in reply to Question Nos. 25 and 32, Shri Naresh Aggarwal has stated that profit and loss of USR ID 3 pertained to M/s Rajlaxmi Commodities Pvt Ltd.

33. The undisputed fact is that income from the same transaction USR 3 for A.Y under consideration has been accepted by the department as income of M/s Rajlaxmi Commodities Pvt Ltd.

Therefore, there appears to be no motive behind the allegation that the assessee Shri Sanjay Singhal has taken accommodation entries to reduce his taxable income as he has never claimed any loss in his return of income.

34. The undisputed fact is also that transactions are not in the name of the assessee and therefore, the assessee cannot claim benefits arising from such transactions in his return of income.

35. Considering the totality of facts from all possible angles, we do not find any reason to interfere with the findings of the ld. CIT(A).

36. In the result both the appeals of the Revenue in ITA Nos. 2421 & 2422/DEL/2022 are dismissed.

The order is pronounced in the open court on 17.04.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: April, 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	
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