

IN THE INCOME TAX APPELLATE TRIBUNAL
“GUWAHATI BENCH, GUWAHATI
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member

I.T.A No.253/GTY/2018
Assessment year: 2015-16

Mrs. Mamta Bansal.....Appellant
C/o Bansal Trade & Agency,
Near Overbridge, Makum Road,
P.O. Tinsukia-786125.
[PAN: ACAPB4268P]

vs.

ITO, Ward-1, Tinsukia.....Respondent

I.T.A No.254/GTY/2018
Assessment year: 2015-16

Mr. Anand Kumar Bansal.....Appellant
C/o Bansal Trade & Agency,
Near Overbridge, Makum Road,
P.O. Tinsukia-786125.
[PAN: ACAPB4257A]

vs.

ITO, Ward-3, Tinsukia.....Respondent

I.T.A No.254/GTY/2018
Assessment year: 2015-16

M/s. Anand Kumar Bansal & Sons, HUF.....Appellant
C/o Bansal Trade & Agency,
Near Overbridge, Makum Road,
P.O. Tinsukia-786125.
[PAN: AAFHA5481G]

vs.

ITO, Ward-3, Tinsukia.....Respondent

I.T.A No.256/GTY/2018
Assessment year: 2015-16

Mr. Sunil Kumar BansalAppellant
C/o Bansal Trade & Agency,
Near Overbridge, Makum Road,
P.O. Tinsukia-786125.

I.T.A No.253, 254,255,256,257/GTY/2018 & I.T.A No.263,264/GTY/2018
Mrs. Mamta Bansal, Mr. Anand Kumar Bansal, M/s. Anand Kumar Bansal & Sons, HUF, Mr. Sunil Kumar Bansal,
M/s. Vikash Agarwal (HUF), Mrs. Nidhi Agarwal, M/s. Lalit Kumar Bansal & Sons, HUF

[PAN: AGVPB7916P]

vs.

ITO, Ward-3, Tinsukia.....Respondent

I.T.A No.257/GTY/2018
Assessment year: 2015-16

M/s. Lalit Kumar Bansal & Sons, HUF.....Appellant
C/o Bansal Trade & Agency,
Near Overbridge, Makum Road,
P.O. Tinsukia-786125.
[PAN: AABHL3050Q]

vs.

ITO, Ward-1, Tinsukia.....Respondent

I.T.A No.263/GTY/2018
Assessment year: 2015-16

M/s. Vikash Agarwal (HUF).....Appellant
C/o Radhe Mohan Agarwal,
Krishna Niwas, Makum Road,
P.O. Tinsukia-786125.
[PAN: AAAHV7599H]

vs.

ACIT, Circle-2, Dibrugarh.....Respondent

I.T.A No.264/GTY/2018
Assessment year: 2015-16

Mrs. Nidhi AgarwalAppellant
C/o Radhe Mohan Agarwal,
Krishna Niwas, Makum Road,
P.O. Tinsukia-786125.
[PAN: ADEPA5300J]

vs.

ACIT, Circle-2, Dibrugarh.....Respondent

Appearances by:

Shri Dindayal Dhandaria, FCA, appeared on behalf of the appellant.
Shri N. T. Sherpa, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 14, 2023

Date of pronouncing the order : May 24, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the different assesseees against the separate orders of the Commissioner of Income Tax (Appeals) (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since the facts and issues involved in all these appeals are identical, hence these have been heard together and are being disposed of by this common order.

2. At the outset, the ld. Counsel for the assessee has submitted that in all the appeals the issue involved is relating to the addition made by the Assessing Officer u/s 69A of the Income Tax Act in respect of sale proceeds of shares of Kailash Auto Finance Ltd. treating the same as income of the assessee from unexplained sources after rejecting the assessee's claim of long-term capital gain on the sale of such shares. The ld. Counsel for the assessee has submitted that the Assessing Officer had made the impugned additions without giving proper opportunity to the assessee to prove the genuineness of the transaction. The ld. Counsel though has admitted that the Hon'ble Calcutta High Court vide common order dated 14.06.2022 in a batch of 90 appeals with a lead case titled as PCIT vs. Swati Bajaj reported in [2022] 139 taxmann.com 352 (Calcutta) confirmed the additions in respect of trading in penny stock/unquoted scrip of Kailash Auto Finance Ltd. also. However, he has submitted that the facts of the case of the assessee were distinguishable. He has submitted that the assesseees, who are related to each other, had traded in the said scrip in routine course. That the assesseees were regularly investing in shares and the assesseees have also suffered losses

in other scrips. The assesseees were having losses prior to the sale of shares of Kailash Auto Finance Ltd. and even the assesseees have suffered future losses also. That the cases of the present assesseees, it was not case of introduction of any unaccounted money. The ld. counsel has further submitted that the Hon'ble Calcutta High Court was not the jurisdictional High Court of the assessee, and that there are other judgements of Hon'ble High Courts, wherein, the additions made by the lower authorities in respect of similar issue have been deleted. The ld. Counsel in this respect has relied upon the decision of the Guwahati Bench of the Tribunal in the case of M/s Sanidhya Mittal vs. ACIT in ITA No.223&224/Gau/2017 vide order dt. 12.07.2019. He has further submitted that the Hon'ble Calcutta High Court in the case of Swati Bajaj (supra) has held that initial burden was upon the assessee to prove the genuineness of the transaction and upon his failure to do so, the assessing authority would be justified in considering the surrounding circumstances, human conduct and preponderance of probabilities. The ld. Counsel has submitted that however in the present case of the assesseees, the Assessing Officer had not given such an opportunity to the assesseees, rather, the Assessing Officer proceeded to frame the assessments on the basis of his own assumptions without giving any opportunity to the assesseees to prove the genuineness of the transactions. The ld. counsel, therefore, has submitted that in view of the above circumstances, it would not be just to say that the assesseees have failed to discharge the burden cast upon them to prove the genuineness of the transactions. That the surrounding circumstances and preponderance of probability, in the facts and circumstances of the case of the assesseees, also did not suggest that the assesseees had introduced any unaccounted income.

3. The ld. DR, on the other hand, has relied upon the findings of the lower authorities. The ld. DR has strongly relied upon the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj (supra).

4. After hearing the ld. representatives of the parties, I am of the view that the issue is required to be re-considered after giving opportunity to the assessee herein to prove the genuineness of the transaction in question. The matter is accordingly restored to the file of the CIT(A) with a direction to examine the contentions of the assessee herein and give opportunity to the assessee to prove the genuineness of the transactions and thereafter to decide the matter afresh in accordance with law. The ld. CIT(A) if deem fit may also cause to make an enquiry through Assessing Officer and call a remand report in this respect to get the true picture of the facts and circumstances of the case.

5. In the result, the captioned appeals are treated as allowed for statistical purposes.

Kolkata, the 24th May, 2023.

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 24.05.2023.

RS

Copy of the order forwarded to:

1. (i) *Mrs. Mamta Bansal,*
- (ii) *Mr. Anand Kumar Bansal,*
- (iii) *M/s. Anand Kumar Bansal & Sons, HUF,*
- (iv) *Mr. Sunil Kumar Bansal,*
- (v) *M/s. Vikash Agarwal (HUF),*
- (vi) *Mrs. Nidhi Agarwal,*

I.T.A No.253, 254,255,256,257/GTY/2018 & I.T.A No.263,264/GTY/2018
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M/s. Vikash Agarwal (HUF), Mrs. Nidhi Agarwal, M/s. Lalit Kumar Bansal & Sons, HUF

- (vii) M/s. Lalit Kumar Bansal & Sons, HUF*
2. (i) ITO, Ward-1, Tinsukia
 - (ii) ITO, Ward-3, Tinsukia
 - (iii) ACIT, Circle-2, Dibrugarh
3. CIT(A)-
 4. CIT- ,
 5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches