

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.1897/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Veritas (India) Ltd. 701, Embassy Centre, Nariman Point, Mumbai- 400021.	बनाम / Vs.	DCIT, Central Circle-5(1) Room No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai- 400021.
--	----------------------	---

आयकर अपील सं/ I.T.A. No.2098/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

Jt. Commissioner of Income (OSD) Tax, Central Circle- 5(1) Room No.1926, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.	बनाम / Vs.	M/s. Veritas (India) Ltd. 701, Embassy Centre, Nariman Point, Mumbai- 400021.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AAACD1654J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Gaurav Kabra
Revenue by:	Shri Samuel Pitta (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 17/04/2023

घोषणा की तारीख /Date of Pronouncement: 21/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are cross-appeals filed by the assessee as well as revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai dated 26.12.2011 for AY.2014-15.

2. The grounds of appeal raised by the assessee are as under: -

“1. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an additions in the Assessment Order passed u/s 143(3) r.w.s. 153A r.w.s. 144C(3) of the Act



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

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 Ld. CIT(A) has erred in treating the exempt Long Term Capital Gain of Rs.2,00,76,725/- as alleged non-genuine/bogus capital gain, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in accepting the fact that the appellant had incurred expenditure of Rs.10,03,836/- (@ 5% of exempt Long Term Capital Gain) during the year as alleged commission paid for earning non-genuine exempt commission paid for earning non-genuine exempt Long Term Capital Gain of Rs.2,00,76,725/- without considering the facts and circumstances of the case.

4. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) as well as Learning Assessing Officer has erred in not providing an opportunity for cross examinations of third parties whose statements were relied upon.

5. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in not appreciating the fact that the statement recorded u/s 132(4) of the Income Tax Act, 1961, was retracted.

6. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in giving direction to other relevant entities in the Veritas group to pass correctional accounting entries in all the concerned entities, which is beyond of his scope.

7. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in making an addition on account of



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

transfer pricing adjustment of Rs.1,22,23,878/- on account of interest on share application money, without considering the facts and circumstances of the case.

8. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in making an addition on account of transfer pricing adjustment of Rs.72,73,688/- on account of Guarantee Commission without considering the facts and circumstances of the case.

9. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

3. The grounds of appeal raised by the revenue are as under: -

“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. 2,00,76,725/-, 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 Id. CIT(A) erred in deleting the addition of Rs.10,03,836/-, 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 Id. 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



*ITA No.1897/Mum/2019 & 2098/M/2019
A.Y. 2014-15
Veritas (India) Ltd*

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 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?”

6.“Whether on the facts and In the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) erred in overlooking the fact that, pursuant to confirming the protective addition, Mr. Nitin Didwania - Director in assessee company has become a benefactor of benefit of dividend income u/s 2(22)(e) of the Act which is taxable in his hands and no adjudication on this aspect has been made in the appellate order?”

4. Ground no. 1 of the assessee is against the action of the Ld. CIT(A) confirming the additions made by the AO passed u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter “the Act”)



without any incriminating material found during course of search u/s 132 of the Act.

5. Brief facts of the case are that the assessee company had filed return of income on 24.09.2014 showing total income at Rs.3,84,56,110/-. Later, search and seizure operation u/s 132(1) of the Act was conducted on 10.09.2015 at Veritas Group, and it resulted in search at the premises of assessee company, its director Shri Nitinkumar Dindayal Didwania, and his family members. Shri Nithinkumar Dindayal Didwania and his family is engaged in the business of trading and distribution of chemicals. Pursuant to search, the AO vide assessment order u/s 143(3) r.w.s. 153A r.w.s. 144C(3) of the Act dated 15.02.2018, determined the total income at Rs.5,53,67,717/- under normal provisions and Rs.8,35,57,197/- u/s 115JB of the Act. Aggrieved the assessee preferred an appeal before Ld CIT(A), and the aforesaid legal ground was raised before him, and contended that the additions have been made by AO u/s 153A of the Act without the aid of any incriminating material found during the course of search and so is bad in law.

6. The Ld. CIT(A) while adjudicating the legal issue noted that assessee company along with its directors Shri Nitinkumar Didwania and his family was also searched u/s 132(1) of the Act; and that search was carried out on the basis of allegation that Shri Nitinkumar Dindayal Didwania, Smt. Nitin Didwania and M/s. Veritas India Ltd (assessee company) have indulged in taking accommodation entries in the form of *bogus long term capital gains* from transaction of various scrips (infra), which was nothing but un-accounted money of



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

assessee/group/directors, which were introduced in the books of account of family members of the directors. The Ld. CIT(A) noted that in this case, notice u/s 153A of the Act dated 09.11.2016 was issued by AO and in response, the assessee had filed return of income on 09.12.2016 declaring gross total income at Rs.1,47,89, 590/-. The Ld. CIT(A) further noted that during search action carried on 10.09.2015 in the case of M/s. Veritas Group, it was found that Shri Nitinkumar Dindayal Didwania and his family [*including assessee company i.e. M/s. Veritas India Ltd.*] and other group companies had entered into share transactions in the scrips – (i) Nouveau Multimedia Ltd. (ii) JMD Telefilms Industries Ltd. (iii) D. B. International Stock Brokers Ltd. (iv) Rander Corporation Ltd. (v) Blue Circle Services Ltd. (vi) Dhanleela Investments Company Ltd. (vii) Effingo Textiles & Trading Ltd. (viii) CCL International Ltd. (ix) Mapro Industries Ltd. and (x) Mishka Finance & Trading Ltd. and claimed capital gain [exempt income] u/s 10(38) of the Act. And that during search the Statement of Shri Nitinkumar Dindayal Didwania and his wife Ms. Niti Nitinkumar Didwania was recorded on 10.09.2015 and 13.09.2015 u/s 132(4) of the Act. And that Shri Nitinkumar Didwania had admitted/explained the entire *modus operandi* of how the pre-arranged bogus LTCG used to be earned from transaction of the aforesaid scrips; and admitted that the claim/earning of long term capital gains (LTCG) by him as well as his family members and the group concerns were bogus and non-genuine; and earned out of manipulative and fraudulent transactions. And the Ld. CIT(A) noted that during appellate proceedings before him, it was submitted that though statement on oath of directors were



*ITA No.1897/Mum/2019 & 2098/M/2019
A.Y. 2014-15
Veritas (India) Ltd*

recorded u/s 132(4) of the Act on 10.09.2015 (AY. 2016-17), the same was under duress and was retracted vide retraction affidavit duly notarised dated 23.10.2015 filed in the O/o DDIT(Inv.) via speed post acknowledged dated 02.11.2015. And that the Assessing Officer has ignored the retraction made by the directors and has added a sum of Rs.2,00,76,725/- being alleged non-genuine long term capital gain and thus rejected the claim of exemption of long term capital gains by treating the entire sale proceeds as unexplained credit u/s 68 of the Act. Further, the AO added an amount of Rs.10,03,836/- being alleged commission @ 5% expended towards arranging such LTCG as unexplained expenditure u/s 69C of the Act.

7. The Ld. CIT(A) after taking note of the aforesaid facts adjudicated the legal issue by holding as under:-

“4.3. I have considered the submissions carefully. It is noted that there was no prior assessment u/s 143(3) for this assessment year earlier. As mandated u/s 153A, notices were issued by the assessing officer. The search was also in respect of LTCG claimed exempt which was not genuine and was admitted to be so by Shri Nitin Didwania, Director of the appellant company. In view of this, no fault can be found with the action of the A.O. in issuing notice u/s.153A to the appellant proposing to make assessments for all six A.Ys. Reliance is placed in this regard on the judgement of Hon’ble Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia 352 ITR 493 (Del) wherein on similar facts, action—of the Assessing Officer in invoking the provisions of section 153A of the Act and making additions on various grounds was upheld. In that case, the A Ys. involved were. 2008-01 and 2002-03 to 2006-07. During the course of



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

search, a written undertaking of loan of Rs.1,50,000/- dated 10.02.2003 given by the assessee in that case to a lady had been recovered pertaining to A.Y.2003-04. In A. Ys.2001-02 and 2002-03 and even subsequent years, the Assessing Officer had made additions on account of unexplained deposit, agricultural income and unexplained gift. After considering the legal provisions as well as the new scheme of post search block assessments introduced w.e.f.01.06.2003, the Hon'ble High Court held that the Tribunal was not justified in holding that no addition could be made for agricultural income, gift received and unexplained deposits as stated above on the ground that in respect of these additions, no material was found during the search carried out u/s.132 and also on the ground that for all the A.Ys. under consideration, the returns filed by the assessee before the search had been processed u/s. 143(1)(a) of the Act. It was also held that the Assessing Officer has the power u/s.153A to make assessment for all the six years and compute the total income of the assessee including the undisclosed income notwithstanding that the assessee filed returns before the date of search which stood processed u/s.143(1)(a). In view of the broad parity of facts and issue involved, the ratio of aforesaid judgment will apply with full force in case of the appellant. Therefore, it is held that the A.O. was justified in making the impugned assessment in case of the appellant by invoking the provisions of section 153A of the Act and his action in doing so being in accordance with law is upheld. in view of the above position, the Grounds of appeal no by the appellant are found to be devoid of merit and is dismissed. Ground of Appeal No.1 is, therefore, dismissed.”



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

8. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

9. We have heard both the parties and perused the records. At the outset, the Ld. DR of the revenue brought to our notice that this Tribunal has passed a common order in the case of directors of assessee company shri Nitin Kumar Dindayal Didwani, M/s. Niti Nitin Kumar Didwani and group M/s. Hazel Mercantile Ltd. (ITA. No. 2092 to 2096/Mum/2019 and others) [Fifteen (15) Appeals and 15 Co's] by order dated 23.01.2023. And those were appeals/cross-appeals of the revenue/assessee's named therein (supra); and which emanates from the assessment orders passed pursuant to the search conducted on Veritas group including the assessee company as well as the directors of assessee company on 10.09.2015. And by passing this common order of directors/group concern, the Tribunal has dismissed similar grounds of appeal of the assessee wherein the same legal issue was raised by holding as under: -

“033. The ground no.1 of the CO challenged the facts that there is no incriminating material found during the course of search and therefore, no addition can be made in the hands of the assessee. The fact clearly shows that there was a search on 10 September 2015 on the assessee and all the group concerns. The main allegation of the search was that the assessee and his family members along with group entities have earned bogus long term capital gain of ₹115 crores. We are fully convinced that there are enough incriminating material found prior to search as well as during the course of search based on which the addition on account of bogus long-term capital gain earned by



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

the assessee on penny stock is based. Firstly there was an information prior to the search that the assessee and his family members along with the companies controlled by him have earned bogus long-term capital gain accommodation entries by selling the sale of various non-descript companies through a fraudulent scheme of tax evasion and money-laundering in a very large scale over the years and unaccounted money generated has been colored as exempt long term capital gain introduced into the books of accounts of the family members in a pre-arranged manner of hundreds of crores of rupees. This has led to search on 10/9/2015. During the course of search, the long-term capital gain earned by the assessee claimed as exempt under section 10 (38) of the act was found recorded in the books of account of these non-genuine companies. The statement recorded of the assessee under section 132 (4), assessee himself has explained whole modus operandi of the scheme and admitted that long-term capital gain claimed by the assessee and his family members and the companies is bogus, non-genuine and all out of fraudulent transactions. Further statement recorded on 14 October 2015 in case of VERITAS India Ltd, assessee confirmed that long-term capital gain earned by him, his family member and the companies is bogus. He also mentioned the name of the person Mr. Girish Zaveri, giving his telephone numbers, giving the name of the companies in which the long-term capital gain is shown, corroborating that he has claimed bogus long-term capital gain. He also gave Person wise, script - wise, assessment year wise, minutely to the extent of each and every rupee of such bogus long-term capital gain earned and also explained from which companies such gain are obtained. He also confirmed that how the above scheme was explained to



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

him by the accommodation entry provider and how he obtained such bogus gains. He also confirmed how the cash was paid to the brokers. He also confirmed that he has taken all the responsibility of obtaining such bogus gain in the hands of the assessee, his family members and companies operated by him. He also admitted that he has paid commission to Mr. Girish Jhaveri and Mr. Natwar for obtaining these accommodation entries. He also explained that unaccounted income is generated out of Hazel mercantile Limited. However, he did not stated how much income he earned out of unaccounted sales. He admitted to have made the sales of ₹ 120 crores out of the books of Hazel Mercantile Ltd (5% of which is added as income of the assessee being gross profit of Rs. 120 crores amounting to ₹ 6 crores). The books of accounts of Hazel Mercantile Ltd Hazel Mercantile Ltd was not produced, the reconciliation or systematic records of the cash generation in that company used for obtaining accommodation entries was also not mentioned. Further, the reason of the search was capital gain claimed as exempt income shown by the assessee, which was corroborating to the investigation of the various agencies including securities and exchange board of India. The inquiries were also confirmed by statements of accommodation entry providers, the directors of the companies shares of those companies were sold to obtained bogus long term capital gain, statement of exit providers, statement of and identification of persons who acted on behalf of the assessee at the insistence of the assessee such as Mr. Girish and Mr. Natwar, data of stock exchange showing trading data of group companies of the assessee and assessee and his relatives, ignorance of the assessee about the companies in which assessee has invested to earn unaccounted income, the



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

operators operating on behalf of the exit providers having their permanent account number is and matching stock exchange trading data, unfamiliarity of the assessee with respect to trading of shares, ignorance of the assessee how he came to know about preferential shares allotment of the invested companies, despite investing heavily in preferential sale allotment of the companies ignorance about even the business of those companies and directors of those companies, no explanation provided by the assessee despite confronting assessee with all those statements of persons involved in scheme of conversion of unaccounted income in bogus long-term capital gain, authorization of obtaining long-term capital gain scheme shown to the assessee by Mr. Girish and Mr. Natwar, Mr. Girish being an employee of the assessee, explaining the scheme in answer to question number 42, explaining the source of money given for obtaining unaccounted income in question number 43, explaining how the unaccounted payments were made in answer to question number 44, confirming in answer to question number 45 that he has entered into a scheme for conversion of unaccounted income, nonattendance in any of the company's annual general meeting confirmed by him wide answer to question number 46, non-receipt of any dividend from these companies clearly shows that authorities who conducted search, show all the documents in their possession which are confirmed by the assessee and admitted the unaccounted income. Therefore, thereafter nothing is required to be unearthed during the course of search as more than enough incriminating material was already available with the search party confronted to the assessee were admitted having the unaccounted income. It is always not necessary that there have to be some paper trail, which should have been found



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

during the course of search for making an addition. The statement made by the assessee confirming the information, admitting the unaccounted income, explaining the modus operandi of earning such income, naming the parties involved in such activity shows clear-cut evidences of earning unaccounted income. Therefore, we do not find any infirmity in the order of the learned CIT (A) to the extent holding that that the addition of unaccounted long-term capital gain which is proved to be bogus is based on material found during the course of search and satisfies all the conditions prescribed under section 153A of the. 034. In view of this, we do not find any merit in the cross objections of the assessee, hence it is dismissed.”

10. Since the legal issue emanates from the same search on 10.09.2015 and in the same group cases, and the addition is also on the same line (Bogus Long Term Capital Gain), this Tribunal holding that there was indeed incriminating material found during the search, we respectfully follow the same and on same reasoning *mutatis-mutandis*, we dismiss this ground of appeal of the assessee.

11. Ground no. 1, 2 & 3 of the Revenue and ground no. 2 of the assessee are inter-linked. Revenue is against the action of Ld. CIT(A) deleting the addition of Rs. 2,00,76,725/- made by AO adding bogus LTCG as well as action of Ld. CIT(A) deleting Rs. 10,03,836/- added by AO on account of commission expenditure for facilitating the bogus LTCG; Brief facts in respect of these issues (*i.e. merit of addition of deletion of Rs. 2,00,76,725/- and Rs. 10,03,836/-*) is that Search and seizure operation under Section 132(1) of the Act was conducted on Veritas Group which included the assessee company, its



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

directors Shri Nitin Kumar Dindayal Didwania, and his family members and group companies on 10th September, 2015. The group of companies are mainly engaged in the business of trading and distribution of chemicals. The assessee company have shown to have earned income from business and profession and capital gains and income from other sources. Consequent to the search, the AO issued notice under Section 153A of the Act and pursuant to it, assessee filed its return of income on 9th December, 2016 declaring total income of Rs. 1,47,89,590/-. Search, was conducted mainly to un-earth the assessee's claim of bogus long term capital gain shown to have been earned by the assessee. During search, statement on oath under Section 132(4) was recorded on 10 & 13 September 2015 where in assessee's promoter/directors Shri Nitin Kumar as well as that of his wife Mrs Niti Nitin Kumar Didwania confessed about taking accommodation entry on sale of Scrips of ten (10) companies named by AO and noted (supra), from which assessee claimed to have made bogus long-term capital gain which were booked in their name as well as family members and the assessee company. The promoters/directors later retracted the confession/admission on 23 October 2015. However, the Assessing Officer during the course of assessment proceedings found that assessee group/assessee has entered into Pre-arranged transactions of sale of ten (10) scrips which facilitated bogus long term capital gain and by virtue of it, assessee & its directions & family members claimed long-term capital gain which was exempt under Section



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

10(38) of the Act. The AO based on the reports/details available before him about the modus adopted by persons like assessee/directors to convert their un-accounted money had entered into transactions/pre-arranged sale transaction of stock/scrips which enabled them to show bogus LTCG, he (AO) issued show cause notice to assessee as to why the long term capital gain of Rs. 2,00,76,726/- not be considered as income under Section 68 of the Act. In the show-cause notice the Assessing Officer has given his adverse findings found after verification of trading data of VERITAS Group cases, *[after analysis of all the ten (10) companies which yielded assessee LTCG]* and gave the details of transactions viz, *exit providers* with respect to each of the scrips, statement recorded of the exit providers, financial conditions of the companies in which assessee earned long-term capital gain etc. And Assessing Officer also noted in SCN that assessee himself has accepted during search operation that for obtaining such bogus long term capital gain *commission* at the rate of 5% in cash was paid to the operators namely Mr. Natwar & Mr. Girish zaveri. Assessee filed its reply to SCN on 16 November 2017 and the main claim of the assessee was that all the details of purchase and sales of the ten (10) scrips in question in the form of contract notes etc have been provided to the Assessing Officer. Further, according to assessee, the shares were purchased and sold through the recognized stock exchange and consideration passed through regular banking channel, and supported by Demat Account and that those shares were held in Demat Account for more than one year; and also pointed out that no reliance could be



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

made on the statement recorded of Mr. Nitin Didwania that the capital gain earned was not genuine, as it has already been retracted. The AO examined assessee's directors once again under Section 131 of the Act, after he retracted his statement on the ground that admission was obtained under duress, and so it was urged by assessee that the capital gains shown to have been earned by it are genuine. However, Assessing Officer rejected the explanation of the assessee and made the addition by holding as under:-

- a) Mr. Raj kumar Kedia an accommodation entry provider has confirmed in his statement recorded under Section 132(4) of the Act, wherein the companies in which the assessee has traded was stated to be an accommodation entry. The statement on oath of Mr. Manish Arora, employee of Mr. Raj Kumar Kedia also confirmed the modus operandi.
- b) The survey conducted on M/s Dhanleela Investments & Trading Company in which the members of Veritas Group are one of the beneficiaries was also explained.
- c) Mere payment of purchase and sales through banking channel and through recognized exchanges cannot be enough to prove the genuineness of the transaction.
- d) Investment in nondescript company by way of preferential allotment and the financials of the company did not justify the investment and large-scale price fluctuation confirmed by the accommodation entry providers proves that the Long Term Capital Gain earned by the assessee is bogus.
- e) The statement of Shri Nitin Kumar Dindayal Didwania under Section 132(4) of the Act wherein he was completely unaware about the financial of the companies where he had made investments, complete unawareness about the activities of these companies as well as the address and names of the directors through whom preferential allotments were obtained. Shri Nitin Kumar Dindayal Didwania also confirmed that all share



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

- transactions in the group member and his family members are having the same character.
- f) The preferential allotment was obtained through one Mr. Natwar & Mr. Girish zaveri and marketed the investment of this long-term capital gain are merely entry providers.
 - g) In view of the statement of the assessee u/s 132 (4) corroborated by the statement of several other participant entities in earning of bogus long term capital gain by assessee, retraction was not accepted.
 - h) It is not necessary to establish the cash trail of these accommodation entries.
 - i) The learned Assessing Officer then relied on several judgments and held that the assessee has utilized his unaccounted cash to obtain the above bogus long term capital gain.”

12. Accordingly, AO made the addition of Rs. 2,00,76,725/- in the hands of the assessee company as unexplained credit under Section 68 of the Act; and he also added 5% commission amounting to Rs.10,03,836/- on the LTCG which according to him, has been paid by assessee to facilitate accommodation entry to the entry-providers, Mr. Natwar & Mr. Girish zaveri, which were added under Section 69 of the Act. Assessee aggrieved with the action of the Assessing Officer preferred an appeal before the Ld. CIT (A); and the Ld. CIT (A) passed a consolidated order for AY 2010-11 to AY 2015-16 on 25 January 2019. And in this appeal, we are concerned with the deletion of addition of Rs. 2,00,76,725/- and Rs. 10,03,836/-

13. The Ld. CIT(A) has deleted both the additions by holding as under:-



ITA No.1897/Mum/2019 & 2098/M/2019
A.Y. 2014-15
Veritas (India) Ltd

“5.4 I have considered the facts and submissions carefully.

The LTCG and the commission added in the group cases is tabulated below: -

Person	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	Total
M/s Hazel Mercantile Ltd.	202,05,648	289,39,693	158,20,785	357,55,020	297,47,206	299,64,323	16,04,32,675
M/s Aspen International Pvt. Ltd	15,03,340	99,24,436	29,49,332	85,05,399	198,10,349		4,26,92,856
M/s Sanman Trade Impex Pvt. Ltd			31,60,227	105,96,724	246,95,532		3,84,52,483
M/s Veritas (I) Ltd.					200,76,725		200,76,725
Sh. Nitin Dindayal Didwania	701,34,900	577,49,901	2386,97,745		2148,94,044	1680,27,919	74,95,04,509
Niti Nitin Kumar Didwania	559,17,609	298,13,063	64,52,697		100,91,369	219,72,700	1242,47,438
Sushmadevi Didayal Didwania	6,59,300	23,92,654				118,34,452	148,86,406
Total Capital Gain (A)	1484,20,797	1288,19,747	2670,80,786	548,57,143	3193,15,225	2317,99,394	115,02,93,092
Commission @ 5% of A (B)	74,21,040	64,40,987	133,54,039	27,42,857	159,65,761	115,89,394	575,14,655
Total	1558,41,837	1352,60,734	2804,34,825	576,00,000	3352,80,986	2433,89,364	120,78,07,747

5.5 The following table tabulates the Returned Income. The capital gains shown and the amount of LTCG claimed as exempt in the case of the appellant VIL.

Particular	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
Returned Income	-203,26,440		-188,92,238		147,89,590	249,17,900	178,65,320
LTCG claimed as exempt					200,76,726		
Capital Gain on alleged penny stock					200,76,725		



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

This clearly shows that LTCG is a significant portion of the Income for the year. Further, there is no capital gains other than the LTCG in respect of the impugned penny stocks.

The details of capital gain in this case of the appellant is tabulated below :

Sr. No	Name of the Scrip	Cost (Rs.)	Sale Value (Rs.)	Capital gain (Rs.)	Gains as % of cost
1.	Rander Corporation Ltd.	3,80,396	2,04,57,122	2,00,76,725	5278%

This clearly shows that huge unprecedented exempt LTCG is claimed which is significant proportion of the income for the year. Also the gains claimed is unreal and extraordinary. Even the best of investors cannot claim to generate such huge gains in such a short time. It is also noted that such humungous gains are not earned after the group was searched in 2015 and department launched investigations in penny stocks.

5.6. The facts and submissions are identical and have been dealt with at length in my appellate orders of even date for M/s Hazel Mercantile Ltd. and Nitinkumar Deendayal Didwania for AY 2010-11 to AY 2015-16. The additions made in respect of non-genuine LTCG and commission for obtaining the LTCG has been upheld. The retraction has been disregarded. It has been held that the statement of admission and explanation of source of the cash for obtaining non-genuine LTCG in all the group concerns/entities has to be considered together. The explanation that the source was out of books sale of stocks in cash in the case of M/s Hazel Mercantile Ltd. has been accepted and the LTCG and expense incurred as commission for obtaining the LTCG in all the individual and entities of VERITAS/DIDWANIA group has been



*ITA No.1897/Mum/2019 & 2098/M/2019
A.Y. 2014-15
Veritas (India) Ltd*

considered as taxable in the hands of M/s Hazel Mercantile Ltd. The protective addition made in that case of M/s Hazel Mercantile Ltd. has been upheld as substantial.

5.7. In light of the facts of this case as well as the facts in the case of other group entities on this issue, the reasons elaborated in my appellate orders in the case of M/s Hazel Mercantile Ltd. and Nitinkumar Deendayal Didwania for AY 2010-11 to AY 2015-16 above, 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.2,00,76,725/- and further addition of Rs.10,03,836/- 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 appellant and the other relevant entities in the VERITAS group will pass correctional accounting entries in all the concerned entities to reflect this position.”

14. Aggrieved by the aforesaid action of the Ld. CIT(A), deleting both the additions, the revenue is before us and the assessee has preferred the appeal also as per the grounds raised supra.

15. We have heard both the parties and perused the records. The Ld. DR brought to our notice that the issue raised before us is no longer *res-integra*. It has been brought to our notice that this Tribunal in the



*ITA No.1897/Mum/2019 & 2098/M/2019
A.Y. 2014-15
Veritas (India) Ltd*

case of assessee's own group cases (supra) especially that of M/s Hazed Mercantile Ltd (discussed at para 40 onwards) vide order dated 23.01.2023 has reversed the action of Ld. CIT(A) and upheld the action of AO making additions of the long term capital gain addition by holding as under: -

048. We have carefully considered the contentions of the learned CIT DR and perused the orders of lower authorities. As we have confirmed the long-term capital gain chargeability in the hands of Mr. Nitinkumar Didwania as well as payment of 5% of the commission for earning such long-term capital gain, the facts and circumstances are exactly similar except the change of the amount. Therefore, we do not have any hesitation in dismissing ground number 1 – 4 of the appeal of the assessee for all these assessment years.”

16. In the light of the aforesaid decision of the Tribunal in assessee's own group cases regarding bogus long term capital gain wherein the Tribunal was pleased to confirm the action of the AO regarding the bogus long term capital gain. Therefore, on the same reasoning as given Tribunal in assessee's own group cases (supra), we reverse the order of Ld CIT(A) and confirm the addition to the tune of Rs.2,00,76,725/- as well as commission of Rs.10,03,836/-.

17. The other grounds of appeal of the revenue are general in nature so not adjudicated.

18. And the other grounds of appeal of the assessee (ground no 7 & 8) are against the action of Ld. CIT(A) confirming the action of AO in making addition on account of Transfer Pricing Adjustment of Rs. 1,22,23,878/- on account of interest on share-application money; and



ITA No.1897/Mum/2019 & 2098/M/2019

A.Y. 2014-15

Veritas (India) Ltd

against the confirmation of addition of Transfer Pricing Adjustment of Rs. 72,73,688/- on account of Guarantee Commissions. In this regard, we note that the Ld. CIT(A) has not adjudicated these grounds by stating that assessee did not press the same before him (refer para 6.1 to 6.4) and he treated the grounds as withdrawn by assessee. And since the assessee has raised the aforesaid grounds before us, we set aside the impugned order and restore both these grounds back to the file of Ld. CIT(A) with a direction to dispose of the same in accordance to sub-section (6) of section 250 of the Act after giving opportunity to assessee and in accordance to law.

19. In the result, the appeal of the assessee is partly allowed for statistical purposes and appeal of the revenue is partly allowed.

Order pronounced in the open court on this 21/06/2023.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 21/06/2023.

Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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