

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.3822/Del/2017

निर्धारणवर्ष/Assessment Year: 2007-08

DCIT, Central Circle-28, Room No. 317, ARA Centre, Jhandewalan Extn., New Delhi.	बनाम Vs.	M/s Saarthak Vanijya India Ltd., 11, Goenka Lane, Shivtalla Street, Kolkatta.
		PAN No. AACCR1635F
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

**Cross Objection No. 70/Del/2020
(In I.T.A No.3822/Del/2017)**

निर्धारणवर्ष/Assessment Year: 2007-08

M/s Saarthak Vanijya India Ltd., 11, Goenka Lane, Shivtalla Street, Kolkatta.	बनाम Vs.	DCIT, Central Circle-28, Room No. 317, ARA Centre, Jhandewalan Extn., New Delhi.
PAN No. AACCR1635F		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri R.S. Singhvi, Adv. & Shri Rajat Garg, Adv.
राजस्वकीओरसे /Revenue by	Shri H.K. Choudhary, CIT-DR

सुनवाईकीतारीख/ Date of hearing:	21.06.2023
उद्घोषणाकीतारीख/Pronouncement on	11.07.2023

आदेश / O R D E R

PER ANUBHAV SHARMA, J.M.

The Departmental appeal as well as cross objection by the assessee are directed against the order of Ld. CIT(Appeals)-29, New Delhi dated 29.03.2017 for AY 2007-08.

2. The facts in brief are that the case of the assessee was reopened on the basis of information received from the ADIT(Inv.), Unit-III, New Delhi, wherein it was mentioned that in consequence to search and seizure action taken on Bindal Group of cases including the present assessee. It has been observed that assessee has taken accommodation entry in the form of share premium and share capital from various non-existing paper companies. During the course of enquiry the alleged investors were not found to be existing at the given address and the list of nine such parties was provided. Ld. AO observed that during the relevant AY 2007-08 the assessee has raised share application money to the extent of Rs.3,59,50,000/- and based upon the response of the assessee addition of Rs.3,56,79,600/- was made. Ld. AO had primarily relied on the statement of Shri Rajesh Bhagat who was the Director in M/s Rajesh Metal India the predecessor entity of the assessee. The Ld. CIT(A) has set aside the addition primarily observing that statement of Shri Bhagat was not reliable statement and he had retracted and given divergent statement on different occasion. At the same time Ld.CIT(A) examined the issue on merits of the to conclude *“No cogent reasoning or any evidence was relied upon. Here it is pertinent to mention that a search has taken place in the premises of appellant and nothing has been found in this regard to substantiate that the appellant has taken this amount as bogus entry and routed its funds for the year under consideration.”*

3. The Revenue is in appeal raising following grounds:
1. *“That on the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,56,79,600/- made by the AO u/s 68 of the IT Act on account of unexplained cash credits in the books of the assessee.*
 2. *That on the facts and in the circumstances of the case, the Id. C(T)A has erred in law and on facts in deleting the addition of Rs.3,56,79,600/- made by the AO on account of unexplained cash credits, by holding that nothing has been found during search to substantiate that the appellant has taken bogus entries and routed its fund without appreciating the fact that Sh. Brijesh Bhagat, Director of the assessee company has himself admitted twice in his statement that the assessee company is involved in providing accommodation entries.*
 3. *That on the facts and in the circumstances of the case, the id. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,56,79,600/- without considering the fact that the creditworthiness of alleged creditors were not established and genuineness of the transactions were not proved.*
 4. *That the grounds of appeal are without prejudice to each other.*
 5. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3.1 Assessee has filed cross objections raising following grounds :

*1(i) That on facts and circumstances of the case, the Ld. CIT(A) has erred in not recording concluding finding regarding the validity of jurisdiction of the **Assessing** Officer for passing a re-assessment order u/s 148 of the Income Tax Act, 1961.*

(ii) That the reasons are merely on the basis of information from investigation wing and in absence of independent application of mind or investigation, the re-opening u/s 148 is wholly on the basis of borrowed satisfaction.

*(iii) That addition made on the basis of information from investigation wing **per se** does not constitute tangible material and in absence of any adverse material on record, the re-*

assessment proceedings u/s 148 is illegal and not sustainable for want of tangible material.

(iv) That in absence of proper approval in terms of provisions of section 151 of the Act, the notice u/s 148 is illegal and without jurisdiction.

(v) That even otherwise, the addition of Rs. 3,56,79,600/- made by the Assessing officer is wholly based on statement recorded u/s 132(4) post recording reasons to believe for initiating the re-assessment proceedings and as such the re-opening is merely on surmises and presumption.

2. That orders passed by lower authority are not justified on facts and same are bad in law.

3. That the appellant craves leaves to add, alter, amend, and forego any of the grounds of appeal at the time of hearing.”

4. Heard and perused the record.

5. It was submitted by Ld. DR that Ld.CIT(A) has fallen in error in not appreciating the fact that Shri Brijesh Bhagat was Director of the assessee company on the basis of his statement of involvement in accommodation entries. Ld. AO had rightly relied on the statement and made the addition and Ld.CIT(A) in an unjustified manner considered the statement to be not reliable.

6. On the other hand, Ld. AR submitted that primarily on the basis of statement of Shri Brijesh Bhagat only the impugned reassessment order was passed and also the cases were assessment u/s 153A for AY 2008-09 and 2010-11 were also opened these assessment orders u/s 153A were subject matter of appeal before the Tribunal in ITA Nos. 6367 & 6368/Del/2016 and by the order dated 09.09.2021, the coordinate bench has deleted the addition primarily on the finding that the statement of Shri Brijesh Bhagat being the stand alone evidence cannot be made basis for additions. He submitted that

the statement alone was the basis of reopening and be a borrowed satisfaction same could not have been relied.

7. Giving thoughtful consideration in the matter on record, it can be observed that admittedly the date of search was 07.03.2014 and assessment proceedings were initiated u/s 153A for AY 2008-09 to 2014-15. The appeal of the Revenue for AY 2008-09 and 2010-11 disposed of by consolidated order dated 09.09.2021, wherein the coordinate bench has observed in para 8 and 9 as follows: -

“8. It is submitted on behalf of the assessee that the Id. Assessing Officer himself admitted that absolutely nothing was found during the search with regard to the alleged bogus investment and the Assessing Officer based the addition at the suggestion of DDIT(Investigation) and the statement of Mr. Bhagat stood an uncorroborated statement, which cannot be a basis for making any addition. He placed reliance on the decision of Hon'ble jurisdictional High Court in the case of PCIT vs. Anand Kumar Jain (HUF) and others in ITA No. 23/2021 and batch by order dated 12.02.2021 wherein the court held in unequivocal terms that the statements recorded u/s. 132(4) of the Act do not by themselves constitute incriminating material as has been explained by the Hon'ble Delhi High Court in the case of PCIT vs. Best Infrastructure (India) P. Ltd. (2017) 84 taxmann.com 287 (Delhi HC). He also brought to our notice the submissions made by the assessee before the Id. CIT(A) which the Id. CIT(A) recorded in the order to the effect that the Id. Assessing Officer himself admitted that absolutely there was nothing found during the search with regard to the alleged bogus investments by the search team. He, therefore, prayed that the croSs objections made be allowed by returning a finding that in view of the decision of jurisdictional High Court in the case of Kabul Chawla (supra), the notice u/s. 153A of the Act and consequential assessment proceedings are bad under law.

9. We have gone through the record in the light of submissions made on either side in the appeal and the cross objections. It remains an undisputed fact that the Id. Assessing Officer placed heavy reliance on the statement of Mr. Brijesh Bhagat recorded on 16.03.2016 despite the fact that the said

person retracted the same by way of an affidavit on 29.03.2016 and except the statement of Mr. Bhagat and the suggestion of DDIT(Investigation), there is no material, whatsoever, to corroborate and substantiate the addition. In view of the decision of Hon'ble jurisdictional High Court in the case of Anand Kumar Jain (HUF) (supra), wherein the Hon'ble High Court followed the decision in CIT vs. Harjeev Aggarwal (2016) 70 taxmann.com 95 (Delhi) and observed that though the statement recorded u/s. 132(4) of the Act has evidentiary value and the relevance as contemplated under the Explanation therefore, on standalone basis such statement does not empower the Assessing Officer to frame the block assessment without there being any material discovered during the search and seizure operations. In so far as the merits are concerned, the observations of the Id. CIT(A) are lawful and his conclusions are impeccable. The statement of Mr. Brijesh Bhagat on standalone basis cannot afford any support to the addition and in view of the decisions of Hon'ble jurisdictional High Court in the case of Best Infrastructure (India) Pvt. Ltd. (supra) and CIT vs. Harjeev Aggarwal (supra), such a statement requires corroboration of some other material discovered during the search and seizure operations. It, therefore, follows that any addition contrary to this position cannot be sustained. On this score, we do not find any reason to interfere with the observations of the Id. CIT(A).”

8. It can be observed from the reasons recorded by the Ld. Assessing Officer for initiating reassessment proceedings along with approval u/s 151 of the Act made available at page no. 2 to 4 of the paper book that except for mentioning the information received from the office of ADIT(Inv.), Unit-III, New Delhi on 24.03.2014, the Ld. AO had verified the ITD data base, where there was no information of receipt of dividend income on an investment made and further recorded suspicion on the creditworthiness of the investors and on verification addresses were not verified so the assessment was opened on satisfaction that income chargeable to tax has escaped.

9. Assessment order of Ld. AO shows that without substantiating the material on which he had doubted the creditworthiness of the investing

companies he considered the investment to be doubtful. At the same time Ld.CIT(A) observed on merits of the case as follows: -

“8.1 During assessment proceedings, AO carried out enquiries by issuance of notice under section 133(6) to the various investor companies and the same was duly complied by them, providing the details such as copy of their bank accounts, their balance sheet, PAN and various other details, to substantiate that these investors have genuinely invested such amount in the appellate company for the year under consideration. It is clear that the investor company has duly confirmed to have invested in appellant company as its audited balance sheet reflects the investment in the name of appellant company. All investors are body corporate and submitting its return of income regularly. A perusal of appellant's bank account reveals that investment is made through cheque and no cash deposits are reflected in its account. It is contended that no such cash was deposited in the case of investors also. Sufficient funds were available in the form of its own share capital and reserves and surpluses so to invest in the appellant company as well as other companies. Further, the shares have been allotted and certificates have been issued. Form 2 with ROC has also been filed in this regard. In view of the above, it is contended that the appellant has discharged its onus with regard to the identity, creditworthiness and genuineness of transaction of the investor company. Therefore, relying upon the ratio in various decisions including a decision of jurisdiction High Court in Kurele Paper Mills P. Ltd., ITA No.369/2015 and SLP against the same has been dismissed by Supreme Court, decision of Hon'ble Supreme Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd. 361 ITR 320 (2014) and CIT vs. Lovely Exports P. Ltd. 216 CTR 195, requested that there is no merit to consider this investment as unexplained.

8.2 In the other hand AO has just mentioned that these investor companies creditworthiness to advance such huge amount, looking to the smallness of the income disclosed by them. No cogent reasoning or any evidence was relied upon. Here it is pertinent to mention that a search has taken place in the premises of appellant and nothing has been found in this regard to substantiate that the appellant has taken this amount as bogus entry and routed its funds for the year under consideration.”

10. Further, the order of Ld. AO shows that he heavily relied on the statement of Shri Brijesh Bhagat recorded u/s 131 of the Act by DDIT(Inv.). He had taken into consideration the statements of Shri Brijesh Bhagat recorded on 16.03.2016, 29.03.2016, affidavit dated 29.03.2016 and statement recorded on 30.06.2015 and which were also made part of the assessment order as exhibits. Still he preferred to rely the retracted statement to make the addition u/s 68 of the Act.

11. The Bench is of the considered opinion that Ld. AO had fallen in error in relying the retracted statement of Shri Brijesh Bhagat. If at all the statement of Shri Brijesh Bhagat was relevant the same should have been corroborated by some material evidences from the enquiry the Ld. AO had conducted with regard to creditworthiness of the parties. On behalf of the assessee the statement of Shri Brijesh Bhagat recorded u/s 131 of the Act on 29.03.2016 during the assessment proceedings in the case of the assessee for assessment years 2008-09 to 2013-14 has been placed on record at page no. 16 to 21 which the Ld. AO had made part of the assessment order. The same shows that Shri Bhagat had denied all the facts of statement dated 16.03.2016 given by him before DDIT(Inv.), Kolkata and an affidavit dated 29.03.2016 of retraction was also filed before Ld. AO. Ld. AO had sought the comments of DDIT(Inv.), Kolkata on the retraction which made the submission that it was an afterthought effort. Thus, the Bench has no hesitation but to accept the observation of the coordinate bench in regard to the assessments completed u/s 153A of the Act that the retracted statement of Shri Bhagat was not reliable piece of evidence and like making addition u/s 153A the same could not have been the sole basis of reopening also. There is no error in finding of CIT(A). The grounds raised have no substance.

12. On behalf of the assessee, cross objections have been filed which are substantially arising out of the fact of non-disposal of the objections of assessee against the validity of jurisdiction exercised by Ld. AO in passing the re-assessment order u/s 148 of the Act. Ld. CIT(A) seems to have not taken cognizance of the fact that specific ground no. 7 was raised before him that Ld. AO had not followed the procedure for issuing notice u/s 148 of the Act as Ld. CIT(A) considered to be a superfluous in the light of earlier proceedings u/s 264 of the Act. Ld. CIT(A) has appreciated the matter before him only on the merits. However, a discussion hereinabove has established that Ld. AO had fallen in error in exercise of jurisdiction beyond the scope of Section 147/148 of the Act as there was absence of independent opinion as basis in his reasons to re-open and there was no tangible material except retracted statement of a witness Mr. Bhagat. Thus, the cross objection deserved to be sustained. **Consequently, the appeal of Revenue is dismissed and Cross objection stand allowed.**

Order pronounced in the open court on 11/07/2023

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 11.07.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi