

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE,  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3498/Del/2017  
(ASSESSMENT YEAR 2008-09)**

Income Tax Officer Ward-9(2) New Delhi	Vs.	M/s Finwiz Capital Services Pvt. Ltd. D-3, Gharoda Apartments Srestha Vihar New Delhi-110 092 PAN-AAACF 0056E
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Maimun Alam, Sr. DR
Respondent by	Mr. Kapil Goel, Advocate

Date of Hearing	27/04/2023
Date of Pronouncement	19/07/2023

**ORDER**

**PER M. BALAGANESH AM:**

This appeal of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-3, Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.285/15-16 dated 27/03/2017 against the order passed by the Income Tax Officer, Ward-9(2), New Delhi (hereinafter referred to as the 'Ld.

AO) u/s 147/144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 31/08/2016 for the Assessment Year 2008-09.

2. The only issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in deleting the addition made in the sum of Rs.2,83,57,000/- u/s 68 of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find the assessee had filed its original return of income for the A.Y. 2008-09 on 26.02.2009 declaring total income of Rs 4,06,320/-. Later the assessment was sought to be reopened vide issuance of notice u/s 148 of the Act on 27.03.2015 after recording the reasons for reopening the assessment. A letter was filed by the assessee on 24.04.2015 stating that the return already filed by the assessee company may be treated as a return in response to notice u/s 148 of the Act. The assessee sought for reasons recorded together with approval u/s 151 of the Act, which were duly provided to the assessee company. The assessee was also requested to include in his reply the explanation along with documentary evidence to all the

transactions / bank entries done with M/s Sidh Trading Agency, M/s Pride Trade Agency and M/s R.N. Aggarwal & Co. The sum of those transactions was Rs 2,83,75,000/-. The ld. AO observed that the assessee did not co-operate with the ld. AO and did not furnish even the basic details of copy of audit report, balance sheet and profit and loss account. Hence the ld. AO issued show cause notice to the assessee and proceeded to frame assessment u/s 144 read with section 147 of the Act. Based on the report of the investigation wing, New Delhi, wherein it had come to notice that Shri Dharmendar Kumar, Proprietor of M/s Sidh Trading Company and M/s Pride Trade Agency and Shri R .N. Aggarwal , Proprietor of M/s R.N. Aggarwal & Co., were engaged in the business of providing accommodation entries to number of companies including assessee company. Shri R.N. Aggarwal in his statement recorded on oath that M/s Sidh Trading Agency, M/s Pride Trading Agency and M/s R.N.Aggarwal & Co. had business relations with assessee company and made sale / purchase of shares on brokerage basis as he is a registered sub-broker with SEBI, trading of iron and steel and grey clothes. Shri R.N. Aggarwal did not produce his books of accounts to prove the aforesaid transactions with the assessee

company and was unable to prove the cash deposits made in his bank account. Accordingly, it was concluded that Shri R N Aggarwal had no actual business transactions with the assessee and credit entries including cash deposits appearing in the bank accounts of M/s Sidh Trading Agency, M/s Pride Trade Agency and M/s R.N. Aggarwal & Co. are nothing but accommodation entries and assessee is one of the beneficiaries of the accommodation entries. The ld. AO on examining the return filed by the assessee observed that assessee had merely offered interest income under the head other sources amounting to Rs 4,06,320/- and had not offered any business income thereon. The ld. AO concluded that Shri R.N. Aggarwal had stated that the bank entries reflected relate to business transactions and total entries pertaining to assessee was arrived at Rs 2,83,75,000/-, for which no explanation was provided by the assessee. Hence the ld.AO proceeded to add the same as unexplained cash credit u/s 68 of the Act in the hands of the assessee while framing the assessment u/s 144 r.w. section 147 of the Act.

4. Before the ld. CIT(A) , it was submitted that the entire addition has been made by merely relying on the statement of Shri R N

Aggarwal recorded on oath behind the back of the assessee, without even providing the copy of the said statement to the assessee. It was submitted that no independent examination was carried out by the ld. AO to examine Shri R. N. Aggarwal during the course of assessment proceedings of the assessee. The assessee submitted that the entire investments as on 01.04.2007 amounting to Rs 4,25,21,066/- reflected in the balance sheet represent investments in shares, which has been accepted by the revenue in Asst Year 2004-05 in scrutiny assessment u/s 143(3) of the Act. These investments were duly sold during the year and for which the assessee submitted the details of sale of shares, which was forwarded to the ld. AO by the ld. CIT(A) vide letter dated 14.09.2016 seeking a remand report. No comments were made by the ld. AO on the same in his reply. The ld. CIT(A) after going through the entire additional evidences filed by the assessee and after perusing the remand report of the ld. AO deleted the addition made by the ld. AO.

5. Admittedly, there was no co-operation from the side of the assessee before the ld. AO during the course of assessment

proceedings to rebut the show cause notice issued by the ld. AO. But we find that the ld. AO had merely relied on the observation of the investigation wing of income tax department, delhi without making any independent examination of Shri R N Aggarwal from his side. The ld.AO had not brought on record with any evidence as to how the assessee is linked with Shri R N Aggarwal. He directly believes the statement recorded on oath from Shri R N Aggarwal in a totally different proceeding by the investigation wing, to be sacrosanct and show caused the assessee to explain those transactions. Moreover, it is the very same AO who had in page 5 of his order stated that Shri R N Aggarwal had no business transactions with the assessee and the transactions reflected in the bank accounts of M/s Sidh Trading Agency, M/s Pride Trading Agency and M/s R.N. Aggarwal & Co. are merely accommodation entries. Having stated so, the ld. AO in the very same page contradicts himself by stating that the bank entries of Shri R N Aggarwal relate to business transactions with the assessee and makes assessee to explain those transactions.

6. We find that the assessee had furnished various documents before the ld. CIT(A) in the form of additional evidences and a remand report was called for from the ld. AO. In the remand proceedings, the assessee from its side had furnished the confirmation from M/s R.N. Aggarwal & Co. before the ld. AO. No adverse inference was drawn by the ld. AO on the said confirmation. The assessee had furnished the copy of account of share sale transactions for the period 01.04.2007 to 31.03.2008 and the same was forwarded to the ld. AO for his comments. The ld. CIT(A) had noted the contentions raised by the assessee were not rebutted by the ld. AO. Even before us, the revenue was not able to controvert the evidences submitted by the assessee before the ld. CIT(A). The assessee had duly furnished the copies of contract notes. The assessee also furnished the audited annual accounts. The assessee furnished the details of investment in unquoted shares reflected in the balance sheet of the assessee and the value of investments as on 31.3.2008 had become nil since all these shares were sold during the year at par. The investments were made in Asst Year 2004-05 which was accepted as genuine in the scrutiny assessment framed on the assessee u/s 143(3) of the Act.

The assessee had also furnished the copies of bills raised by M/s R.N.Aggarwal & Co. for share transactions wherein he had charged commission on the share transactions carried out on behalf of the assessee. It was specifically proved with evidences that the assessee had received the sale proceeds of shares through account payee cheques and duly recorded in the books of accounts. The monies received thereon were utilized for acquisition of land and advancing monies to third parties including advance to suppliers. These facts are staring on us on bare perusal of the balance sheet itself together with its schedules thereon. The argument advanced by the assessee before the Id. CIT(A) that the nature of credit found in the books of assessee company were only towards sale of shares and that they are neither loan, deposit nor share capital/ share application money, is found to be correct. It is not in dispute that the assessee company was holding shares in its balance sheet from Asst Year 2004-05 (which has been accepted by the revenue u/s 143(3) of the Act) and those shares were sold during the year under consideration. Hence the sale proceeds of shares credited in the bank account cannot be treated as unexplained cash credit u/s 68 of the Act. The shares already held by the assessee were sold by

the assessee company at par through R.N. Aggarwal & Co. and had paid commission thereon to Shri R.N. Aggarwal. It is not the case of the revenue that the assessee had understated the sale consideration of shares and hence would be liable for some capital gains tax. In the balance sheet of the assessee company, the opening balance of investments of Rs 4.25 crores was reduced to Rs Nil evidencing the fact of sale of shares during the year. In our considered opinion, the nature and source of credit has been duly explained by the assessee as contemplated u/s 68 of the Act. Hence we hold that the ld. CIT(A) had rightly granted relief to the assessee in the instant case.

7. Since the relief is granted to the assessee on merits, the petition filed by the assessee under Rule 27 of the Income Tax (Appellate Tribunal) Rules challenging the validity of reassessment proceedings need not be gone into. The same is hereby left open.

8. In the result, the appeal of the revenue is dismissed. .

Order pronounced in the open court on 19<sup>th</sup> July, 2023.

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Dated:19/07/2023

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

*Pk/ sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI