

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. Nos. 1409 to 1415/Mum/2023
(निर्धारण वर्ष / Assessment Years: 2008-09 to 2014-15)

Yash-V-Jewels Ltd. Office No. 501, Adibaba Apartment, Gazdar Scheme, 16 th Floor, Near Rajesh Khanna Garden, Santacruz- West-400054.	बनाम/ Vs.	DCIT, Central Circle-1(1) Room No. 903, 9 th Floor, Pratishtha Bhavan, (Old CGO Building (Annexe) M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY1119P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Vimal Punmiya	
Revenue by:	Dr. Kishore Dhule (DR)	

सुनवाई की तारीख / Date of Hearing: 12/07/2023
घोषणा की तारीख /Date of Pronouncement: 31/07/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)45, Mumbai dated 22.02.2023 for AY. 2008-09 to 2015-16.

2. At the outset, the Ld. AR brought to our notice that the issue raised in all the captioned appeals are similar (*except difference in sum/figures*). This contention of Ld. AR could not be controverted by the Ld. DR. Therefore, we are inclined to take up the appeals of assessee for AY. 2008-09 as lead case for adjudication and the decision in the appeal i.e. AY. 2008-09 would cover other appeals and will be followed for other assessment years.



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

3. The grounds of appeal of the assessee for AY. 2008-09 are as under: -

“1. The learned Commissioner of income Tax (Appeal) has erred in not allowing the appellant company’s appeal for disapproving the learned Assessing officer's view of rejecting the Books of Accounts and income of appellant by invoking the provision of section 145 (3) of the income tax Act, 1961.

ii. The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the action of learned assessing officer of treating all the business activities as accommodation entry without appreciating the submission / documentary evidence provided to prove the genuineness of all the transaction of Income, Expenses, Business Losses, Capital Gain / Loss, purchase, sales, loans and advances and Investments etc submitted by appellant company.

iii. The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the addition made by the learned Dy. Commissioner of Income Tax by estimating addition at the rate of alleged commission income at 0.20% p.m. for Loans & Advances and 2% for Share Application money (Investments) during the captioned year.

iv. The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the proposition of the learned assessing officer and treatment of the alleged unaccounted commission income is confirmed on “Protective Basis”,



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

v. The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal.”

4. Drawing our attention to the grounds raised (supra), the Ld. AR submitted that the main issue is against the action of the Ld. CIT(A) confirming the *protective assessment* made by the AO when the *substantive addition* has been made by AO in the hands of Shri Praveen Kumar Jain and the same have been confirmed even at the level of this Tribunal. According to Ld. AR, since substantive addition made by AO has been confirmed by Tribunal in the hands of Shri Praveen Kumar Jain, impugned protective assessment made in the hands of assessee be deleted and for such a proposition, cited various decisions of this Tribunal which will be discussed (infra). And it is noted that no other grounds were argued and the merits of assessment even though protective in nature, has not been argued and so, not adjudicated. So, the limited plea is that since substantive addition has been confirmed in the hands of Shri Praveen Kumar Jain, protective assessment in the hands of assessee be deleted.

5. Brief facts are that the assessee company is into trading of diamonds, investment and providing short term finance to borrowers. The AO noted that pursuant to search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter “the Act”) in the premises of Shri Praveen Kumar Jain (entry operator) on 01.10.2013 (AY. 2014-15), it was found that assessee company was also one of the group companies controlled by Shri Praveen Kumar Jain. Pursuant to the



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

ibid search, the case of assessee was centralized and thereafter, the AO issued notice to assessee u/s 153C of the Act and assessee filed return of income declaring total income/loss of Rs.5,40,931/-. The AO noted in the assessment order that for making assessment in the case of assessee, he considered the material/statement recorded during the course of search conducted on Shri Praveen Kumar Jain. Accordingly, he found that Shri Praveen Kumar Jain through networking of his group companies [*including that of the assessee company*] was involved in the business of providing accommodation entries in the garb of providing unsecured loans, share capital or issuing bills of purchase and sales. In the light of this finding, the AO issued questionnaire to the assessee to find out details of business of the assessee. After considering reply of assessee, he rejected the same and after reproducing the statement of Shri Praveen Kumar Jain wherein he accepted that he indulged in providing accommodation entries for commission through his concerns, (*which fact has been retracted later by Shri Praveen Kumar Jain*), AO was of opinion that Shri Praveen Kumar Jain was managing and controlling *inter-alia* concerns/group companies including the affairs of the assessee company and that assessee was also in the business of providing accommodation entries and consequently he rejected the books of the assessee and estimated profit of the business and held as under: -

“8.4 During the course of assessment proceedings, the assessee filed the details of transaction of providing accommodation entries by different modes which are reproduced in Col. C of the



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

following table. From the details so filed it is seen that the assessee during the year has given accommodation entries by way of different modes such as share application money/share capital, unsecured loan, bogus bills of purchase and sales upon which the net profit is worked out in the following manner-

S. No	Particulars of Entry provided	Amount (in Rs.)	Rate of Commission	Commission Income
1	Loan & Advances	3,23,236,807	0.20% per month (2.4% per year)	7,75,843
2	Bogus share application	35,44,80,000	2%	70,89,600
	Total			78,65,443

8.5 The net profit of the assessee from the above bogus transactions of business is estimated at Rs.78,65,443/-. This amount of Rs.78,65,443/- is brought to tax in the hands of the assessee by Invoking the provisions of section 145(3) of the Act, net of expenses.

8.6 The expenses Incurred if any by assessee against: the above " brokerage income is also not allowed considering the fact that, there are no details or evidences filed by the assessee with respect to the expenses, if any, incurred on this activity. The claim of the expenditure cannot be allowed until and unless it is made by the assessee, it is subject to verification, TDS has been duly deducted on such expenses, mode of payment is verified and supporting evidences are produced for verification. The loss debited by the assessee on a/c of share trading (F&O) – Rs.74,83,842/- inter alia other expenses, is also not allowed as it has been categorically held that the assessee is engaged in the business of providing accommodation entries only and the relevant details have also not been filed. Therefore, the amount



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

so earned by the assessee as per above Para is taxed as assessee's net income for the year under consideration under the head Income from Other Sources.

9. Protective Assessment –

From the facts discussed herein above, it is clear that it is Praveen Kumar Jain who is the kingpin of the entire net work of the companies/concerns revealed by him in his statements recorded during the course of search, no matter whether these entities are owned by him or by persons who are his relatives or employees or associate brokers, with the fact that entire show of the business of providing accommodation entries is being run by Praveen Kumar Jain. But natural, the profit/income by way of commission on the turnover done through these conduit being enjoyed by him only. The assessee company is also a concern operated and controlled by Mr. Praveen Kumar Jain as has been admitted by him in his statement recorded during the course of search action. Under the circumstances, the income earned on turnover done through this concern has been included as income in the individual case of Mr. Praveen Kumar Jain and the same is hereby assessed in this case on Protective Basis.”[Emphasis given by us]

6. Thus, protective assessment has been made by AO in the hands of assessee, since, substantial addition has been made in the hands of Shri Praveen Kumar Jain. Aggrieved, by the aforesaid Action of AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the same. Aggrieved, the assessee is before us.



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

7. We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee submitted that the action of the Ld. CIT(A) dismissing the appeal of assessee company, is wrong since the substantive addition made in the hands of Shri Praveen Kumar Jain has been confirmed at the level of Tribunal, therefore he pleads that, the protective assessment made in the hands of assessee be removed. The Ld. DR opposes and says that even if the protective assessment is deleted it should be made with a rider/condition that in case if substantive addition made in the hands of Shri Praveen Kumar Jain substantive is deleted, then protective assessment in the hands of the assessee should be revived.

8. We note that assessee is private limited company incorporated on 30.07.1999 and registered with Registrar of Companies. Assessee company is an investor/trader in diamonds and lends money. It has been brought to our notice that assessee has been duly complying with the statutory filing as per Companies Act. And it has been regularly filing its return of income including for AY. 2008-09 to AY. 2014-15. Based on search on 01.10.2013 u/s 132 of the Act at the premises of Shri Praveen Kumar Jain, and on the strength of his statement (Shri Praveen Kumar Jain) (*which has been retracted*) the AO concluded that assessee company was a group company of Shri Praveen Kumar Jain and indulged in providing accommodation entries as per instruction of Shri Praveen Kumar Jain. And taking note that assessee company has shown in AY. 2008-09 transaction of providing



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

loan/share application money of Rs.33,49,737/- and Rs.2,36,26,917/- respectively and AO estimated commission income in the hands of assessee to the tune of Rs.78,65,443/- and for others years as under: -

Sr. No	A.Y	Assessed Income
1	2008-09	78,65,440
2	2009-10	56,64,247
3	2010-11	89,19,550
4	2011-12	9,56,410
5	2012-13	21,81,000
6	2013-16	13,90,000
7	2014-15	

9. However, the AO noted that assessee company was acting as per instruction of Shri Praveen Kumar Jain and the profits from turnover of assessee company would be enjoyed by Shri Praveen Kumar Jain and since the substantive addition was made in the hands of Shri Praveen Kumar Jain, AO ultimately made protective addition in the hands of assessee. On appeal, Ld. CIT(A) confirmed the action of AO. The grievance of assessee company is that since substantive addition made in the hands of Shri Praveen Kumar Jain for AY. 2008-09 to AY. 201415 has been confirmed by this Tribunal vide order dated 19.01.2023, the protective assessment in the hands of assessee may be removed. The Ld. AR submitted the following: -



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

Concept of protective assessment

1. Protective assessment is a precautionary assessment.
2. Where an income has arisen, but AO is not sure who will pay tax on that income, he resorts to precautionary or protective assessment.
3. The concept of 'protective assessment', was explained by the Hon'ble Apex Court in the case of Lalji Haridas v. ITO [1961] 43 ITR 387.

Where substantive addition is confirmed, protective addition cannot survive.

1. There is no specific provision in the Act for the purpose of making a protective assessment.
2. However, now it is well-settled by judicial precedent that in order to protect the interest of the revenue, protective assessment can be made.
3. However, no recovery can be made on the basis of the protective assessment. [Reference - Parasmal Dangi v. Asstt. CIT [2007] 17 SOT 19 (URO) (Chennai)].
4. A protective assessment comes to an end when the substantive assessment is made in the case of a different person.
5. In the following cases, where substantive assessment was made or confirmed, the protective addition in the hands of other assessee did not survive.
6. CIT v. Teachers Housing Co-operative Society [2014] 41 taxmann.com 90/221 Taxman 191 (Mag.) (All.). Assessee-society was dealing in sale and purchase of land. In course of



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

assessment, Assessing Officer noted that a plot of land belonging to assessee was sold on heavy premium which was not disclosed in its books of account. Assessing Officer assessed an income of Rs. 10 lakhs being amount of premium received on sale of plots on protective basis in the hands of assessee. Simultaneously, substantive assessment of same amount was also made in case of AOP consisting of nine persons connected with assessee. Commissioner (Appeals) as well as Tribunal held that when said amount had been assessed on substantive basis in the hands of an AOP consisting of nine persons, who had actually received premium and appropriated same to themselves, said amount could not be taxed in hands of assessee on protective basis.

7. Parasmal Dangi (supra) - In this case, the substantive addition of certain sum was made in the case of 'P'. It was held that, once the substantive assessment had been made in the hands of 'P', the protective assessment made in the hands of the assessee in respect of same income could not stand. The revenue cannot have two assessments in respect of the very same income. Therefore, the protective assessment made in the hands of the assessee was set aside.

8. CIT v. Sobhrajmal [2014] 51 taxmann.com 506/([2015] 228 Taxman 308 (Raj.) - It was held that, where additions were already made on substantive basis in case of partnership firm or other partners and said additions had been finally sustained by Tribunal, then same addition could not be made on protective basis in hands of assessee, being partner of firm.



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

Therefore, where substantive assessment was made or confirmed in the hands of one assessee, the protective addition in the hands of other assessee cannot survive.

(i) Basant Dharmichand Jain Vs. DCIT (ITA Nos. 374 and 375/Mum/2022 for AY. 2008-09 and AY. 2009-10).

(ii) M/s. Atharv Business Pvt. Ltd. Vs. DCIT, CC-1(1) (ITA No. 497/Mum/2019 for AY. 2008-09).

(iii) Duke Business Pvt. Ltd. Vs. DCIT, CC-1(1) (ITA. No.2500/Mum/2019 for AY. 2008-09).

(iv) Sumukh Commercial Pvt. Ltd. Vs. DCIT, Central Circle-1(1) (ITA. No.2499/Mum/2019 for AY. 2008-09)

(v) Spurti computech Pvt. Ltd. Vs. DCIT, Central Circle-1(1) (ITA. No.2501/Mum/2019 for AY. 2008-09).

(vi) Casper Enterprises Pvt. Ltd. Vs. DCIT, Central Circle-1(1) (ITA. No.2498/Mum/2019 for AY. 2008-09).”

10. We note that the Tribunal in the case of Shri Praveen Kumar Jain Vs. DCIT (*ITA. No. 7191/Mum/2018 for AY. 2008-09 to AY. 2014-15 ITA. No.7197/Mum/2018*) by order dated 19.01.2023 has confirmed the substantive addition made by the AO. In the light of the same, the plea of assessee is that the protective addition made in the hands of the assessee be deleted, since substantive addition has been confirmed in the hands of Shri Praveen Kumar Jain. We find force in the plea of assessee, but in order to protect the interest of revenue, we direct the deletion of the protective assessment made in the hands of assessee with a condition/rider that in case, if the substantive addition in the hands of Shri Praveen Kumar Jain happens to be deleted, then



ITA Nos. 1409 to 1415/Mum/2023
A.Ys.2008-09 to 2014-15
M/s. Yash V. Jewels Ltd.

protective assessment in the hands of the assessee would be revived. With this observation, we partly allow the appeals of the assessee, without going in to the merits of the assessment/protective assessment.

11. This decision of ours will be followed in all other assessment years reflected in the caption.

12. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 31/07/2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 31/07/2023.
Vijay Pal Singh, (Sr. PS)

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

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.

आदेशानुसार/ BY ORDER,

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