

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1416/M/2023

Assessment Years: 2008-09 to 2015-16

M/s. Yash-V-Jewels Ltd., Office No. 501, Adibaba Apartment, Gazdar Scheme, 16 th Floor, Near Rajesh Khanna Garden, Santacruz -West, Mumbai-400 054 PAN: AAACY119P	Vs.	Dy. Commissioner of Income Tax, Central Circle-1(1), Room No. 903, 9 th Floor, Pratishtha Bhavan(Old CGO Bldg Annex), M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Vimal Punmiya, A.R.
Revenue by : Shri. B. Laxmi Kanth, D.R.

Date of Hearing : 12 . 07 . 2023

Date of Pronouncement : 31 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Yash-V-Jewels Ltd. (hereinafter referred to as 'the assessee') by filing the aforesaid appeal sought to set aside the impugned composite order passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] for A.Y. 2008 – 09 to 2015-16 on the grounds inter-alia that:

"I. 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, 196.

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 view of the learned assessing officer of disallowing legitimate business expenses Rs. 2,20,951/- debited to Profit and Loss account as unfairly treating all the business activities of the appellant company as accommodation entry business only.

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".

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

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee a group company of Praveen Kumar Jain claims to be in the business of trading in diamonds and out of the fund generated from this business assessee provides short term finance on interest basis to the needy. On the basis of search and seizure operation under section 132 of the Income Tax Act, 1961 (for short 'the Act') by Deputy Director of Income Tax (Investigation) [DDIT(Inv.)], Mumbai a notice under section 153C was issued and in response thereto the assessee had filed return of income on 12.02.2015 declaring total income/loss of Rs.5,40,931/-. Necessary notices were issued to which the assessee has duly responded and filed details/submissions. From the perusal of profit and loss account and balance sheet Assessing Officer (AO) noticed that the assessee

company has not done any business during the year under consideration and the preceding year but has debited loss of Rs.1,20,79,969/- to the P& L account on account of capital gain out of which loss of Rs.1,20,81,125/- falling under exemption by virtue of section 10(38) of the Act is not claimed and the balance sheet amount of Rs.1156/- is shown as Short Term Capital Gain (STCG). The AO also noticed that since the assessee has not done any business activities in the preceding year as well as during the year under consideration the expenses of Rs.2,14,939/- are not allowable under chapter IV-D of the Act and thereby disallowed the same. The AO accordingly framed the assessment under section 143(3) of the Act at the total income of Rs.1156/- on protective basis in the hands of assessee and on substantive basis in the hands of Praveen Kumar Jain.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by following his own order for A.Y. 2008-09 by dismissing the appeal filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee company is created, controlled and managed by Praveen Kumar Jain through bogus directors and has not carried out any real business activities. It is also not in dispute as has been held by AO that during the preceding year as well as during the year under consideration the assessee company was not engaged into any business activities. It is also not in dispute that during the year under consideration the assessee company has filed return of income declaring total loss of Rs.(-)2,13,783/-.

6. In the backdrop of the aforesaid facts and circumstances of the case AO framed the assessment at the total income of Rs.1156/- on protective basis on the ground that the substantive addition has already been made in the hands of Praveen Kumar Jain.

7. We have perused the order passed by co-ordinate Bench of Tribunal dated 19.01.2023 in ITA No.7192 to 7197 and 4977 to 4988 for A.Y. 2008 – 09 to 2014-15 wherein substantive addition in the hands of Praveen Kumar Jain in all the 39 group companies created and controlled by him including assessee company has been made.

8. In view of what has been discussed above, we are of the considered view that since the revenue has not challenged the protective addition made by AO and confirmed by Ld. CIT(A) the protective addition made in the hands of assessee company is not sustainable. The coordinate bench of Tribunal in case of Basant Dharmichand Jain vs. DCIT (2023) 146 taxmann.com 519 (Mumbai-Trib.) wherein it is held that when substantive addition

has been made in the hands of one assessee the protective addition in the hands of another assessee is not sustainable.

9. In view of what has been discussed above we are of the considered view that Ld. CIT(A) has erred in confirming the protective addition in the hands of assessee which is not sustainable in the eyes of law in the face of the fact that substantive addition for the same amount cannot be made in the hands of assessee company even on protective basis.

10. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 31.08.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.08.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.