

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2134/Del/2022
Assessment Year: 2017-18**

Shiv Cotex India P. Ltd., House No. 41-42, Gandhi Mandi, Panipat, Haryana. PAN:AANCS7408L (Appellant)	Versus	DCIT, Central Circle, Karnal. (Respondent)
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Assessee by	:	Sh. Piyush Kaushik, Advocate
Revenue by	:	Sh. Aashish Mohanty, CIT-DR

Date of hearing	:	04.12.2023
Date of pronouncement:		04.12.2023

ORDER

This is an appeal by the assessee against order dated 30.06.2022 of learned Commissioner of Income-tax (Appeals)-3, Gurgaon for the assessment year 2017-18.

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

“1. That on the facts and circumstances of the case and in the Law, the CIT(A) had grossly erred in confirming additions of Rs. 8,08,920 on account of unexplained investment; Rs. 3,12,882 on account of unexplained purchases; Rs. 2,80,000 on account of unexplained

investment; Rs. 3,99,571 on account of unexplained investment in excess stock; Rs. 12,43,925 on account of unexplained investment; Rs. 1,64,830 on account of unexplained investment; Rs. 7,45,824 on account of undisclosed income; Rs. 2,88,478 on account of undisclosed income; Rs. 2,58,160 on account of profit from undisclosed income & Rs. 11,46,899 on account of undisclosed income in the hands of assessee company.

2. That on the facts and circumstances of the case and in the Law the CIT(A) had grossly erred in confirming aforesaid additions in the hands of assessee company particularly when the seized documents forming the basis of aforesaid addition do not belong or pertain to the assessee; the ownership of seized documents forming the basis of aforesaid additions being acknowledged in the hands of Sh. Rajiv Garg, director of company in his individual capacity in the application filed before Income Tax Settlement Commission u/s 245C of the Act.”

3. Briefly, the facts are, the assessee is a resident corporate entity. Pursuant to a search and seizure operation conducted on the assessee under section 132 of the Income-tax Act, 1961, proceedings under section 153A of the Act were initiated. In course of assessment proceedings, based on materials found and seized during the search and seizure operation, the Assessing Officer called upon the assessee to furnish necessary details. Ultimately, he completed assessment under section 143(3) read with section 153A of the Act determining total income of Rs.8,34,73,850/- after making a number of additions. Against the assessment order so passed, the assessee preferred an appeal before learned first appellate authority.

However, the additions made by the Assessing Officer were more or less sustained except partial relief granted in respect of some additions.

4. Before us, learned counsel appearing for the assessee submitted that in course of proceedings before the first appellate authority, the assessee had pleaded that various additions made at the hands of the assessee have been owned up by one of the directors of the company, Shri Rajiv Garg and he has already approached the Settlement Commission for settling the dispute. He submitted, since the order of the Settlement Commission was not available at that point of time, the first appellate authority did not accept assessee's contention and sustained the additions. However, he submitted, the order of the Settlement Commission has now been passed and the issues may be restored back to the Assessing Officer for deciding afresh after taking note of the order passed by the Settlement Commission.

5. Learned Departmental Representative submitted, due to the order of the Settlement Commission, the issues can be restored back to the Assessing Officer for fresh adjudication.

6. We have considered rival submissions and perused materials on record. It is evident, before learned first appellate authority, the assessee had specifically pleaded that various additions made by the Assessing Officer at the hands of the assessee have actually been owned up by one of the directors of the company, Shri Rajiv Garg and he has made an application before the Settlement Commission for settling the dispute regarding those additions. It is observed, learned first appellate authority did not accept the aforesaid contention of the assessee since the proceedings before the Settlement Commission were not finalized. However, before us, learned counsel for the assessee has furnished a copy of the order dated 11.10.2023 passed by Interim Board for Settlement, wherein the application filed by Shri Rajiv Garg, one of the directors of the assessee company, has been accepted. It is further observed, in the said order the Settlement Commission has observed that since Shri Rajiv Garg is the key person of the group and manages all financial affairs and further that he is responsible for earning undisclosed income emerging from the seized materials, all the transactions, which do not belong to any particular group, should be considered in

his hands. Therefore, in view of the aforesaid observations of the Settlement Commission, all the issues relating to the additions made at the hands of the assessee and disputed before us need a fresh look at the end of the Assessing Officer. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the issues back to the Assessing Officer for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. While doing so, the Assessing Officer is directed to keep in mind the order passed by the Settlement Commission in respect of Shri Rajiv Garg, one of the directors of the assessee company. Grounds are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 04/12/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 04.12.2023

*aks/-