

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1689/Del/2022  
(Assessment Year: 2013-14)**

Alchemist Touchnology, Building No. 23, Nehru Place, Alchemist House, South Delhi-110019 (Appellant)	Vs.	ACIT, Central Circle-20, Delhi  (Respondent)
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**PAN:AAICA1617Q**

Assessee by :	Shri N. K. Lal, CA
Revenue by:	Shri Zafarul Haque Tanweer, CIT DR

Date of Hearing	10/01/2024
Date of pronouncement	11/03/2024

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1689/Del/2022 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-31, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 468/19-20 dated 05.11.2021 against the order of assessment passed u/s 153C/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.02.2019 by the Assessing Officer, ACIT, Central Circle-20, New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal before us:-

*"1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A)-31, Delhi in Appeal No. 468/19-20 has erred in passing the order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*

*2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred confirming the actions of the Ld. AO as well as the Ld. Addl. CIT, Range-5, New Delhi by granting multiple approvals u/s 153D of the Act (without any legal mandate) and revisiting the earlier approvals without any*

*change of facts and emergence of any new fact and thus the subsequent approvals and orders were void- ab-initio.*

*3. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in upholding the action of the Ld. AO by making additions/disallowances in the impugned assessment order framed u/s 153A of the Act on the issues which have no nexus with the material unearthed during the course of search operations and thereby making a de-novo assessment, which needs to be deleted.*

*4. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in upholding the action of the Ld. AO, as the impugned assessment order is devoid of principles of natural justice and the Ld. AO was unable to demonstrate the alleged seized document based on which an exorbitant addition has been made and thus void-ab-initio.*

*5. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of the Ld. AO, by making ad-hoc additions of Rs. 119,88,60,000/- u/s 69 of the Act as unexplained investments on mere surmises, conjectures and without first pointing out to the appellant company.*

*6. That on law, facts and circumstances of the case, the impugned order passed by the Worthy CIT(A) deserves to be quashed since the same has been passed against the principles of natural justice and at the same time there existed a reasonable cause for non- appearance whenever the date of hearing came to the knowledge of appellant.*

*7. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.”*

3. We have heard the rival submissions and perused the materials available on record. A search and seizure action u/s 132 of the Act was carried out in the case of Alchemist Group by the Investigation Wing of Chandigarh on 20.6.2014. The business activities of the group are mainly located at Chandigarh, Delhi, Kolkata, Mumbai, Patna and Varanasi. The corporate office of the group is at Nehru Place, New Delhi. Alchemist group is involved in various business activities including food & agriculture, hospitality, hotels & resorts, restaurants, retail, infrastructure, aviation, healthcare, road technologies, real estate, steel, pharmaceuticals, tea production etc. The case of the assessee was centralized vide order dated 2.12.2015 by the learned Principal Commissioner of Income Tax. Consequent to the search action u/s 132 of the Act, notice u/s 153C of the Act was issued to the

assessee company on 11.8.2016 after recording the satisfaction note on 9.8.2016. The assessee company filed its return of income for the Asst Year 2013-14 declaring Nil income in response to notice u/s 153C of the Act. The Id. AO observed in the assessment order that several notices and questionnaires were issued to the assessee company and that no replies were filed by the assessee company. On 4.12.2018, the assessee furnished Form 34BA intimating that it had preferred an application before the Hon'ble Income Tax Settlement Commission (ITSC) u/s 245D(1) of the Act. However, the same was rejected by the ITSC on 14.12.2018 for non-appearance and non-payment of tax. Thereafter, the assessment proceedings got resumed again. On 15.1.2019, an application was filed by the assessee requesting for cloned copy of seized data and requested for copy of FT & TR reference. In response to which a letter was written to the concerned ADIT (Inv.) and the assessee was directed to be present on 5.2.2019. This fact is mentioned in Page 28 of the assessment order. The Id. AO observed that none appeared on behalf of the assessee on 5.2.2019.

4. The Id. AO in the assessment proceedings proceeded to examine the details of Foreign Direct Investment (FDI) received by the assessee company. A hard disk -2 was seized from the office premises of Alchemist group at SCO 12-13, Sector-9D, Chandigarh which contained certain data pertaining to money to be sent and amount received in India through FDI route. A show cause notice dated 6.11.2018 was issued to the assessee and following information was asked from the assessee to explain and substantiate with respect to seized material:-

*"On analysis of data located in G:\DATA OF SERVER 3FILESERVER PRESENT DATA\XLS\Trade Transaction 2013-14- Final-Ravi Singapore-Finalin hard disk-2 seized from SCO 12-13, Sector-9 D, Chandigarh. Details related to Foreign Direct Investment (FDI) received in Alchemist group entities are found maintained. The scanned copy of details in the document located at the above path in the hard disk is reproduced below:*

<i>FDI Details</i>			
<i>Particulars</i>	<i>Send</i>	<i>Total Amount Received In India</i>	<i>Diff</i>
<i>AFL</i>	<i>13000000.00</i>	<i>11897090.17</i>	<i>1102909.83</i>
<i>ATI</i>	<i>19500000.00</i>	<i>18621973.931</i>	<i>878026.07</i>

AHL	19000000.00	18009117.72	990882.28
Total USD	51500000.00	48528181.82	2971818.18
	51500000.00	48528181.82	
1000000	51.50	48.53	

*From the analysis of the above document, it is clear that Alchemist Food Ltd. (AFL), Alchemist Touchnology Ltd. (ATL) and Alchemist Holdings Ltd. (AHL) had sent US \$13000000.00, \$19500000.00 and \$19000000.00 respectively. As per the above document, these companies have received US \$ 11897090.17, \$18621973.93 and \$18009117.72 respectively."*

5. In response to the above, the assessee furnished documents of Certificate of Foreign Inward Remittance (FIRC) from Standard Chartered Bank from LGF Lode Stone Global Fund Limited, Cyprus (in short LGF); share certificates issued by assessee to LGF; a letter from LGF to Punjab National Bank certifying receipt of share certificate from the assessee company; and furnished document from Reserve Bank of India (RBI) for amounts received under FDI route. The Id. AO observed that pursuant to earlier reference made by the CBDT Foreign Tax Division to examine the veracity of the funds received by the assessee from LGF, the reply of the FT&TR division of CBDT dated 1.6.2017 was received wherein it revealed that LGF was showing very meager profit but however it had invested in the assessee company to the extent of 1049518 pounds. The Id. AO concluded that LGF does not have strong balance sheet and financials. The hard disk seized from the computer contained the details of 'amounts sent' and 'amounts received in India'. The Id. AO issued show cause notice to the assessee to explain the amount sent to the extent of 19500000 USD. In other words, it was the belief of the Id. AO that the assessee had sent 19500000 USD in hawala route to Cyprus and had received back 18621973.93 USD under FDI and hence the amounts sent of 19500000 USD is to be taxed in the hands of the assessee company. The assessee in response to the said show cause notice duly responded that 19500000 USD represent the amount sent by LGF and the amount received by the assessee company in India was only 18621973.93 USD under FDI route and the difference was due to LC charges and other bank charges. This fact is also mentioned in Page 29 of the assessment order. The Id. AO further observed in page 29 of his

order that FT & TR report revealed that LGF had raised money through issue of shares and the same money had been introduced as investments in the assessee company. Despite this, the Id. AO proceeded to hold that the assessee had not explained the receipt of funds under FDI route and held that genuineness of the transactions is not established by the assessee. The Id. AO also observed that the transaction of the assessee is nothing but a camouflage to roundtrip their own money via FDI route. Accordingly, the Id. AO concluded that the figure of 19500000 USD shown as 'amounts sent' is undisclosed investment made by the assessee sent for the purpose of obtaining funds through FDI route to avoid tax incidence which have been introduced in its books. Such unexplained money introduced in its books through FDI route is liable for addition u/s 68 of the Act since the money has been sent to secure such funds through FDI route, the same has to be considered as unexplained investment in terms of provisions contained in section 69 of the Act. The Id. AO accordingly made an addition of Rs 119,88,60,000/- (19500000 USD \* Rs 61.48 per USD) u/s 69 of the Act.

6. The Id. CIT(A) upheld the action of the Id. AO by observing as under:-

*"5.3.1 I have carefully considered all the facts on record and find that the explanation given by the appellant to explain the difference between the amount shown as sent in the seized data and the amount actually received as investment, is quite untenable since the appellant has not given any details and particulars regarding the mode of transmission of the amount of \$ 19500000. Had this amount been transmitted through banking channels, the appellant could have readily given the details and statements thereof, which would also show the amounts claimed to be deducted therefrom. No such supporting evidence has been given during the assessment as well as appellate proceedings. Thus the genuineness of the entire transaction of sending and receiving funds is not at all established. Under these circumstances, I find no reason to interfere with the assessment order and accordingly the addition of Rs. 119,88,60,000/- on account of unexplained investment u/s 69 of the I.T. Act, is hereby upheld. Ground nos. 6 & 7 are dismissed."*

7. The short issue that arises for our consideration on merits is that whether the expression 'amounts sent' of 19500000 USD mentioned in seized data represent amounts sent by assessee under hawala route or the amounts sent by

LGF from Cyprus to assessee company. The assessee had been consistently stating that the same represents amounts sent by LGF from Cyprus and after deduction of LC charges and other bank charges, the assessee could receive only 18621973.93 USD in India under FDI route. There is absolutely no dispute that the assessee had indeed received this sum of 18621973.93 USD equivalent to Rs 100 crores as share capital and share premium from LGF Cyprus under FDI route. We find that the assessee had furnished the following documents before the lower authorities :-

- a) Opinion of merchant bankers to FDI dated 24.12.2012 regarding the fair market value of the assessee company shares.
- b) FIRC certificate issued by Standard Chartered Bank that foreign currency of 18621973.93 USD was received at an exchange rate of Rs 53.70 amounting to Rs 100 crores on 11.2.2013 by the assessee company from LGF Lodestone Global Fund Limited, Cyprus.
- c) Share certificate issued by assessee company to LGF.
- d) Return of allotment in Form 2 filed by the assessee company with Registrar of Companies (ROC) duly containing the details of number of shares issued, break up of share capital and share premium thereon and the date of allotment of shares together with the board resolution of the assessee company for the said allotment of shares and payment of requisite filing fees to ROC.
- e) Letter dated 8.3.2013 submitted by assessee company to Punjab National Bank for submission of FC-GPR Part A to RBI-Foreign Direct Investment mentioning the details of amounts received under FDI route duly mentioning the name of LGF with its address in the prescribed form.
- f) Certificate from a independent company secretary dated 7.3.2013 certifying that with regard to the subject mentioned receipt of monies under FDI route and consequential allotment of shares to LGF , the requirements of relevant provisions of the Companies Act, 1956 and Foreign Exchange Management Act (FEMA) had been complied with.

g) Letter issued by LGF dated 12.3.2013 to Punjab National Bank confirming the fact of they investing Rs 100 crores towards shares in assessee company and also confirming the fact of receipt of share certificate from the assessee company.

8. We find that the assessee had been asking for a cloned copy of the hard disk before the Id. AO right from the assessment proceedings. Infact even during the pendency of the appeal before this Tribunal, the assessee had issued a reminder request to the Id. AO vide letter dated 05.01.2023 and 20.10.2023 to provide the cloned copy of the hard disk-2 seized from the office premises of Alchemist group at SCO 12-13, Sector -9D, Chandigarh. In this regard, the Id. DR argued that seized documents were already handed over to the assessee on 4.12.2018 by drawing a proper Mahazarnama. The Id. AR objected to the same by stating that when Mahazarnama, if any, per se was drawn on 04.12.2018 wherein the seized documents were handed over to the assessee according to revenue, then what is the need for the Id. AO to grant an opportunity to the assessee to be present for receiving the cloned copy of the hard disk on 5.2.2019. In this regard, the Id. AR drew our attention to the order passed by the learned Commissioner of Income Tax (Appeals) -27, New Delhi in Appeal No. CIT(A), Delhi-27/10748/2018-19 dated 09.06.2023 in the case of ROC Foods Limited (earlier M/s Alchemist Foods Limited). It is pertinent to note that Alchemist Foods Ltd was also one of the recipients of share capital and share premium under FDI route along with the assessee company herein. In the said order of Id. CIT(A) dated 09.06.23, the letter issued by the Id. AO dated 01.02.2019 is reproduced wherein an opportunity of hearing is given to the Alchemist Foods Limited, Alchemist Hospitals and assessee herein. For the sake of convenience, the said letter dated 01.02.2019 is reproduced below:-

*"Office of the  
Asstt. Commissioner of Income Tax,  
Central Circle 20, New Delhi  
Room No. 108, ARA Center, 1<sup>st</sup> floor, Jhandewalan Extn., New Delhi 10055  
Phone No. 011-23593444*

*F No. ACIT/CC-20/2018-19*

*Dated 01.02.2019*

To,

The  
The Principal officer,  
23, Alchemist House,  
Nehru Place New Delhi

*Sub: Request for attending cloning and forensic analysis in the case of Alchemist group on 05.02.2019- reg.*

*Kindly refer to the above mentioned subject.*

*In this regard, it is submitted that a search & seizure operation u/s 132 of the Act was carried out by investigation Wing, Unit 2 of DIT (Inv) Chandigarh DOS 20.08.2014 in the case of Alchemist group. The assessment is pending in the following cases M/s. Alchemist Foods, M/s. Alchemistic Tochnology and M/s. Alchemist Hospital. Assessee has requested for clone copy of required data disk as it is alleged by assessee that no such data is there. In view of above cloning and forensic analysis of same disk will be carried on 05.02.2019.*

*You are thereby requested to kindly be present at the time of cloning and further forensic analysis.*

*Encl: As above*

*Yours faithfully,*

*(Saurabh Kumar Sharma)  
Asstt. Commissioner of Income Tax,  
Central Circle-20, New Delhi"*

9. The assessee had replied that since this letter was received only on 6.2.2019, it could not attend the hearing on 5.2.2019. This was intimated to the Id. AO on 06.02.2019 itself both by way of letter sent to him physically as well as in official Email ID of the Id. AO. The Id. DR vehemently submitted that the seized documents were indeed already handed over to the assessee on 4.12.2018 itself much before the completion of assessment proceedings on 7.2.2019. We are in agreement with the argument advanced by the Id. AR that if the seized documents were already provided to the assessee on 04.12.2018 itself, then what is the need for the Id. AO to grant an opportunity to the assessee to be present for receiving the cloned copy of the hard disk on 05.02.2019. Hence the version of the assessee that the cloned copy of the hard disk-2 which allegedly contained the material for

making the impugned addition was never handed over to the assessee requires to be accepted. In this background, the stand taken by the assessee that it had not sent any monies abroad through illegal means and hence there cannot be any addition u/s 69 of the Act towards unexplained investment in the hands of the assessee company requires to be accepted. We hold that when assessee states that it had not made any investment by sending monies abroad in illegal means, it cannot be asked to prove the negative. The onus shifts on the revenue to prove the fact with cogent materials that statement of assessee is incorrect. Without doing so, the revenue cannot directly proceed to make an addition u/s 69 of the Act by entertaining a huge suspicion.

10. We find that from perusal of the records, there is no evidence to prove that the 'amounts sent' shown in the hard disk is actually amounts sent by assessee company in hawala route which had ultimately found its way in the form of share capital and share premium under FDI route. The revenue had completely addressed this issue and made an addition purely on suspicion and surmise without any basis thereby making the addition totally unsustainable in the eyes of law. On the contrary, the assessee had stated that LGF had sent 19500000 USD from Cyprus and after deduction of LC charges and other overseas bank charges , the assessee could ultimately receive only 18621973.93 USD equivalent to Rs 100 crores in India under FDI route as share capital and share premium. In support of this, the assessee had duly provided all the necessary documents as listed above. The assessee from the inception had always taken the stand that it had not sent any monies abroad in hawala route. The assessee cannot be asked to prove the negative. It is for the revenue to prove the same with cogent evidences, which is not done in the instant case. We find that the revenue had merely proceeded to make the addition on suspicion. It is trite law that suspicion howsoever strong would not partake the character of legal evidence and hence a greater onus is casted on the revenue to bring on record cogent evidences to justify its suspicion, which is conspicuously absent in the instant case. The only material that is relied upon by the revenue is the hard disk seized during search which only contained

the details of 'amounts sent' and 'amounts received'. Nowhere the said material even suggested that the amounts were sent by assessee company in illegal route which in turn had surfaced back in the form of share capital and premium under FDI route from Cyprus. Though the presumption u/s 292C of the Act would go in favour of the revenue, it cannot be brushed aside that the said presumption is a rebuttable presumption and assessee had duly discharged its onus on the same. Moreover, the present assessee herein is an assessee proceeded u/s 153C of the Act and hence it is all the more necessary for the revenue to arrive at the satisfaction that income or materials or documents does not belong or pertain to the searched person and indeed belongs to third person (i.e 153C assessee). Viewed from this angle, it could be safely concluded that presumption u/s 292C of the Act would apply only to the person proceeded u/s 153A of the Act and not for the assessee u/s 153C of the Act.

11. Further this case was even subjected to examination by CBDT Foreign Tax Division wherein FT & TR reference was also made to Cyprus tax authorities. FT & TR had submitted its report duly confirming the fact that LGF had raised monies through issue of shares and those monies had been utilized by them for making investment in shares of Assessee Company under FDI route. No adverse comments were indeed given by FT &TR of CBDT with regard to these transactions. Hence the source of source is also duly established and proved by the assessee company herein. Hence the allegations leveled by the revenue that LGF has shown meager income in its financial statements are totally irrelevant considerations here and the entire action of the lower authorities herein would only result in the doubting the examination carried out by CBDT Foreign Tax Division.

12. In view of the aforesaid observations, we hold that the entire addition u/s 69 of the Act has been made by the Id. AO and sustained by the Id. CIT(A) out of mere suspicion without any basis and hence the same is hereby directed to be deleted at once on merits.

13. Since the relief is granted to the assessee on merits, the other legal grounds raised by the assessee in the grounds of appeal are not adjudicated and the same are hereby left open.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/03/2024.

-Sd/-  
**(C. N. PRASAD)**  
**JUDICIAL MEMBER**

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

Dated: 11/03/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi