

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.2599/Del/2022  
Asstt. Year: 2015-16

Smt. Shrikanta Bajaj, RNB House, 1 Near Raja Garden Opp. Mother Dairy, New Delhi 0 110 027 PAN AHLPR0130J	Vs.	DCIT, Central Circle-32, Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain, Advocate Shri Aman Garg, CA, Ms. Uma Upadhyay, CA Ms. Bulbul Singhal, CA
Department by:	Shri Dharam Veer Singh, CIT- DR
Date of Hearing:	06.05.2024
Date of pronouncement:	22.05.2024

**ORDER**

**PER VIMAL KUMAR, JM**

The appeal is against order dated 13.09.2022 of the Learned Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred as Learned CIT(A)] confirming the addition of Rs. 45,00,000/- made by the Learned Assessing Officer (hereinafter referred as Learned AO) under section 68 of the Income Tax Act, 1961 vide order dated 17.12.2019.

2. Brief facts of the case are that the appellant/assessee filed its return on 22.02.2016 declaring income of Rs. 7,11,260/- for assessment year 2015-16 which was processed under section 143(1) of the Income Tax Act, 1961. The assessee is partner of M/s. RNB Leasing and Financial Services. A search and seizure operation was carried on Bajaj Group and others group on 20.04.2017. During the course of search and seizure a key of Indian Overseas Bank locker was found. This locker was in the name of Lalita Bajaj and the assessee i.e. Mrs. Shrikanta Bajaj. Search action on 22.05.2017 was carried out on locker no. 111 Indian Overseas Bank. No incriminating document or material was found as is evident from the punchnama dated 22.5.2017. Learned Assessing Officer while framing assessment order under section 153A relied on the material seized from premises of the third party i.e. family members and concerns of M/s. N.K. Sarda belonging to RNB Group. It is a fact that assessee for the relevant year under consideration filed income tax return on 22.02.2016 and time limit to issue notice under section 143(2) expired on 30.09.2016. There was no pending assessment in the case of assessee at the time of framing of assessment under section 153A of the Income Tax Act. Learned Assessing Officer on basis of seized documents passed order dated 17.12.2019 seeking explanation as to why amount of Rs. 45,00,000/- should not be added and initiated demand notice and challan for charging interest and penalty.

3. Appellant / assessee preferred appeal which was dismissed vide order dated 13.09.2022.

4. Being aggrieved appellant / assessee preferred present appeal.

5. Learned Representative for appellant assessee submitted that Learned CIT(A) erred in not appreciating the fact Learned AO had framed assessment under section 153A read with section 143(3) of the Act solely on material seized from premises of third party and no incriminating material was found during the course of search of locker. Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 2015(9) TMI 80-Delhi High Court has held that completed assessments can be interfered with by the AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search. Assessee had received Rs. 45,00,000/- on consideration for sale of her share in RNB Infrastructure Pvt. Ltd. at par value. Assessee had sold the shares out of the old investments made by the assessee. Learned AO and Learned CIT(A) had not doubted the purchase of investments by the assessee. Before Learned CIT(A) assessee submitted an application under rule 46A of the Income Tax Act, 1961 with documents in support of her explanation. Learned CIT(A) called for a remand report from Learned AO. In remand report Learned AO submitted that in order to verify the claim of assessee that the funds received in bank account was on account of sale of investment, he issued notices under section 133(6) of the Act and in response of the parties submitted their replies along with

documentary evidence which substantiated the explanation given by the assessee.

6. Learned representative for appellant / assessee submitted that the assessee wants to press the Ground No. 14 which is as under:-

*“14. (i) On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 45,00,000/- under section 68 of the Act on account of income from undisclosed sources.*

*(ii) That the above addition has been confirmed ignoring the detailed submissions provided by the assessee.”*

7. Learned representative for appellant/assessee submitted that similar grounds were taken in ITA No. 2596/Del/2022 and ITA No. 2593/Del/2022. Hon'ble ITAT Delhi Bench in ITA No. 2596/Del/2022 titled as Lalita Bajaj vs. DCIT decided on 11.10.2023 in similar facts ordered deletion of Rs. 35,00,000/- under section 68 of the Income Tax Act, 1961. Hon'ble ITAT Delhi Bench in ITA No. 2593/Del/2022 titled as Smt. Poonam Bajaj vs DCIT decided on 31.1.2024 held that Learned CIT(A) has erred in confirming the addition of Rs. 5,00,000/- under section 68 of the Act on account of income from undisclosed sources.

8. Learned Representative for Department submitted that the appellant is alleged to have obtained accommodation entry from entry operator Sh. Nirmal Sarada amounting to Rs.45,00,000/- Ld. AO in the assessment order has relied upon various findings of the search and survey operations carried out on the premises

of the appellant and the shell concerns as well as pre search and post search investigations to the fact that the concern from whom funds has been received by the appellant and other RNB Group entities are shell concern managed and operated by Nirmal Kumar Sarda or his family members and do not have any business activity. The concerns operated by Mr. Sarda are merely shell concerns which are receiving credits immediately before transfer of money to the RNB group and are being used for providing accommodation entries by layering of unaccounted money. Learned CIT(A) rightly held that funds are rotated through family members and concerns of M/s. N.K. Sarda and are being ultimately transferred in accounts of persons belonging to RNB Group. So appeal may be rejected.

9. From examination of record in light of aforesaid rival contentions it is crystal clear that appellant / assessee Smt. Shrikanta Bajaj filed return for assessment year 2015-16 of Rs. 7,11,260/- on 22.02.2016. Appellant / assessee is partner in M/s. RNB Leasing and Financial Services. Consequent to search and seizure operations on 20.4.2017 key of Indian Overseas Bank Locker No. 111 in the name of Lalita Bajaj and the assessee i.e. Smt. Shrikanta Bajaj was found. On search of locker No. 111 dated 12.5.2017, nothing incriminating was found as is evident from punchnama and assessment order.

10. The Co-ordinate Bench of the Tribunal in the case of Lalita Bajaj and Namita Bajaj in ITA No. 2596/Del/2022 And

2598/Del/2022 for Assessment Year 2015-16 vide order dated 11/10/2023 held as under:-

*“10. On careful consideration of submission, first of all, we note that the Assessing Officer made addition in hands of assessee by noticing that the assessee has sold 3,50,000/- shares of RNB Infrastructure Pvt. Ltd. @10% which were acquired by the assessee at the very same price i.e. @10 per share. The AO made addition by observing that the explanation submitted by the assessee was baseless as the impugned amount remained unexplained credit and the explanation of the assessee was not found to be sustainable to the satisfaction of the AO, therefore, the AO made addition u/s 68 of the Act. Before Learned CIT(A), assessee filed an additional evidence under Rule 46A of the Income Tax Rules and remand report was called from the AO wherein the AO after verification and examination of additional evidence and by taking on record the replies of the assessee from the share purchaser parties in response to notice u/s 133(6) of the Act reported as follows:*

*"4. In the application under rule 46A, the appellant has submitted that the credits/funds received in the bank account in the year under consideration are on account of sale of investment held by her in equity shares of RNB Infrastructure Pvt. Ltd. to RNB Leasing and Financial Services. It is further submitted by the appellant that amount received by her from the alleged shell concern was merely on the instructions of RNB Leasing and Financial Services, however, she has no business relation with the alleged shell concerns. Further referring to FORM 2 i.e return of allotment filed on 23.05.2007 and list of share transfer submitted with MCA. the assessee has submitted that investments held in shares of RNB Infrastructure Pvt. Ltd. were sold by her @10 per share which were acquired by her directly from RNB Infrastructure Pvt. Ltd. @ 10 per share. Referring to the above mentioned additional evidences the assessee has stated that funds received by her in the year under consideration were only on account of sale of investments at par out of which no gain/profit has arisen to her and since, no surplus money being received by her except for the recovery of cost of investments, the transactions cannot be regarded as accommodation entries.*

*5. In order to verify the above documents and submissions made by the assessee, notices under section 133(6) were issued to the above concerns on 07.03.2022. In response to which replies were received from the parties. Copy of the said replies is also enclosed here with this report for your goodself's kind consideration and reference. In the replies the parties have confirmed that funds were given to the assessee on behalf of RNB Leasing and Financial Services on account of purchase of shares by them from RNB Leasing and Financial Services out of their*

*disclosed sources of fund Further, in support of their explanation they have submitted copy of their bank statement, financial statements, ITR. The explanation given by assessee is substantiated by the documents submitted.*

*6. It is noticed that the explanation/submission now being made by the assessee was not made during the course of assessment proceedings. During the assessment proceedings ample opportunities were given to the assessee to discharge her onus to substantiate the genuineness of the transactions. However, no plausible explanation was given in this regard at that time. However, the documents now being filed before your good self and replies have also been received from various parties confirming the same Hence, the decision of considering the additional evidence may be Taken on merit by your good office."*

*11. When the observations of the AO, basis taken by the Learned CIT(A) for upholding the addition made by AO is evaluated on the touch stone of documentary evidences submitted by the assessee and the remand report of the AO vide dated 15.03.2022, then we safely gather that the assessee acquired shares of RNB Infrastructure Pvt. Ltd. by view of allotment during F.Y. 2007-08 and her name was listed in the list of share holders filed by the said company in Form 2 on 23.05.2007 which was submitted to Ministry of Corporate Affairs. It is also not in dispute that the acquisition price of shares and sale price of shares was same i.e Rs.10 per share. The AO in the remand report recorded the Learned CIT(A) that the share purchaser party have confirmed the fund given to the assessee on behalf of the RNB Leasing and Financial Services on account of purchase of share by them from RNB Leasing and Financial Services out of their disclosed sources of funds. In support of said explanation, share purchases parties had also submitted copies of their respective Bank Statement, Financial Statement, Income-tax Returns in response to notice u/s 133(6) of the Act issued by AO. The Assessing Officer has concluded his remand report by merely alleging that despite several opportunities, the assessee did not submit documentary evidences during the proceedings which were submitted belatedly before Learned First Appellate Authority without any reason. The AO have not made any adverse comments on the additional evidences filed by the assessee and submitted the report by finally stating that the documents now being filed as additional evidences and replies of share purchaser confirming the transaction of purchaser of shares are on record.*

*12. In view of above factual findings stated by the AO in the remand report, we are unable to see any valid reason to invoke the provision of Section 68 of the Act treating the amounts received by the assessee as considering of sale of shares as unexplained to credits particularly when the Department has not objected the investment of shares by the assessee during F.Y. 2007-08 relevant to A.Y. 2008- 09. On respectful and careful perusal of the proposition relied by the Learned CIT(A), we*

*clearly observe that in these case issue was of alleging the allotment of Shares by assessee company against share application money and share premium and the AO made addition under section 68 of the Act by holding that the identity and creditworthiness of investor and genuineness of transactions could not be established by the share application and premium recipient assessee company. But in the present case, the assessee has not received any share application money or premium from the investor but the impugned transaction in the present case pertains to sale of investment/ shares by the assessee to the other entities and such transaction cannot be alleged as unexplained or bogus particularly when the Department has not disputed the investment in shares of RNB Infrastructure Pvt. Ltd. by the assessee during the earlier period of time i.e. in the A.Y. 2008-09 in the year of investment by the assessee. Therefore, we respectfully note that the benefit of case laws relied by CIT(A) having distinct and dissimilar facts and circumstances are not available for the Revenue in the present case. Accordingly, Ground No.4 of assessee on merits is allowed and AO is directed to delete the addition.”*

11. By respectfully following the orders of Co-ordinate Bench (supra) and finding the parity the Ground No. 14 are allowed and the additions made by the Learned AO which was sustained by the Learned CIT(A) is hereby deleted.

12. Hence the appeal is allowed. Both the impugned orders are set aside.

**Order pronounced in the open court on 22<sup>nd</sup> May, 2024.**

**sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**sd/-  
(VIMAL KUMAR)  
JUDICIAL MEMBER**

Dated: 22/05/2024

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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