

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA” BENCH
VIRTUAL HEARING AT KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. Nos.83 to 85/PAT/2021
Assessment Years: 2010-11 to 2012-13

Bajaj Iron& Steel Private Ltd. Appellant
C/o, Nirmal & Associates, Chartered Accountants
Nepali Kothi,Opp. Gasoline Petrol Pump,
Boring Road, Patna-800001.
(PAN: AADCB7751M)

vs.

ACIT, Central Circle-2, Patna Respondent

Appearances by:

Shri Nishant Maitin, CA appeared on behalf of the appellant.

Shri Ashok Kumar, CIT, DR, appeared on behalf of the Respondent.

Date of concluding the hearing :October 18, 2024

Date of pronouncing the order :November 18, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

All the captioned appeals have been preferred by the assessee against the separate orders evenly dated 22.03.2021 of the Ld. Commissioner of Income Tax (Appeals), Patna-3 (hereinafter referred to as the “Ld. CIT(A)” passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for Assessment Years 2010-11 to 2012-13. Since the captioned appeals for different Assessment Years 2010-11 to 2012-13 belong to same assessee and all pertaining to the same search action, hence, the same were heard together and are being disposed of by this common order.

2. The assessee in these appeals is aggrieved by the action of the Ld. CIT(A) in confirming the addition made by the AO on account of share application/share premium and unsecured loans treating the same as

income of the assessee from unexplained sources. The ITA No./Assessment Year wise detail is as under:

	ITA No. 83/Pat/2021, AY : 2010-11	ITA No. 84/Pat/2021, AY: 2011-12	ITA No. 85/Pat/2021, AY: 2012-13
Addition on account of (in lakh)			
Share capital	40.60	20.00	
Share Premium	365.40	348.50	
Unsecured Loan	210.00	17.00	235.00
Enhancement by AO	50.10 lakh	-	-
Enhancement by CIT(A)	666.10	385.50	235.00

3. At the outset, the Ld. Counsel for the assessee has submitted that the assessment proceedings in the case of the assessee have been carried out u/s. 153A of the Act pursuant to the search action carried out u/s. 132 of the Act on 25.07.2013. He has further submitted that during the course of search action, no incriminating material was found pertaining to the additions made by the Assessing Officer (in short "AO"). He has further submitted that for Assessment Years 2010-11 & 2011-12, the original assessment proceedings stood completed/unabated on the date of search action, therefore, in the light of the recent decision of the Hon'ble Supreme Court in the case of **Pr. CIT Vs. Abhishek Buildwell Pvt. Ltd. [2013] 454 ITR 212 (SC)**, the impugned additions were not warranted. He, in this respect has given the following chart :

Asst. Year	2010-11	2011-12	2012-13
Original Return filed u/s.	139(1)	139(1)	139(1)
Date	28.09.2010	24.08.2011	17.09.2012
Returned Income	Nil	Nil	Nil
Pending proceedings as on date of search	Nil	Nil	Nil
Due date for notice u/s. 143(2) six months from the end of relevant asst. year.	30.09.2011	30.09.2012	30.09.2013

4. Apart from that, even on merits he has brought our attention to the relevant page 8 of the impugned order of the Ld. CIT(A) dated 22.03.2021 for AY 2012-13 and further, page 8 of the order dated 22.03.2021 for AY 2011-12 and pages 9 and 10 of the order of Ld. CIT(A) dated 22.03.2021 for AY 2010-11, wherein, the remand report of the AO has been reproduced. The Ld. Counsel in this respect has stated that even on merits, the assessee had duly furnished requisite evidence and details to prove the identity and creditworthiness of the share subscribers and creditors and genuineness of the transactions, whereupon, the Ld. CIT(A) had called upon remand report from the AO and the AO has not made any adverse comments against the assessee and has reported that he had examined the documents and replies filed by the assessee and further the replies received from the share subscribers/creditors in response to the notices issued u/s. 133(6) of the Act and which have been examined /verified by him.

6. The Ld. DR could not rebut the aforesaid facts on the file. He, however, has submitted that even the Ld. CIT(A) has enhanced the income of the assessee pertaining to two loan transactions observing that the AO has not properly examined the said transactions. He, has further brought our attention to the relevant observation of the AO in relation to AY 2010-11, wherein the AO has noted that the assessee during the year had taken a loan of Rs.1.90 Cr. from M/s. Paramsukh Mercandise and it was further noted that in some separate cases, survey action was carried out in the case of M/s. Mandhyati Dealcom Pvt. Ltd. and M/s. Manohar Vanijya Pvt. Ltd. on 24.07.2013 and during the survey action statement of one Shri Vinod Kumar Agarwal was recorded and wherein, he admitted that accommodation entries were

provided to M/s. Paramsukh Mercandise through paper companies controlled by him. The AO further noted that no disclosure has been made in respect of share capital/share premium in case of M/s. Paramsukh Mercandise. Under these circumstances, the AO treated the unsecured loans from M/s. Paramsukh Mercandise to the assessee as unexplained income of the assessee.

6.1. Even on the basis of above observation, in our view, the addition cannot be sustained in the case of the assessee. Firstly, there was no incriminating material found during the course of search action relating to the aforesaid loan transaction and the said issue cannot be re-examined in case of a non abated/completed assessment as no incriminating material has been found during the search action. Secondly, merely because, the creditor had not declared income in its return of income, that cannot be a basis to make the addition in the case of the assessee. Rather, the source of credit, in such a scenario, stands proved in the hands of the assessee. Moreover, a remand report has also been called upon by the Ld. CIT(A) from the AO, whereupon, the AO has duly examined the issue and no adverse finding has been given. Hence, even the enhancement made by the Ld. CIT(A) in respect of two other loan transactions, under the circumstances, is not sustainable. Even for AY 2012-13, the Ld. CIT(A) himself has observed in the impugned order that during the appellate proceedings, appellant submitted the details regarding share transactions along with explanation. The same were forwarded to the AO and remand report was called upon. In the remand report, the AO has mentioned that the appellant had filed several documents/details, which were examined and verified. The Ld. Counsel has, therefore, submitted that no adverse remarks have been given by the AO in the remand report.

7. However, the Ld. CIT(A) without making any discussion and without pointing out any defect or infirmity in the evidences/documents and explanations furnished by the assessee, confirmed the additions by relying upon the assessment order and ignoring the remand report and without pointing out any error or discrepancy in the details furnished by the assessee. Therefore, the impugned orders of the Ld. CIT(A) are not sustainable even on merits also.

8. In view of the above discussion, the impugned additions are not sustainable and the same are ordered to be deleted. The impugned orders of the Ld. CIT(A) are set aside. The appeals of the assessee stand allowed.

9. In the result, all the appeals of the assessee stand allowed.

Order is pronounced in the open court on 18.11.2024

Sd/-
[Rakesh Mishra]
लेखा सदस्य/**Accountant Member**

Sd/-
[Sanjay Garg]
न्यायिक सदस्य/**Judicial Member**

Dated: 18.11.2024.

JD. Sr. P. S

Copy of the order forwarded to:

1. **Appellant –**
2. **Respondent –**
3. CIT(A), Patna-3
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

*I.T.A. Nos.83-85/Pat/2021
Assessment Years: 2010-11 to 2012-13
Bajaj Iron & Steel P. Ltd.*