

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

**BEFORE PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1211/Del/2023
(Assessment Year : 2012-13)
ITA No.2588/Del/2022
(Assessment Year : 2013-14)
ITA No.2589/Del/2022
(Assessment Year : 2014-15)
ITA No.2590/Del/2022
(Assessment Year : 2015-16)
ITA No.2591/Del/2022
(Assessment Year : 2016-17)
ITA No.2592/Del/2022
(Assessment Year : 2017-18)

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| RNB Infrastructure Pvt. Ltd. RNB House, 1, Shivaji Enclave, Main Road, Near Raja Garden, Opp. Mother Dairy, New Delhi-110027 PAN No. AADCR0962Q (APPELLANT) | Vs. | DCIT, Central Circle-32, New Delhi (RESPONDENT) |
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| Assessee by | Shri Ved Jain, Adv. & Sh. Aman Garg, CA |
| Revenue by | Ms. Suman Malik, CIT-DR |

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| Date of hearing: | 18.09.2024 |
| Date of Pronouncement: | 16.12.2024 |

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeals filed by the assessee against the respective orders passed under s. 250 of the Income Tax Act, 1961 (the Act) by the Ld.CIT(A) is tabulated hereunder:-

| Sl.No. | ITA Nos. | Assessment Year | Ld.CIT(A)'s order dated | Assessment order passed under section | Assessment order dated |
|--------|---------------|-----------------|-------------------------|---------------------------------------|------------------------|
| 1. | 1211/Del/2023 | 2012-13 | 28.02.2023 | 153A r.w.s 143(3) | 17.12.2019 |
| 2. | 2588/Del/2022 | 2013-14 | 29.08.2022 | 153A r.w.s.143(3) | 20.12.2019 |
| 3. | 2589/Del/2022 | 2014-15 | 29.08.2022 | 153A r.w.s 143(3) | 17.1.2.2019 |
| 4. | 2590/Del/2022 | 2015-16 | 29.08.2022 | 153A r.w.s 143(3) | 17.12.2019 |
| 5. | 2591/Del/2022 | 2016-17 | 29.08.2022 | 153A r.w.s 143(3) | 17.12.2019 |
| 6. | 2592/Del/2022 | 2017-18 | 29.08.2022 | 153A r.w.s. 143(3) | 17.12.2019 |

2. As noted, the captioned appeals were set in motion from search assessments passed under s. 153A of the Act. Accordingly all the captioned appeals were heard together and a consolidated order is passed hereunder:

3. As transpired in the course of hearing, the assessment years 2012-13, 2013-14 & 2014-15 stood concluded on the date of initiation of search and are thus unabated assessment years for the purposes of section 153A whereas assessment years 2015-16, 2016-17 & 2017-18 were pending on the date of search and thus stood abated.

ITA No.1211/Del/2023, ITA No.2588/Del/2022 & ITA No.2589/Del/2022
(Assessment Years : 2012-13, 2013-14 & 2014-15)

4. Briefly stated, a search under s.132 of the Act was conducted on RNB Group including assessee on 20.04.2017. Consequently, notice under s. 153A of the Act was issued on the assessee and assessment was framed under s. 153A of the Act wherein additions and disallowances of varied amounts were made in different assessment years. The Ld.CIT(A) in the respective first appellate orders passed under s. 250 of the Act confirmed the additions/disallowances.

5. Aggrieved, the assessee preferred appeal before Tribunal.

6. When the matter was called for hearing, the Ld. Counsel for the assessee submitted at the outset that the captioned AYs 2012-13, 2013-14 & 2014-15 are liable to be challenged on three broad issues. *Firstly*, the additions made by the AO in the assessment framed under s. 153A are unconnected to any incriminating material found in the course of search as is self-evident from panchnama as well as the assessment orders. The assessment under s. 153A has been framed relying on statement of third

person, electronic data recovered from third person. Hence, such additions made are unsustainable under s. 153A in law insofar as assessment years 2012-13, 2013-14 & 2014-15 concerned owing to the fact that the aforesaid assessment years remained unabated at the time of search. The assessment being concluded and not pending at the time of search, the additions to be made under s. 153A is squarely dependent upon the discovery of incriminating documents found in the course of search as held in landmark judgement in the case of *Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399 (SC)* followed in many other judgements delivered by Hon'ble Supreme Court. Consequently, the scope of assessment order under s. 153A is restricted to the incriminating material found in the course of search in the case of assessee. *Secondly*, the additions made in the proceedings under s. 153A based on material found in the course of search in case of third person is unsustainable in law and right course available to AO in law was to proceed against the assessee under s. 153C of the Act rather than s.153A of the Act. The additions under s. 153A of the Act are bad in law in this score too. This view has been expressed by the Co-ordinate Bench of the Tribunal in group cases in the case of *Pushpa Devi Bajaj vs DCIT, Central ITA No.816/Del/2023* order dated 04.12.2013 wherein it was held that mandatory proceedings under s. 153C must be followed in such situation. *Thirdly*, the Ld. Counsel for the assessee also submitted on merits that in this case, the Ld.CIT(A) has called for a remand report from the AO on the evidences filed qua impugned transactions. The AO during the remand proceedings has undertaken verification and held that the explanation of the assessee stands substantiated by documentary evidences furnished in the course of remand proceedings and therefore, the additions are not sustainable even on merits. For such proposition, the Ld. Counsel for the assessee relied upon the decisions rendered by the Co-ordinate Bench of the Tribunal in group cases in *Lalita Bajaj vs DCIT & Ors. in ITA Nos.2596 & 2598/Del/2022; ITA Nos.2593, 2600, 2597/Del/2022 and ITA No.2599/Del/2022* order

dated 11.10.2023. Besides, these broad issues, the Ld. Counsel for the assessee also raised the issue of mechanical approval granted under s. 153D of the Act.

7. The Ld. Counsel for the assessee thus submits that the additions made by the AO and endorsed by the Ld.CIT(A) cannot be countenanced in law both on grounds of jurisdiction available to the AO as well as on merits, where the AO himself has eventually found the documentary evidences to be satisfactory. The Ld. Counsel for the assessee thus sought the reversal of the additions made by the AO.

8. The Ld.CIT DR for the Revenue relied upon the first appellate order.

9. We have carefully considered the rival submissions and perused the material available on record. The assessee had challenged the additions made under s. 153A of the Act, both on legal issue as well as on merits.

10. It is the case of the assessee that so-called incriminating material referred to in the assessment order are in the shape of statements recorded of third person i.e. Shri Pawan Agarwal much prior to search and material found in the case of other person. On perusal of the assessment orders and the first appellate order, it is observed that there does not appear to be any reference to any incriminating material found in the course of search of the assessee *per se*. The alleged incriminating material referred are primarily in the nature of statement of third person prior to search and material found in the course of search of the third person. This being so, the additions made in assessment years 2012-13, 2013-14 & 2014-15 are outside the ambit of jurisdiction under s. 153A of the Act. In view of the judgement rendered in the case of *Pr. CIT v. Abhisar Buildwell (P.) Ltd.* (supra) and plethora of judgements relied on behalf of the assessee, the additions made in unabated assessment are not permissible under s. 153A of the Act.

11. We further take note of the judgement of the Hon'ble High Court of Delhi rendered in the case of *Pr.CIT vs Sh. Vikram Dhirani in ITA No.666/2023* judgement dated 20.08.2024 wherein it was held that statement under s.132(4) obtained in the

course of search *ipse facto* do not constitute incriminating material found in the course of search for the purposes of section 153A of the Act. In the instant case, the statement of third person obtained much prior to search is referred for impugned additions. The course adopted by the Revenue for assessment in unabated cases is outside the bandwidth of the provisions of s.153A of the Act for the purposes of treating such statement as incriminating material found in the course of search.

12. The Co-ordinate Bench in the group cases namely *Pushpa Devi Bajaj* (supra) adjudicated the issue in favour of assessee in similar circumstances.

13. We also simultaneously find that the matter was also referred to AO in the remand proceedings wherein the AO categorically stated that the explanation given by the assessee towards source of funds recorded by the assessee towards sale of investments in preference shares of RNB Synthetic Pvt.Ltd., RNB Leasing and Financial Services etc. stands substantiated by documentary evidences submitted.

13.1. The remand report filed by the AO before the Ld.CIT(A) concerning AY 2012-13 is reproduced hereunder for ready-reference:-

“Kindly refer to the above cited subject wherein the remand report was called in the case of the above mentioned assessee for the AY 2012-13 in relation to the additional evidences filed by the appellant under Rule 46A.

2. The assessment in the case of the assessee was completed on 17.12.2019. Wherein addition of Rs. 1,41,25,000/- was made under section 68 of the IT Act 1961 in the hands of the assessee on account of undisclosed income and credits in the bank account of the assessee.

3. The appellant vide its application before the Ld. CIT(A) in the present case has filed following additional evidences:

| S.No. | Particulars | Page No. |
|--------------|---|-----------------|
| 1. | <i>Copy of replies dated 16.12.2019 along with acknowledgement dated 19.12.2019 and 21.12.2019 filed in response to notice issued u/s 142(1) dated 19.10.2019</i> | 218-222 |
| 2. | <i>Copy of Form 2 Le. return of allotment for year 2007 filed on 24.06.2010 with MCA by RNB Synthetics Pvt. Ltd.</i> | 223-238 |
| 3. | <i>List of share transfer as on 31.03.2012 filed with the MCA by RNB Synthetics Pvt. Ltd.</i> | 239-240 |
| S.No. | Particulars | Page No. |

| | | |
|-----|---|---|
| 4. | RNB Leasing and Financial Services Copy of affidavit Copy of PAN Card Copy of return of income | 241-242 243 244 |
| 5. | Jhunjhunu Commerce Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of COI, MOA & AOA Copy of PAN card Copy of confirmation filed by Jhunjhunu Commerce Pvt.Ltd. Copy of bank statement | 245 246-254 255-260 262 262 263 |
| 6. | Simon Tie Up Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of COI, MOA & AOA Copy of PAN Card Copy of confirmation filed by Simon Tie Up Pvt.Ltd. Copy of bank statement | 264 265-276 277-293 294 295 296 |
| 7. | Manikrit Tie Up Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of MOA & AOA Copy of PAN Card Copy of confirmation filed by Manikrit Tie Up Pvt.Ltd. Copy of bank statements Copy of assessment order for AY 2016-17 | 297 298-312 313-332 333 334 335-336 337-338 |
| 8. | Darshan Barter Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of MOA & AOA Copy of PAN Card Copy of confirmation filed by Darshan Barter Pvt.Ltd. Copy of bank statement | 339 340-348 349-364 365 366 367 |
| 9. | Kashi Prayag Tradelink Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of MOA & AOA Copy of PAN Card Copy of assessment order for AY 2013-14 Copy of VAT registration certificate Copy of GST registration certificate Copy of documents related to export Copy of VAT returns Copy of confirmation filed by Kashi Prayag Tradelinks Pvt.Ltd. Copy of bank statement | 368 369-378 379-397 398 399-403 404-406 407-408 409-411 412-414 415 416-418 |
| 10. | Vijay Sanjay Tradecom Pvt. Ltd. Copy of return of income Copy of audited financial statements Copy of MOA & AOA Copy of PAN Card Copy of GST registration certificate Copy of VAT return Copy of GST registration Copy of letter from Nagar Palika, Deshnoke dated 26.06.2018 Copy of assessment order for AY 2013-14 Copy of letter from Nagar Palika, Deshnoke dated 27.10.2014 Copy of assessment order u/s 143(3) of M/s. Vijay Sanjay Tradecom Pvt.Ltd. for AY 2018-19 Copy of confirmation filed by Vijay Sanjay Tradecom Pvt.Ltd. Copy of bank statement | 419 420-428 429-447 448 449-451 452-456 457-460 461-462 463-466 467 468-470 471 472-474 |
| 11. | Ganeshvani Investment Advisors Pvt. Ltd. | |

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|---|---------|
| Copy of return of income | 475 |
| Copy of audited financial statements | 476-487 |
| Copy of MOA & AOA | 488-511 |
| Copy of PAN Card | 512 |
| Copy of confirmation filed by Ganeshvani Investment Advisors Pvt.Ltd. | 513 |
| Copy of bank statements | 514 |

4. *In the application under rule 46A, the assessee 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 assessee in preference shares of RNB Synthetics Pvt. Ltd. to RNB Leasing and Financial Services. It is further submitted by the assessee that amount received by assessee from the alleged shell concern was merely on the instructions of RNB Leasing and Financial Services, however, it has no business relation with the alleged shell concerns. Further referring to FORM 2- ie. return of allotment filed on 24.06.2010 and list of share transfer submitted with MCA, the assessee has submitted that investments held in shares of RNB Synthetics Pvt. Ltd. were sold by her @500 per share which were acquired by it directly from RNB Synthetics Pvt. Ltd. @ 500 per share. Referring to the above mentioned additional evidences the assessee has stated that funds received by it in the year under consideration were only on account of sale of investments at par out of which no gain/profit has arisen to it and since, no on account of sale of surplus money being received by it 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, notice under section 133(6) were issued on 27.04.2022. In response to which documents pertaining to the parties from whom funds were received by the assessee were filed. The reply is further supported by the confirmations of the above parties 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 confirmation, 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 its 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.”*

13.2. The AO has thus given a favourable Remand Report on merits on the controversy arising from additions made. When the evidences were accepted by the AO as proper and genuine, that too after requisite enquiries and examination thereon, the allegations against the assessee in the course of assessment do not cut much ice any longer. The allegations initially made thus stood negated by the AO himself. The Ld.CIT(A) has not assigned any cogent reason to brush aside the categorical findings of the AO in the Remand Report. The Ld.CIT(A) has endorsed the additions based on the observations of the AO in the assessment order. In the wake of observations made by the AO in the Remand Report, the additions made is not justified on merits either.

14. We also take notice of the view expressed by the Co-ordinate Bench in group cases in Smt. Poonam Bajaj (ITA No.2593/D/2022); Smt. Pushpa Devi Bajaj (2600/D/2022) & Shri Pramod Bajaj (2597/D/2022) order dated 31.01.2024 where the issue was adjudicated the issue in favour of the assessee. In consonance thereof also, we have no difficulty to accept the contentions of assessee.

15. Thus judged from any angle, the additions/disallowances made by the AO for assessment years 2012-13, 2013-14 & 2014-15 are unsustainable in law both on points of jurisdiction and merits. The respective orders passed under s. 250 by the Ld.CIT(A) are thus set aside and the additions made *qua* these assessment years are reversed. Having held so, we do not consider it expedient to engaged ourselves on other legal aspects raised in the grounds of appeal.

16. In the result, all three captioned appeals of the assessee are allowed.

**ITA No.2590/Del/2022, ITA No.2591/Del/2022 & ITA No.2592/Del/2022
(Assessment Years : 2015-16, 2016-17 & 2017-18)**

17. The assessment years 2015-16, 2016-17 & 2017-18 were stated to be pending at the time of search and therefore stood abated. The assessee however broadly contends that the additions have been made *firstly*, without any incriminating material found in the course of search and *secondly*, the Ld.CIT(A) had called for remand

report from the AO on the aspects of merits of the additions. The AO in his remand report undertook the requisite verifications and held that explanation of the assessee on the impugned additions towards alleged undisclosed income stands substantiated by documentary evidences. The assessee also contends that in the group cases in the case of Lalita Bajaj (ITA No.2596/Del/2022) & Namita Bajaj (ITA No.2598/D/2022) order dated 11.10.2023, the issue has been decided in favour of the assessee on similar facts.

18. The remand report filed by the AO before the Ld.CIT(A) concerning AY 2015-16 is extracted hereunder for ready-reference:-

“Kindly refer to the above cited subject wherein the remand report was called in the case of the above mentioned assessee for the AY 2015-16 in relation to the additional evidences filed by the appellant under Rule 46A.

2. The assessment in the case of the assessee was completed on 17.12.2019. Wherein addition of Rs. 17,84,58,500/- was made in the hands of the assessee on account of undisclosed income.

3. The appellant vide its application before the Ld. CIT (A) in the present case has filed following additional evidences:

| S.No. | Particulars | Page No. |
|--------------|---|-----------------|
| 1). | <i>Copy of replies dated 16.12.2019 along with acknowledgement dated 19.12.2019 and 21.12.2019 filed in response to notice issued u/s 142(1) dated 19.10.2019</i> | 454-463 |
| 2. | <i>Copy of Form 2 i.e. return of allotment for year 2007 filed on 24.06.2010 with MCA by RNB Synthetics Pvt. Ltd.</i> | 464-475 |
| 3. | <i>Copy of Form 2 i.e. return of allotment for year 2007 filed on 01.06.2010 with MCA by RNB SEZ Bikaner Pvt. Ltd.</i> | 476-487 |
| 4. | <i>Copy of Form 2 i.e. return of allotment for year 2007 filed on 01.06.2010 with MCA by RNB Coimbatore Pvt. Ltd.</i> | 488-499 |
| 5. | <i>List of share transfer as on 31.03.2015 filed with the MCA by RNB Synthetics Pvt. Ltd.</i> | 500-501 |
| 6. | <i>List of shareholders as on 31.03.2015 filed with the MCA by RNB SEZ Bikaner Pvt. Ltd. filed with MCA</i> | 502 |
| 7. | <i>List of shareholders as on 31.03.2015 filed with the MCA (503 by RNB SEZ Coimbatore Pvt. Ltd. filed with MCA</i> | 503 |
| 8. | For RNB Leasing and Financial Services <ul style="list-style-type: none">• Copy of affidavit• Copy of PAN card | 504-505 |

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| | <ul style="list-style-type: none"> • Copy of return of income | 506 507 |
| 9. | <p>For Founder Properties Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statements • Copy of assessment order for AY 2014-15 | 508 509-520 521-536 537 538-539 540-542 543-544 |
| 10. | <p>For Raachi Consultancy Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statements • Copy of assessment order for AY 2014-15 | 545 546-556 557-568 569 570 571-575 576-577 |
| 11. | <p>For Seva Infrastructure Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statements | 578 579-589 590-604 605 606 607-609 |
| 12. | <p>For Momentum Real Estate Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statements • Copy of assessment order for AY 2014-15 | 610 611-623 624-643 644 645 646-647 648-649 |
| 13. | <p>For Substantial Consultancy Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statements • Copy of assessment order for AY 2012-13 • Copy of assessment order for AY 2014-15 | 650 651-662 663-678 679 680 681 682-685 686-688 |
| 14. | <p>For Designline Mercantiles LLP</p> <ul style="list-style-type: none"> • Copy of return of income | 689 |

| | | |
|-----|---|--|
| | <ul style="list-style-type: none"> • Copy of audited financial statements • Copy of LLP deed • Copy of PAN card • Copy of confirmation • Copy of bank statements • Copy of assessment order u/s143(3) of M/s Designline Mercantiles LLP for AY 2018-19 | <p>690-694 695-704 705 706-707 708-717 718-719</p> |
| 15. | <p>For Trendster Mercantile LLP</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of LLP deed • Copy of confirmation • Copy of bank statements • Copy of MCA Data • Copy of assessment order u/s143(3) of M/s Trendster Mercantile LLP for AY 2018-19 | <p>720 721-722 723-727 728-729 730-734 735 736-737</p> |
| 16. | <p>For Kashi Prayag Tradelink Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income along with Computation of Income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of PAN card • Copy of assessment order for AY 2013-14 • Copy of registration certificate under various indirect tax laws • Copy of export related documents • Copy of VAT return • Copy of letter from Nagar Palika, Deshnok • Copy of MCA Data • Copy of confirmation filed by M/s Kashi Prayag Tradelink Pvt Ltd. • Copy of bank statement | <p>738 739-750 751-769 770 771-772 773-777 778-792 793 794- 794.1 795 796</p> |
| 17. | <p>For Sanchar International</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of balance sheet • Copy of joint venture agreement • Copy of PAN card • Copy of bank statements • Copy of confirmation filed by M/ s. Sanchar International | <p>797 798 799-804 805 806 807</p> |
| 18. | <p>Vijay Sannjay Tradecom Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of COI, MOA & AOA • Copy of registration certificate under various indirect tax laws • Copy of letter from Nagar Palika, Deshnok • Copy of assessment order for AY 2013-14 | <p>808 809-821 822-840 841-852 853-854 855-858</p> |

| | | |
|-----|---|---|
| | <ul style="list-style-type: none"> • Copy of letter from Nagar Palika, Deshnoke dated 27.10.2014 • Copy of PAN card • Copy of record of survey proceedings in the case of Vijay Sanjay Tradecom Pvt. Ltd. • Copy of email dated 06.12.2019 from Radheyshyam Upadhyay to ACIT, Central Circle 32 • Copy of affidavit filed by Radheyshyam Upadhyay vide letter dated 13.12.2019 • Copy of assessment order u/s143(3) of M/s Vijay Sanjay Tradecom Pvt. Ltd. for AY 2018-19 • Copy of confirmation filed by M/s Vijay Sanjay Tradecom Pvt. Ltd. • Copy of bank statements | <p>859</p> <p>860</p> <p>861-865</p> <p>866-868</p> <p>869-874</p> <p>875-877</p> <p>878</p> <p>879-880</p> |
| 19. | <p>For Promina Wealth Management Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of MOA & AOA • Copy of confirmation • Copy of bank statements • Copy of MCA Data • Copy of assessment order u/s143(3) of M/s Promina Wealth Management LLP for AY 2018-19 | <p>881</p> <p>882-887</p> <p>888-908</p> <p>909-910</p> <p>911-916</p> <p>917</p> <p>918-919</p> |
| 20. | <p>For Panoramic Consultancy Pvt. Ltd.</p> <ul style="list-style-type: none"> • Copy of return of income • Copy of audited financial statements • Copy of MOA & AOA • Copy of PAN card • Copy of confirmation • Copy of bank statement of the assessee company • Copy of assessment order u/s143(3) of M/s Panoramic Consultancy Pvt. Ltd. for AY 2018-19 | <p>920</p> <p>921-934</p> <p>935-944</p> <p>945</p> <p>946</p> <p>947-948</p> <p>949-950</p> |
| 21. | <p>Copy of reply dated 22.12.2019 filed by Shri Nirmal Sarda in response to notice dated 17.10.2019</p> <p>Encl:</p> <ul style="list-style-type: none"> • Copy of retraction affidavit • Copy of Screenshot of MCA data of Aditi Import Export Pvt. Ltd. • Copy of correspondences from Vikarm Bajaj to Nirmal Sarda | <p>951-987</p> <p>988-999</p> <p>1000</p> <p>1001-1006</p> |

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 assessee in preference shares of RNB Synthetics Pvt. Ltd., RNB SEZ Bikaner Pvt. Ltd. and RNB SEZ Coimbatore Pvt. Ltd. to RNB Leasing and Financial Services. It is further submitted by the appellant that amount received by assessee from the alleged shell concern was merely on the

instructions of RNB Leasing and Financial Services, however, it has no business relation with the alleged shell concerns. Further, the assessee has submitted that on perusal of the copy of Form 2 of RNB Synthetics Pvt. Ltd., RNB SEZ Bikaner Pvt. Ltd. and RNB SEZ Coimbatore Pvt. Ltd. i.e. return of allotment filed on 24.06.2010, 01.06.2010 and 01.06.2010 respectively, and list of share transfer submitted with MCA, it can be seen that investments held in shares of RNB Synthetics Pvt. Ltd., RNB SEZ Bikaner Pvt. Ltd. and RNB SEZ Coimbatore Pvt. Ltd. were sold by assessee @500, @400 and @400 per share respectively, which were acquired by it directly from RNB Synthetics Pvt. Ltd., RNB SEZ Bikaner Pvt. Ltd. and RNB SEZ Coimbatore Pvt. Ltd. @500, @400 and @400 per share respectively. Referring to the above mentioned additional evidences the assessee has stated that funds received by it in the year under consideration were only on account of sale of investments at par out of which no gain/profit has arisen to it and since, no surplus money being received by it 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, notice under section 133(6) were issued on 27.04.2022. In response to which documents pertaining to the parties from whom funds were received by the assessee were filed. The reply is further supported by the confirmations of the above parties 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 confirmation, bank statement, financial statements, ITR. The explanation given by assessee is substantiated by the documents submitted.*
6. *Further, the assessee in the application under Rule 46A has mentioned that during the year under consideration, addition to the extent of Rs. 3,76,00,000/- has been made in respect to the transactions not pertaining to the year under consideration but pertaining to the preceding years i.e. AY 2013-14 & 2014-15. The said contention of the assessee is found in order.*
7. *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 its 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.”*

19. In the re-joinder to the remand report the assessee reiterated before the Ld.CIT(A) that alleged funds received by the assessee in AY 2015-16 and other AYs under consideration were on account of sale of investments held by the assessee in preference shares of RNB Synthetics Pvt.Ltd., RNB SEZ Bikaner Pvt.Ltd., RNB SEZ Coimbatore Pvt.Ltd. etc. to RNB Leasing and Financial Services. Sale of investments were made by the assessee at par which is the same as the value at which the shares were purchased. Hence no surplus money was received by the assessee except recovery of cost of investments. Thus, the transaction cannot be regarded as accommodation entries. The AO in his remand report dated 29.04.2022 clearly observed that due verifications have been carried out under s. 133(6) of the Act. The assessee further pointed out that on the basis of documents submitted and verification carried out, the AO in his remand report has categorically stated that the explanation given by the assessee stands substantiated. The assessee also pointed out that amount to the extent of INR 3.76 crores relates to the transactions which are not pertaining to the year under consideration at all. The main plank of the assessee was that the remand report squarely vouches for substantiation of the transactions and therefore in the wake of such findings, the additions made by the AO even on merits do not continue to hold water any more. Similar plea on merits has been taken in respect of other AYs under consideration. The assessee thus contends that the Ld.CIT(A) was not justified in confirming the action of the AO despite categorical remand report obtained in the first appellate proceedings and without assigning any reason to depart from the view expressed in Remand Report.

20. We have carefully considered the rival submissions and perused the respective orders passed by the lower authorities. The first contention raised by the assessee that the additions made under s.153A in the absence of incriminating material is not justified do not appear to be in consonance of law governing the field, since the AYs 2015-16 and subsequent AYs were pending at the time of search and stood abated. In

the abated assessments, the power of the AO is not limited to incriminating material found in the course of search alone. The plea of the assessee is thus rejected.

21. We however find merit in the plea of the assessee that in view of the averments made in the remand report obtained by the Ld.CIT(A) for different assessment years under appeal, the impugned additions retained by the Ld.CIT(A) is not justified. Where the AO has categorically observed that explanation offered in respect of funds received by the assessee on account of sale of investments held by the assessee in preference shares is substantiated by documentary evidences, the Ld.CIT(A) ought not have brushed aside such view without substantive reasons. Thus, where the AO himself has accepted veracity on source of funds in question, the action of the Ld.CIT(A) confirming the original assessment in ignorance of remand report is not justified without showing how the AO has committed error in such findings in Remand Report. The additions sustained by the Ld.CIT(A) despite categorical observations of the AO in the remand proceedings is thus not sustainable in law in the facts of the case.

22. Similar questions arise in the similar factual backdrop in all the captioned AYs from 2015-16 to 2017-18. Thus, action of the Ld.CIT(A) in all the three captioned appeals required to be set aside and the additions made in the assessment order calls for reversal.

23. We thus do not consider it expedient to deal with other multiple legal contentions.

24. In the result, captioned appeals of the assessee are allowed.

25. In the combined result, all the captioned appeals filed by the assessee stands allowed.

Order is pronounced in the open court on 16.12.2024.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date: 16.12.2024

Subodh Kumar/Amit Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT, Delhi