

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

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

**ITA No.2595/Del/2022
(Assessment Year : 2014-15)**

RNB Mercantile P. Ltd. RNB House, 1, Shivaji Enclave, Main Road, Near Raja Garden, Opp. Mother Dairy, New Delhi-110027 PAN No. AABCR9334G (APPELLANT)	Vs.	DCIT, Central Circle-32, Delhi (RESPONDENT)
---	-----	---

Assessee by	Shri Ved Jain, Adv., Sh. Aman Garg, CA & Ms. Bulbul Singhal, CA
Revenue by	Ms. Suneeta Verma, CIT-DR

Date of hearing:	26.09.2024
Date of Pronouncement:	18.12.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 31.08.2022 passed by Ld. Commissioner of Income Tax (A)-30, New Delhi ["Ld.CIT(A)"] under s. 250 of the Income Tax Act, 1961 ["the Act"] arising from the assessment order dated 19.12.2019 passed under s. 153A r.w.s 143(3) of the Act pertaining to assessment year 2014-15.

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

1. *"On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order passed is bad in the eyes of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).*
3. *On the facts and circumstances of the case, the learned CIT (A) has erred in rejecting the contention of the assessee that the search in itself is*

invalid since no search warrant has been issued in the name of the appellant.

4. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed under section 153A r.w.s. 143(3) is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*
5. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed under section 153A r.w.s. 143(3) is illegal and bad in law as the same has been passed without having valid jurisdiction.*
6. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that addition in order passed u/s 153A r.w.s. 143(3) of the Act has been made, without any incriminating material having been found during the course of search.*
7. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the proceedings initiated under section 153A against the appellant and the assessment framed under section 153A r.w.s 143(3) are in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law. The purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.*
8. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law, in rejecting the contention of assessee that assessment order was passed relying upon the material and evidences without providing the copies of same to the appellant and without providing proper and adequate opportunity to the appellant to rebut the same.*
9. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the assessment framed under section 153A r.w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*
10. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that notice issued u/s 142(1) of the Act is bad in law as no assessment proceedings were pending on the date on which such notice was issued.*
11. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reissuance of notice under section 153A dated 05.09.2019 is against the settled law that there cannot be two simultaneous notices i.e., a new notice cannot be issued when proceedings under first notice is not finalized.*

12. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee, that notice issued under section 143(2) is barred by limitation as the same has been issued beyond the statutory time limit prescribed under the Act.*
13. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the specific objection raised by the appellant before AO under section 124 of the Act.*
14. (i) *On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the addition of Rs. 10,10,000/- made on account of income from undisclosed sources.*
(ii) *That the above addition has been confirmed ignoring the detailed submissions provided by the assessee.*
15. *On the facts and circumstances of the case, the learned CIT(A) has erred in facts and in law in confirming interest charged u/s 234A, 234B and 234C of the Act.”*

3. The captioned appeal was set motion from search assessment passed under s. 153A of the Act.

4. Briefly stated, a search under s. 132 of the Act was conducted on RNB Group including assessee on 20.04.2017. Consequently a notice under s. 153A of the Act was issued on the assessee and the assessment was framed under s. 153A of the Act wherein the addition of INR 10,10,000/- was made to the return income of INR 14,580/-. The Ld.CIT(A) in the first appellate order passed under s. 250 of the Act, confirmed the addition.

5. Aggrieved the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, Ld. Counsel for the assessee submitted at the outset that

- (i) The assessment has been framed under s. 153A of the Act without any incriminating material and solely relying on material seized from the premises of the third party. The AO as well as the Ld.CIT(A) has not doubted the purchase of preference share of RNB Synthetic Pvt.Ltd. by the assessee. The assessee sold 2000 preference shares of RNB Synthetic Pvt.Ltd. to INR 10 Lakhs at par value to RNB Leasing and Financial Services. The AO and the Ld. CIT(A) has not rejected the documents furnished by the assessee and also failed to highlight any undisclosed income of the assessee. Both the AO and

the Ld. CIT(A) has made and confirmed the additions by indulging any surmises and conjectures.

- (ii) Ld. Counsel for the assessee further submitted that a Remand Report was called for from the AO on the transactions resulting in impugned addition of INR 10,10,000/-. The AO vide Remand Report dated 22.03.2022 categorically held that the impugned transactions cannot be regarded as accommodation entries. Thus when the AO himself was satisfied with the explanation offered and documentary evidences, the Ld.CIT(A) was wholly unjustified in confirming the additions made by the AO in the assessment proceedings.
- (iii) The Ld. Counsel for the assessee next submitted that the issue is squarely covered in favour of the assessee in the case of *Lalita Bajaj (ITA No.2596/Del/2022)* and *Namita Bajaj (ITA No.2598/Del/2022)* order dated 11.10.2023.

7. The Ld.CIT DR for the Revenue relying upon the first appellate order.

8. We have carefully considered the rival submissions and perused the material available on record. The assessee has challenged the addition under s. 153A of the Act both on legal issues as well as on merits.

9. We straightway referred to the Remand Report filed by the AO before the Ld.CIT(A) in the course of the appellate proceedings with reference to AY 2014-15 in question which 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 2014-15 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 19.12.2019. Wherein addition of Rs. 10,10,000/- was made in the hands 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.	Copy of reply dated 17.12.2019 submitted on 21.12.2019	278-279
2.	Copy of documentary evidences related to the following parties:- <u>M/s. Kashi Prayag Tradelink Pvt. Ltd.</u> * Copy of ITR acknowledgment * Copy of certificate of incorporation	279.1 280

	<ul style="list-style-type: none"> * Copy of MOA & AOA * Copy of audited financial statements * Copy of bank statements * Copy of PAN card * Copy of assessment order for AY 2013-14 along with notice of demand and computation * Copy of VAT registration certificate * Copy of GST registration certificate * Copy of export documents * Copy of VAT return * Details of GST returns * Copy of letter from Nagar Palika, Deshnoke * Copy of confirmation <p><u>Vijay Sanjay Tradecom Pvt. Ltd.</u></p> <ul style="list-style-type: none"> * Copy of ITR acknowledgment for AY 2014-15 * Copy of audited financial statements * Copy of certificate of Incorporation * Copy of MOA & AOA * Copy of bank statements * Copy of PAN card * Copy of VAT registration certificate * Copy of GST registration certificate * Copy of VAT return * Copy of GST return * Copy of letter from Nagar Palika, Deshnoke dated 26.06.2018 * Copy of assessment order for AY 2013-14 along with notice of demand and computation * Copy of letter from Nagar Palika, Deshnoke dated 27.10.2014 * Copy of confirmation 	<p>281-298 299-310 311 312 313-317 318-319 320-321 322-327 328-332 333-336 337 337.1 338 339-351 352 353-370 371 372 373 374-375 376-380 381-384 385 386-390 391 391.1</p>
3.	<p>Copy of reply 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 statement of Shri Nirmal Sarda recorded at Sarda Mohalla, Deshnoke • Copy of statement of Shri Nirmal Sarda recorded at office premises in Bikaner • Copy of screenshot of MCA • Copy of summon issued to the bank in the case of Mr. Vijay Kumar Khatri • Copy of record of survey proceeding of Innovative Trade Vision Pvt. Ltd. • Copy of record of survey proceedings in the name of Bhoomika Enterprises and Vijay Sanjay Tradecom Pvt. Ltd. • Copy of correspondences from Vikram Bajaj to Nirmal Sarda • Copy of retraction affidavit 	<p>392-428 429-478 479-499 500-501 502-505 506 507 508-511 512-523</p>
4.	Copy of email dated 06.12.2019 from Radhey shyam Upadhyay to ACIT, Central Circle-32	524-527
5.	Copy of affidavit filed by Radheyshyam Upadhyay vide letter dated 13.12.2019	528-532
6.	Copy of assessment order u/s 143(3) of M/s. Vijay Sanjay Tradecom Pvt. Ltd. for AY 2018-19	533-535

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, 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 16.03.2022. 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 COI, MOA, AOA, PAN, ITR, Audited Balance Sheet & Profit & Loss account for The F.Y.2013-14. 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."*

10. We find merit in the plea of the assessee that in view of the categorical assertions made in the remand report obtained by the Ld.CIT(A) for assessment year under question, the impugned addition 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 of 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 addition sustained by the Ld.CIT(A) despite categorical observations of the AO in the remand proceedings is thus not sustainable in law in the backdrop of the such facts.

11. Hence action of the Ld.CIT(A) in the captioned appeal required to be set aside and the addition made in the assessment order calls for reversal.

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

13. In the result, captioned appeal of the assessee is allowed.

Order is pronounced in the open court on 18.12.2024.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date: 18.12.2024

Amit Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR,
ITAT, Delhi