

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

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

**ITA No.1983/Del/2024 Assessment Year- 2012-13
ITA No.1984/Del/2024 Assessment Year- 2013-14
ITA No.1985/Del/2024 Assessment Year- 2014-15
ITA No.1986/Del/2024 Assessment Year- 2015-16**

Deputy CIT, Central Circle-II, New Delhi	Vs.	Pacific Mining Products Pvt. Ltd., H. No.23A, Office No.201, Kamal Tower Laxmi Nagar, Delhi PIN-11000 92
PAN No: AADCP6632R		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Shri Sumer Singh Meena, CIT DR

Date of Hearing : 12.11.2024
Date of Pronouncement : 27.12.2024

ORDER

PER SUDHIR KUMAR: JUDICIAL MEMBER

In all these four appeals being ITA Nos. 1983/Del/2024 to 1986/Del/2022, where Revenue has taken similar grounds, excepting difference in figures. Therefore, for the sake of convenience and brevity, we proceed to dispose of these common appeals by this

common order. We proceed to deal with ITA No.1983/Del/2024 as a lead case and our decision in rest other connected appeals shall follow mutatis mutandis.

2. **ITA No. 1983/Del/2022**

1. 1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the protective addition of Rs. 4,57,26,000 on account of undisclosed income admitted during search simply on the ground that the substantive addition has been upheld in the hands of Sh. Ashish Garg, without appreciating the fact that the fate of the substantive addition has not attained finality and the same is liable to be assailed before a higher appellate body. The protective addition is made with an intent to protect the interest of revenue in the event that the substantive addition fails to fructify. Thus, in order to protect the interest of revenue, the protective addition in the hands of the assessee is required to be sustained.

2 Ld. CIT(A) has erred in deleting the subject protective addition simply on the grounds that the same may constitute double addition while paradoxically upholding the addition in principle.

Ld. CIT(A) has failed to appreciate the fact that protective addition does not constitute double addition as the protective addition is made in order to protect the interest of revenue in the event that the substantive addition fails to fructify.

3. That the appellant craves leave to add alter, adduce or amend or any ground or grounds on or before the date of hearing of appeal

Total Tax Effect

Rs. 1,48,35,800

ITA No. 1984/Del/2024:

1. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the protective addition of RA 17,80,36,912/- on account of undisclosed income admitted during search simply on the ground that the substantive addition has been upheld in the hands of Sh. Ashish Garg, without appreciating the fact that the fate of the substantive addition has not attained finality and the same is liable to be assailed before a higher appellate body. The protective addition is made with an intent to protect the interest of revenue in the event that the substantive addition fails to fructify. Thus, in order to protect the interest of revenue, the protective addition in the hands of the assessee is required to be sustained.*

*Tax effect relating to each ground
of appeal Rs.57764076*

2. *Ld. CIT(A) has erred in deleting the subject protective addition simply on the grounds that the same may constitute double addition while paradoxically upholding the addition in principle. Ld. CIT(A) has failed to appreciate the fact that protective addition does not constitute double addition as the protective addition is made in order to protect the interest of revenue in the event that the substantive addition fails to fructify.*

Rs.92,79,577

3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in holding that the addition of Rs. 2,86.00,945-on account of unexplained unsecured loan received by the assessee was double addition as the same amount was added under head "Share Application" and "sundry creditors" in AY 2011-12 completely overlooking the fact that there is no evidence submitted by the assessee to support its claim*

4. *Ld. CIT(A) has erroneously reproduced and conferred with the submissions of the assessee that an amount of Rs. 1 Crore has been transferred from sundry creditors to unsecured loans and the addition was made in A.Y. 2011-12 even though there is no documentary evidence to support the assertions of the assessee. During the course of the assessment proceedings, the assessee had failed to submit any evidence to justify the sources and nature of the unsecured loans. Even during the appellate*

proceedings, Ld. CIT(A) has expressly stated that no additional evidence were admitted. Thus, in absence of any additional evidence, there is nothing available on record from which the claim of the assessee can be verified. Ld. CIT(A) has not referred to any documents or evidence submitted by the assessee that would demonstrate the claim of the assessee that 'sundry debtors from A.Y 2011-12 were transferred to unsecured loans and the same were doubly added. The observations made by Ld. CIT(A) are unsubstantiated and lack any evidentiary basis.

5. That the appellant craves leave to add alter, adduce or amend or any ground or grounds on or before the date of hearing of appeal.

Total Tax Effect Rs. 6,70,43,653

ITA No. 1985/Del/2024:

1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the protective addition of Rs. 2,19,17,707/- on account of undisclosed income admitted during search simply on the ground that the substantive addition has been upheld in the hands of Sh. Ashish Garg, without appreciating the fact that the fate of the substantive addition has not attained finality and the same is liable to be assailed before a higher appellate body. The protective addition is made with an intent to protect the interest of revenue in the event that the substantive addition fails to fructify. Thus, in order to protect the interest of revenue, the protective addition in the hands of the assessee is required to be sustained.

Rs.74,49,829

2. Ld. CIT(A) has erred in deleting the subject protective addition simply on the grounds that the same may constitute double addition while paradoxically upholding the addition in principle. Ld. CIT(A) has failed to appreciate the fact that protective addition does not constitute double addition as the protective addition is made in order to protect the interest of revenue in the event that the substantive addition fails to fructify.

3. That the appellant craves leave to add alter, adduce or amend or any ground or grounds on or before the date of hearing of appeal.

Total Tax Effect

Rs. 74,49,829

ITA No. 1986/Del/2024:

1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the protective addition of Rs. 4,57,26,000/- on account of undisclosed income admitted during search simply on the ground that the substantive addition has been upheld in the hands of Sh. Ashish Garg, without appreciating the fact that the fate of the substantive addition has not attained finality and the same is liable to be assailed before a higher appellate body. The protective addition is made with an intent to protect the interest of revenue in the event that the substantive addition fails to fructify. Thus, in order to protect the interest of revenue, the protective addition in the hands of the assessee is required to be sustained. Rs. 59,43,723

2. Ld. CIT(A) has erred in deleting the subject protective addition simply on the grounds that the same may constitute double addition while paradoxically upholding the addition in principle. Ld. CIT(A) has failed to appreciate the fact that protective addition does not constitute double addition as the protective addition is made in order to protect the interest of revenue in the event that the substantive addition fails to fructify.

3. That the appellant craves leave to add alter, adduce or amend or any ground or grounds on or before the date of hearing of appeal.

Total Tax Effect

Rs. 59,43,723

3. Brief facts of the case in ITA No.1983/Del/2024 are that the search and seizure operation was carried out in the case of Apple Group on 11.11.2014 on the various business premises of the

group companies and residential premises of their directors under Sections 132/133A of the Act. M/s. Pacific Mining Products Pvt. Ltd. is one of the group companies having common directors and shareholders. During the course of search in the case of M/s Apple Industries, Nirman Stelco and other companies at B-16, Sector-2 Noida, and various incriminating documents were found & seized which indicated transactions with the Assessee Company. Subsequently, survey under Section 133A of the IT Act was carried at the business premises of the assessee Le A-470/13 second Floor. Praksh Complex, Shakarpur, Delhi 92 and 8th Pearl Gateway Tower, Sector-14, Noida incriminating documents was found and impounded.

4. During the course of search, incriminating diary was found and seized from the residence of Sh Ashish Garg, CEO of the Apple Group at F-22, Model Town, New Delhi which was annexed as BK-1 and BK-2. Later on, 19.11.2014, statement of Shri Ashish Garg, was recorded in continuation to his previous statement recorded on 11.11.2014, & he admitted Rs. 105.60 crores as undisclosed income in the hands of the following group companies namely:

1. Apple Natural Resources Pvt. Ltd.
2. Apple Alloys Pvt.Ltd.
3. Apple Minerals Pvt. Ltd.
4. Pacific Mining Products Pvt. Ltd. respectively.

The group popularly known as "Apple Group of Companies'(AGC)" is a diversified group with multiple business interests and was established in 2000 as Apple Group of Companies. The group is presently engaged in various businesses & deal in various different fields like metal (mainly Iron & steel), coal, construction, commodities trading (mainly Includes steel & iron, coal & iron ore) etc. at Noida (where its Corporate office & Headquarters are located), Bellary (Karnataka), Anantpuri Andhra Pradesh), Hyderabad, Manthal etc. In view of search operation, the group cases were centralized to Central Circle, Noida. The Jurisdiction under s 127 of the Income Tax Act, 1961, in this case, was passed by the Ld. Pr. Commissioner of Income Tax-7 Delhi, New Delhi, communicated vide F. No. Pr.CIT-7 Centralization/2014-15/633 dated 09/03/2015. Subsequently, for the purpose of assessment, a notice under Section 153A of the Act was issued dated 11.07.2016 to the ITR within 15 days of the service of the notice, but, no ITR

was filed within the due date. Under such situation, various opportunities were afforded to the Assessee Company.

5. In view of the above discussion, it is abundantly clear that assessee has chosen deliberately not to comply to the notices and has preferred not to furnish any detailed information of Income & Expenditure and all other details called for connected with the transactions in the seized documents. It was manifestly clear that the accounts of the Assessee are defective, incomplete in as much as neither all the receipts nor the correct expenses have been recorded in the books. The Assessee also admits incorrectness of its accounts which was found during the course of search and seizure operation. Sh. Ashish Garg, Director of the Company while making disclosure of Rs. 106 Cr. admitted that there are various discrepancies in the books of account. He found that it was essential to determine the correct income of the assessee for assessment years 2009-10 to 2015-16 and it was also necessary to recast the entire accounts and prepare fresh accounts which could only reflect the true and correct financial results of the company. These various notices issued to the assessee remained un-complied with. This is obviously done to sabotage the process of law to avoid

disclosure and assessment of its true & correct income. This kind of utter non compliance is clearly for the reasons when everything is not correct and proper and the assessee has much to hide from detection by the tax authorities. Despite of the several opportunities allowed to the assessee & despite very long time allowed, the assessee company utterly failed to file the details & information as called for From the above, background of deliberate non compliance to the process of law & utter disregards to the assessment proceedings in its case, it can clearly be inferred & made out that the assessee has deliberately chosen not to comply with the various notices issued and to not furnish the details as called for to avoid from the assessment of true & correct income for the various Assessment years under assessment.

6. In view of the above background of non-compliance, show-cause-notice dated 20/12/2016 issued to the assessee company providing him an opportunity to make its submissions on or before 22/12/2016 as to why its books of account for A.Y. 2009-10 to 2015-16 should not be directed for special audit under Section 142(2A) of Act. The notice was also personally served to the wife of Sudesh Jain, managing director of the company. Vide reply dated

23/12/2016, the assessee through his authorized representative, Shri S. Pathak submitted reply. The assessee filed copies of ITR in response to notice under Section 153C of the Act. The assessee in response to the notices issued by the Assessing Officer, failed to furnish the requisite documents, books of accounts, were not produced which are necessary for arriving at the true and correct picture of the financial results. Also in terms of section 44 AB of Act, the assessee was required to furnish audited accounts in the prescribed format before specified date which should be duly signed and verified by the Auditor setting forth such particulars as may be prescribed. It was worth mentioning that the said report was also not furnished by the assessee.

7. In view of seized documents and admitted undisclosed income and having regard to the nature and complexity of the accounts, incorrectness of the accounts and multiplicity of transactions as well as specialized nature of business activity of the assessee and in the interest fairness, the assessee company was directed to gets its accounts audit under Section 142(2A) of the Act for the assessment years 2009-10 to 2015-16 by M/s Choudhary Pasha & Co, 513, Plaza Kalpana, Kanpor, Auditor nominated by Ld. PCIT(Central),

Kanpur in this behalf and the assessee was directed to furnish a report of such audit in the prescribed form duly signed and verified by such auditor. The direction to get accounts audited under Section 142(2A) of the Act was issued with the previous approval of Ld. Pr. CIT (Central), Kanpur communicated vide his letter dated 29/12/2016. A copy of the order of approval under Section 142(2A) of the Act was personally served to Sunita Jain wife of the Sudesh Jain, director of the company. However, ultimately, the assessee failed to produce the documents and books of accounts to be examined by the Auditor. Initially a 60 days time was given for the completion of the Audit and furnishing such reports of the Auditor by the Assessee. However, the time span was further extended to 31.07.2016 and again till 20/06/2017. However, to compliance was made by the assessee before the Special Auditor. A penalty show cause under Section 271(1)(b) of the Act fixing date of compliance was fixed on 12/06/2017. Simultaneously, a letter was written dated 03/07/2017 to the assessee to show cause as to why best judgment assessment under Section 144 of the Act may not be made in its case since the assessee has failed to cooperate & comply to the directions of for the Special Audit issued under Section

142(2A) of the Act. The compliance was sought on 10/07/2017. In compliance to the above, the assessee submitted time petition dated 08.07.2017 and requested for adjournment of hearing to some other date in last week of July, 2017. But no details were submitted. Considering his request and time barring nature of the case, the next date of hearing was fixed on 17.07.2017. In response to the same no details were filed. In the view of natural justice, a summons was issued to the Sudesh Jain to appear personally with books of accounts and other details. But, again he failed to appear.

8. In the view of above, non-cooperative attitude of the assessee & failure to comply with the Direction under section 142(2A) to get the accounts audited entails a best judgment assessment under section 144 of the Act. In the given circumstances, there is no other alternative than to complete the assessment order ex-parte on the basis of information available on the record & in the seized documents.

9. In view of the above background of non-compliance, show-case notice dated 20/12/2016, issued to the company providing an opportunity to make its submissions on or before 22/12/2016 as to

why its books of account for assessment years 2009-10 to 2015-16 should not be directed for special audit under Section 142(2A) of the Act. The notice was personally served to the wife of Sudesh Jain, Managing director of the company in case M/s. Apple Natural Resources Pvt. Ltd, M/s Apple Minerals Pvt. Ltd., M/s Pacific Mining Products Pvt. Ltd. and vide reply dated 23/12/2016, the assessee submitted through his authorized representative. The Assessee filed copies of ITR in response to notice 153C of the Act was filed. The assessee has response in the notices issued failed to furnish the requisite documents, books of accounts, etc, which are necessary for arriving at the true and correct picture of the financial results.

10. The Assessing Officer, after verification of records, total income at Rs.4,57,260/- was assessed for assessment year 2012-13, Rs. 17,80,136,910/- for assessment year 2013-14, Rs. 2,19,17,707/- for assessment year 2014-15 and Rs.1,83,19,380/- for assessment year 2015-16 under Section 153C r.w.s 144 of the Act. Tax and interest under Section 234A, 234B, 234C & 234D of the Act was charged accordingly. Aggrieved with the order of the Assessing Officer, the assessee company has filed the appeal before the Ld.

CIT(Appeals) who vide his order dated allowed the appeals of the assessee against which the revenue is in appeal before us.

11. At the time of hearing, none appeared for and on behalf of the assessee. The Bench decided to dispose of the issue with the assistance of the Learned DR.

12. We have heard the Learned DR and perused the material available on the record. Learned DR has stated that the Ld. CIT(Appeals) has erred to delete the additions without considering that the substantive addition made by the Ld. CIT(Appeals) in the hand of Shri Ashish Garg has not attain the finality . He supported the stand of the Assessing Officer. Ld. CIT(Appeals) further held that the provisions of Section 292C of the Act as under:

“The provisions of Section 292C make it very clear that the seized documents belong to the assessee and the contents of the documents are true. From the above discussion and evidences available on record, it is clear that Sh. Ashish Garg is directly related to the group companies and contentions of the appellant are patently false. But the addition on the same issue has been made on a substantive basis in the hands of Sh. Ashish Garg and the same has been confirmed in the order of CIT(A)-4, Kanpur in Appeal No. CIT(A)-IV/KNP/10477/2017-18 for AY 2015-16 dated 19.04.2022 as the same money cannot be taxed again in the hands of the assessee. As the same money cannot be taxed twice, the addition considered as

protective by the AO on account of the entries mentioned in the seized diary is deleted and the ground of appeal is allowed for statistical purposes”.

13. If, we go through the order of the Learned CIT(A) and examine the whole issue, it will reveal that the addition on the same issue has been made on substantive basis in the hands of Shri Ashish Garg and the same has been confirmed by the Learned First Appellate Authority. The same money cannot be taxed again in the hands of the assessee. Learned Assessing Officer has made the addition on protective basis while the addition has been made in the hands of Ashish Garg director of the assessee company. The money cannot be taxed twice. The Learned CIT(A) has rightly allowed the appeals of the assessee. Accordingly, we do not find any reason to interfere with the findings of the Learned CIT(A).

14. Keeping in view the decision taken by the Ld. CIT(Appeals) in the right direction, the appeals of the Revenue are liable to be dismissed. Since, we have dismissed the appeal of the Revenue in the leading appeal i.e. ITA No.1983/Del2024, therefore, remaining appeals of the Revenue are also dismissed.

15. In the net result, all the four appeals filed by the Revenue are dismissed.

Order pronounced in the Open Court on 27.12.2024

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 27/12/2024.

Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI