

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

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

**ITA No:- 2602/Del/2022
(Assessment Year- 2015-16)**

Sh. Kishan Kumar Bajaj, Plot No. 3, Shivaji Enclave, Main Road, Near Raja Garden, Opp. Mother Dairy, Delhi-110027.	Vs.	DCIT, Central Circle-32, Delhi.
PAN No: ABFPB2245N		
APPELLANT		RESPONDENT

Assessee by : Shri Ved Jain, Adv. and
Shri Aman Garg, CA
Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing : 30.12.2024
Date of Pronouncement : 28.03.2025

ORDER

PER SUDHIR PAREEK, JM

This appeal by the Assessee preferred against the order of Ld. Commissioner of Income Tax (Appeals)- 30, New Delhi-110055, [hereinafter referred to as the Ld. CIT(A)] vide order dated

07.09.2022 pertaining to Assessment Year 2015-16. The Assessee has raised the following ground 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, 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.

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 illegal and bad in law as the same has been passed without having valid jurisdiction.

5. 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.

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 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.

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 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.

8. 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.

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 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.

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 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.

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 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.

12. 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.

13.(i) On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the addition of Rs. 25,00,000/- u/s 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.

14. 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.

15. On the facts and circumstances of the case, the learned CIT (A) has erred in facts and in law in confirming the action of Assessing Officer in determining tax liability as per section 115BBE of the Act.

16. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Brief facts of the case are that the original return in this case was e-filed on 22.02.2016 declaring income of Rs. 6,93,990/- which was processed u/s 143(1) of the Income Tax Act, 1961. The assessee is Partner of M/s RNB Leasing & Financial Services and director in seven companies in which other family members are also directors/partners, in these family concerns.

3. A search and seizure operation was carried out at the various premises of Bajaj Group and its associates including the assessee and the directors and others. Consequent to search action in this case, notice u/s 153A of the Income Tax Act, 1961 (hereinafter called the “Act”) was manually issued on 05.07.2018 requiring the assessee to file the return of his income within 15 days of service of the notice. Thereafter, another notice is u/s 153A of the Act, was issued through ITBA portal on 05.09.2019 requiring the assessee to file the return of his income within 15 days of service of the notice. In response to notice u/s 153A of the Act the assessee vide letter dated 18.07.2018 submitted that the return filed by the assessee on

30.03.2015 may be treated as the return filed in response to notice u/s153A of the Act.

5. Heard rival submissions and carefully scanned the materials available on record.

6. In the course of hearing, the Ld. AR submitted that it is quite evident that no incriminating document / material was found in the aforementioned search action, which is corroborative by Punchnama and assessment order itself, and it is also submitted that the assessee received Rs. 25 lakhs as a consideration for sale in investment in share in RNB Infrastructure Pvt. Ltd. made by him and both the lower authorities not doubted the purchase of investment by the assessee, which is already being duely explained. It is also submitted that Co-ordinate Bench, Delhi in the case of Smt Poonam Bajaj, Smt. Pushpa Devi Bajaj, Sh. Pramod Kumar Bajaj vs. DCIT, Central Circle-32, Delhi ITA No. 2593/Del/2022 and ITA No. 2600/Del/2022 and ITA No. 2597/Del/2022, allowed the appeal and deleted the addition in question.

7. The Ld. AO while framing the assessment order u/s 153A of the Act, solely relied on the material seized from the premises of the

third party and the same is evident from the assessment order and no incriminating material was found from the locker of the assessee during the course of search.

8. Per contra, the Ld. DR relied upon the order of the authority below.

9. The Ld. AR relied upon the case of Smt. Shrikanta Bajaj vs. CIT, in ITA No. 2599/Del/2022, co-ordinate Bench observed as under in identical matter:

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 Le. @10 pe 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 a 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 he 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 Ver 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 ie 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."

10. The Ld. AR also relied upon the order of Coordinate Bench of Tribunal in the case of Lalita Bajaj and Namita Bajaj, Ita No. 2596/Del/2022 and 2598/Del/2022, the relevant para is reproduced 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 Le 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.”

11. A search and seizure operation was carried out at the various premises of Bajaj Group and its associates including the assessee and the directors and others. Consequent to search action in this case, notice u/s 153A of the Income Tax Act, 1961 (hereinafter called the “Act”) was manually issued on 03.07.2018 requiring the assessee to file the return of his income within 15 days of service of the notice. Thereafter, another notice is u/s 153A of the Act, was issued through ITBA portal on 05.09.2019 requiring the assessee to file the return of his income within 15 days of service of the notice. In response to notice u/s 153A of the Act the assessee vide letter dated 18.07.2018 submitted that the return filed by the assessee on

28.03.2016 may be treated as the return filed in response to notice u/s153A of the Act.

12. Finally, the assessment order passed on 18.12.2019 and Ld. AO made addition of Rs. 25,00,000/- u/s 68 of the Act as income from undisclosed sources. Aggrieved by the same, the assessee / appellant filed appeal specifically raised the ground no. 5, that the addition made u/s 153A r.w.s. 143(3) of the Act, without any incriminating material found during the entire course of search.

13. In the appeal filed before the Ld. CIT(A), partly allowed the appeal by confirming the addition amounting to Rs. 25 lakhs.

14. On being dissatisfied with the confirmed addition hereinbefore, the assessee before us as appellant.

15. Heard rival submissions and perused the material available on record.

16. The Ld. AR further submitted that the assessee for the year under consideration, filed return of income on 28.03.2016 and time limit prescribed to issue notice u/s 143(2) already been expired on 30.09.2015. At the time of framing the assessment u/s 153A of

the Act, there was no pending assessment in the case of the assessee.

17. Ld. AR also relied upon the judgment passed by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, in which Hon'ble High Court held that completed assessment can be interfered by the Ld. AO while making the assessment u/s 153(A) of the Act, only on the basis of some incriminating material unearthed during the course of search and about ratio of the Hon'ble Delhi High Court already been confirmed by the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. 2023 (4) TMI 1056.

18. The Ld. DR relied upon the order of the authority below.

19. By following the above binding judicial precedent and emerging fact situation, we find material substance in the submissions advanced on behalf of the assessee / appellant and have thoughtful consideration that addition in question deserves to be deleted by allowing the appeal.

20. Consequently, the appeal of the assessee is hereby allowed as indicated above.

Order pronounced in open court on 28.03.2025.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 28/03/2025

Pooja, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	02.03.25, 26.03.25
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	02.03.25, 26.03.25
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9	Date of killing off the disposed of files on the judisis Portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
12.	Date of Dispatch of the order	