

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 89/PAT/2021
Assessment Year: 2012-13**

ACIT, Central Circle-2, Patna	Vs.	M/s. Maxxon Vanijya & Resources Pvt. Ltd.
(Appellant)		(Respondent)
PAN: AACCM3143M		

Appearances:

Department represented by : Md. Shadab Ahmed, CIR(DR).

Assessee represented by : Sudeep Sinha, Adv.

Date of concluding the hearing : 13-October-2025

Date of pronouncing the order : 08-December-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)- 3, Patna [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2012-13 dated 26.08.2021.

2. The Revenue is in appeal before the Tribunal raising the following revised grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) is not justified in deleting the addition of Rs. 4,07,00,000/-, which was not even added in this order.

2. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) is not justified in deciding the issue, which was not even subject matter of impugned order."



3. Brief facts of the case are that a search u/s 132(1) of the Act was carried out in the Binoshiba group of cases, Patna on 18.09.2014. The Binoshiba group consists of a number of concerns which are in the business of manufacture and trade of liquor and the main concerns of the group are M/s. Binoshiba Liquors Pvt. Ltd., M/s. Salson Liquors Pvt. Ltd. and M/s. Goodhost Liquors Pvt. Ltd. The group of concerns are owned and managed by Shri Binod Kumar and Shri Sanjay Kumar, resident of Anugrah Narayan Path, Patna. The assessee, M/s. Maxxon Vanijya and Resources Pvt. Ltd. is related to M/s. Binoshiba Group of cases. A notice u/s 153C of the Act along with a questionnaire was issued to the assessee on 14.12.2016. The assessee filed a written submission and requested that the return of income filed u/s 139 of the Act may be treated as return filed u/s 153C of the Act and as per the return of income, the total income was shown at ₹5,840/-. A notice u/s 143(2) of the Act was also issued and the case was scrutinised. The books of accounts were examined, the documents produced, the replies and other documents filed by the assessee were perused and examined by the Assessing Officer (hereinafter referred to as 'the Ld. AO'). The total income of the assessee assessed at ₹4,07,05,840/- u/s 153C r.w.s. 153A r.w.s. 143(3) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) allowed the appeal of the assessee by holding as under:

"I have carefully considered the arguments/submissions/findings of the Assessing Officer and the appellant and I find considerable force in the argument/submission of the appellant. Further at the same time Assessing Officer has not done any independent enquiry with positive evidence to prove any infirmity or inaccuracy in any of the documents submitted by the appellant and merely proceeds to add on the basis of assessment order already passed under section 144 of the Act.



The Assessing Officer simply rejected the submission of the appellant without bringing any defect/discrepancies in the papers and documents submitted during the course of assessment proceedings. Further, the Assessing Officer did not make any verification of the document submitted by the appellant. Two types of cases have been indicated. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer sits back with folded hands till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions and suspicion. The present case falls in the latter category. In the present case the Assessing Officer has simply rejected the evidence furnished by the appellant. Hon'ble High court in the case of Gangeshwari Metal Pvt Ltd has disapproved the action of the Assessing Officer wherein the Assessing Officer sits back with folded hands till the appellant exhaust all the evidence or material in his possession and then comes forward to merely reject the same on the presumption and suspicion. Here the assessing officer, after noting the facts, merely rejected the same. This would be apparent from the observations of the assessing officer in the assessment order.

In *NRA Iron & Steel (P) Ltd*, the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

In this context it is very important to know that upto A.Y.2012-13, the burden of proof u/s.68 of the Act oscillated between the assessee and the AO depending upon the nature and quality of evidence adduced with regard to any sum credited in the books of accounts of the assessee company (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called. However, from A.Y.2013-14 a proviso to section 68 was inserted by the Finance Act, 2012 w.e.f. 01.04.2013 wherein the onus of proving identity, genuineness and creditworthiness of the creditor to the satisfaction of the AO has entirely shifted to the assessee. In this regard the relevant proviso as inserted is reproduced hereunder.

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any



such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

1. the person, being a resident in whose name such credit is recorded in the ed to be true of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]

Further, the Hon'ble Bombay High court in the case of CIT Vs. Gagandeep Infrastructure Pvt. Ltd. [2017] 80 taxmann.com 272 held that insertion of above proviso is prospective in nature and not retrospective. Therefore, taking into account assessment years under appeal (as this A.Y. is prior to A.Y. 2013-14) and all other facts as discussed above, the addition of Rs.4,07,00,000/- is directed to be deleted. Accordingly, the appeal is allowed.

3.2. In the result, the appeal is allowed.”

4. Aggrieved with the order of the Ld. CIT(A), the Revenue has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. DR submitted that an order u/s 153C r.w.s. 153A/143(3) of the Act dated 28.12.2016 was passed. Prior to passing of order, an assessment order u/s 144 of the Act assessing the total income of ₹4,07,05,840/- had been passed on 18.03.2015. Thus, in the order u/s 153C r.w.s. 153A/143(3) of the Act dated 28.12.2016 neither any separate addition was made nor any query relating to share capital has been apparently raised. A perusal of the assessment order u/s 153C r.w.s. 153A/143(3) shows that an assessment order u/s 144 of the Act at the total income of ₹4,07,05,840/- was already passed on 18.03.2015 for the impugned assessment year and the income assessed has been



included to compute the total income in the order passed u/s 153C r.w.s. 153A/143(3) of the Act. The Ld. CIT(A) in the course of appeal against the order dated 28.12.2016 has discussed the statement of facts, the addition u/s 68 of the Act, the case laws in the case of 154 ITR 244 (Pat) - ACT Vs Bahri Brothers, 151 ITR Page 150 (Pat) Addl. Commissioner of Income-tax Vs. Hanuman Agrawal, Gyan Ganga Ltd. v Dy. CIT (2010) 003 ITR (Trib) 0372, CIT v. Samir Biotech Pvt. Ltd. ITA No415/2008 of Delhi High Court, CIT v, Value Capital Services P. Ltd. (2008) 307 ITR 334 (Delhi) , CIT' vs. Divine Leasing & Finance Ltd. (CC 375/2008) dated 21-1-2008, CIT v. Daulat Rant Rawatmuli [87 ITR 349 (SC)], (2008) 216 CTR (SC) 195 CIT v. Lovely Exports (P) Ltd., (2011) 239 CTR 0478 :(2010) 194 TAXMAN 0043 :(2010) 045 DTR 0281 CIT v. Dwarkadhish Investment (P) Ltd., Bharti Syntex Ltd. v. Dy. CIT (2011) 052 DTR 0073, CIT v. Chandela Trading Co. P. Ltd. 2015 TaxPub(DT) 1383 (Cal-HC). However, the Ld. DR brought to our notice that no such discussion relating to section 68 of the Act was made in the order u/s 153C r.w.s. 153A/143(3) of the Act and the income assessed vide order u/s 144 of the Act dated 18.03.2015 at ₹4,07,05,840/- has been merely incorporated in computation of the total income. Neither any discussion has been made relating to the addition on account of cash credits in this order nor any reply of the assessee appears to have been considered. The order u/s 144 of the Act was made on 18.03.2015 i.e. prior to the order passed u/s 153C r.w.s. 153A/143(3) of the Act which is dated 28.12.2016.

7. The Ld. AR stated that the assessment proceeding was pending for the impugned A.Y. which should have been abated and the assessment u/s 153C r.w.s. 153A/143(3) of the Act ought to have been made as per law. It is further stated that no satisfaction note was



recorded for the proceeding u/s 153C of the Act and no incriminating material was available in the assessment order, the details submitted and the source of funds could not be enquired in the proceeding for AY 2012-13. The order u/s 153C of the Act being mechanical and the additions lacking foundation ought to have been deleted and requested that the order of the Ld. CIT(A) may be confirmed.

8. We have considered the submissions made. The appeal before the Ld. CIT(A) was in respect of the order u/s 153C r.w.s. 153A/143(3) of the Act dated 28.12.2016 and the same has been decided as is apparent from page 1 of the order of the Ld. CIT(A) dated 26.08.2021. There was a best judgement order passed u/s 144 of the Act at the total income of ₹4,07,05,840/- on 18.03.2015 and no discussion whatsoever has been made relating to either share capital or the addition u/s 68 of the Act in the order passed u/s 153C r.w.s. 153A/143(3) of the Act. However, the Ld. CIT(A) has made elaborate discussion and deleted the addition on account of cash craves whereas no such discussion has been made in the impugned assessment order relating to the search and in the course of the appeal against the order u/s 153C of the Act, the appeal against the order u/s 144 of the Act dated 18.03.2015 has been decided which order is separately appealable. Thus, the Ld. CIT(A) has adjudicated on the issue which do not emanate from the assessment order u/s 153C r.w.s. 153A/143(3) of the Act dated 28.12.2016 and therefore, the order of the the Ld. CIT(Appeals) cannot be sustained. The Revenue has raised certain issue relating to the genuineness of the share capital in the Ground no. 2. However, the same needs to be agitated in the appeal against the order u/s 144 of the Act which was not before the Ld. CIT(A) and, therefore, in the current appeal, the issue does not emanate from the order of the Ld. AO. The facts being so, the



order of the Ld. CIT(A) has been passed on extraneous consideration and not on the issues decided in the order u/s 153C r.w.s. 153A/143(3) of the Act dated 28.12.2016 in which no addition on account of the findings of the search has been made but while computing the total income, the income already assessed vide order u/s 144 of the Act dated 18.03.2015 at ₹4,07,05,840/- has been merely included in incorporated. Hence, the order of the Ld. CIT(A) is neither in accordance with the facts of the case, nor as per law, therefore, the same is hereby quashed. All the issues decided in his order are the subject matter of the appeal against the order u/s 144 of the Act of the Act dated 18.03.2015. Hence, both the revised grounds of appeal, i.e. Ground Nos. 1 & 2 are allowed.

9. In the result, the order of the Ld. CIT(A) is quashed and the appeal filed by the Revenue is allowed .

Order pronounced in the open Court on 8th December, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 08.12.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **ACIT, Central Circle-2, Patna.**
2. **M/s. Maxxon Vanijya & Resources Pvt. Ltd., 30/1L Old Ballygunge, 1st Lane, Kolkata, West Bengal, 700019.**
3. CIT(A)-3, Patna.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata