

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

**BEFORE : SHRI N.K. SAINI, ACCOUNTANT MEMBER &
SHRI C.M. GARG, JUDICIAL MEMBER**

**ITA Nos. 6457 & 6458/Del./2013
Asstt. Year : 2007-08 & 2008-09**

D.C.I.T., Central Circle-11, vs. Winsome Finance Pvt. Ltd.,
New Delhi. 27/8A, Waterloo Street,
Kolkata.
[PAN :AAACW 2440F]

**ITA No. 6459/Del./2013
Asstt. Year : 2008-09**

D.C.I.T., Central Circle-11, vs. Lyton Consultancy Pvt. Ltd.,
New Delhi. 4-A, Ganpat Bangla Road,
Bura Bazar, Kolkata.
[PAN :AAACL5626D]

**ITA Nos. 6453 & 6454/Del./2013
Asstt. Year : 2007-08 & 2008-09**

D.C.I.T., Central Circle-11, vs. Zee Securities Pvt. Ltd.,
New Delhi. 27/8A, Waterloo Street,
Kolkata.
[PAN :AAACZ 0904B]
(Appellant) (Respondents)

Appellant by : Shri Aliq Ahmed, Sr. D.R.
Respondents by : None

Date of hearing : 19.08.2015
Date of pronouncement : 30.09.2015

ORDER

Per Bench:

These appeals have been filed by the Revenue against the orders of CIT(Appeals)-XXXI, New Delhi, all dated 19.09.2013 passed in appeals Nos. 403, 404, 405, 416 & 417/2013-14 for the assessment years 2007-08 and 2008-09.

2. Except the amounts of addition made on protective basis, the sole ground of Revenue in all these five appeals is similarly worded. The ground raised by the Revenue in ITA No. 6457/Del./2013 for assessment year 2007-08 reads as under :

“2. *On the facts and in the circumstances of the case, the Commissioner of Income Tax (A) has erred in law and on facts in deleting the addition of Rs.7,01,07,808/- made by AO under section 68 of the I T Act on protective basis.*”

ITA No. 6457/Del./2013(A.Y. 2007-08):

3. Briefly stated, the facts giving rise to this appeal, are that the Assessing Officer completed the assessment u/s. 143(3) read with section 153A of the Income-tax Act, 1961 (for short -the Act) making addition of Rs.7,01,07,808/- u/s. 68 of the Act. The aggrieved assessee filed an appeal before the CIT(A), alleging that the order passed by the Assessing Officer is illegal, invalid and bad in law, the impugned addition u/s. 68 of the Act is unjustified, unwarranted and excessive, the

income so determined is not valid and sustainable and the AO has erred in passing the impugned assessment order. The CIT(A) granted relief to the assessee by observing that there was cash element in the transaction with Mr. Jain and the impugned amount was duly included in their surrendered income. Therefore, the additions u/s. 68 of the Act on protective basis in the hands of the respective assesseees are not sustainable. Now, the aggrieved Revenue is before this Tribunal in the second appeal with the sole ground as reproduced here above.

4. When the appeals were called for hearing, neither the assessee nor his representative appeared before us nor any application for adjournment has been filed on behalf of the assessee-respondent. On careful and vigilant perusal of the relevant material placed on record, inter alia, assessment order, impugned order of the CIT(A) and other facts on record, we are of the view that these appeals can be adjudicated in absence of assessee-respondent after hearing the learned Departmental Representative appearing on behalf of the Revenue. Thus, we proceeded to hear the learned Departmental Representative for proper adjudication of these appeals.

5. We have heard the arguments of the learned Departmental Representative and carefully perused the relevant material placed on record.

6. The learned Departmental Representative (Capital DR), supporting the action of the AO, submitted that from the description mentioned on various seized documents, it was evident that Shri N.K. Jain was an entry operator and the modus operandi adopted by Shiv Vani group was very much clear. The learned Departmental Representative further contended that unaccounted cash was being transferred to Shri N.K. Jain, who in turn is ploughing back the same in the form of bogus entries of share capital/application money, bills & loans etc. by charging commission to the various concerns of M/s. Shiv Vani group. The learned Departmental Representative further submitted that the transaction relating to present assessee pertaining to assessment year 2007-08 was rightly treated as unexplained transaction materialized through banking channel, the source of which is not explained. Hence, the same was rightly added in the hands of the assessee on protective basis u/s. 68 of the Act by the AO. The learned Departmental Representative vehemently contended that the CIT(A) granted relief to the assessee without any basis mainly holding that even if the AO had a doubt that the amount is something related to the entry business then he [CIT(A)] did not find any evidence brought on record which would say so. The learned Departmental Representative finally contended that the addition made u/s. 68 of the Act on protective basis in the hands of the assessee cannot be deleted until and unless the

issue of substantive addition attains finality in favour of the Revenue. The learned Departmental Representative submitted that the impugned order may be set aside by restoring that of the AO.

7. On careful consideration of above submissions, and perusal of the assessment order, we note that the Assessing Officer made the impugned addition u/s. 68 of the Act with the following observations and findings :-

“During the course of assessment proceedings the following facts came in notice which emerge that Sh. N K Jain is an entry operator.

i. Page no. 70 of annexure A-4, seized from office of Shiv Vani group at NBC Plaza, Saket, contains the summary account of Sh. N K Jain wherein details of payment received and transferred by N K Jain wherein details of payment received and transferred by N K Jain has been mentioned. On the basis of noting a sum of Rs.14.83 crores has been surrendered as additional income in the hands of assessee in the assessment year 2009-10.

ii. Page no. 6 of annexure A-1, seized from residence of Sh. R K Somani & employee in group wherein it is mentioned that “N.K. Jain CAL, and also shows cash sent on 09.01.2008. On this transaction Sh. R K Somani has surrendered commission of Rs.300000/- against noting of 4.5 mentioned on the page.

iii. Page no. 26 of Annexure A-18 contains capital and loan syndication by Sh. N K Jain with Mr. Hiralal Rathi & Sh. R K Somani for the period before 2001. The Commission on transaction has been offered for taxation by Sh. R K Somani & Sh. Hiralal Rathi in their hands in the relevant Assessment Year.

iv. The description on page no. 26 of annexure A-18, shows noting as “Account of NK Jain” and commission has been mentioned @5.5% on capital, @ 3.5% on entry and @ 5% on bills. Such a high rate of commission is not possible in normal course of business which also

indicates the involvement of Sh. N K Jain for providing of accommodation entry.

v. The substantial cash payment by the assessee on account of commission to various brokers/entry operators is also appearing in the seized documents and surrendered during assessment/search.

Keeping in view the above facts and the description mentioned on various seized documents, it is evident that Sh. N.K. Jain is an entry operator.

The modus operandi adopted by Shiv Vani group is clear. Unaccounted cash is being transferred to Sh. N K Jain, who in turn is poughing back the same in the form of bogus entries of shares capital/application money, bills & loans etc. by charging his commission to the various concerns of M/s. Shiv Vani group.

It is seen that the transaction of page 56 of Annexure A-14, is reflected on the same page as other transaction of Mr. Jain who is involved n giving entries to various group concern of Shiv Vani group as discussed above and this fact is proved from description on various pages of seized material. Hence, these transactions through Mr. Jain are held to be entry transaction financed through Shiv Vani out of undisclosed sources of income. As the source of funds for all these transactions through Mr. Jain is M/s. Shiv Vani Oil and Gas Exploration Services Ltd., the flagship company of the group, substantive addition is being made in the hands of Shiv Vani Oil and Gas Exploration Services Ltd and protective addition is being made in the hands of the assessee who is beneficial owner of these transaction.

Thus the transaction relating to above assessee amounting to Rs.70107808 pertaining to this assessment year is treated as unexplained transaction materialized through banking channel whose source is not explained. Hence, this amount is added in the hands of the assessee on protective basis u/s. 68 of the IT Act.

I am satisfied that the assessee has concealed the particulars of its income. Therefore, provision of section 271(1)(c) of the IT Act are attracted.”

8. From the bare reading of the impugned order, we further observe that the CIT(A) demolished the protective addition made by the AO u/s. 68 of the Act with the following observations and conclusion :

“4.2.5 It has been explained that wherever there was cash element in the transaction with Mr. Jain, the appellant has duly included the same in their surrendered income. The details found at page 56 of B14 A14 are not having any cash element not accounted in the assessee’s books. It has been further submitted that since Mr. Jain was maintaining the bank accounts at Kolkata, his name appears at the top of the page. However, the amounts written against various names of the companies are not cash transactions but bank transactions duly reflected in the books and explained to the AO with all supporting documents during the assessment proceedings.

4.2.6 I find that none of the credit entries relate to any cash deposits. They are all either bank-to-bank transfers or cheque deposits. The narrations in the bank account give the details of the account nos. from where the amount has been received or the cheque numbers. I also observe that there appears to be no dispute about amounts having been received in the appellant’s bank account through banking channels. The AO also admits in the assessment order that all these transactions have been duly reflected in the bank accounts of the appellant when he states that “unexplained transaction materialized through banking channel”. However he held that the source is not explained.

4.2.7 It is observed that in the assessment proceedings the complete books of accounts, bank statements & transactions were explained to the AO and no adverse inference was drawn by the AO on the books of accounts & transactions mentioned therein.

4.2.8 It has been explained that the amounts have been received towards sale of shares held as stock-in-trade. It is seen that financial statements of the company do establish that the appellant had sold shares which were held by it as stock-in-trade. The profit and loss account of the year ending 31.03.2007 shows sales to the tune of Rs.7,00,30,000/-. Schedule I to the balance sheet also gives details of stock of shares held, purchased and sold during the year. It has been submitted that during the year there are purchase of shares of both of private limited and publicly

listed companies. The AR has submitted that the sale considerations of these shares have been remitted into the bank account and the said page 56 of Annexure B14.A14 is the summary of receipts into the bank account of different companies (listed therein). Merely because Mr. Jain's name appears on the top of the table, it should not be inferred that the transactions are unaccounted.

4.2.9 I am of the view that there is no merit in holding that the amounts mentioned in the seized document relates to any deposits into the bank account the source of which is unexplained. The fact that the AO has found Mr. Jain to be a entry operator, in itself, cannot make every entry in the bank account as unexplained. The AO has ignored the fact that the appellant has sold his stock of shares and investment and received the amounts. Once the amounts are received through banking channels towards sale of stock in trade, the same cannot be held as amount the source of which unexplained.

4.2.10 The appellant had submitted before the AO that the amounts represented amount received on sales of stock and investment and also inter-corporate loans. This submission is common to all the names appearing at page No. 56 of the seized Annexure. This has been reproduced at page 2 of the assessment order by the AO. In the submission made before the AO it was explained that the said page is a bank summary prepared by staff for internal control purpose and reconciliation of bank account. The appellant had also submitted the confirmation of amount received/paid for verification of the AO. The same has also been duly reproduced by the AO in the assessment order. Hence it is incorrect to say the source of the deposits in the bank is unexplained. Even if AO had a doubt that the amount is something related to the entry business, I do not find any evidence brought on record which would say so. In any case the amounts received in the bank accounts of the appellant as proceeds from sale of shares held as stock-in-trade and investment cannot be held as unexplained. These are revenue receipts already credited to P&L account or reduced from investments. There cannot be further addition on this account.”

9. In view of the above, at the very outset, we note that the Assessing Officer himself noted the fact that Shri N.K. Jain was proved to be the alleged entry

operator on the basis of noting at page No. 70 of Annexure A-4, seized from the office of Shiv Vani Group at NBC Plaza, Saket, which contains the summary account of Shri N.K. Jain wherein details of payment received and transferred by N.K. Jain has been mentioned and on the basis of noting, a sum of Rs.14.83 crores has been surrendered as additional income in the hands of the assessee in A.Y. 2009-10.

10. When we further analyze the impugned order of CIT(A), it is ample clear that the first appellate authority has noted that wherever there was cash element in the transaction with Mr. Jain, the appellant assessee has duly included the same in their surrendered income. Under these facts and circumstances, we may safely infer that the assessee respondent has surrendered the amount wherever there was cash element in the transaction with Mr. N.K. Jain, which was added to the income of the assessee-respondent on substantive basis for A.Y. 2009-10.

11. The CIT(A) while granting relief to the assessee also observed that the amounts represented the amount received on sale of stock and investment and also inter-corporate loans. The CIT(A) also considered the submissions of the assessee that the assessee submitted confirmation of amount received/paid for verification before the AO which was duly reproduced by the AO in the assessment order.

Hence, it was incorrect to say that the source of deposit in the bank account of the assessee remained unexplained. We are in agreement with the final conclusion of the CIT(A) that in case the AO had a doubt that the impugned amounts was related to the entry business then also he could not bring any evidence on record, which would say so, supporting the allegation of the AO. We, therefore, are of the considered opinion that the amount received in the bank account of the assessee-respondent as proceeds of sale of shares held as stock-in-trade and investment, cannot be held or treated as unexplained income of the assessee, which would attract addition u/s. 68 of the Act. Especially when these revenue receipts which were received against sale of stock in trade had already been credited to the P & L account and reduced from the investments, then there cannot be further addition on protective basis u/s. 68 of the Act. On the basis of foregoing discussion, we are inclined to hold that the CIT(A) rightly viewed that there was no merit in assessing the impugned amount u/s. 68 of the Act on protective basis in the hands of the assessee when the same has been included in the surrendered amount in the hands of respective assesseees and the issue of substantial addition has attained finality. Hence, we are unable to see any ambiguity or impropriety and any reason to interfere with the order of CIT(A) and we uphold the same. Accordingly, the sole ground of revenue being devoid of merit in ITA No.6457/Del./2013 for the assessment year 2007-08 is dismissed.

ITA Nos. 6458, 6459, 6453 & 6454/Del./2013:

12. Since as we have already noted that the facts and circumstances pertaining to ITA No. 6457/Del./2013 are similar to these appeals and the Revenue has raised similarly worded grounds on same footings except the impugned amounts of additions, therefore, our conclusion/result in ITA No. 6457/Del./2013 is applicable to all these four appeals in *mutatis mutandis*.

13. In the result, all the five appeals of the Revenue are dismissed.

Order pronounced in the open court on 30.09.2015.

Sd/-
(N.K. SAINI)
Accountant Member

Sd/-
(C.M. GARG)
Judicial Member

Dated : 30.09.2015

*aks/-

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*