



\$~9 to 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 1/2024**
PR. COMMISSIONER OF
INCOME TAX (CENTRAL)-2Appellant
Through: Mr. Sanjay Kumar and Ms.
Easha, Advocates.
versus
HERITAGE BEVERAGES PVT. LTDRespondent
Through: Mr. Gaurav Jain and Mr.
Shubham Gupta, Advocates.

10.
+ **ITA 10/2024**
PR. COMMISSIONER OF
INCOME TAX (CENTRAL)-2Appellant
Through: Mr. Sanjay Kumar and Ms.
Easha, Advocates.
versus
HERITAGE BEVERAGES PVT. LTD.Respondent
Through: Mr. Gaurav Jain and Mr.
Shubham Gupta, Advocates.

11.
+ **ITA 12/2024**
PR. COMMISSIONER OF
INCOME TAX (CENTRAL)-2Appellant
Through: Mr. Sanjay Kumar and Ms.
Easha, Advocates.
versus
HERITAGE BEVERAGES PVT. LTD.Respondent
Through: Mr. Gaurav Jain and Mr.
Shubham Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **09.08.2024**
CM APPL. 313/2024 (5 days delay) in ITA 10/2024
CM APPL. 350/2024 (5 days delay) in ITA 12/2024

Bearing in mind the disclosures made in the applications, they



are allowed. Delay of 5 days in filing the appeals is condoned.

Applications stand disposed of.

ITA 1/2024, ITA 10/2024 and ITA 12/2024

1. The **Principal Commissioner of Income Tax**¹ impugns the validity of the order dated 16 May 2023 passed by the **Income Tax Appellate Tribunal**² and posits the following questions of law for our consideration:-

“A. Whether on the facts and circumstances of the case the Ld. ITAT has erred in deleting the addition of Rs.5,62,00,000/- made by AO on account of unexplained share capital and share premium under Section 68 of the Act?

B. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the fact that assessee has directly or indirectly received share capital and premium from entities/persons not having creditworthiness to provide such huge amount of unsecured loans?

C. Whether the Ld. ITAT has erred in holding that share capital/premium received was explained ignoring the judgments in the cases of NRA Iron and Steel Pvt. Ltd. dated 05.03.2019, Navodaya Castlers Pvt. Ltd. (Delhi) in ITA No. 320/2012 and Youth Construction Pvt. Ltd. 357 ITR 197 and CIT Vs. NR Portfolio Pvt. Ltd. (Delhi) in ITA No. 1018/2011?

D. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in deleting the addition completely ignoring the evidentiary value of statement under Section 132(4) of the Act of the director of the Kandhari group companies, Shri Pradeep Kumar Shastri and confirmed by Sh. Varinder Pal Singh Singh Kandhari Wherein he had admitted surrender of his unaccounted income in the form of bogus share capital/premium?

E. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the facts that the fund which was credited in the bank account of the investor companies was debited on the same day/following day(s) in which it was received?

F. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the requisite details and evidences were filed by the assessee to prove the creditworthiness and genuineness of the shell companies who made investment in group companies of assessee, despite the fact that based on their financial statements it was held that the subscriber companies is not doing any real business?

¹ PCIT

² Tribunal



G. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the facts that the creditworthiness and genuineness of the shell companies who made investment in group companies of assessee is not proved since they were showing meagre returned income with negligible income from operations?"

2. We had on hearing preliminary submissions addressed by Mr. Kumar, learned counsel appearing in support of the appeal, in our order of 03 January 2024 observed as under:-

“1. Notice. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let learned counsel for the appellant take steps for service through all permissible modes including via approved courier service. The respondent may file a reply, if so chosen and advised, within a period of three weeks from today.

2. Prima facie, we take in consideration the submission of learned counsel appearing in support of this appeal who submits that once it had been found that the investments made by M/s MSD Finance India Pvt. Ltd. and M/s Indo Gulf Infrastructure Investment Pvt. Ltd. were made from undisclosed sources, the findings as returned by the Income Tax Appellate Tribunal [‘ITAT’] and which has affirmed the view taken by the Commissioner of Income Tax (Appeals) would not sustain. Matter requires consideration.

3. Let the appeal be called again on 06.05.2024.”

3. The aforesaid issue arose in the context of the Tribunal while dealing with the additions under Section 68 of the **Income Tax Act, 1961**³, having observed as follows:-

“7. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, the dispute in the aforesaid three assessment years relates to addition of investments made on account of share capital and share premium by two entities with the assessee company. On a careful reading of the assessment orders, it is very much clear that the sole basis for the additions made u/s. 68 of the Act at the hands of the assessee company is the statement recorded from one, Mr. Praveen Kumar Shastri, stated to be the director of Kandhari group of companies. On a perusal of the observations made by the Assessing Officer in the assessment order, it can be seen that in the statement recorded,

³ Act



the concerned person has stated that the share capital and share premium received by M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., and in turn, invested with assessee company, were nothing but these two entities income from undisclosed sources, which are introduced in the names of other entities. He has also stated that the concerned person admitted to offer certain amount of income at the hands of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd. Aforesaid facts recorded by the Assessing Officer clearly demonstrate that, at best, the share capital and share premium invested in assessee company were unexplained income of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd.. However, as far as the Assessee is concerned, the source of investment stands explained, as the investment has come from M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., even, assuming that such investments were out of unexplained income of these two entities. On a reading of the order of Id. Commissioner (Appeals), it is observed that in course of assessment proceedings, the assessee had furnished various documentary evidences, as enumerated in para 5.2 of Id. Commissioner (Appeals)'s order for the assessment year 2011-12, to prove the genuineness of the transactions. However, the Assessing Officer has not brought any material on record to controvert the claim of assessee or falsify the evidences furnished before him. As rightly observed by Id. Commissioner (Appeals), without factually examining the evidences furnished by the Assessee through proper enquiry, the Assessing Officer has placed much reliance on the appraisal report and judicial precedents. Reading of the assessment orders reveal, the Assessing Officer has not referred to any incriminating material found as a result of search and seizure operation conducted in case of the Assessee, which could have even remotely linked to the additions made. In this regard, following observations of Id. Commissioner would be of much relevance :

“5.6 Respectfully following the above judgment, which is on identical factual matrix, it can be reasonably inferred that since, no material was found during the search in respect of the equity share capital, it cannot lead to the conclusions drawn by the AO. No specific corroborative evidence has been brought on record by Assessing Officer to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the director of the appellant companies have never made any statement regarding the share capital / share premium / share



*application money and no disclosure have been made with regard to share capital / share premium / share application money / unsecured loan. As such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. The addition made in the case of the appellant is deleted. Therefore, **ground no. 3 is allowed.**”*

However, it has been pointed out to us that the unexplained money which formed the corpus of the share application already stood taxed in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd. and M/s MSG Finance India Pvt. Ltd. This becomes evident from a reading of paragraph 4.5 of the assessment order dated 29 December 2016, which is extracted hereinbelow:-

*“4.5 During the course of search action conducted at the office premises of Sh. Varinder Pal Singh Kandhari at Plot no. 237-238, Udyog Vihar, Gurgaon on 28/03/2015, the above facts are confronted to Mr. Pradeep Kumar Shastri, Director in Kandhari group companies, who had admitted that a part of share premium received by M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt Ltd which was further given to M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd was nothing but its own unexplained income from undisclosed sources of these two companies introduced in the names of other entities. Therefore, **he admitted to offer for taxation a sum of '8,63,36,000/- in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd for the F.Y. 2008-09 and further sum of Rs. 3,50,00,000/- in the hands of M/s MSG Finance Pvt. Ltd for the F.Y. 2010-11, aggregating to Rs. 12,13,36,000/-.***

The relevant portion of statement of Sh. Pradeep Kumar Shastri recorded u/s 132(4) of I.T. Act on 29.03.2015 at Plot No. 237-238, Udyog Vihar, Gurgaon is reproduced as under:-

Q.3 In your statement on 28/03/2015, you have stated that you are the director in M/s Indogulf Infrastructure & Investment Pvt. Ltd and M/s MSG Finance Pvt. btd. However, you are not aware of the activities/affairs of these companies which are registered at your residential address. You also stated that you are the director in these two companies as desired by your employer i.e. Sh. Varinder Pal Singh Kandhari who is also promoter/director of M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd. Do you abide by the statement? Are these companies floated by/being also the interested party of Kandhari.

Ans. Yes, I accept and abide by statement as mentioned above. M/s Indogulf Infrastructure Investment Pvt. Ltd and Ms MSG



Finance India Pvt. Ltd were floated by Sh. Varinder Pal Singh Kandhari. He is the main who is in control of these companies. He is main interested party in these two companies. I am also the interested party in these two companies to some extent.

Q.4 The two companies mentioned in question no. 3 have invested in M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd. Please explain the source of invested amount with these companies lay M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt. Ltd?

Ans. I have gone through the income tax returns and accounts of these two companies of last seven years along with Sh. Varinder Pal Singh Kandhari and I accept that, a part of share premium received by M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt. Ltd is own unexplained income from undisclosed sources of these two companies introduced in the names of other entities. After considering all the affairs and account of these two companies with due diligence. I accept and come in open with clean hands before the Income Tax Department that share premium of Rs.8,63,36,000/- introduced in the books of accounts of M/s Indogulf Infrastructure Investment Pvt. Ltd in F.Y. 2008-09 and share premium of Rs. 3,50,00,000/- introduced by M/s MSG Finance India Pvt. Ltd in F.Y. 2010-11 cannot be explained. I am unable to explain the source of above mentioned two amounts totalling to Rs. 12,13,36,000/- (8,63,36,000+3,50,00,000) in words Rs. Twelve crore thirteen lakh and thirty six thousand only. To buy peace of mind and avoid litigation I hereby offer a sum of Rs. 8,63,36,000 in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd in F.Y. 2008-09 and a sum of Rs. 3,50,00,000/- in the hands of M/s MSG Finance India Pvt. Ltd in the F.Y. 2010-11 as additional income over and above the income already declared in the ITRs of the respective aforesaid companies. I will pay the due tax on these amount along with the due interest as per I.T. Act, 1961 as early as possible. I am offering this income with request that penalty under the income tax act may not be initiated, I am submitting balance sheet set of above said two companies.”

4. We note that an identical question arose for consideration in **Principal Commissioner of Income Tax-Central-I v. Surya Agrotech Infrastructure Limited⁴** and where the following questions

⁴ 2023 SCC OnLine Del 5530



had arisen for the consideration of the Court:-

“10. The appeals are admitted on the following question of law, which arises for consideration:

“Once the flagship company of the group of companies had paid tax on its unaccounted income by way of proceedings conducted before the Settlement Commission, as accepted by the revenue, whether the same money when used in the form of share capital in the respondents/assessee's companies can again be subjected to tax in the hands of the respondents/ assessee's?”

5. Upon due consideration of precedents rendered on the subject, the Court ultimately had held as follows:-

“14. We have examined the judicial precedents cited on behalf of the appellant/revenue and it is found that the same are of no help to the appellant/revenue as the same stand on distinguishable footing. Unlike the present case, circumstances in the judicial precedents (*except in one case*) cited on behalf of appellant/revenue did not pertain to the issue of double taxation possibility.

15. The judicial precedent in the case *Dharamdas Agarwal* (supra) cited by learned counsel for appellant/revenue supports the case set up by the respondents/assessee's. In the said case, placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Anantharam Veerasinghaiah & Co. v.s CIT*, (1980) 3 SCR 618, it was held that when cash credits were treated as income from undisclosed sources, the assessee can take an alternative contention before the Appellate Assistant Commissioner that the cash credits were out of the undisclosed income taxed in earlier years.

16. In the case of *Laxmipat Singhania v. Commissioner of Income Tax, UP*, AIR 1969 SC 501, the Hon'ble Supreme Court reiterated the fundamental principle of law of taxation that unless otherwise expressly provided, income cannot be taxed twice; and that it is not open to the Income Tax Officer, if income has accrued to the assessee and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as an income of another year on the basis of receipt.

17. In the case of *Commissioner of Income Tax IV v. Sarjan Realities Ltd.*, 2010 SCC OnLine Guj 8298 also it was held that when the assessee had already paid tax on the interest income in the earlier years, no fault could be found in the impugned order of the Tribunal in holding that the assessee was entitled to write off the excess income shown in the earlier years, inasmuch as the same



income cannot be taxed twice, once in the earlier years and again in the year under consideration.

18. In the case of *CIT v. K. S. M Guruswamy Nadar and Sons*, (1984) 149 ITR 127, it was held that when there are two separate additions, one on account of suppression of profit and another on account of cash credit, it is open to the assessee to explain that the suppressed profits had been brought in as cash credits and one has to be telescoped into the other resulting in only one addition; and that the Tribunal was right in its view in telescoping the additions made towards the cash credits.

19. In the case of *M/s M.R. Shah Logistics Pvt Ltd v. DCIT*, (2018) SCC OnLine Guj 4850, the Gujarat High Court held that once a company disclosed the unaccounted cash amount in the Income Declaration Scheme, 2016 and paid tax thereon, upon utilization of the same towards investment in share capital of the assessee company through various companies, the same could not be again subjected to tax in the hands of the appellant assessee.

20. In the case of *B. Nanji Enterprise Ltd v. DCIT*, 2017(8) TMI 189 (Gujarat), the Gujarat High Court held thus:

“7. It is this judgment the assessee has challenged in the present appeal. From the material on record, it can be seen that the sum of Rs.74 lakhs was offered to tax by Bhikhubhai N. Padsala in his settlement application. Such application has been granted by the Settlement Commission by passing order of settlement. By very statutory scheme of provisions, acceptance of such income in the hands of Bhikhubhai N. Padsala would have to be preceded by payment to tax. We have therefore proceeded on the basis that the Settlement Commission accepted the said sum as income of Bhikhubhai N. Padsala and the department has already received the tax and interest on such income. That being the position, it would not be possible for the department to tax the same income once again in the hands of the present assessee. This would be for multiple reasons. Firstly, there is nothing on record to suggest that before the Settlement Commission, the declaration of Bhikhubhai N. Padsala in this respect was opposed by the Revenue. Secondly, the Settlement Commission having accepted such settlement, with or without the opposition by the Revenue, finality of the conclusions of the Settlement Commission would attached in terms of section 245I of the Act. Thirdly, the department concedes



that the order of Settlement Commission has not been challenged further. Under the circumstances, allowing the department's appeal, levying tax on the same amount from the assessee would be wholly impermissible. In fact, it also would be opposed to the observations of the Assessing Officer and those of the Tribunal that under no circumstances, the same income would be subjected to tax twice”.

21. In the case of *Pr. CIT (Central) v. Krishan Kumar Modi*, 2022:DHC:676-DB, also a coordinate bench of this court reiterated that same money cannot be taxed twice.

22. In the cases of *Omaxe Limited v. DCIT*, 2014:DHC:1985-DB, a Division Bench of this Court and *Komal Kant Fakir Chand Sharma v. DCIT*, (2019) SCC OnLine Guj 696, a Division Bench of the Gujarat High Court held that once Settlement Commission had completed proceedings, its order is conclusive vide Section 245I and reopening any proceeding in respect of matters covered in the said order would be barred, except to the extent that the revenue can seek remedy under Section 245D(6) read with Section 245D(7) of the Act.

23. To recapitulate, in the present case, the material on record reflects that the Assessing Officer throughout the proceedings placed heavy reliance on the statement of Shri Shekhar Aggarwal to the effect that the undisclosed income of Priya Gold Group of Companies was routed in the form of share capital of the respondents/assessee companies by way of accommodation entries from Kolkata based entry provider companies and such share capital is liable to be taxed as income in the hands of the respondents/assessee companies. At the same time, it is also not in dispute that Surya Food & Agro Limited, the flagship company of the group has already offered the said undisclosed income to the tune of Rs. 49,12,00,000/- to tax before the Settlement Commission, which income was enhanced by the Commission to Rs. 55,77,00,000/- and the final order of the Settlement Commission having not been challenged by either side has attained finality. It is also not in dispute that before the Settlement Commission the flagship company specifically declared that the undisclosed income which was offered before the Settlement Commission had been applied by way of share capital to the group entities, namely the present respondents/assessees. Further, before the Settlement Commission, the flagship company also explicitly stated that there is no other undisclosed asset found or application of funds by the group, which statement remains unchallenged till this stage.



24. In view of aforesaid, the irresistible conclusion is that since the undisclosed income which is subject matter of the present dispute had already been taxed in the hands of the flagship company Surya Food & Agro Ltd., it cannot be again subjected to tax in the hands of the respondents/assessee companies in the form of application of the said income as their share capital. Accordingly, the question as framed above is answered against the appellant/revenue and in favour of the respondent/assessee.”

6. Following the view expressed by the Coordinate Bench of this Court in *Surya Agrotech*, we find that the appeals fail to raise any substantial question of law. They shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 9, 2024/vp