

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

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

**ITA No.1098/DEL/2019
(Assessment Year: 2009-10)**

**ITA No.2204/DEL/2019
(Assessment Year: 2013-14)**

Surya Vincom P. Ltd.,
2nd Floor, 19, Local Complex,
Near Pushpa Bhawan, Madangir,
New Delhi – 110 062.

vs.

ACIT, Central Circle 8,
New Delhi.

(PAN : AACCN8423B)

**ITA No.3300/DEL/2019
(Assessment Year: 2013-14)**

ACIT, Central Circle 8,
New Delhi.

vs.

Surya Vincom P. Ltd.,
2nd Floor, 19, Local Complex,
Near Pushpa Bhawan, Madangir,
New Delhi – 110 062.

(PAN : AACCN8423B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Dharam Veer Singh, CIT DR

Date of Hearing : 12.08.2024

Date of Order : 16.08.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-24, New Delhi [“Ld. CIT(A)”, for short] dated 31.12.2018 for the Assessment Year 2009-10 and the cross appeals have been filed by the Assessee and Revenue against the order of Ld. CIT (A) dated 07.01.2019 for Assessment Year 2013-14.

2. At the time of hearing, none appeared on behalf of the assessee to represent these cases and from the record, we observed that the case was posted for hearing first time on 29.03.2022 and from that date onwards, on 13 occasions, the cases were posted for hearing but none appeared on behalf of the assessee. On 16.05.2024, the Bench directed ld. DR for the Revenue to serve the notice with direction. An Inspector was assigned with the duty to serve the notice. The Inspector’s report dated 24.07.2024 is placed on record as per which the Inspector visited the address of the assessee and found that it is a big complex having so many flats situated in complex/towers. The Inspector was not allowed to enter the building and has no option but to serve the notice through manually or through fixture at the flat. Since the Inspector was not allowed to enter into the flat premises of the complex by the security personnel, therefore, he returned the original hearing notice with the note that it is unserved or non-affixed at the premises of the assessee.

3. After taking note of the Inspector's report, we notice that assessee is not interested to prosecute the case nor respond to the appeal filed by the Revenue in Assessment Year 2013-14. Considering the above facts on record, we proceeded to hear the case with the assistance of ld. DR for the Revenue.

4. At the time of hearing, ld. DR brought to our notice brief facts of the case relating to Assessment Year 2009-10 are, the return of income of the assessee was originally filed on 27.03.2010 declaring nil income. A search and seizure operation was carried out in the case of Priya Gold Group and its premises on 16.12.2014. During the search and seizure action on the Head Office of the Group, substantial documents were found and seized. The documents seized contained documents relating to assessee company also. After recording satisfaction, notices under section 153A of the Income-tax Act, 1961 (for short "the Act") read with section 153C were issued on the assessee.

5. During assessment proceedings, the Assessing Officer observed that assessee has received share application money including share premium of Rs.490 per share aggregating to Rs.15,37,00,000/- from the group entities of Priya Gold Group. During post-search enquiries, it was found that assessee is a paper company/conduit company to facilitate and rotate the funds of the Priya Gold companies. Accordingly, the addition was made under section 68 of the Act.

6. Aggrieved with the above order, assessee preferred an appeal before the

Id. CIT (A) and before the Id. CIT (A), submitted as under :-

“That on the facts and in the circumstances of the case the Ld. Assessing Officer has erred both in facts and in law by making addition on account of share capital amounting Rs. 15,37,00,000 received by the appellant company u/s 68 of the Act without appreciating the fact that the appellant company has no assets, except paper entries showing investment in other shell companies, in fact if there were actual assets in these shell companies, then these would have been taken over by the Priyagold Group Companies, which would be the recipient to these assets.

The appellant company had made investments in various companies in the captioned assessment year which were sold in assessment year 2011-12 and further reinvested the same amount in M/s Surya Processed Food Pvt Ltd, which are a part of the Priyagold Group.

Further it is submitted that the appellant company is a 'shell company', fact which had been substantiated by the Investigation Wing of Kolkata also. The investments shown in the balance sheet are in other shell companies, "which are mere paper entries and have no intrinsic value.

During the search & seizure operation on April 21, 2015; statement of Shri Pankaj Agarwal was recorded on oath under section 131 (1A) of the Act. Shri Debashish Dutta accepted in his statement that he provided accommodation entries to the appellant company through various paper companies (namely Mrs Manglam Financial Consultants Pvt Ltd. M/s Subhdhan Financial Advisory Pvt Ltd, M/s Shivam Financial Advisory Pvt Ltd and M/s Vinayak Investment Pvt Ltd). The copy of his statement is attached as Annexure-Z.

Therefore the appellant company acted as an intermediary and in the whole scheme of things and was merely a conduit, for introducing the share capital in the priyagold group of companies. Therefore, on the basis of facts and circumstances of the instant case, there is no ground of invoking any of the provisions of section 68 of the Act, as this would tantamount to double taxation of the same income and would not be legally justified.

Further we reiterate that the said sum in fact represents an investment made by M/s Surya Food & Agro Ltd' who had made an application under section 245 C (1) of the Act on December 14, 2016 before the Hon 'ble Settlement Commission and M/s Surya Food & Agro Ltd had also mentioned the fact that it introduced its undisclosed income in form of share capital in two of its group companies i.e. M/s Surya Processed Foods Pvt Ltd and M/s Surya Agrotech Infrastructure Ltd through Kolkala based shell/paper companies (namely M/s Garima Commerce Pvt Ltd, M/s Surya Vincon Pvt Ltd. M/s Surya Vanijya Pvt Ltd. M/s Subhshree Investment

Management Pvt Ltd and M/s Lokenath investment Consultants Pvt Ltd) in the 'Statement of Facts' (SOF) submitted with the Hon 'ble Settlement Commission, the copy of SOF has already been submitted with your good office.

Subsequently the Hon 'ble Settlement Commission vide its order under section 245 D(4) of the Act dated June 8, 2018 accepted the additional income i.e. 49,12,73,399 offered by M/s Surya Food & Agro Ltd with further addition of Rs.6,64,51,000 (i.e. settled income u/s 245D(-I) at Rs. 55,77.24.399) offered by M/s Surya Food & Agro Ltd.

Therefore we request your good office to kindly delete the additions made by the Ld. Assessing Officer in the income of the appellant company.”

7. After considering the submissions of the assessee, ld. CIT (A) sustained the addition made by the Assessing Officer by observing as under :-

“5.12 Considering the facts stated above, in my considered and reasoned opinion the appellant undoubtedly has failed in course of assessment and appellate proceedings to establish the identity and creditworthiness of the so-called share applicants and genuineness of transactions. The AO has rightly invoked the provisions of the section 68 of the Act to make addition of Rs.15,37,00,000/- on account of share application money and added it back to the total income of the appellant. Thus, I hold that the action of the AO in making addition of Rs.15,37,00,000/- on account of share application money is justified and therefore the addition of Rs.15,37,00,000/- u/s 68 of the Act made by the AO is confirmed. This Ground No.1 of appeal is therefore dismissed.”

8. Aggrieved with the above order, assessee is in appeal before us.
9. Considered the submissions of Ld. DR and material placed on record, we observe that assessee has received share premium from various entities and failed to establish the identity and creditworthiness of the share applicants and also genuineness of the transactions. Therefore, we do not see any reason to disturb the findings of the ld. CIT (A). Accordingly, the appeal filed by the assessee is dismissed.

10. With regard to appeal preferred by the assessee and Revenue for AY 2013-14, the relevant facts brought to our notice by the Id. DR for the Revenue are, a search and seizure operation was carried out in the case of Priya Gold Group and its premises on 16.12.2014. Similar to the facts in AY 2009-10, search assessment was initiated in the case of the assessee u/s 153C r.w.s. 153A of the Act. During assessment proceedings, the AO observed from the balance sheet of the assessee for the current assessment year that it had made investment in equity shares of Surya Processed Food Pvt. Ltd. for an amount of Rs.15.38 crores. The AO observed that during the search and post-search enquiries conducted by the department, the assessee was found to be a paper company utilised by Priya Gold Group for rotating its own unaccounted fund as share capital/share premium. After recording the above satisfaction, the Assessing Officer discussed that there was no business activity in the case of first layer of alleged investor companies and the profit shown by them is insignificant. After discussing the various aspects of *modus operandi* operated by Priya Gold Group, the AO treated the assessee as merely a paper company used by Priya Gold Group to introduce their own unaccounted funds. He further noted that the source of credits in the hands of the assessee is not explained but these credits have been immediately transferred to Surya Processed Food Pvt. Ltd. which is the ultimate beneficiary of these credits. Based on the above observations, he made substantive addition of Rs.15.38 crores in the hands of

the beneficiary i.e. Surya Processed Food Pvt. Ltd. and in order to protect the interest of the Revenue, he made protective addition in the hands of the assessee.

11. Further, the AO observed that the assessee being a paper company which was utilised for channelizing the unaccounted funds of Surya Processed Food Pvt. Ltd., he observed that normally 2 – 3% to the total value were charged as commission. Accordingly, he determined the commission @ 2.5% at Rs.38,45,000/- as the income of the assessee.

12. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and Id. CIT (A) after considering the submissions of the assessee deleted the protective addition made by the AO in the hands of the assessee and further sustained the commission determined by the AO.

13. Aggrieved with the above order, both the assessee and Revenue are in appeal before us.

14. Considered the submissions of Ld. DR and material placed on record, we observe that during the impugned assessment year i.e. 2013-14 based on the material found during search, AO observed that certain funds were moved through the assessee by Surya Processed Food Pvt. Ltd. which belongs to Priya Gold Group. AO made substantive addition in the hands of Surya Processed Food Pvt. Ltd. and protective addition in the hands of the assessee. Ld.CIT (A) deleted the protective assessment in the hands of the assessee considering the

fact that assessee is only a paper company and substantive addition is already made in the hands of Surya Processed Food Pvt. Ltd.. After considering the facts on record, we do not see any reason to disturb the findings of Id. CIT(A). Accordingly, the appeal filed by the Revenue is dismissed.

15. Coming to the appeal of the assessee, we observe that the AO has determined the commission @ 2.5% on the value of Rs.15.38 crores which was transferred by book entry to Surya Processed Food Pvt. Ltd.. Since no representation from the assessee side we are not in a position to appreciate the facts on record and Id. CIT (A) has sustained the above said addition, we do not see any reason to disturb the same. Accordingly, the appeal filed by the assessee is dismissed.

16. In the result, both the appeals filed by the assessee and the appeal filed by the Revenue are dismissed.

Order pronounced in the open court on this 16TH day of August, 2024.

SD/-
(VIMAL KUMAR)
JUDICIAL MEMBER

SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 16.08.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-24, New Delhi.
5. DR: ITAT
REGISTRAR

ASSISTANT

ITAT, NEW DELHI