

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-1 : NEW DELHI  
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8835/Del/2019  
Assessment Year: 2010-11

Brij Resources Pvt. Ltd.,  
C/o Kapil Goel, Advocate,  
F26/124, Sector-7,  
Rohini,  
New Delhi.

Vs. ITO,  
Ward-5(2),  
New Delhi.

PAN: AACCB2048J

(Appellant)

(Respondent)

Assessee by	:	Shri Kapil Goel, Advocate
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	15.06.2021
Date of Pronouncement	:	07.07.2021

ORDER

This appeal filed by the assessee is directed against the order dated 16<sup>th</sup> September, 2019 of the CIT(A)-2, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a private limited company and had filed its return of income on 20<sup>th</sup> September, 2010 declaring the total income at Rs.7,380/-. The return was processed u/s 143(1) of the IT Act. Subsequently, information was received from the Investigation Wing that during the course of search and survey action in the case of Jain brothers, namely,

Virendra Jain and Surendra Kumar Jain, it was found that they were engaged in the business of providing accommodation entries by providing RTGS/cheques/PO/DD in lieu of cash to a large number of beneficiary companies floated and controlled by them. Information was received that the assessee M/s Brij Resources Pvt. Ltd., had received accommodation entry in the form of sale of investment of Rs.10 lakh during the F.Y. 2009-10 relevant to A.Y. 2010-11 from M/s Shalini Holdings Pvt. Ltd., a company controlled and managed by S.K. Jain group of companies. The AO, therefore, after recording the reasons, reopened the case u/s 147 of the Act and issued notice u/s 148 of the IT Act. In response to the same, the assessee submitted that the original return filed on 20<sup>th</sup> September, 2010 u/s 139(1) of the Act may be treated as filed in response to the notice u/s 148 of the IT Act. The assessee also requested for supply of reasons which was duly provided to the assessee. The assessee objected to the reopening of the assessment and the AO, vide order dated 5<sup>th</sup> December, 2017, disposed of the objections by rejecting the same.

3. Subsequently, the AO issued notice u/s 142(1) of the Act calling for certain details. The assessee appeared before the AO and filed the requisite details. It was submitted that during F.Y. 2009-10, relevant to A.Y. 2010-11, the assessee had sold 5000 shares of Shree Govind Devji Biogenics Pvt. Ltd. for a sale consideration of Rs.10 lakhs on 17<sup>th</sup> March, 2010 to Sunny Cast & Forge Pvt. Ltd.. Relying on various decisions, it was submitted that the principal amount of

investment cannot be added to the total income of the assessee. The AO asked the assessee to prove the genuineness of the transaction with regard to the sale of shares. Subsequently, notice u/s 133(6) of the Act was also issued to the following parties:

- (i) M/s Shree Govind Devji Biogenic Pvt. Ltd.,
- (ii) M/s Bhole Baba Enterprises Pvt. Ltd,
- (iii) M/s Sunny Cast and Forge Pvt. Ltd.,
- (iv) M/s Bloomsbury Constructions Pvt. Ltd.

4. Since no compliance was received from the above parties, the AO asked the assessee to explain as to why the sale transaction of Rs.10 lakh should not be treated as non-genuine and taxed within the provisions of the Act. Since the assessee could not explain to the satisfaction of the AO regarding the above transaction, the AO, relying on various decisions, made addition of Rs.10 lakh to the total income of the assessee u/s 68 of the Act. Similarly, the AO also made addition of Rs.20,000/- being commission @ 2% on Rs.10 lakh for arranging the accommodation entry.

5. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of reassessment proceedings. However, the ld.CIT(A) dismissed the appeal filed by the assessee by relying on various decisions.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal challenging the validity of the reassessment proceedings u/s 148 of the Act as well as the addition u/s 68 of the Act on merit.

7. The Id. Counsel for the assessee submitted that the assessee has sold the investment during the year which is appearing in the balance sheet at the beginning of the assessment year and the shares so sold are not in the nature of penny stock. He submitted that the nature of transaction was not verified by the AO and he has not seen the movement of the assets from the balance sheet. Therefore, the entire reassessment proceedings have become null and void. Referring to the recent decision of the Honøble Delhi High Court in the case of Synfonia Tradelinks Pvt. Ltd. vs. ITO, vide W.P.(C) 12544/2018, order dated 26<sup>th</sup> March, 2021, he submitted that the Honøble High Court has threadbare decided the issue relating to section 147 and in the light of the above decision, the reassessment proceedings should be quashed.

8. So far as the merit of the case is concerned, the Id. Counsel for the assessee submitted that the investments were made in the preceding assessment year and were released during this year by sale of the same. Therefore, provisions of section 68 cannot be applied to the facts of the present case. He submitted that merely because the buyer and seller did not respond to the notice u/s 133(6), the assessee cannot be held responsible for their non-appearance and the AO was at liberty to take necessary recourses by issuing summons u/s 131 or issuing

commissions, etc. as per law. He submitted that the amount has been received by cheque and the investments were made in the preceding assessment year which was sold during the year and the amount has been received by cheque and, therefore, provisions of section 68 cannot be applicable for realisation of investment.

9. The Id. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A). He submitted that the assessee has made only verbal arguments and there is no mention of sale of investment. Therefore, the contention of the assessee cannot be accepted. So far as the validity of reassessment proceedings are concerned, the Id. DR submitted that the Id.CIT(A) while deciding the issue has given justifiable reasons as to why the reassessment proceedings are valid. He accordingly submitted that the order of the CIT(A) be upheld.

10. The Id. Counsel in his rejoinder submitted that at the time of reply of the assessee to section 148 notice, it was clearly mentioned in the objection that transaction in question is of sale of investment and full details were given on the basis of which the AO had issued notice u/s 133(6) of the Act. Therefore, it is wrong on the part of the Id. DR to say that only verbal argument was made and no evidence was given to the AO during the course of assessment proceedings.

11. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find,

the AO in the instant case, on the basis of information received from the Investigation Wing that the assessee has received accommodation entry in the form of sale of investment of Rs.10 lakh during the F.Y. 2009-10, relevant to A.Y. 2010-11 from M/s Shalini Holdings Pvt. Ltd., a company managed and controlled by Shri S.K. Jain group of cases, reopened the assessment after recording reasons u/s 147 of the Act and after obtaining necessary approval from the competent authority. I find, the assessee, in response to the said notice, filed the return of income and sought for the reasons for reopening which was provided to the assessee. After disposing of the objections raised by the assessee by passing a speaking order, the AO completed the assessment making an addition of Rs.10 lakhs u/s 68 of the Act and another Rs.20,000/- being commission @ 2% for arranging such accommodation entry. I find, the Id.CIT(A) upheld the action of the AO both on merit as well as on validity of reassessment proceedings.

12. So far as the validity of reassessment proceedings are concerned, I find, the Id.CIT(A) has, after detailed discussions, dismissed each of the aspect raised by the assessee challenging the validity of the reassessment proceedings. In absence of any contrary material brought to my notice, the reassessment proceedings initiated by the AO and confirmed by the CIT(A) is upheld.

13. So far as the merit of the case is concerned, it is a fact that the assessee, during the impugned assessment year, has sold the shares of M/s Shree Govind Devji Biogenic Pvt. Ltd. to M/s Sunny Cast and Forge Pvt. Ltd. for an amount of

Rs.10 lakhs. The assessee has purchased the shares of Shree Govind Devji Biogenic Pvt. Ltd. during the F.Y. 2008-09, relevant to A.Y. 2009-10 and were shown in the balance sheet of the assessee company under the head 'Investments' which is discernable from page 17 of the paper book. I find, the assessee, during the year, has sold the investment and has received the amount by cheque and, therefore, in my opinion, provisions of section 68 of the Act cannot be applied to realization of investment which was duly reflected in the balance sheet of the assessee company in the preceding assessment year. In my opinion, if the sale of share is bogus, then the purchase of the same shares is also bogus. If the case of the Revenue is that assessee's own money has come back to the assessee in shape of accommodation entry, then, the money of the assessee had gone in the preceding year in shape of purchase of the shares which were sold during the year. No action appears to have been taken in the preceding assessment year treating the purchase of the shares as bogus. Therefore, once such bogus purchase is sold then the entire amount, in my opinion, cannot be added u/s 68 of the IT Act, 1961. I, therefore, set aside the order of the CIT(A) on this issue and direct the AO to delete the addition. Similarly, the commission of Rs.20,000/- disallowed by the AO and sustained by the CIT(A) is also deleted in view of the discussion above. The grounds raised by the assessee challenging the addition on merit are accordingly allowed.

14. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 07.07.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 07<sup>th</sup> July, 2021.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi