2023:DHC:6480-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 09.08.2023*
Judgment pronounced on: 06.09.2023

\+ **ITA 927/2019**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-1
..... Appellant

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

versus

SURYA AGROTECH INFRASTRUCTURE LIMITED
..... Respondent

Through: Mr Ved Jain and Mr Nischay Kantoor, Advs.

\+ **ITA 933/2019**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-1
..... Appellant

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

versus

SURYA AGROTECH INFRASTRUCTURE LIMITED
..... Respondent

Through: Mr Ved Jain and Mr Nischay Kantoor, Advs.

\+ **ITA 928/2019**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-1
..... Appellant

2023:DHC:6480-DB

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

versus

SURYA PROCESSED FOOD PVT. LTD. ..... Respondent

Through: Mr Ved Jain and Mr Nischay Kantoor, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J.:

1. These three appeals filed under Section 260A of the Income Tax Act by the revenue, having arisen out of common factual and legal matrix are taken up together for disposal.

2. We heard learned counsel for both sides and examined the written submissions.

3. Briefly stated, circumstances relevant for present purposes are as follows.

3.1 The respondents/assessees are companies forming a part of M/s Priya Gold Group of Companies. On 16.12.2014, search and seizure proceedings under Section 132 of the Income Tax Act were conducted in the case of Priya Gold Group of Companies, during which statement of Shri Shekhar

Aggarwal, Director of Surya Food & Agro Limited (the flagship company of the group) was recorded under Section 132(4) of the Act. In his said statement, Shri Aggarwal admitted that the said group of companies had earned unaccounted income which was routed as bogus share capital during the Financial Years pertaining to the Assessment Years 2013-14 and 2014-15.

3.2 As assured in his said statement by Shri Aggarwal, the said entire undisclosed income of the group was surrendered in the respective assessment years by the flagship company Surya Food & Agro Ltd. through proceedings before the Settlement Commission. The additional income so disclosed before the Settlement Commission was Rs.49,12,73,399/- with specific pleadings that the profit made outside books by the applicant was utilized for making investments in the share capital of the respondents/assessees. The Settlement Commission by way of final order settled the income at Rs.55,77,22,000/- and that final order having been accepted by both sides, attained finality. As regards status of Shri Shekhar Aggarwal, it is not in dispute that being Director of the flagship company, Surya Food & Agro Ltd, he was handling all investment related issues of Priya Gold Group of Companies. According to respondents/assessees, further addition in the name of unexplained share capital in their hands now would be tantamount to double taxation on the same income.

4. In the above backdrop, the Assessing Officer, placing heavy reliance on the statement of Shri Shekhar Aggarwal recorded his conclusion that the investment of Rs.46,91,00,000/- in the form of share capital in various companies of Priya Gold Group was nothing but accommodation entry and

was liable to be assessed to tax in the hands of the respondents/assessees. The Assessing Officer, having recorded his satisfaction that the respondents/assessees had concealed the income, made additions under Section 68 of the Act both with respect to the abovementioned amount and commission at the rate of 2.5%; and also triggered that penalty proceedings under Section 271(1)(c) of the Act against the respondents/assessees.

5. The appeals filed on behalf of the respondents/assessees against the assessment orders were dismissed vide orders dated 07.01.2019 of the Commissioner, Income Tax (Appeals), thereby upholding the assessment orders.

6. However, the respondents/assessees attained success in the second appeal, wherein the learned Income Tax Appellate Tribunal set aside the impugned orders and held that since the income in question had already been taxed in the hands of Surya Food & Agro Limited, the same could not be taxed again on account of application of the said income in the form of share capital of the respondents/assessees. Furthermore, the Tribunal after recording submissions from both sides, deleted the addition related to the 2.5% commission thus :

> *"22. With regard to ground No.2, both the parties admitted that this ground would be consequential to the decision in ground No.1. The Assessing Officer, apart from the addition on share capital, has also made further addition of alleged expenditure being commission for acquiring the accommodation entries in the form of share capital. Both the parties have agreed that if it is accepted that the investment in the share capital was out of the undisclosed income of M/s Surya Food & Agro Limited, which is disclosed before the Settlement Commission, the same finding would be squarely applicable with regard to commission for arranging such accommodation entries. In view of the finding with regard to ground No.1, we hold that the*

> *addition for alleged expenditure on arranging the accommodation entries in the form of share capital is also made from the undisclosed income offered and settled by M/s Surya Food & Agro Limited before the Settlement Commission".*

7. Hence, the present appeals.

8. 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/assessees companies can again be subjected to tax in the hands of the respondents/ assessees?"

9. With the consent of learned counsel for both sides, we heard these appeals finally at this stage itself.

10. Learned counsel for appellant/revenue assailed the impugned orders of the Tribunal, contending that the same are not based on correct application of law and facts. Learned counsel for appellant/revenue contended that the impugned orders are liable to be set aside since the same are based on wrong understanding of law that the income in question was being assessed to tax twice. It was argued that in the hands of respondents/ assessees, the income was being subjected to tax only once. Learned counsel for appellant/revenue also argued that the impugned orders to the extent of deleting the additions made under Section 68 of the Act without establishing

any of its limbs, viz. identity, creditworthiness or genuineness of the transaction by the assessee was an error in law. Learned counsel for appellant/revenue also laid emphasis that the respondents/assessees were not party to the settlement proceedings and the Settlement Commission did not deliver any findings concerning the respondents/assessees, consequently, the latter cannot take any advantage of the proceedings before the Settlement Commission. Learned counsel for appellant/revenue placed reliance on the judgments in the cases titled ***ACIT vs Chetan Das,*** (1975) 99 ITR 46 (Delhi); ***CIT vs Neemar Ram Badlu Ram,*** (1980) 122 ITR 68 (Allahabad); ***ACIT vs Dharamdas Aggarwal,*** (1983) 144 ATR 143 (MP); and ***CIT vs KSM Guruswamy Nadar & Sons,*** (1984) 149 ITR 127 (Madras).

11. Per contra, learned counsel for respondents/assessees supported the impugned orders and contended that these appeals are devoid of merit. Learned counsel for respondents/assessees, pointing out the reliance placed by the Assessing Officer on the statement of Shri Shekhar Aggarwal, argued that once Shri Aggarwal admitted that the Priya Gold Group of Companies had routed its unaccounted income in the form of share capital in the respondents/assessees companies and the admitted position being that the proceedings before the Settlement Commission subjected the said unaccounted income to tax, which proceedings having not been challenged by either side, attained finality, subjecting the said income to tax in the hands of the respondents/assessees would be tantamount to double taxation, which is not permissible in law.

12. 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.

12.1 The judicial precedent in the case ***Dharamdas Agarwal*** (supra) cited by learned counsel for appellant/revenue supports the case set up by the respondents/assessees. In the said case, placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Anantharam Veerasinghaiah & Co. vs CIT,*** 1980 SCR (3) 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.

13. In the case of ***Laxmipat Singhania vs 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.

14. In the case of ***Commissioner of Income Tax IV vs 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.

15. In the case of ***CIT vs 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.

16. In the case of ***M/s M.R. Shah Logistics Pvt Ltd vs 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.

17. In the case of ***B. Nanji Enterprise Ltd vs 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*".

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

19. In the cases of ***Omaxe Limited vs DCIT***, 2014:DHC:1985-DB, a Division Bench of this Court and ***Komal Kant Fakir Chand Sharma vs 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.

20. 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.

21. 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.

22. The above captioned appeals are disposed of in the aforementioned terms.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

SEPTEMBER 06, 2023/as