

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'B' : NEW DELHI)  
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER  
ITA No. 3301/Del/2019  
(Assessment Year : 2013-14)**

DCIT, Central Circle-8, New Delhi	Vs.	M/s. Subhshree Investment Management Pvt. Ltd. Flat -1A, Block-2, Silver Spring Bldg., 5, JBS, Haldane Avenue, Kolkata, West Bengal-700105. PAN : AAMCS4230P
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	None
Respondent by	Ms. Rishpal bedi, CIT, DR

Date of hearing:	30.05.2023
Date of Pronouncement:	01.06.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Revenue against the order dated 07.01.2019 of CIT(A)-24, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 238/2017-18 arising out of an appeal before it against the order dated 28.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-8, New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. Non-appeared for the assessee in spite of repeated notices being issued and the report on notices show that assessee has left the address. No further opportunity is justified. Arguments of Ld. DR were heard who supported the findings of Ld. AO and further brought on record the order dated 07.05.2019, in ITA No. 1156/Del/2019, 1157/Del/2019 and 1158/Del/2019 in the case of M/s. Surya Processed Food Pvt. Ltd. and Surya Agrotech Infrastructure Ltd. which shows that these appeals of assesses were allowed for A.Y. 2013-14.
4. It can be appreciated that Ld. AO had made substantive evidences in the hands of M/s. Surya Processed Food Pvt. Ltd. on account of accommodation entries received from paper companies by the assessee and M/s. Surya Processed Food Pvt. Ltd. being part of Priya Gold Group. The Ld. CIT(A), while deleting the additions has observed in para no. 5.3.14 as follows :-

*“5.3.14 In the light of the above observations I hold that M/s Surya Processed Food Pvt. Ltd. is the ultimate beneficiary of the transfer of unexplained credits in bank accounts of the appellant company. Further, the appellant company cannot shirk from its legal obligation to prove the identity and credit worthiness in respect of source of the credits and genuineness of transactions by adjudging itself as shell company. It is proved beyond doubt that M/s Surya Processed Food Pvt. Ltd is beneficiary of funds to the tune of Rs. 15,62,50,000/- in AY 2013-14. I therefore, hold that substantive addition of Rs. 15,62,50,000/- in the case of M/s Surya Processed Pvt. Ltd. is justified whereas, in the facts and circumstances of the case, the protective addition of Rs. 15,62,50,000/- in the hands of the appellant company is not justified and therefore **deleted**. **Ground No. 2 is accordingly allowed.**”*

5. The order dated 07.05.2019 of co-ordinate Bench placed on record by Ld. DR indicates that additions in the hands of M/s. Surya Processed Food Pvt. Ltd. for A.Y.

2013-14 have been deleted since the income has already been taxed in the hands of M/s Surya Food and Agro Limited. The relevant findings in para 19 and 20 are reproduced below to show how the issue has been dealt to the benefit of present assessee company;

*“19. Thus, the Settlement Commission declined to give any finding with regard to the application of additional income disclosed before the Settlement Commission. We find that the ITAT in assessee's own case, while considering the stay petitions by these two companies which are under appeal before us, in its order in Stay Application No.205 to 207/Del/2019, vide order dated 1st March, 2019, gave the following finding :- We have carefully considered the rival contentions and perused the orders of the lower authorities as well as the order of the settlement commission dated 8/6/2018. It is apparent that the disclosure has been made by the company who has earned the undisclosed income and routed in books through the petitioner companies as unaccounted share capital. The application of the income is taxed in the hands of the petitioner companies apparently it seems and sources of income is taxed in the ITA Nos.1156 to 1158/Del/2019 hands of Surya Food and Agro Ltd. Therefore prima facie the case of the assessee shows that there is a double addition, once the source of income and secondly the application of income. Therefore according to us the balance of convenience lies in favour of the assessee.*

*20. Learned DR has contended that the conclusion drawn by the ITAT in the order of stay is a wrong conclusion and should not be relied upon while deciding the appeals on merits. However, after considering the submissions of both the sides and the facts of the case and going through the orders of the lower authorities as well as Settlement Commission, we entirely agree with the above finding of the ITAT given in the stay petitions. From the assessment order, the relevant portion of which has already been reproduced above in this order, it is clear that the stand of the Assessing Officer throughout was that there was undisclosed income of the Surya Group which is routed in the form of share capital in the group companies by obtaining the accommodation entries from Kolkata based entry provider companies. Such share capital/share premium is liable to be added in the hands of the group companies. The flagship company of the group viz., M/s Surya Food*

*and Agro Limited has already offered the additional income to the tune of `49.12 crores before the Settlement Commission, which the Settlement Commission has enhanced to `55.77 crores. The order of the Settlement Commission is accepted by both the parties and thus has become final. Before the Settlement Commission, the assessee has repeatedly stated, which we have already mentioned above while reproducing the relevant portion of the application before the Settlement Commission, that the undisclosed income which is being offered before the Settlement Commission has been applied by way of introduction in the shape of share capital to group entities viz., M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Limited. In paragraph 15 of the application before the Settlement ITA Nos.1156 to 1158/Del/2019 Commission, M/s Surya Food & Agro Limited has made it clear that there is no other undisclosed asset found or application of funds by the group. This statement made before the Settlement Commission has neither been found to be incorrect nor before us it has been shown that M/s Surya Food and Agro Limited has applied the undisclosed income offered before the Settlement Commission for acquisition of any other asset. In view of the above, we entirely agree with order of the ITAT passed in stay petition wherein the ITAT held that the disclosure has been made by the company who has earned the undisclosed income and routed in books through the petitioner companies as unaccounted share capital. The application of the income is taxed in the hands of the petitioner companies apparently it seems and sources of income is taxed in the hands of Surya Food and Agro Ltd. Therefore prima facie the case of the assessee shows that there is double taxation, once the source of income and secondly the application of income. We entirely agree with the above finding of the ITAT in the order passed in the stay petition filed by M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Ltd. **In view of the above, since the income has already been taxed in the hands of M/s Surya Food and Agro Limited, the application of the said income in the form of share capital in M/s Surya Processed Food Pvt.Ltd. and M/s Surya Agrotech Infrastructure Ltd. i.e., the appellants before us, cannot be taxed again.** Accordingly, we delete the addition for unexplained share capital and allow ground No.1 in all the appeals.*

21. 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 ITA Nos.1156 to 1158/Del/2019 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. Accordingly, ground No.2 of the assessee's appeals is allowed.”*

5.1 Thus where the Ld. CIT(A) in the case of present assessee had observed that M/s. Surya Processed Food Pvt. Ltd. is ultimate beneficiary and while confirming the substantial additions in hands of M/s. Surya Processed Food Pvt. Ltd. had deleted the protective additions in the hands of present assessee, the same require reconsideration on merits, in the light of orders dated 07.05.2019 of the Tribunal wherein substantial additions in the hands of M/s. Surya Processed Food Pvt. Ltd. have also been deleted since the income has already been taxed in the hands of M/s Surya Food and Agro Limited.

6. In the light of aforesaid, ground raised by Revenue is sustained for statistical purposes and the issue is restored to the files of Ld. CIT(A) with direction to decide the issues afresh in the light of aforesaid observations of the Bench and effect of Tribunal decision dated 07.05.2019, in ITA No. 1156/Del/2019, 1157/Del/2019 and

1158/Del/2019 in the case of M/s. Surya Processed Food Pvt. Ltd. and Surya Agrotech Infrastructure Ltd. for A.Y. 2013-14. Consequently, the appeal of **Revenue** is allowed for statistical purposes.

**Order pronounced in the open court on 1<sup>st</sup> June, 2023.**

**Sd/-**  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:- 01.06.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

AR, ITAT  
New Delhi