

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

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.7778/Del/2019
(ASSESSMENT YEAR 2014-15)**

Kanav Metals 29/04, West Patel Nagar New Delhi-110 008 PAN-AAKFK 2420J (Appellant)	Vs.	Income Tax Officer Ward-50(1) New Delhi (Respondent)
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Appellant by	Mr. Ved Jain, Advocate and Mr. Aman Garg, CA
Respondent by	Ms. Kanti E. Khobragade, Sr. DR

Date of Hearing	06/09/2023
Date of Pronouncement	19/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-35, New Delhi ["Ld. CIT(A)", for short], dated 30/08/2019 for Assessment Year 2014-15.

2. Grounds taken in this appeal are as under:

"1. That the Learned CIT(Appeals) had erred both in Law as well as in facts of the Case in upholding addition of Rs.67,50,000/- and recording her finding that "nor has it been conclusively established that the funds introduced factually belonged to the partners and not the appellant firm" The above finding has been recorded without judicious consideration of facts and particularly in view that statement of both the partners have

been recorded during the course of Assessment proceedings where both the partners have confirmed introduction of cash in the firm as contribution to their capital.

2. The Learned CIT(Appeals) had committed a grave mistake of law by not following various judgments of various High Courts inspite of the fact that identical question have been squarely decided by respective High Courts and Learned CIT(Appeal) has not recorded any reasons for not following the judgments cited before her during the course of appeal proceedings.

3. That Learned CIT(Appeals) had erred both in law as-well-as in facts of the case in confirming addition of Rs.4,879/-, the amount of interest under Section 244(A) which was alleged of not having not been declared in statement of accounts.

The appellant craves leave of this Honorable Court to add, amend, substitute or delete any of the grounds of appeal at the time of arguments.”

3. Brief facts of the case are that, the assessee filed return declaring income of Rs. 12,220/-. During the year under consideration, the assessee shown to have derived income from wholesale business of scrap. The case of the assessee was selected for complete scrutiny, during the course of the assessment proceedings it was noticed from the balance-sheet of the Assessee Firm that an addition of Rs. 67,50,000/- (Rs. 35,0,000/- in Sh. Dhiraj Harjai account and Rs. 32,50,000/- in Sh. Neeraj Harjai account) was made to the Firm during year under consideration. The assessee was show caused as to why addition in partners' capital account amounting to Rs. 67,50,000/- may not be added back to the income of the assessee. The assessee replied to the show cause notice of the A.O. in following manners:-

“In the above matter it is submitted that the above assessee was issued show cause with regard to addition in capital accounts of the Partnership Firm That in regard to the notice as above, it is submitted herein as under:

That the above assessee have filed audited balance sheet with the return of income, the perusal thereof revealed that there were addition in the capital accounts of the partners herein as under:

Name of the Partner	Amount of Additions
Sh. Sh. Neeraj Harjai	32,50,000/-
Sh. Dheeraj Harjai	35,00,000/-

The same is also evident from the copy of capital account annexed with the audited balance sheet already furnished.

1. Separate taxable persons

That the partners of the above said firm assessee and the partnership firm are separate taxable person as per section 2(31) wherein the partners are assessed as individuals and the firm as partnership firm. The partners as above and the partnership firm are separately assessed to income tax as distinct taxable entity under distinct PAN. That the partners have duly filed there income tax returns for the AY 2014-15, copy whereof enclosed herewith.

The detail of PAN acknowledgement of return of income being herein as under:

Name of Person/Assessee PAN	Acknowledgement No.
M/s Kanav Metals	AAKFK2420J 435154711301114
Sh. Neeraj Harjai	AAAPH7620M 513061870200315
Sh. Dhiraj Harjai	AAPP1938F 513060540200315

That the addition in the capital account have been made by the partners and out of the sources known to the partners in their personal capacity.

That the partners owns responsibility of the credit in form of addition in capital account and both the firm and the partners are in existence. That once the credit in the books are owned by the partners, the entire responsibility also switches to them.

That the such credit in form of addition in capital account can be added only if it relates to the firm assessee but herein, it is the responsibility of the partners who are separate taxable entity.

So in view of the above it is requested that the proceedings initiated vide show cause notice be dropped. ”

4. Further the summons u/s 131 of the Act were served by the A.O. to Sh. Dhiraj Kumar Harjai and Sh. Neeraj Kumar Harjai and both of them have confirmed the introduction of capital in the Assessee Firm during the Financial Year 2013-14 relevant to Assessment Year 2014-15 and owned the responsibility for introduction of capital in the Assessee Firm. Since both the partners admitted to have introduced capital of Rs. 67,50,000/- in the partnership Firm by way of cash and no plausible explanation furnished by them, the re-assessment proceedings in their hands have been initiated against the partners. Therefore, the Ld. A.O. in the case of the Assessee made addition in the hands of the Assessee Firm on protective basis to protect the interest of the Revenue vide assessment order dated 28/12/2016. Aggrieved by the assessment order dated 28/12/2106, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) dismissed the Appeal filed by the assessee vide order dated 30/08/2019 which is under challenge before us by the assessee on the grounds mentioned above.

5. The Ld. Counsel for the assessee vehemently submitted that the assessment proceedings initiated u/s 147 of the Act against the partners of the assessee firm have been dropped on account of same becoming time barred as per the provision of Section 153(2) of the Act on 31/03/2023, therefore, contended that substantial addition made in the hands of the Assessee Firm does not survive. By relying on the order of the Tribunal of Jodhpur Bench in the case of Ramesh Chand Prem Raj Soni (HUF) Vs. Assistant Commissioner of

Income Tax, 2006 (10) TMI 197-ITAT, Jodhpur dated 06/10/2016 and sought for allowing the Appeal.

6. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

7. It is not in dispute that the assessment order has been passed against the assessee on 28/12/2016 by making addition in the hands of the Assessee Firm on protective basis to protect the interest of the Revenue and in the very same assessment order, it is observed that *'since both the partners of the Firm have admitted and owned the introduction of Rs. 67,50,000/- from their own source to the Assessee Firm and in the absence of no plausible explanation furnished by the partners the reassessment proceedings in their hands are being initiated separately for bringing the said amount to tax'*. It is brought to our notice that the said reassessment proceedings u/s 147 of the Act against the partners of the Assessee Firm was dropped on account of same becoming time barred as per the provision of Section 153(2) of the Act on 31/03/2023, which was not disputed by the Ld. DR. It is well settled proposition of law that when substantive addition does not survive on account of being time barred, then the protective addition also does not survive. The said view of ours have been fortified by the order of the Tribunal in (Jodhpur Bench) the case of Ramesh Chand Prem Raj Soni (HUF) Vs. ACIT 2006 (10) TMI-197 dated 16/10/2016, where in it is held as under:-

"6. We meticulously traversed through all the evidences and also took the learned Authorized Representative and Departmental Representative, through all the relevant papers placed in the file to which our attention was drawn. There is no dispute with regard to the facts that all the additions, which are the subject-matter of this appeal or for that matter that of assessment order passed under s. 158BD in the case of the HUF, are made on protective basis. All parallel additions were made in the case of Shri Ramesh Chand Soni individual. The assessment made under s. 158BC in the case of Shri Ramesh Chand Soni does not survive at all, since it has been struck down being time-barred. The addition made on substantive basis have not been decided by deleting the same from assessee's individual hands rather they were thrown along with the block assessment order. meaning thereby, now there is no substantive addition in existence at all; and the protective addition presupposes the existence of substantive additions Let us put it in another words that whenever additions are made, they are only substantive additions. The term protective addition is a misnomer, actually it is a substitutive addition. The 'protective-addition' name has been given to it since it protects the interest of the Revenue Say, if in X's case, addition cannot be ultimately made, it may be considered in the case of Y. Here in such a case there happens to be some doubt as to whom a particular income belongs to when it is not clearly established as to in whose hands a particular income should be added, when there are evidences that it may belong to either of the two, or when scintillating evidences are available from which it is not possible to come to clear-cut conclusion, readily. In the given case the substantive additions have not been declared to not belong to Shri Ramesh Chand Soni. Had that been the case, this protective addition could have been considered and added substantially if it

was found to belong to "protective assessee. We don't say that no protective addition can be made under Chapter XIV-B of the Act"

8. In view of the above discussion, since the substantive addition has not been survived on account of being time barred, consequently, the protective addition made in the hands of the assessee herein also will not survive, accordingly, we delete the protective addition by setting aside the order of the Lower Authorities.

9. In the result, Appeal of the assessee is allowed.

Order pronounced in open Court on 19th September, 2023

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 19/09/2023

Pk/R.N Sr ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

