

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "A", NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 AND
 SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA Nos. 5026, 5027, 5029, 5030, 5031 & 5032/DEL/2015		
AYRS.: 2006-07, 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13		
DCIT, CC-19, NEW DELHI ROOM NO. 362, ARA CENTRE, E-2, JHANDEWALAN EXTN., NEW DELHI	VS.	SMT. MALA KALSI, 44, MALCHA MARG, CHANAKYA PURI, NEW DELHI (PAN: AFQPK0596L)
(APPELLANT)		(RESPONDENT)
AND		
CO NOS. 378, 379, 381, 382, 383 & 84/DEL/2015		
IN		
(ITA Nos. 5026, 5027, 5029, 5030, 5031 & 5032/DEL/2015)		
AYRS.: 2006-07, 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13		
SMT. MALA KALSI, 44, MALCHA MARG, CHANAKYA PURI, NEW DELHI (PAN: AFQPK0596L)	VS.	DCIT, CC-19, NEW DELHI ROOM NO. 362, ARA CENTRE, E-2, JHANDEWALAN EXTN., NEW DELHI
(APPELLANT)		(RESPONDENT)

Department by : Sh. Satpal Gulati, CIT(DR)
 Assessee by : Sh. Amit Goel, & Nippun Mittal,
 CAs

ORDER

PER H.S. SIDHU : JM

The Revenue has filed 06 Appeals and Assessee has filed 06 Cross Objections, against the respective impugned orders passed by the Ld. Commissioner of Income Tax (Appeals)-XXVII, New Delhi relevant to assessment years 2006-07, 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13 respectively. Since the issues involved in these appeals are

common and identical, hence, the Appeals and Cross Objections were heard together and are being disposed of by this common order for the sake of convenience, by dealing with Revenue's Appeal being ITA No. 5026/Del/2015 (AY 2006-07).

2. The following are the grounds raised in assessment year 2006-07 by the Revenue in its Appeal. However, in other appeals the grounds are same, except the difference in the figures.

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that the overseas companies in which the assessee is shareholder/beneficial owner is not a resident in India. under section 6(3)(ii) of the I.T. Act whereas on the basis of seized documents/e-mails and in various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal u/s 134(4) have admitted that taxability of these companies lies in India and these companies are resident for the tax purpose u/s 6 of the I.T. Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and

sources of revenue of all the overseas companies in which assessee is shareholder/beneficial owner are the Indian Companies.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized materia, E mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi, Sh. Anil Aggarwal and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the LT. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on

facts in holding that once an addition on substantive basis was made in the hands of the overseas companies treating them as residents in India u/s 6(3) of the LT. Act, there was no reason of occasion or an issue to assess the same in the hands of the appellant on protective basis.

6. The Ld. Commissioner of Income Tax (Appeals) has. erred in law as well as on facts in deleting the addition of Rs.371,32,83,664/ made by Assessing Officer

7. The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.

8. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of' the hearing of the appeal."

3. The following are the grounds raised in the assessment year 2007-08 by the Assessee in the Cross Objection. However, in other Cross Objections the grounds are same, except the difference in the figures.

- "1. On the facts and circumstances of the case and in law, the assessment order passed by the AO is without jurisdiction.
2. That on the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue/ services of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed.
3. On the facts and circumstances of the case and in law, the addition of Rs. 497,94,74,501/- made by the AO is beyond the scope / jurisdiction of provisions of section 153A of the Act and, therefore, the addition made is liable to be deleted.

The above grounds are without prejudice to each other.

The appellant craves leave to add, vary and / or amend any or all the of the above grounds whether before or during the appellate proceedings."

REVENUE'S APPEAL (AY 2006-07)

4. The brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted by the Investigation Wing of the department on 22.03.2012 in M/s. Focus Energy Group of cases. The assessee was also covered u/s 132(1) of the Income Tax Act, 1961. In response to notice u/s 153A issued by the Assessing Officer the assessee filed her return of income. While completing the assessment in the case of the assessee, the Assessing Officer did not make any addition on substantive basis. However, additions were made on protective basis holding that profits of all the overseas companies as mentioned in the assessment order are to be taxed in India on the ground that these overseas company were treating as "Resident" in India in accordance with the provisions laid in section 6(3) of the Income Tax Act 1961 and also held that since so far none of the overseas companies have admitted to be in the jurisdiction of India and they have not filed valid return and paid taxes thereon, therefore, in order to protect the interest of revenue protective addition in respect to the income of the overseas companies for AY 2006-07 of Rs.371,34,13,346/- was made in the hands of the assessee and income of the assessee was accordingly assessed vide order dated 31.3.2014 passed u/s. 153A/143(3) of the I.T. Act, 1961. Aggrieved with the aforesaid assessment order dated 31.3.2014, assessee filed appeal before the Ld. CIT(A) who vide his impugned order dated 05.05.2015 deleted the protective additions made by the Assessing Officer and allowed the appeal of the assessee. Aggrieved with the

impugned order, the Revenue is in appeal before the Tribunal and assessee has also filed the cross objections.

5. During the hearing, the Ld. CIT (DR) relied upon the order of Assessing Officer while the Ld. Counsel of the assessee relied upon the order of Ld. CIT(A).

6. We have heard both the parties and perused the relevant records available with us, especially the impugned orders. All the grounds in the revenue's appeal, in substance, relate to solitary issue of deletion of protective addition by the Ld. CIT(A). Therefore, the same are being considered together. We find that AO in the assessment order admitted that the entire amount which was added to the income of the assessee on "protective basis" was already assessed in the hands of the overseas companies on "substantive basis". It was further noted that the Assessing Officer did not consider the details filed by the assessee in the course of the assessment proceedings but made the assessment of the assessee on the basis of the assessment orders of the overseas companies and also that of her husband Sh. Ajay Kalsi. We further note that addition which was made on substantive basis in the hands of the overseas companies was also made in the hands of Sh. Ajay Kalsi on protective basis and also the same amount was added to the income of the assessee on protective basis. Therefore, addition of the same amount was made by the Assessing Officer in the hands of three persons i.e. (a) the overseas companies, (b) Sh. Ajay Kalsi and (c) Smt. Mala Kalsi which

was unwarranted and unjustified. The additions made in case of the overseas companies u/s 6(3) is not relevant to the case of the assessee as she is only a shareholder, and was not entitled to derive any benefit. During the year under consideration the assessee did not derive any benefit for which she is liable to pay taxes thereon as per the Indian Tax Laws. It is not out of place to mention that when addition was already made in the hands of the overseas companies on substantive basis treating them as residents in India, there is no justification for the Assessing Officer to make such an addition in the hands of a share holder on protective basis, when no benefit was derived by her from these companies to protect the interest of revenue. It is noted that without assessing the income of the assessee for the year under consideration, the Assessing Officer simply transferred the addition made in case of the overseas companies to the assessment order of Sh. Ajay Kalsi on the ground that he exercised control and management of the affairs of the overseas companies as laid down in section 6(3) of the I.T. Act 1961 without bringing on record a concrete and substantial evidence to prove his role. Based on the assessment of Sh. Ajay Kalsi, by virtue of being a 50% share holder in Multi Asset Holdings Ltd., the Assessing Officer made an addition of similar amount in case of the assessee meaning thereby that the Assessing Officer did not assess the income of the assessee based on the details filed in her return u/s 153A, but assessed the income of the overseas companies in her hands without any basis. We further note that in the case of the assessee's husband Sh. Ajay Kalsi, a

protective addition was also made on identical facts. In that case Ld. CIT(A) vide his order dated 27.04.2015 in Appeal No. 346/14-15 discussed the facts pertaining to the protective addition in detail and deleted the entire protective addition made by the Assessing Officer in his case. Since, the facts of the assessee's case are similar to those of her husband, the reasons given by the Ld. CIT(A) in his above order in the case of Sh. Ajay Kalsi will apply mutatis mutandis in the case of the assessee also. Therefore, the addition made by the Assessing Officer on protective basis amounting to Rs. 3,71,32,83,664/- was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) and reject the grounds raised by the Revenue.

7. In the result, the Revenue's appeal is dismissed.

8. Following the consistent view taken in ITA No. 5026/Del/2015 AY 2006-07 in upholding the action of the Ld. CIT(A), as aforesaid, the grounds raised by the Revenue in other Appeals also rejected and accordingly, the other Revenue Appeals being ITA Nos. 5027, 5029, 5030, 5031 & 5032/DEL/2015 relating to assessment years 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13 also stand dismissed.

ASSESSEE'S CROSS OBJECTIONS

9. Since we have dismissed all the Revenue Appeals as aforesaid by upholding the action of the Ld. CIT(A), hence, all the Cross Objections filed by the Assessee have become infructuous and dismissed as such.

10. In the result, all the 06 Appeals of the Revenue as well as 06 Cross Objections of the Assessee are dismissed in the aforesaid manner.

Order pronounced in the Open Court on 01/12/2017.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Date 01/12/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches