

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

**ITA No. 1947/Mum/2022**

(Assessment Year 2019-20)

DCIT-CC-5(2)  
Central Range-5,  
Room No.1906,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

**(Appellant)**

Parsvanatha Comtrade LLP  
F 501, Sterling Court,  
Maheshwari Nagar,  
Vs. Marol-Midc Road Andheri  
(E)  
Mumbai-400 093

**(Respondent)**

**PAN No. AAQFP9841A**

**Assessee by** : Shri Rakesh Joshi, AR  
**Revenue by** : Shri Achal Sharma, CIT DR

**Date of hearing:** 02.11.2022  
**Date of pronouncement :** 23.12.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the Dy. Commissioner of Income Tax, Central Circle 5(2), Mumbai (the learned Assessing Officer) against the appellate order passed by The Commissioner of Income-tax (Appeals)-53, Mumbai [The learned CIT (A)] for A.Y. 2019-20 dated 13<sup>th</sup> May, 2022, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (The Act) dated 28<sup>th</sup> September, 2021, was allowed.

02. The learned Assessing Officer aggrieved with the order of the learned CIT (A) has raised the following grounds of appeal:-

*"1. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in deleting the addition made under provisions of sec. 56(2)(x) of 1. Tax Act 1961, ignoring the statement of Shri Anil Gupta, Partner of assessee LLP recorded during the course of survey in which he clearly confirmed that the 2.5 Cr. equity shares of Responsive Industries Limited were purchased by Parsvanatha Comtrade LLP from Fairpoint Tradecom LLP on 12.04.2018.*

*2. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in deleting the addition made under provisions of sec. 56(2)(x) of I Tax Act 1961, ignoring the statement of Shri Anil Gupta, Partner of assessee LLP recorded during the course of survey proceedings which has immense evidentiary value and cannot be disregarded or overlooked or contradicted at later stage without any authentic evidence.*

*3. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in stating that the date of purchase is 06.04.2018 on the basis of so called share purchase agreement however the same is found to be not authentic and not valid in the eyes of Apparently, filing of such unauthentic agreement appears to be afterthought with intention to evade tax."*

03. Brief fact of the case is that assessee is a limited liability partnership firm filed its return of income on 20<sup>th</sup> November, 2020 at ₹ 15 lacs. A survey under Section 133A of the Act was carried out on the Responsive Group on 22<sup>nd</sup> October, 2019. Assessee was also covered in the survey. Assessee is having two partners namely Mr. Anil Gupta and Ms. Nikita Gupta. The assessee is engaged in the business as investment adviser.
04. During the course of survey, it was found that 2,50,00,000 shares of Responsive Industries Limited were purchased by the assessee on 12<sup>th</sup> April, 2018 from Fairpoint Tradecom LLP at ₹ 40 per share through off market transaction. At that time, according to the learned Assessing Officer the price of the above company at stock exchange was ₹73.35 per share. Therefore, the learned Assessing Officer was of the opinion that assessee has received benefit of ₹33.35 per share which is chargeable to tax under Section 56(2) (X) of the Act. Thus, ₹83,37,50,000/- was difference between quoted price of the share and price at which shares were purchased by assessee. The learned Assessing Officer was also of the view that statement of Mr. Anil Gupta partner of the assessee was recorded on 22<sup>nd</sup> October, 2019, wherein in reply to question no.43, he stated that 2.5 crores equity shares of Responsive Industries Limited were purchased by the assessee from Fairpoint Tradecom LLP on 12<sup>th</sup> April, 2018. The show

cause notice was issued to the assessee on 20<sup>th</sup> September, 2021.

05. Assessee submitted that the shares in question were in fact purchased by the assessee as per share purchase agreement dated 6<sup>th</sup> April, 2018 and therefore, the price prevailing on 12<sup>th</sup> April, 2018 cannot be taken. Further, assessee sought attention of the learned Assessing Officer to the MOU dated 27<sup>th</sup> March, 2018. The assessee also relied on circular no.704 dated 28<sup>th</sup> April, 1995. Accordingly, assessee submitted that no addition can be made under Section 56(2) (X) of the Act.
06. The learned Assessing Officer found that DCIT BPU-1, Mumbai has passed an order under Section 24(1)(i) of the Prohibition of Benami Property Transactions Act, 1988 wherein the shares were attached provisionally treating the assessee as benamidar. Therefore, the contention of the assessee was rejected. The learned Assessing Officer further relied on the statement of Mr. Anil Gupta wherein he confirmed that statement of substantial acquisition of shares and takeover in Responsive Industries Limited of 2.5 crore shares on 12<sup>th</sup> April 2018 from Fairpoint Tradecom LLP which was reported in exchange on 13<sup>th</sup> April 2018. Accordingly, the learned Assessing Officer held that now assessee cannot deny that the shares were not purchased on 12<sup>th</sup> April, 2018. The learned Assessing Officer further rejected the MoU



and stated that the date of purchase of shares on 6<sup>th</sup> April 2018 which was executed on non-judicial stamp paper was not notarized and therefore, not valid. Accordingly, he made an addition under Section 56(2)(x) of the Act of ₹83,37,57,000/-. Accordingly, the assessment order under Section 143(3) of the Act was passed on 28<sup>th</sup> September, 2021, determining the total income of the assessee at ₹83,52,50,000/-.

07. Assessee being aggrieved with Assessment order preferred appeal before learned Commissioner of Income-tax (Appeals). The learned CIT (A) passed an order on 13<sup>th</sup> May, 2022 deleting the above addition. Therefore, the learned Assessing Officer is in appeal before us.
08. The learned Departmental Representative heavily relied on the order of the learned Assessing Officer. He submitted that the statement of the partner of the assessee firm clearly shows that the shares were purchased on 12<sup>th</sup> April, 2018. Further, the share purchase agreement is not notarized and therefore, there was substantial difference in the share price of the shares of above company on 12<sup>th</sup> April, 2018 and therefore, the balance sum has been correctly added under Section 56(2) (x) of the Act. It was further stated that the learned CIT (A) has ignored the fact that assessee is held to be the benamidar of the above shares.

09. The learned Authorized Representative vehemently supported the order of the learned CIT (A). He further filed a paper book containing 72 pages. He referred to the MoU dated 27<sup>th</sup> March 2018 entered into between assessee and Fairpoint Tradecom LLP. He submitted that according to that agreement it is clear cut that Mr. Rishav Agarwal is promoter of Responsive Industries Limited wanted to bring in a strategic investor in the above company. Mr. Anil Gupta, partner of the assessee firm is having good network in investment community and was hired for identifying suitable strategic investors. The services to be rendered by the assessee is listed in paragraph no. 3 of the MoU and the compensation was that some shares of the Responsive Industries Ltd would be provided from the holding of the Rishav Agarwal at a price which shall be the average market price of the shares of Responsive Industries Ltd for the preceding six months prior to the date thereof. In the same clause Mr. Rishav Agarwal agreed to sale 2.50 crores of shares of Responsive Industries Ltd. A separate share purchase agreement was also decided to be entered into. This MoU between Mr. Rishav Agarwal and Mr. Anil Gupta was entered into on 27<sup>th</sup> March, 2018. Consequent to that a share purchase agreement was also entered into on 6<sup>th</sup> day of April, 2018 between Fairpoint Tradecom LLP of the Rishav Agarwal Group and assessee LLP for purchase of 2,50,00,000 shares of Responsive Industries Ltd. the



share price was determined at ₹ 40 per share amounting to ₹100 crores. The learned Authorized Representative further relied upon circular no.704 dated 28<sup>th</sup> April, 1995, he extensively referred to paragraph no.2 of that circular, wherein it has been stated that when the transaction is taking place directly between the parties and that through exchange, the date of contract shall be as declared by the parties being the date of transfer, if it is valid by actual delivery of shares. He further submitted that immediately after that the shares were transferred to the assessee. Coming to the proceedings under the Prohibition of Benami Property Transactions Act, he submitted that the final order dated 29<sup>th</sup> September, 2021 issued by the adjudicating authority clearly shows that the transaction is not a benami transaction. He further extensively referred to the conclusion at Para no.8, wherein on 6<sup>th</sup> April, 2018 Fairpoint Tradecom LLP, has transferred 2.5 Crore shares to the assessee as per the share purchase agreement. He also referred to the statement of Mr. Anil Gupta which clearly shows that the negotiation for the shares were going on in the month of March, 2018 and the price was negotiated at ₹ 40 per share during the mutual negotiation with Mr. Rishav Agarwal. It was further stated that the learned Assessing Officer has unnecessarily rejected the MoU and unnecessarily relied upon question no.42 of the statement of Mr.

Anil Gupta. He submitted that those documents were intimation to the Securities And Exchange Board of India Limited and Stock Exchange. He further relied upon the co-ordinate Bench decision of Amritsar Bench in case of Max Telecom Ventures Limited Vs. ACIT [2008] 114 ITD 46 (Amritsar) which held that when an agreement was acted upon and was followed up by the delivery of shares the date of contract and sale declared by the parties shall be treated as date of transfer. He further relied upon on the decision of Kolkata Tribunal in Pramod Kumar Chaudhary Vs. ITO in ITA No. 925/Kol/2012 dated 29<sup>th</sup> January, 2015 which also held so. He submitted that both these decisions are clearly accepting the circular no.704 dated 28<sup>th</sup> April, 1995.

010. In the rejoinder, the learned Departmental Representative heavily relied on the decision of the Hon'ble Bombay High Court in case of Dr. Dinesh Jain Vs. ITO [2014] 45 taxmann.com 442 (Bombay) which states that where loose papers found in survey showed receipts in hands of assessee and assessee admitted same as his undisclosed income but in assessment retracted from the admission and if fails to furnish the evidence to justify his stand the above receipt can be taxed as undisclosed income of the assessee. Therefore, in the present case, the statement was made during the course of survey and certain documents were found, therefore, the above

decision of the Hon'ble High Court covers the issue in favour of the Revenue.

011. The learned Authorized Representative stated that firstly, there was no undisclosed investment and there is evidence in the form of MoU and share purchase agreement which clearly shows that what should be the date of the transfer of the shares. He further stated that it is not the question of any declaration made during the course of survey. He accordingly submitted that the decision of the Bombay High Court does not apply to the facts of the present case. He once again extensively referred to the various evidences placed in the paper book.
012. We have carefully considered the rival contentions, perused the orders of the lower authorities, paper book filed before us and the adjudication order under the provision of Benami Properties and Prohibition Act. We find that the fact shows that the assessee has purchased 2.50 crore shares of a company based on the Memorandum of Understanding dated 27<sup>th</sup> March, 2018. Consequent to the MoU, on 6<sup>th</sup> April, 2018, the share purchase agreement was signed, wherein the price per share was agreed at ₹ 40 per share. This was the prevailing market price of the share as on 6<sup>th</sup> April, 2018. Immediately, thereafter on 12<sup>th</sup> April, 2018 the above shares were transferred to the Demat Account of the assessee. Therefore, now dispute is whether the date of



purchase of the shares is considered as 6<sup>th</sup> April, 2018 or 12<sup>th</sup> April, 2018. According to the assessee the date of share purchase agreement should be the date of purchase. The claim of the assessee is covered by CBDT Circular no. 704. The Id. CIT (A) has dealt with this issue as under :-

*"4.4 The only dispute is regarding the date of the purchase of share by the appellant, whether it should be 06.04.2018 or 12.04.2018. The case of the appellant is that the date of share purchase agreement i.e. 06.04.2018 should be that date of purchase and on the other hand, the case of the AO is that the date should be 12.04.2018 i.e. the date on which the shares were credited in the demat account of the appellant firm. The CBDT in circular No. 704 dated 28.04.1995, has explained that in cases where the shares are transacted through Stock Exchange, the date of transfer of share should be the date of brokers' note. In respect of the transaction in share not through Stock Exchange, the date of contract of sale as declared by the parties shall be treated as date of transfer, provided it is followed by actual sale of shares and the transfer deed. Thus, the CBDT has clarified that in case of offline transaction, the date of share transaction should be the date of contract between the parties. In the case of the appellant, the contract of transaction of shares of RIL was signed on 06.04.2018 as share purchase agreement. Thus, as explained by the CBDT in circular No. 704, the date of transfer of shares of RIL should be 06.04.2018. It is a fact that shares were transferred to the demat account of the appellant on 12.04.2018. Thus, the condition provided in the*



*CBDT circular also gets satisfied with respect to the actual transfer of the shares subsequently. The adjudicating authority has also taken note of the MOU dated 27.03.2018 and the share purchase agreement dated 06.04.2018 and held the shares of RIL was not a Benami Transaction. In the statement recorded during the survey proceedings u/s. 133A, Shri Anil Gupta, the partner of the appellant firm, has confirmed the transaction between the appellant firm and M/s. Fairpoint Tradecom LLP with respect to off-market sale of shares on 12.04.2018 which was reported to the Stock Exchange on 13.04.2018. However, subsequently, the appellant firm has produced the documentary evidences in the form of MOU dated 27.03.2018 and share purchase agreement dated 06.04.2018. It is also a fact that both these documents/evidences have been accepted as genuine by the adjudicating authority. PBPT Act in its order dated 29.09.2021. In Para 13 of the order, the adjudicating authority, PBPT Act, has held that-*

*"There is no reason to doubt the intention of the promoters of Responsive Industries Ltd. to take services of Shri Anil Gupta, an expert in the relevant domain area to rope in big investors at a price which was to be not less than Rs. 40; 26 weeks average market price as mandated by Rules. The Memorandum of Understanding and Sale and Purchase Agreement (SPA) are testimony to this. There is nothing on record to doubt genuineness of these documents. These documents basically put in suitable restriction (lien/pledge) in order to safeguard the interest of promoters and the basic intention was to sell these shares at a*

*beneficial price to the future investors. The payments received from the investors were to be repatriated to the promoters entity after retaining the compensatory percentage of profit by Mr. Anil Gupta".*

4.5 *In view of the above facts, the date of purchase of shares of RIL of the appellant firm was 06.04.2018. The share price was fixed mutually by both the parties after taking the average rate of preceding 6 months prior to the MOU.*

*Thus, the addition made by the AO u/s 56(2)(x) amounting to Rs. 83,37,50,000/- is deleted."*

013. On careful perusal of the facts it is apparent that assessee has purchased 2,50,00,000 shares of responsive industries Ltd, through a registered share purchase agreement with Fairpoint trade, LLP on 6 April 2018 at a consideration of ₹ 40 per share. Such shares were also transferred in the Demat account of the assessee pursuant to the above share purchase agreement. Thus according to the assessee, the date of transaction of the share is 6<sup>th</sup> of April 2018 only. The learned AO considered that the shares of responsive industries Ltd were traded on stock exchange on 12/4/2014 at ₹ 73.35 per share. Further the intimation given to the securities and exchange board of India is by responsive industries Ltd based on that the Demat data of share registrar. As the shares were transferred in the Demat account of the assessee on 12 April 2018, that date was



mentioned by the company. However, actually the shares were transacted on 6 April 2018, consequent to that; the shares were transferred in the Demat account of the assessee on 12 April 2018. Thus, the transaction has taken place, directly between the parties and not through the stock exchange, therefore, the date of contract of sale as declared by the parties shall should be treated as the date of transferred as the same has been followed by actual delivery of shares and the transfer deeds. The learned CIT - A, has deleted the addition following the circular number 704 dated 28/4/1995. Further as per the adjudicating authority's order dated 29/9/2021 Under the PBPT act also confirms the fact recorded by the learned CIT - A. In fact, the learned CIT - A, has extracted the order of the adjudicating authority which exonerates assessee about the genuineness of these documents. Therefore, those documents cannot be doubted now. As per those documents. The shares were transacted on 6 April 2018 and not on 12 April 2018. Therefore, the learned and CIT - A, is correct in holding that the addition u/s 56 (2) (tax) cannot be made in the hands of the assessee.

014. Further, the decisions relied upon by the learned departmental representative with respect to the validity of the statement recorded during the course of search does not come to the rescue of the revenue, for the simple reason that the documents



found during the course of survey were held to be genuine showing the transaction of transfer of shares on 6 April 2018 followed by the transfer of shares in the Demat account of the assessee on 12 April 2018.

015. No infirmities were pointed out by the learned DR in the order of the learned CIT – A. We also do not find any infirmity in the order of the learned CIT – A, as it followed the circular issued by the CBDT in deleting the above addition. In fact, the learned assessing officer should also not have made the addition because it is contrary to the circular of the CBDT. Needless to say, that the circulars of the board are binding on the assessing authorities.

016. Accordingly, we confirm the order of the learned CIT – A. Accordingly, appeal of the learned assessing officer is dismissed.

Order pronounced in the open court on 23.12.2022.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23.12.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai