

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No.1428/Del./2014
Assessment Year: 2001-02**

DCIT, Circle 12(1), New Delhi (Appellant)	vs.	Giri Buildwell (P) Ltd., S-423, Top Floor, Greater Kailash Part-II, New Delhi. PAN - AABCG 2921Q (Respondent)
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Assessee by	Sh. Amrit Lal, Sr. DR
Revenue by	Sh. B.L. Gupta, ITP

Date of Hearing	07.04.2017
Date of Pronouncement	13.04.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order dated 27.12.2013 of Id. CIT(A)-V, New Delhi for the assessment year 2001-02 on the following grounds :

"1. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in holding that reopening of the assessment u/s. 147/148 of the Act was bad in law?

2. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.24,03,100/- on account of unexplained cash credit by way of accommodation entries?

3. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.2,30,57,400/- made by AO on account of share application money received from those parties whose genuineness and creditworthiness was not proved?"

2. The brief facts of the case are that the return of income filed by assessee on 29.10.2001 declaring total income of Rs.1,69,735/- was processed u/s. 143(1) on 20.06.2002. Thereafter, a notice u/s. 148 was issued on 19.03.2008 after recording the following reasons :

The assessee has filed its return of income on 29.10.2001 at the income of Rs.1,69,740/-. The return was processed under section 143(1) on 20.06.2002. Information has been received from DIT, Investigation-I, Sh. P.K. Dubey by letter No. 1322 dated 02.03.2006 that the above said assessee has availed facilities of an entry operator to introduce unaccounted black money by way of bogus accommodation entries. The details of these entries are as under :

Addressee Bank a/c	Value of entry	Instrument No.	Date of entry Taken	Name of account holder of entry giving a/c	Bank account from which entry given
Nainital Bank	500750	491584	22.07.2000	Rajeev Kr. Agarwal	3616 SBP DG
Nainital Bank	500750	493642	-Do-	Murari Lal	14253 Jailaxmi Coop. Bank Fatehpuri, Delhi
Nainital Bank	400600	652327	18.07.2000	Charm Investments Pvt. Ltd.	435 Fedral Karol Bagh

	400400	898295	-do-	MJM Investments	11176 CD BOI Karol Bagh
	600600	898399	-do-	-do-	-do-
Total	2403100				

I have gone through the relevant material which indicate that the assessee has taken bogus accommodation entries to the extent of at least Rs.24,03,100/-. These entries have been taken in lieu of unaccounted cash and so the aforesaid amount represents unexplained cash credits in the hands of the assessee. In view of the above facts, it is clear that the assessee has failed to disclose fully and truly all material facts necessary for its assessment. Considering the facts of the case, I have reason to believe that income to the extent of at least Rs.24,03,100/- has escaped assessment and this is a fit case for initiation of proceedings u/s. 147 of the Income Tax Act, 1961.”

3. In response to notice u/s. 148, the assessee submitted that the return filed originally on 29.10.2001 may be treated to have been filed in response to notice u/s. 148. The assessee further explained that the information so relied on for initiation of proceedings u/s. 147 is wrong and the assessee has neither received any such amount as mentioned in the information nor is there any credit entry thereof in any books of account maintained by assessee. The AO, however, did not accept the explanation of the assessee and made addition of Rs.24,03,100/- as escaped income on account unexplained cash credit u/s. 68 of the IT Act vide reassessment order dated 19.12.2008.

4. Apart from the above, the Assessing Officer further made following additions :

(i). Share application money	Rs.2,30,57,400/-
(ii). Cessation of liability	Rs. 20,50,000/-
(iii). Unexplained Investments	Rs.1,19,00,000/-
(iv). Amount due to sundry creditors	Rs.2,82,87,108/-

5. The assessee challenged the assessment order in appeal before the learned first appellate authority both on validity of proceedings u/s. 147/148 of the Act and on merits of additions. The ld. CIT(A) after considering the detailed submissions of the assessee held the reassessment as invalid and also deleted the additions on merits vide impugned order. Aggrieved, the Revenue is in appeal before the Tribunal, challenging the only deletion of additions of Rs.24,03,100/- made on account unexplained cash credits and Rs.2,30,57,400/- made on account of unexplained share application money.

6. The learned DR reiterating the contents of the assessment order, submitted that the ld. CIT(A) was not justified in deleting the additions on merits and to quash the reassessment on legal

ground. It was submitted that the assessee had received accommodation entries of Rs.24,03,100/- and further addition of Rs.2,30,57,400/- was rightly made by the AO on account of share application money received from such parties whose genuineness and creditworthiness was not proved. He, therefore, urged for restoration of assessment order.

7. On the other hand, the Id. Counsel for the assessee relied on the order of the Id. CIT(A) and submitted that the reassessment was made on the basis of wrong information, which did not pertain to the assessee and the Assessing Officer has not verified the same. Hence, the reason to believe formed by the AO for reopening the assessment u/s. 147 has rightly been held as invalid leading to assessment order void ab initio. It was submitted that once the transactions of accommodation entry as contained in the alleged information was not proved to pertain to the assessee and the original reason to believe escapement of income stood collapsed, the Id. Assessing Officer was not justified to acquire jurisdiction to assess other incomes even after insertion of Explanation 3 to section 147 by Finance Act,

2009 w.e.f. 01.04.1989. Reliance is placed on the decisions of Rajasthan High Court in CIT vs. Shri Ram Singh, 217 CTR 345 and of Bombay High Court in CIT Vs. Jet Airways (I) Ltd., 195 Taxman 117 (Bombay). It was also submitted that the Assessing Officer having failed to apply independent mind to the information, the belief of escapement of income formed on the basis of such information cannot be entertained for reopening of assessment. Reliance is placed on the decision of ITAT Ahmedabad Bench in Mahadev TradingCo. Vs. ITO, 135 ITD 1 (Ahd.).

8. We have considered the rival submissions and have gone through the entire material available on record including the orders of the authorities below and case laws relied upon and we find that the impugned order does not call for any interference. It is notable that the contention of the assessee from the beginning has been that they have not received any amount, whatsoever, from the four persons namely, Rajiv Kumar Aggarwal, Murari Lal, Charm Investments and MJM Investments, as mentioned in the alleged information noted above. It has also been submitted that there is no credit entry in the assessee's bank account with

Nainital Bank, as mentioned in the said information, nor any such entry was there in any of the books of account of assessee. The bank statement and books of account were produced before the authorities below. An affidavit to this effect was also furnished before the lower authorities. The Id. Assessing Officer, however, while rejecting the explanation of assessee has only stated that the explanation of the assessee is not acceptable and this entry remains unexplained in the hands of assessee as has been arrived by the Investigation wing of the department. There is no rebuttal of assessee's contention on the part of revenue or any application of mind by the AO to prove that the alleged accommodation entries as contained in the information were actually received by the assessee. Therefore, the reason to believe formed by AO on the basis of alleged accommodation entries of Rs.24,03,100/-, as contained in the information, stands collapsed, having been formed without any material on record and application of mind and accordingly, the addition so made on the basis of such unsustainable belief has rightly been deleted by the Id. CIT(A). The Coordinate Bench of Tribunal in the case of Mahadev Trading Co. (supra) has held that where the Assessing Officer proceeded

for reopening of assessment on non-existent and factually incorrect reasons and he did not apply independent mind on information received from DDIT(Inv.) prior to recording of reasons, the reopening of assessment in such a case was clearly invalid. In view of this, we are, therefore, of the considered opinion that once it is found that the income, for which the AO had initially formed a reason to believe that it had escaped assessment, has not escaped assessment, it is not open to the AO to assess some other income as held by Hon'ble Bombay High Court in CIT vs. Jet Airways (supra). Similar view has been taken by Rajasthan High Court in CIT vs. Sri Ram Singh(supra). Without prejudice to the above, the issue regarding share application money has also been found properly dealt with by the Id. CIT(A), who has made an elaborate discussion in the impugned order. In absence of any contrary material on record, we do not find any justification to interfere with the conclusion arrived at by the Id. CIT(A) on this account also. No good ground is made out on behalf of the revenue to support the order of the Assessing Officer. We accordingly are inclined to dismiss the present appeal

of the Revenue and confirm the impugned order on the issues involved in this appeal.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 13.04.2017.

Sd/-
(I.C. Sudhir)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 13.04.2017
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Copy forwarded to:

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3. CIT
5. DR, ITAT

2. Respondent
4. CIT(Appeals)
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Assistant Registrar