

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA Nos. 1945 & 1946/Del/2013
Assessment Years: 2003-04 & 2004-05

M/s Shruti Fastners Ltd.,
1666-B, Govindpuri Extension,
Mall Road, Kalkaji,
New Delhi – 110019

Vs. DCIT, Circle 8(1),
New Delhi

(PAN: AAACS2175H)
(APPELLANT)

(RESPONDENT)

Assessee by : Dr. Rakesh Gupta, Adv. & Sh. Somil Aggarwal, Adv.
Revenue by : Shri NK Bansal, Sr. DR

Date of hearing : 22-09-2016

Date of order :-10-2016

ORDER

PER H.S. SIDHU, J.M.

The Assessee has filed these two Appeals against the separate Orders both dated 30.1.2013 of the Ld. CIT(A)-XI, New Delhi pertaining to assessment years 2003-04 & 2004-05. Since the issues involved in these appeals are common, therefore, the same are being consolidated by this common order for the sake of convenience, by dealing with ITA No. 1945/Del/2013 (AY 2003-04).

2. The following grounds raised in ITA No. 1945/Del/2013:-
1. That the Id. CIT(A) had erred on facts and under the law in not admitting the additional evidence as filed before her.
 2. That the provisions of section 147/148 of the I.T. Act were not applicable to the facts of Assessee's case and therefore, the issue of notice u/s 147/148 was illegal and consequently, the impugned assessment order as passed u/s 147/143(3) is unlawful and unjust and therefore the same deserved to be annulled/cancelled.
 3. That without prejudice to ground No.2 above, no justification subsisted on the part of the Ld. AO in making an additions aggregating at Rs.83,15,000/- u/s 68 of the I.T. Act on account of alleged unexplained cash credits and the same ought to have been deleted by the Ld. CIT(A) keeping in view the submissions made before her supported by documentary evidence and also in view of the judicial pronouncements.
 4. That without prejudice to ground No. 3 above, the additions aggregating at Rs.83,15,000/- towards the assessable income of the Assessee are very excessive. Various observations made by the authorities below in their respective orders are either incorrect or untenable. Detailed written submissions alongwith the paper book as

filed before the Ld. CIT(A) and the arguments advanced by the Counsel had not been appreciated properly or had been ignored.

5. That the interest as levied u/s 234 is illegal and at any rate, without prejudice very excessive.

6. That the appellant reserves its right to add, amend/modify the grounds of appeal.

3. The following grounds raised in ITA No. 1946/Del/2013:-

1. That the provisions of section 147/148 of the I.T. Act were not applicable to the facts of Assessee's case and therefore, the issue of notice u/s 147/148 was illegal and consequently, the impugned assessment order as passed u/s 147/143(3) is unlawful & unjust and therefore the same deserved to be annulled/cancelled.

2. That without prejudice to ground No.1 above, no justification subsisted on the part of the Ld. AO in making an, additions aggregating at RS.11,00,000/- u/s 68 of the I.T. Act on account of alleged unexplained cash credits and the same ought to have been deleted by the Ld. CIT(A) keeping in view the submissions made before her supported by documentary evidence and also in view of the judicial pronouncements.

3. That without prejudice to ground No. 2 above, the additions aggregating at Rs.11,00,000/- towards the assessable income of the Assessee are very excessive.

Various observations made by the authorities below in their respective orders are either incorrect or untenable.

Detailed written submissions alongwith the paper book as filed before the Ld. CIT(A) and the arguments advanced by the Counsel had not been appreciated properly or had been ignored.

4. That the interest as levied u/s 234 is illegal and at any rate, without prejudice very excessive.

5. That the appellant reserves its right to add, amend/modify the grounds of appeal.

4. The brief facts of the case are that a notice u/s. 148 of the Income Tax Act, 1961 was issued to M/s Shruti Fastners Ltd on 22.3.2010 after recording reasons for issue of notice, as required by Section 143(2) of the Act. The necessary approval as required by Section 151 of the Act was obtained before issue of the notice. The assessee filed a letter stating that the original return of income filed at a total income of Rs. 14,10,933/- be treated as returned filed in compliance with notice issued u/s. 148 of the Act. In response to the notice u/s. 142(1) of the Act, the Assessee's Director attended the hearing from time to time. In this case information was received from the Directorate of Investigation (Inv.-I), New Delhi that the

assessee has received an accommodation entry of Rs. 5.82 crores into its bank account from different companies/ concerns during the financial year 2002-03 relevant to assessment year 2003-04 so as to introduce its unaccounted money into its account. Thereafter, considering the reply of the assessee, AO passed an order u/s. 147/143(3) of the I.T. Act, 1961 on 30.11.2010 assessing the total income of Rs. 97,25,933/-.

5. Against the Order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 30.1.2013 has dismissed the appeal of the assessee.

6. Aggrieved with the aforesaid order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

7. Ld. Counsel for the assessee has only argued the legal ground raised vide ground no. 2 stating that the provisions of section 147/148 of the I.T. Act were not applicable to the facts of the assessee's case and therefore, the issue of notice u/s. 147/148 was illegal and consequently, the impugned assessment order as passed u/s. 147/143(3) is unlawful and unjust and therefore the same deserved to be annulled / cancelled. In support of his contention he filed the various Paper Books enclosing therewith the assessment and appellate records and a compilation of various case laws having pages 1 to 208. He further stated that Ld. CIT(A) has erred in confirming the action of the AO in framing the impugned assessment order without assuming jurisdiction u/s. 147 and that too without

complying with the mandatory conditions as prescribed under section 147 to 151 of the I.T. Act, 1961 and the reasons recorded are invalid and contrary to law and facts. He further draw our attention towards the copy of reasons for reopening the case u/s. 148 and stated that no proper reasons were recorded; no nexus between the materials relied upon and the belief formed for escapement of income; no application of mind; no proper satisfaction was recorded before issue of notice u/s. 148; no independent conclusion that there was escapement of income. It was further stated that the case was reopened only on the basis of Investigation Wing information which suffers with serious debility and lacks definiteness, without describing the basic aspects of alleged transaction and in the absence of the same, whole action of the AO gets vitiated. To support his contention he submitted that the issue in dispute is squarely covered in favour of the assessee by the ITAT decision dated 09.1.2015 in the case of G&G Pharma India Limited vs. ITO passed in ITA No. 3149/Del/2013 (AY 2003-04) in which the Judicial Member is the Author. He further stated that the above decision of the ITAT dated 9.1.2015 has been upheld by the Hon'ble Jurisdictional High Court in its Decision dated 08.10.2015 in ITA No. 545/2015 in the case of Pr. CIT-4 vs. G&G Pharma India Ltd. In this behalf, he filed the copy of the order dated 9.1.2015 of the ITAT, Delhi Bench passed in the case of G&G Pharma India Ltd vs. ITO (Supra). In this regard, he filed the copies of the aforesaid decisions before the Tribunal. In view of the

above, he requested that by following the aforesaid precedents the reassessment proceedings of the AO may be quashed by accepting the Appeal filed by the Assessee.

8. On the contrary, Ld. DR relied upon the orders passed by the authorities below and stated that the AO has properly recorded the reasons for reopening by due application of mind, hence, the appeal of the Assessee may be dismissed.

9. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case laws cited by the assessee's counsel. For the sake of clarity, we would like to reproduce the reasons recorded for reopening the case as under:-

"Information from the office of the DIT(Inv.)-I, New Delhi has been received that the assessee M/s Shruti Fastners Ltd. has received an accommodation entry of Rs. 5.82 crores. Into its bank account from different companies / concerns during the financial year 2002-03 relevant to assessment year 2003-04 so as to introduce its unaccounted money into its accounts. In view of the above facts, I have reason to believe that the income of Rs. 5.892 crores has escaped assessment in the hands of the assessee in terms of section 147 of the I.T. Act for the assessment year 2003-04.

Accordingly, notice u/s. 148 of the I.T. Act is issued to the assessee."

9.1 On going through the above reasons recorded by the AO, we are of the view that AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that income has escaped during the year. In our view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation)-I, New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Our view is supported by the following judgments/decisions:-

(a) Pr. CIT vs. G&G Pharma India Ltd. in ITA No. 545/2015 dated 8.10.2015 of the Delhi High Court wherein the Hon'ble Court has adjudicated the issue as under:-

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as

accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under [Section 143\(3\)](#) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own

unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a

post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity .

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises.

15. The appeal is dismissed."

(b) Signature Hotels (P)_ Ltd. vs. ITO and another reported in 338 ITR 51 (Del) has under similar circumstances as follows:-

"For the A.Y. 2003-04, the return of income of the assessee company was accepted u/s.143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently, the Assessing Officer issued notice u/s.148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.

The Delhi High Court allowed the writ petition and held as under:

"(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have 'reason to

believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.

(ii) A notice u/s.148 can be quashed if the 'belief' is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reasons. There should be a link between the reasons and the evidence/material available with the Assessing Officer.

(iii) The reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during F.Y. 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or

established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income.

(iv) Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid up capital of Rs.90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed.”

10. In view of above, we are of the considered view that the aforesaid issue in dispute is exactly the similar and identical to the issue involved in the present appeal and is squarely covered by the aforesaid decisions of the Hon'ble High Court of Delhi in the case of G&G Pharma (supra) & Signatures Hotels (P) Ltd. (Supra). Hence, respectfully following the above precedents in the case of Pr. CIT-4 vs. G&G Pharma India Ltd. (Supra) and Signature Hotels (P) Ltd. vs. ITO, we decide the legal issue in dispute in favor of the Assessee and against the Revenue and accordingly quash the reassessment proceedings and allow the legal ground no. 2 raised by the Assessee

in its Appeal. Since we have quashed the reassessment proceedings, as aforesaid, the other issues are not being dealt with.

11. As regards the ITA No. 1946/Del/2013 (AY 2004-05) is concerned, following the consistent view, as taken in ITA No. 1945/Del/2013 (AY 2003-04), as aforesaid, the ITA No. 1946/Del/2013 (AY 2004-05) also stands allowed.

12. In the result, both the appeals of the Assessee are allowed.

Order pronounced in the Open Court on 07/10/2016.

SD/-
[O.P. KANT]
ACCOUNTANT MEMBER

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 07/10/2016

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches