IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-3 : NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No.2637/Del/2015
Assessment Year : 2006-07

Rahul Bhandari, N-50, Dr. Mukherjee Nagar, Delhi.	Vs.	ACIT, Circle-20(1), New Delhi.
PAN: AAFPB3371A		
(Appellant)		(Respondent)

Assessee By	:	Shri Ved Jain, Advocate, Shri Ashish Goel, & Shri Ashish Chadha, CAs
Department By	:	Shri Anil Sharma, Sr. DR

Date of Hearing	:	01.09.2016
Date of Pronouncement	:	08.09.2016

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A) dated 30.12.2014 for the assessment year 2006-07 on the following grounds:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that proceedings initiated under Section 147, read with Section 148 are bad as the condition and procedure prescribed under the statute have not been complied with.

3(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in law as the same are based on reasons which are vague.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.14,67,410/- on account of deposits in bank account.

5(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the abovesaid addition rejecting the explanation and evidences brought on record by the assessee to show that the said deposits pertain to business receipts of the assessee.

(ii) Without prejudice to the above and in the alternative, addition has to be restricted to the income components of the deposits and not all the deposits can be added.

(iii) Without prejudice to the above and in the alternative, the addition can be made only of the peak credit in the said bank account.

The appellant craves leave to add, amend or alter any of the grounds of appeal."

2. After hearing the rival contentions, I find that the AO tried to assume jurisdiction by issuing notice u/s 148 for reopening the assessment. He has recorded the reasons for reopening the assessment as follows:-

> "Reasons for reopening of the case u/s 147/148, A.Y. 2006-07
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> In this case, as per AIR information (without PAN) contained in a CD circulated by the CCIT-I, Delhi vide letter F.No. CCIT/Delhi/Juris/CRPU/2007-08/10065 dated 05.12.2008 and further the same was forwarded by ITO, Ward-29(4) vide letter F.No.ITO/Ward 29(4)/DAO/CashDeposit/204/2011-12/609 dated 15.03.2012, it was found that Sh. Rahul Bhandari had made transaction of Rs. 14,67,400/- with Industrial Development Bank of India Ltd, MUM 100314 on 31.03.2006.
>
> For the above stated reasons to believe, the case of the assessee needs examination for reassessment, u/s 147 of, the Income Tax Act, 1961, as the above mentioned income of Rs. 14,67,400/- escaped assessment. Necessary approval in this regard may be allowed to reopen the case u/s147."

3. I observe that the AO's finding that an investment was made on 31.3.2006 is factually incorrect. I have, therefore, to necessarily conclude that the reasons were recorded without application of mind. Therefore, on this ground itself, the reopening of assessment has to be held bad in law by following the judgements of the jurisdictional High Court in the case *Signature Hotels Pvt. Ltd. vs. ITO 328 ITR 51 (Del)*

wherein it was held that notice issued based on a report from Investigation Wing is invalid where the AO does not examine the evidence. The Hon'ble jurisdictional High Court in the case *Principal Commissioner of Income Tax vs. G & G Pharma India Ltd. in ITA no. 545/2015* vide order dt. 8.10.2015 at para 12 and 13 held as follows.

> *"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10 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 ITA No. 3602/Del/2010 C.O. No. 276/Del/2010 A.Y. 2000-2001 M/s Bawa Float Glass Limited 3 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 ."

4. Respectfully following the judgements of the Hon'ble jurisdictional High Court in the cases cited above, the assessment being bad in law I quash the same.

5. In the result, the appeal of the assessee is allowed.

The order pronounced in the open court on 08.09.2016.

Sd/-

[J. SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dated, 08th September, 2016.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.