

ITA No. 387/Del/2014
A.Y. 2004-05
Perfect Capital Services Ltd.

“Information is received from the Investigation Wing of the Income Tax Dept. That M/s Perfect Capital Services Ltd. is a beneficiary of accommodation entries received from certain established entry operators identified by the Investigation Wing during the period relevant to the A.Y. 2004-05.

A comprehensive investigation was carried out by the Investigation Wing for identification of entry operators engaged in the business of money laundering for the beneficiaries and on the basis of investigations carried out and evidences collected, a detailed report has been forward. In the instant5 case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transactions.

Sl. No	Beneficiary's name	Beneficiary bank name	Value of entry taken	Instrument no. By which entry taken	Date on which entry taken	Name of account holder of entry giving account	Bank from which entry given	Branch of entry giving bank	A/c no. Entry giving account
1.	Perfect Capital Services Ltd.	ABN Amro Bank	200000	941742	10.4.2003	IME International	KVB	166	Perfect Capital Services Ltd.
2.	Perfect Capital Services Ltd.	ABN Amro Bank	150000	270913	31.10.13	Parivartan Capital & Financial Services P.Ltd.	Corp. Bank	167	Perfect Capital Services Ltd.

The accommodation entry providers have given accommodation entries in the grab of share application money/expenses/gift/purchase of shares etc. They have worked for commission.

Sources of the above are not explained. I, therefore have reason to believe that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above A.Y. the income chargeable to tax to the extent of accommodation entry mentioned above which is Rs.3,50,000/- has escaped assessment within the meaning of section 147 of the Act. To bring to tax the income which has escaped assessment, I propose to issue notice u/s 148 of the Income Tax Act, 1961.

Since, four years has expired from the end of the relevant A.Y. and no scrutiny assessment was completed u/s 143(3) in this case for the said A.Y. the reasons recorded above for the purpose of reopening of assessment is put up kind satisfaction of ACIT, Range 14, N.Del in terms of proviso of S.151(2) of the Income Tax Act 1961.”

4.1. The Hon'ble Delhi High Court in the case of 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 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.

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 .”

4.2. A plain reading of the reasons recorded demonstrate that the A.O. has not applied his mind to the material/information received from the Director (Investigations). Without such independent application of mind, it is not possible for the A.O. to come to a conclusion that he has reason to believe that income assessable to tax has escaped assessment. Thus, respectfully following the propositions of law laid down by the Hon’ble Delhi High Court in the case of Pr.CIT vs. G & G Pharma India Ltd. (supra) I hold that the reopening is bad in law.

5. The Ld.Sr.D.R. Shri T.Vasanthan relied on the judgement of the Hon’ble Supreme Court in the case of Deepak vs. State of Rajasthan and argued that in case there is infirmity in the reasons recorded by the AO, then the matter should be remanded back to the A.O. for fresh adjudication and the reassessment should not be quashed.

5.1. We have perused the judgement of Hon’ble Supreme Court. The propositions laid down therein apply to cases where the assessing authority has properly assumed jurisdiction. It is only thereafter that some procedural irregularities were found. In the case on hand, the A.O. has not properly assumed jurisdiction of this case, in view of the fact that the reasons recorded for reopening are without independent application of mind. When the assumption of jurisdiction itself is bad in law, the question of restoring the matter to the file of the A.O. does not arise.

6. Applying the propositions laid down in the case of Principal Commissioner of Income Tax vs. G&G Pharma India Ltd. in ITA no.

545/2015 (supra), to the facts of the case on hand, I hold that the reopening is bad in law.

7. In the result assessee's appeal is allowed.

Order pronounced in the Open Court on 30th November, 2015.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 30th Nov., 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar