

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 1418/Del/2016 : Asstt. Year : 2007-08

Speco Tech Roofing and Ceiling System Pvt. Ltd., C/o Bhati Wadhwa & Co., CAs, 5N/1A, First Floor, Near MCF Mayor Office, B.K. Chowk, NIT Faridabad, Haryana-121001	Vs	DCIT, Central Circle-II, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AAJCS7152F		

Assessee by : Sh. K. C. Singhal, AR

Revenue by : Sh. S. K. Jain, DR

Date of Hearing : 17.11.2016	Date of Pronouncement : 14.02.2017
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ORDER

This is an appeal by the assessee against the order dated 08.01.2016 of Id. CIT(A), Faridabad.

2. Following grounds have been raised in this appeal:

“1. That the reassessment proceedings initiated u/s 148 are without jurisdiction since territorial jurisdiction vested in A.O having jurisdiction over area of Kalkaji, New Delhi where the regd. office of the appellant is situated. This fact was well known within the knowledge of A.O issuing notice u/s 148.

2. That reassessment proceedings initiated u/s 148 are void ab-initio since the A.O. failed to verify the veracity of the information before recording the so

called reasons as held by the Delhi HC in various cases. Mere receipt of information from (Inv) wing does not confer power on AO to initiate proceedings u/s AO. The CIT(A) grossly erred in law in ignoring the binding decisions of the high court relied upon by the appellant while upholding the validity of such proceedings.

3. That reassessment proceedings initiated u/s 148 are void ab-initio since the reasons recorded are vague without reference to any material on record. There is no nexus or live link between the information/material and the formation of belief that there is escapement of income for the year under consideration and thus contrary to the settled legal position. The CIT(A) grossly erred in law in ignoring the binding decisions of the high court relied upon by the appellant while upholding the validity of such proceedings.

4. The CIT(A) erroneously decided the above legal issue on the basis of the information which was not available with the AO on the date when the reasons were recorded.

5. That reassessment proceedings initiated u/s 148 are void ab-initio since approval u/s 151 is not in accordance with law.

6. That assessment framed u/s 147 are bad in law since assessment is made without supplying the copy of reasons recorded despite repeated requests and therefore liable to be quashed. (Such reasons have been supplied only on application after the assessment).

7. That without prejudice to the above, the burden u/s 68 stood discharged by the assessee in view of enormous evidence filed before the A.O. in the assessment proceedings and the judicial decisions. In fact, the onus shifted to the A.O. to prove that share application money received was by way of accommodation entry in lieu of cash as alleged by the A.O. in the reasons recorded u/s 148. No incriminating material has been confronted /supplied to the appellant during the assessment to rebut the onus shifted to revenue.

8. Mere mentioning of allegations in the assessment order does not and cannot establish the veracity of the allegation. Further, nothing has been confronted to the assessee in the course of assessment proceedings and therefore contents of the report cannot be considered as evidence in view of the decisions of the apex court and therefore no addition could be legally made on the basis of mere allegations. In the absence of cogent evidence, the addition could not be legally made.

The appellant craves to add, or amend the grounds of appeal, if required and necessary.

It is therefore prayed that the impugned addition be deleted or such other suitable relief be allowed which the Hon'ble bench may deem fit."

3. The main grievance of the assessee in this appeal relates to the reopening of the assessment u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the basis of information received from Investigation Wing.

4. The facts of the case in brief are that the assessee filed the original return of income on 31.10.2007 declaring an income of Rs.11,20,430/- which was processed u/s 143(1) of the Act. Thereafter, the AO issued the notice u/s 148 of the Act after recording the reasons u/s 147 of the Act. The assessee in response to the said notice filed a letter dated 23.04.2013 enclosing the revised return for the assessment year under consideration. The assessee thereafter vide letter dated 14.05.2013 asked the copy of reason to belief for reopening the case. The AO in para 3.1 of the assessment order observed as under:

“3.1 A detailed information regarding accommodation entries provided by Sh. Surendra Kumar Jain Group to various beneficiary companies was received from the office of the Director of Income Tax (Inv.)-II, New Delhi. Vide her letter F. No. DIT(Inv.)-II u/s 148/2012-13/269 dated 15.03.2013. As per the information a search & survey action was conducted by Unit-VI(2), New Delhi in the case of Shri Surendra Kumar Jain and Shri Virendra Jain on 14.09.2010. Various incriminating documents were seized and impounded.”

5. The AO also extracted the report of Investigation Wing, New Delhi in para 3.2 of the assessment order dated 24.03.2014, for the cost of repetition, the same is not reproduced herein. The AO provided the reasons recorded vide letter dated 25.07.2013. The AO completed the assessment by making the addition of Rs.20,00,000/- u/s 68 of the Act. The said amount was held to be introduced as share capital/share application money and share premium from undisclosed sources.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the validity of the reassessment. However, the Id. CIT(A) did not find merit in the submissions of the assessee by observing in paras 9 to 15 of the impugned order as under:

“9. Ground Nos. 1 to 4. Taking up the first issue raised by the appellant is regarding the validity of the reassessment proceedings u/s 147/148. I have considered the facts of the case, observations of the AO and submissions of the appellant. For reopening, an assessment made under Section 148 of the Act, the following conditions are required to be satisfied:-

(i) The Assessing Officer must form a tentative or prima facie opinion on the basis of material that there is underassessment or escapement of income;

(ii) He must record the prima facie opinion into writing;

(iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.

(iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.

(v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. Explanation to the Section stipulates that mere production of books of accounts or other documents from which the Assessing Officer could have, with due diligence,

inferred material facts, does not amount to "full and true disclosure of material facts".

10. Coming to the specific facts of the case, the AO has recorded the reasons on the basis of the information received from the Investigation Wing. A perusal of the reasons recorded by the AO clearly shows that the appellant has taken accommodation entries from Sh. Surinder Kumar Jain Group of cases during the F.Y. 2007-08. The quantum of entries i.e. 20 Lacs has been specifically mentioned. In fact in the case of ITO vs Purshottam Dass Bangur (1997) 224 ITR 362 (SC) the Hon'ble Supreme Court has clearly held that letter from Deputy Director (Investigation) constitutes information and reasons to believe that income has escaped assessment. In fact herein the Hon'ble Supreme Court has also held that merely because the notice was sent on the next day of the receipt of the information from the DDIT(Inv.) does not mean the ITO has not applied his mind in this connection, Hon'ble Supreme Court in the case of RAYMOND WOLLEN MILLS LTD. Vs. ITO 236 ITR 34 (SC) and ACIT VS. RAJESH JHAVERI STOCK BROKERS (P) LTD. 291 ITR 500 (SC) and CIT VS. India Terminal Connector System ltd, ITA 643/2011 Delhi HC that at the stage of initiation of Re - Asstt. Proceedings only primer -facie belief has to be formed for escaped income and not conclusively. Reliance is also placed on the Judgment of the Hon'ble Supreme Court in the case of PHOOL CHAND BAJRANG LAL AND ANOTHER VS. ITO & ANOTHER 203 ITR 456 (SC) the head note for which reads as below:

"Sufficiency of reasons for reopening assessments is not for the court to judge. Section: 147(a) -failure to disclose truly and-fully material facts - cash loans -originally accepted as genuine subsequent information from A.O. of a company that its M.D. has confessed - he or his company has not advanced any loan to any person during the relevant period - subsequent

information is 'definite, specified and reliable. Sufficiency of reasons for formation of belief is not for the court to judge. Reassessment notices are valid. [Applied/followed in- 208 ITR 196 (RAJ) : 208 ITR 266 (DEL): 209 ITR 01 (BOM) :209 ITR 135(BOM): Assam Forest Products (P) Ltd. Vs. CIT : 211 ITR 447 (SC): 214 ITR 669 (RAJ) : 221 ITR 538 (SC) :226 ITR 352 (GUH): 237 ITR 549 (BOM):248 ITR 493 (P&H) :ITO VS Selected Dalurband Coal Co. Pvt. Ltd. 217 ITR 597 (SC) :253 ITR 83 (DEL) 257 ITR 481 (Guj)]

It has been held in a number of judicial pronouncements that what is necessary to re-open an assessment is not final verdict but a prima facie reason. Once such a reason is recorded by assessing authority, he assumes jurisdiction of notice u/s 148 - ACIT vs. Tube Investment of Income Ltd. (ITAT Chennai TM) 133 ITD 79;

Rajat Export Corporation Pvt. Ltd. Vs ITO (Del) 341 ITR 135. As regards information for re-opening, it has been held in KalyanjiMavji & Co. Vs CIT (SC) 102 ITR 287, that information may come from external sources or even from material already on record or may be derived from the discovery of new and important matter or fresh fact. Word - "information" would also include true and correct state of law derived from relevant judicial decisions either of the Income Tax authorities or Courts of law.

And reliance is placed on Hon'ble Madras High Court in the case of STERLITE INDUSTRIES (INDIA) LTD. v ASSISTANTCOMMISSIONER OF INCOME-TAX AND ANOTHER [2008J302 ITR275 (MAD.) The head note for which reads as under

Reassessment -Notice—Validity of Notice - Information From Enforcement Directorate showing possible inflation of purchases -notice valid -Income-tax Act, 1961, ss.147, 148

11. Perusal of the assessment order specially para 3.1 to para 3.6 also clearly show that the AO had sufficient reasons to reopen the assessment proceedings u/s 147. Thus in view of the above facts and judicial precedents. I have no hesitation in holding that the AO has rightly reopened the assessment proceedings and the approval accorded by the Addl. Commissioner of Income Tax, Range-1, Faridabad has not been done in purely mechanical manner.

12. The next contention of the appellant has been that the reason recorded by the AO has not been supplied to him despite repeated requests. In this regard, the Director of the Company Sh. Harpinder Singh S/o Sh. Jarnail Singh has an affidavit which is reproduced below:

"I Harpinder Singh S/o Sh. Jarnail Singh R/o H.No. 612, Sector-14, Faridabad do here by solemnly affirm that:

1) That I am a director in "M/s Speco Tech Roofing & Ceilings Systems Private Limited" having PAN No. AAJCS7152F, I am competent to make the statement on behalf of the company.

2) That we have filed Income tax Return as on 25/04/2013 for the assessment year 2007-2008 in response to your notice U/s 148 for our above mentioned company.

3) That the alleged Notice dated 25/07/2013 along with reasons to believe as alleged in para 2 of the assessment order was never received by the company."

13. To verify this contention of the appellant the assessment records were called for and it is observed that a notices u/s 143(2) and letter enclosing the copy of reasons recorded dated 25.07.2013 are placed in the assessment folder. The dispatch No. for these are 1837 and 1838, the same that have been mentioned by the AO in the assessment order. Moreover, a perusal of the order sheet shows that on 07.03.2014 the AO has issued another notice u/s 143(2) and 142(1) and alongwith these a copy of the reasons recorded has once again been given to the appellant. Moreover, the Ld. Counsel for the appellant has replied to these notices on 12.03.2014 and thus, if the notices u/s 143(2) and 142(1) have been received by the appellant, since he has complied to the same on 12.03.2014, thus it can be safely presumed that the reasons recorded by the AQ have also been received by him alongwith these notices. Thus from the above it is evident that a copy of the reasons recorded for reopening the case have been given by the AO to the appellant before the completion of the assessment proceedings. Even the affidavit of the appellant is silent on the content of the order sheet entry dated 07.03.2014, (despite the appellant having inspected the assessment folder) and thus keeping in view all these facts I hold that the reasons recorded for reopening the case have been supplied to the appellant before the completion of the assessment proceedings. Thus this ground of the appellant is dismissed.

14. The next contention raised by the appellant is on the issue of jurisdiction. As per the appellant, the Appellant Company is assessed in Delhi and the proceedings u/s 148 have been initiated by Deputy Commissioner of Income Tax, Circle-1, Faridabad and thus the AO at Faridabad lacks jurisdiction. In this regard, it is seen that the PAN of the appellant is with the jurisdiction of DCIT, Faridabad and the appellant has not raised the objection on the jurisdiction with DCIT, Faridabad within one month of the issue of notice u/s 148 by DCIT,

Faridabad. The notice u/s 148 has been issued on 25.03.2013 and the appellant on 23.04.2013 has filed a revised return with DCIT, Circle-1, Faridabad. If the question of jurisdiction was to be raised, it was at this juncture. Rather than- bringing forth the question of jurisdiction, the appellant has himself filed his revised return with the DCIT, Circle-1, Faridabad vide letter dated 23.04.2013. Thus keeping in view these facts and as per the provisions of Section 124 this ground of the appellant is also dismissed.

15. The next contention of the appellant has been that the reasons recorded are undated and thus could have been recorded later than the issue of notice u/s 148. Once again the same has been verified by me from the assessment record and it is seen that the Addl. Commissioner of Income Tax, Range-1, Faridabad has accorded his approval to ACIT, Circle-1, Faridabad vide letter dated 22.03.2013, dispatch No. 1480 and the same has been received by ACIT, Circle-1, Faridabad on 25.03.2013 and is placed on the assessment folder. Thus from the above it is clear that the AO has recorded the reasons for reopening of the case and received the approval of Addl. Commissioner of Income Tax, Range-1/ Faridabad before the issue of notice u/s 148. Thus this ground of the appellant is also dismissed. Thus Ground Nos. 1 to 4 of the appellant are dismissed.”

7. The Id. CIT(A) on merit also confirmed the addition made by the AO.

8. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and also furnished the factual aspects which are reproduced verbatim as under:

<i>Facts</i>	<i>Remarks</i>
<i>1. Notice u/s 148 dated 25.3.13 at page 20 of paper book</i>	<i>It is addressed to New Delhi address which is the regd. office of the appellant co. It was sent to New Delhi address.</i>
<i>2. Copy of reasons recorded u/s 148 which was never supplied to the appellant in the course of assessment proceedings, (page 57 of paper book)</i>	<i>It also shows the address of regd. office of appellant co</i>
<i>3. The appellant had always been filing returns at New Delhi and never filed any return at Faridabad</i>	<i>The appellant vide letter dated 23.4.13 submitted before the AO the copy of the return filed at New Delhi. The AO also acknowledges the same in para 1 of his order. Instead of transferring the case to the AO at New Delhi, he chose to continue to assume the jurisdiction. (Copy of ITR at page 19)</i>
<i>4. The appellant, through its counsel, vide letter dated 14.5.13 sought the copy of reasons recorded u/s 148</i>	<i>It was never supplied and the AO kept silent till 6.3.14 when the appellant again requested for copy of reasons recorded, (copy of letter at page 22) order.</i>
<i>5. The AO issued notice u/s 143(2) along with notice u/s 142 on 7.3.2014 seeking various informations.</i>	<i>Even at this stage, the AO kept silent about the reasons recorded u/s 148.</i>
<i>6. However, the appellant furnished all informations by 19.3.14 as desired by AO as is also apparent from para 2 of the order</i>	<i>Pages 24-38 of paper book.</i>
<i>7. Order of assessment is passed on 24.3.14</i>	<i>For the first time, the appellant came to know through such order (i) that copy of reasons recorded were sent to assessee through letter dated 25.7.13 along with notice u/s 143(2) and (ii) information regarding report of inv. wing reproduced in para 3.2 of order running in to various pages.</i>

8. The appellant filed an application dated 21.4.14 for inspection of assessment record	The inspection was allowed on the said date. The copy of reasons was supplied by the AQ after few days.
9. The appeal was filed against order of AO on 25.4.2014	The affidavit of the director of the appellant was also filed before the CIT(A) along with the submissions. The affidavit appears at page 16 of P.B.

9. It was further submitted that the AO reopened the assessment purely on the basis of information received from the Investigation Wing. Therefore, the assessment reopened u/s 147 r.w.s 148 of the Act was not valid. The reliance was placed on the following case laws:

- *Signature Hotels (P.) Ltd. Vs ITO (2011) 338 ITR 51 (Del)*
- *Jagdish Karnany Vs ITO 155 Taxman 35 (Del)*
- *Mrs. Amina Rasool Vs ITO 161 TTJ 405 (Asr.)*
- *Aksar Wire Products (P) Ltd. Vs ACIT in ITA No. 1167/Del/2015 order dated 11.12.2015*
- *Signature Hotels (P) Ltd. Vs ITO 338 ITR 51 (Del.)*
- *CIT Vs Atul Jain 299 ITR 383 (Del.)*
- *CIT Vs Insecticides (India) Ltd. 357 ITR 330 (Del.)*
- *ITO Vs Lakhmani Mewal Das 103 ITR 437 (SC)*
- *CIT Vs Orissa Corp. (P) Ltd. 159 ITR 78 (SC)*
- *Kishinchand Chellaram Vs CIT 125 ITR 713 (SC)*

10. In his rival submissions the ld. DR strongly supported the orders of the authorities below and further submitted that the assessee was given numerous opportunity to produce Principal Officer/ relevant person of the investor companies but the onus cast upon the assessee was not discharged. It was further submitted that the inquiries conducted by the Investigation Wing and also by the assessment wing established that the

assessee was indulged in a notorious practice of receiving the accommodation entry in order to effect payment of legitimate tax. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was justified.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO in para 3 of the assessment order dated 24.03.2014 categorically stated that a detailed information regarding accommodation entry provided by Sh. Surender Kumar Jain to various beneficiaries companies was received from the office of Director of Income Tax (Inv.-II), New Delhi vide letter dated 15.03.2013. In the instant case, the AO issued the notice dated 25.03.2013 only after receiving the aforesaid information. Therefore, the reopening was done on the basis of Investigation Wing. The Id. CIT(A) also pointed out in para 5 of the impugned order that the information was received by the AO from Director of Income Tax (Inv.-II), New Delhi vide letter dated 15.03.2013. Therefore, it is clear that the AO issued the notice u/s 148 of the Act for reopening the assessment u/s 147 of the Act on the basis of information received from the Investigation Wing.

12. On a similar issue the Honøble Jurisdictional High Court in the case of Signature Hotels Pvt. Ltd. Vs ITO and Anr. (2011) 338 ITR 51 (supra) held as under:

“Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence on belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bonafide, 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 reason. There should be a link between the reasons and the evidence/material available with the Assessing Officer. The "reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and not that the Assessing Officer should have finally ascertained the fact by legal evidence or reached a conclusion, as is determined and decided in the assessment order, which is the final stage before the Assessing Officer.

It has further been held that:

“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 financial year 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. 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.”

13. In the present case also the AO issued the notice u/s 148 of the Act only on the basis of information received from the Investigation Wing. Therefore, by following the ratio laid down by the Honøble Jurisdictional High Court in the aforesaid referred to order, the legal issue relating to reopening the assessment is decided in favour of the assessee and the assessment framed on the basis of notices issued u/s 147 r.w.s. 148 of the Act is quashed.

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

(Order Pronounced in the Court on 14/02/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 14/02/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR