

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "C" NEW DELHI**

**SHRI J.SUDHAKAR REDDY, A.M
AND SHRI C.M. GARG, JM**

**ITA No: 1464/Del/2013
AY : - 2002-03**

Hannu Marketing P.Ltd.
H 27, Udyog Nagar
Rohtak Road
Delhi 110 041

vs. ITO, Ward 12(3)
New Delhi

PAN: AABCH 0667 G

(Appellant)

(Respondent)

Appellant by : Mr. Gautam Jain, FCA and
Mr. Piyush Kr.Kamal, Adv.

Respondent by: Shri Amrit Lal, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal by the assessee directed against the order of the Ld.CIT(A)-VIII, New Delhi dated 31.01.2013 pertaining to the Assessment Year (A.Y.) 2002-03.

2. The assessee challenged the order of the first appellate authority both on the issue of validity of reopening of assessment as well as on merits of the addition.

3. We first consider the issue of validity of reopening of assessment.

4. We have heard rival contentions. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the orders of the authorities below we hold as follows.

5. The reasons for reopening are as follows.

“The assessee filed its return of income for the year under consideration vide receipt no.107 dated 30.9.2002 declaring loss of Rs.16,747/-. The same was processed u/s 143(1) on 31.10.2002.

An information regarding entry operators and their beneficiaries has been received through a CD from Investigation Wing/IDT(Inv.) New Delhi that the assessee has taken accommodation entry amounting to Rs.7,90,000/- from various entry operators as per details given below.

<i>Value of entry taken – Rs.</i>	<i>Date of entry</i>	<i>Entry taken from</i>	<i>Instrument no. of entry</i>	<i>Name of entry provider Bank</i>	<i>Name of beneficiary Bank</i>
4,00,000	02.03.2002	Rabik exports Ltd.	2286	Ratnakar Karon bagh	Union Bank of India, Paschim Bihar
3,90,000	04.03.2002	Fair N Square Exports P.Ltd.	1816179	Vijaya, Ramnagar	Union Bank of India, Paschim Vihar

On the basis of investigation made by the Investigation Wing/DIT(Inv.), New Delhi it has been found that the assessee has taken accommodation entry of Rs.7,90,000/- which is nothing but assessee’s own unaccounted money which has been routed back to it in the form of accommodation entry in the assessee’s account in Union Bank of India, Paschim Bihar. I have also perused various reports received from the Investigation Wing/DIT(Inv.), New Delhi and on that basis, I have reasons to believe that income of Rs.7,90,000/- has escaped assessment due to failure on the part of assessee company to disclose truly and fully all material facts necessary for completion of assessment.”

5.1. A perusal of these reasons demonstrate that the Assessing Officer has not independently applied his mind to the information received from the Investigation wing/DIT Investigation, New Delhi. He has simply based his reasoning on the report of the Investigation Wing. Such borrowed satisfaction cannot be the basis for the A.O. to form a belief that income subject to tax has escaped assessment.

5.2. The Hon'ble jurisdictional High Court in the case of Pr. Commissioner of Income Tax Vs. G&G Pharma India Ltd. (supra) in para 12 and 13 has held 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."

Thus it is clear that the basic requirement for reopening of assessment 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 was found to be missing when the AO proceed to reopen the assessment which is in nature of a post mortem exercise after the event of reopening of the assessment. Therefore the reopening of the assessment was found to be invalid as it does not satisfy the requirement of law that prior to the reopening of the assessment the AO has to apply his mind to the material and conclude that he has reason to believe that income of the assessee has escaped assessment. Applying the above proposition of law it leaves no doubt in the mind that in the case on hand the AO has reopened the assessment mechanically without application of mind to conclude that the said deposit in the bank account of the assessee constitutes the income of the assessee and the same has escaped assessment. In view of the facts and circumstances as well as the decisions relied upon by the AR, the reopening is in the case of the assessee is not valid and the same is quashed. Since the

reopening of the assessment held to be invalid therefore other grounds of the appeal become infructuous.”

Similar are the judgements by the Hon’ble Delhi High Court in many other cases.

5.3. Applying the propositions laid down in the above case law to the facts of the present case we hold that the reopening is bad in law. Hence we quash the assessment.

6. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 27th January, 2017.

Sd/-

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 27th January, 2017.

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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