IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No. 2122/Del/2008
AY: 2001-02

Smt. Priya C/o Sh. Vinod Kumar Goel Advocate 282, Boundary Road Civil Lines, Meerut PAN: ALDPK 2963 N	vs.	ACIT, Circle 2 Meerut

A n d

ITA No. 5505/Del/2015
AY: 2001-02

Smt. Priya Meerut	vs.	ACIT, Circle 2 Meerut

(Appellant) **(Respondent)**

Appellant by : Shri Vinod Kumar Goel, Adv.
Respondent by : Sh. T.Vasanthan, Sr.D.R.

ORDER

Both these appeals are filed by the assesee. ITA 2122/Del/2008 is filed by the assessee against the order of the Ld.CIT(A), Meerut dt. 17.3.2008 pertaining to the A.Y. 2001-02. ITA 5505/Del/15 is filed by the assessee against the penalty order. Of the Ld.CIT(A), Meerut dt. 25.8.2015.

2. Facts in brief:- The facts of the case as enumerated by the Ld.CIT(A) at paras 2 to 2.3 of his order are extracted for ready reference.

"2. The assessee is an individual being proprietor of M/s.Jindal Bulk Carrier. Return of income was filed on 30.10.2001 showing total income of Rs.5,03,425/-. Originally, the case was assessed u/s 143(3) on 2.9.2003 on the same as returned-income. Thereafter, case was considered u/s 263 of the I.T.Act by the CIT on the issue of rental income, but after verification, proceedings were dropped. Later, case was reopened u/s 147 on the basis of information that -

"The cash of Rs.9.53 lacks was deposited on 27.4.2000 in current account No.CA 2147 of Parshav Spinning Mills with Vijaya Bank, Ansari Road, New Delhi. This amount was transferred on the same date to CA3119 of Goyal Textiles Ind. Ltd. maintained in the same bank. From CA 3119 the same amount was transferred on 27.4.2000 itself to OD 99037 of Shri Sanjay Mohan Agarwal in Vijaya Bank, Ansari Road, New Delhi, where from the DD No. 969895 dated 27.4.2000 for Rs.9,5l,000/- was issued in favour of Priya of Meerut."

2.1. During further assessment proceedings, the assessee was examined. The assessee submitted that Shri Sanjay Mohan Agarwal of Delhi, who has since expired, was the best friend of her husband. There was no business relation. Shri Sanjay Mohan Agarwal had gifted Rs.9,5I ,000/- out of natural love and affection, and this gift was duly declared by the assessee in the return, after personal examination of the donor. The assessee was not aware of the transaction, through banking channels as occurred in the account of Shri S.M.Agarwal before giving gift to the assessee.

2.2. The AO has mentioned and. reproduced the relevant excerpt of the statement of Shri Sanjay Mohan Agarwal, recorded during original assessment proceedings by the previous AO on 7.4.03 wherein Shri Sanjay Mohan Agarwal had confirmed elaborately that he had made this gift.

2.3. The AO, however, held that as equivalent amount of money was deposited in cash in an account on a particular date and within the same day, it travelled through another intermediatery account, to one more account from which on the same day equivalent amount was gifted; this was a direct evidence of a sham transaction. The AO added the gift as unexplained credit u/s 68 of the Act."

3. Aggrieved the assessee carried the matter in appeal without success. Further aggrieved the assessee is before me on the following grounds.

"1. That notice u/s 148 issued to the assessee was never served to the assessee because the assessee has shifted from Meerut to Delhi and also filing the return of income regularly in Delhi by surrendering old PAN Hence, proceeding u/s 148 is bad in law and Act does not provide any assessment u/s 148.

2. That the proceeding u/s 147 is nothing but change in opinion only because the assessee already furnished material facts before the A.O. and on the basis of material facts passed the assessment after proper examination of the facts and also case examined by CIT Meerut u/s 263 of I.T. Act 1961. Therefore, on the basis of change in opinion reopening of assessment is out of jurisdiction.

3. That refer to the para 7(iv)(iii) of the A.O. u/s 148 dated 27-12-2006 the mistake of notice u/s 142 dated 04-12-2006 were corrected but it is wrong. Now a person can attend a date on 21-07-2006 of a notice issued u/s 142(i) dated 04-12-2006 for the A.Y. 2004-05 on a rough paper. Ld. CIT (A) has not given any finding on this ground.

4. That the A.O. has passed the impugned order overruling the higher authorities decision. Ld.CIT (A) has not given any finding on this ground.

5. That refer to the para 9 pages 5 of A.O. u/s 148 dated 27-12-2006. The CIT Meerut has dropped the proceedings u/s 263 on 25-10-2005. Finding given by Ld CIT(A) Meerut is erroneous.

6. That the addition made by Ld. A.O. of Rs. 9,51,000/- treated as same transaction is without any basis. Hence, addition made by Ld. A.O. is arbitrary, unjust and illegal. Ld. CIT(A) decide this issue with a new fact which is never disclosed to the assessee by A.O. or CIT(A). Hence, order of CIT(A) is against the principal of natural justice.

7. That the assessee has right to add/delete or modify any grounds during the appeal proceeding."

4. I have heard Sh.T.Vasanthan, Ld.Sr.D.R. on behalf of the Revenue and Shri Amit Goel, the Ld.Counsel for the assessee. On a careful consideration of the facts and circumstances of the case, material placed on record, orders of lower authorities, case laws cited, I hold as follows.

5. The Ld.Counsel for the assessee submitted that the issue in question stands covered in favour of the assessee by an earlier order of the ITAT Delhi Benches SMC in ITA 2966/Del/2007 for the A.Y. 2001-02, in the case of Shri Vinod Bahl vs. ITO, Ward 25(3), New Delhi vide order dt. 31st August, 2007.

6. The Ld.D.R. opposed these contentions.

7. On a careful consideration of the facts and circumstances of the case, I find that the Tribunal in its order in the case of Shri Vinod Bahl vs ITO in ITA no. 2966/Del/2007 (supra) from para 12 to para 17 held as follows.

"12. I have given careful thought to the submission of the parties. In large number of cases through investigations and inquiry, the department has found that many companies and individuals indulge in hawala transactions. On the basis of admission/statement or other information, cases of the assessees having credit entries from name lenders or hawala dealers are reopened to add back hawala entries. These cases broadly fall in the two categories:

1) where statement or admission of name lenders/hawala dealers are 'general' that they carried only bogus transactions. Such information is sent to different officers to take action/proceedings u/s 147/148 of the Income-tax Act on the basis of such statements and confession. For illustration, may refer to case of Chhugamal Rajpal Vs S.P. Chaliha & Others 79 ITR 603, (S.C.) where action was initiated on the basis of Circular issued from the Office of Commissioner of Income Tax, Bihar and Orissa which stated that three persons named in that Circular were merely name lenders and therefore, transactions carried by them were bogus and proper investigation regarding loan from such persons was necessary. When, on the basis of above Circular, reassessment proceedings u/s 147/148 of the Income tax Act were initiated which were subsequently challenged up to Supreme Court. Their Lordships of Supreme Court held that the Circular by itself: without any other material and investigation, could not afford any basis to the I.T.O. for having a reasonable belief that income chargeable to tax had escaped assessment. Likewise, in the case of ITO Vs Lakhmani Mewal Das 103 ITR 437(S.C.) where again the creditor allegedly had confessed that he had lent his name only and there was nothing to show that the confession related to any advance to the assessee or even the period during which name and not loan was sent and where it was not shown through any material that confession pertained to the specific period, the subject matter of assessment which was sought to be reopened. Their Lordships characterized such information as "wholly vague and indefinite, far-fetched and removed" which could not afford any basis for entertaining reasonable belief to initiate reassessment proceedings u/s 147/148.

2) In the second category are cases like Phool Chnnd Bajrang Lal & Another Vs ITO 203 ITR 456 (S.C.), where Income Tax Officer, subsequent to the completion of original assessment and on making an inquiry from the Income Tax Officer of the creditor, found that loan of Rs.50,OOO shown in account of the creditor with the assessee was really not loan paid in cash but only hawala to cover up a bogus transaction. The provisions of Section 147 were

correctly held to be applied. It was held by their Lordships of Supreme Court that information received was specific in nature and reliable in character which goes to expose the falsity of claim or statement made by the assessee at the time of original assessment. Their Lordships of Supreme Court, after taking into account decision of Chhagamal Rajpal and Lakhnami Mewal (supra) held that two situations were distinct and different. Whereas on the basis of general information, reopening of assessment is not valid. However, it was valid where reopening was based on specific information passed to the assessing officer.

13. The aforesaid decisions given in relation to reopening of assessment under sections 147/148 of I.T.Act are good guidance for deciding case in hand on merit. Legal effect of quality of information cannot work to the advantage of the revenue where information is the basis of assessment rather than reopening of assessment proceedings. In fact, stronger evidence is needed to justify addition on merit against evidence for action u/s 147/148. The reopening of proceeding u/s 147/148 in this case has not been challenged as it was done after amendment or Section 147 w.e.f. 1.4.89.; Therefore, I proceed to consider the case on merit of the addition.

14. The Assessing Officer had quoted letter from DDI who advised him to take proper action u/s 148 of the l.T.Act. The contents of letter of DDI were not challenged before me and therefore I cannot doubt that the said Shri Sanjay Mohan Agarwal might have indulged in hawala transaction as held by the Assessing Officer and other revenue authorities. However, it is not shown that said Shri Sanjay Mohan made any statement regarding the Cheque given to the assessee for Rs.3 lakh. There is no material on record to show that the cheque was bogus and only a hawala entry. It is an admitted position that said Cheque was realized and credited to the bank account of the assessee. Therefore, prima facie, the genuineness of the entry is clearly established on record. Assessee has further placed on record copy of return of Shri Sanjay Mohan at page 30 of the paper book to show that Shri Sanjay had submitted return for AY 2000-01 showing gross income of Rs.1,39,228 and was an income tax assessee. The balance sheet of the relevant period of Shri Sanjay Mohan shows debts and assets worth crores, and, therefore, his capacity to advance Rs.3 lakh to the assessee cannot be doubted on the material on record. The credi entry of loan and repayment of the same has also been accepted by Shri Sanjay Mohan Agarwal as per copy of confirmation placed on record. The Id. Commissioner of Income-tax (Appeals) has held the said copy to be inadmissible evidence but I do not know on what basis such a finding has been recorded. It is settled law that strict rules of Evidence Act are not applicable to the income tax proceedings. Copy of a document is admissible in I.T. proceedings. It is not shown that when such copy was produced before the Assessing Officer, any objection was raised. Assessing

Officer had demanded production of the original which could not be produced. It is further not shown that Commissioner of Income-tax (Appeals) during appellate proceedings at any stage demanded original confirmation and assessee had failed to produce the same. As noted earlier, assessee had the original in possession and had shown the same to me. As objection to the production of the copy was not raised by the Assessing Officer at the first instance, it could not be raised at appellate stage by Id. Commissioner of Income-tax (Appeals) and, that too, without insisting on production of the original. In the above circumstances, I hold that Shri Sanjay Mohan Agarwal confirmed the transaction in question as a loan transaction which was received back by him as pleaded by the assessee.

15. It is therefore to be seen that as against above evidence which clearly establish and prove genuineness of credit of Rs. 3 lacs, what has revenue done to hold the credit as bogus and hawala? They collected information that Shri Sanjay Mohan was giving large scale hawala entries. The information is general in character and rail in the first category mentioned above. Other evidence that several donees/loanees surrendered several gifts/loans from Shri Sanjay Mohan is no evidence to materially affect the case of the assessee. Therefore, the case of assessee can not be taken as disproved.

16. There is another controversy between the parties whether the amount given was a gift or a loan. The assessee claimed it to be interest free loan which was returned to Shri Sanjay Mohan Agarwal. The revenue, on the other hand, has contended that it was a fictitious gift made to the assessee in return for receipt of equal amount plus commission in cash~ In my opinion, if credit entry is proved as genuine, the controversy loses its significance. Moreover, the revenue has not established that the assessee paid cash to obtain gift. Even the assessee is not shown to have been examined. The Assessing Officer further refused to give basis for action against the assessee as the same was belatedly sought from him. As regards entry in the books of account, it has been found that the credit is neither recorded as loan nor gift in the books of account of the assessee. The books of accounts are also not made in the regular course of business. In fact, assessee carries on no business and in the relevant period had income from salary, interest etc. In such circumstances, no adverse inference can be drawn against the assessee. On the other hand, the case of the assessee is fully supported by confirmation from Shri Sanjay Mohan Agarwal available at page 6 of the paper book. In the books of Sanjay Mohan, copies of which have been placed on record, out of total loans and advances of Rs.41 crore, more than Rs.38 crore do not bear .any name and are shown under the head "others". From above entry, it is difficult to hold that in the books of account of Shri Sanjay Mohan, loan of the assessee was not reflected. It might be true that several persons to whom

gifts were given by Sanjay Mohan surrendered those gifts and accepted gifted amount as their income. But that, in my view, cannot be taken as good material to establish that credit entry in account of the assessee was bogus or hawala entry and that the same was obtained by making payment in cash to late Shri Sanjay Mohan. The Id.DDI, while informing the Assessing Officer about hawala transactions carried by Shri Sanjay Mohan, had advised the Assessing Officer to take action U/S 148 of the Income-tax Act. Further inquiries and investigation in accordance with law were required to be carried by the Assessing Officer of the assessee. But the same, unfortunately, were not carried as noted above. "General" information was taken as good enough to make addition. The other material which their Lordships or Supreme Court called "specific' material was required to be collected. As noted earlier, general material collected about a creditor to be hawala is not sufficient even to validly initiate a reassessment proceeding, It cannot be good material to sustain an assessment. Therefore, on facts and circumstances of the case, it is not possible to hold that genuineness of entry, creditworthiness of the creditor etc. has not been established on record. In the light of above facts and circumstances, I do not see any good ground to sustain addition of cash credit or commission of Rs.1S000 allegedly paid by the assessee to obtain fictitious entry. These are directed to be deleted.

17. In the result, appeal of the assessee is allowed."

8. Respectfully following the decision of the Co-Ordinate Bench, I am of the considered opinion that the addition in question cannot be sustained. Hence I allow ground no.6 of the assessee.

9. As we have granted relief on merits, we do not go into the issue of reopening which is challenged from ground no.1 to 5 by the assessee, as it would be an academic exercise.

10. In the result ITA 2122/Del/08 is allowed.

11. ITA 5505/Del/15 is filed by the assessee directed against the order of the Ld.CIT(A), Meerut dt. 25.8.2015 for the A.Y. 2001-02, wherein the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 was upheld.

12. In view of our decision in ITA 2122/Del/2008, wherein I have deleted the entire addition, I cancel this penalty. In the result appeal no.ITA 5505/Del/15 by the assessee is allowed.

13. In the result, both the appeals ITA 2122/Del/08 and ITA 5505/Del/15 filed by the assessee are allowed.

Order pronounced in the Open Court on 23rd December,2015.

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 23rd December, 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