

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE : JUDICIAL MEMBER

ITA no. 5744/Del/2013

Asstt. Yr: 2005-06

Income Tax Officer,
Ward 25(1), New Delhi.

Vs. Mr. Dinesh Bansal,
C/O Krishan Lal Dinesh Kumar,
148B, G&JU-Block,
Pitampura, Delhi-110034.
PAN: AGEPB 8000 H

AND

C.O. No. 108/Del/2014

(In ITA no. 5744/Del/2013)

Asstt. Yr: 2005-06

Mr. Dinesh Bansal,
C/O Krishan Lal Dinesh Kumar,
148B, G&JU-Block,
Pitampura, Delhi-110034.

Vs. Income Tax Officer,
Ward 25(1), New Delhi.

(Appellant)

(Respondent)

Revenue by : Shri Neehar Ranjan Pandey Sr. DR
Assessee by : Shri Neeraj Jain CA &
Shri P.K. Misra CA .

Date of hearing : 17/12/2015.

Date of order : 03/02/2016.

ORDER

PER S.V. MEHROTRA, A.M:

The captioned appeal by the revenue and the cross-objection by the assessee are directed against the order dated 02.08.2013 passed by the ld.

CIT(A),XXIV, New Delhi in appeal no. 215/12-13, relating to A.Y. 2005-06.

2. Brief facts of the case are that the assessee had filed return of income declaring income at Rs. 1,97,413/-, which was accepted u/s 143(1). Subsequently information was received from DI(Inv.) that due to search carried out in the case of Sh. Navneet Kumar Jain and others on 26.4.2010 it transpired that they were engaged in providing accommodation entries in the form of bogus sales bill. The modus operandi suggested that they issued bogus bills from their concerns to the beneficiaries and took cheques and after deducting their communication cash was returned to the beneficiaries. The list included the name of assessee, which showed that assessee had taken accommodation entries of Rs. 48,60,000/- from Navneet Kumar Jain & Sons and Rs. 13,88,000/- from Vee Kay International. Accordingly, AO issued notice u/s 148 and since the assessee did not file any explanation, made addition of Rs. 62,48,000/-.

3. The Id. CIT(A) upheld the reopening made by AO, inter alia, observing as under:

“5. I have carefully considered the submissions made by the Ld. AR and have gone through the assessment order. The first ground of appeal is general in nature and, therefore, requires no specific comments. In the second ground of appeal, the appellant has contested that the order u/s 143(3)/148 was

passed by the ITO, Ward 26(4) who was having no jurisdiction over the appellant. It is observed that the case of the appellant was transferred from, ~TO, Ward 25 (1) to ITO Ward 26(4) by the appropriate authority. Therefore, the contention of the appellant that the assessment order was passed without jurisdiction have not merit and the same is hereby rejected.

In the third and fourth grounds of appeal, the appellant has contested the reopening of the assessment. The Id. AR has contended that the case of the appellant was reopened by the AO without applying his mind and independently verifying the information received from a third party i.e. DIT(lnv), New Delhi. It is observed that during the course of search action carried out in the case of Sh. Navneet Kr. Jain and his son, Vaibhav Jain along with Jaquar Group, on 26.4.2010, they have accepted that they were engaged in providing accommodation entry in the form of bogus sale bills. These entries were provided directly or through an agent. The entry providers had floated about 37 proprietorship concerns in the name of the family members, employees, and themselves to conduct this business. They issued bogus bills from the concern to the beneficiaries and took cheques against them. These cheques were deposited in the bank account of the respective concern. Subsequently, cash was withdrawn and the same was returned to the beneficiaries after deducting their commission. The list of beneficiaries who took accommodation entry from Sh. Navneet Kr. Jain and his group concern included the name of the appellant. The appellant has taken accommodation entry of Rs.48.60 lacs from the account of MIs Navneet Kr. Jain & sons (a/c NO. 1005460) and of Rs.13,88,000/- from the a/c of M/s Vee Kay International (A/c No.941803) totaling to RS.62.48 lacs. On the basis of receipt of information, the AO recorded his satisfaction/ reason for reopening of the case and a notice was issued u/s 148 of the IT Act to the appellant. Thus, there is a live connection between the information in reasons

recorded and additions made by Assessing ~Officer. From the above facts, it is also clear that the AO had definite information such as the name of accommodation entry provider, its bank account and the modus operandi of providing accommodation entry in respect of the appellant. It is also observed that the case of appellant for the relevant A.Y. was only processed u/s 143(1) and it was not subjected to scrutiny earlier. For reopening of a case u/s 147/148, it is worthwhile to mention that only the prima facie information is required and it need not require detailed investigation regarding the involvement of an assessee in escapement of income. Reliance in this regard is placed on the decision of Hon'ble Apex court in the case of CIT vs: Rajesh Jhavari Stock Brokers (P) Ltd. 291 ITR 500(SC) wherein the Hon'ble Supreme Court held that in determining whether the commencement of the reassessment proceedings are valid, it is only to be seen that there was a prima facie some material on the basis of which the Department could reopen the case. The sufficiency/correctness of the material is not a thing to be considered at that stage. In the present case, after receipt of information about the appellant from the Investigation Wing, the AO has duly applied his mind and recorded the reasons for reopening of the case of the appellant. The AO has also provided during the course of reassessment proceedings, the copy of reasons recorded to the appellant and the appellant has not raised any objection during the course of assessment proceedings about the reopening. of the case and participated in the assessment proceedings without any grievance/ objection.

The case laws relied upon by the appellant in this regard are distinguishable on the facts from the case of the appellant. In the case of CIT vs Atul Jain(supra) , the AO had only a vague information that the assessee had taken a bogus entry of capital gains by paying cash along with premium, for W taking a cheque of that amount. The information did not indicate the

source of capital gains. The details of shares and parties to the transaction were not recorded in the satisfaction note of the AO. The information supplied to the AO was scanty and extremely vague. The AO had even failed to record his satisfaction about the correctness and merely accepted the truth of the vague information in a mechanical manner. Similarly, in the other case of CIT v/s SFIL Broking Ltd(supra), the AO had received information from the Deputy director of Income Tax(lnv) along with directions to issue notice under section 148. The AO had also received a direction from Add!. CIT to initiate proceedings u/s 147 in respect of the assessee concerned. On these facts, the Hon'ble court held that these directions cannot be considered as the reasons for proceedings u/s 147 1148 of the act and the AO had clearly failed to apply his mind to the information in arriving at independent belief that Income had escaped assessment. In the other case of Lakshya Exim pvt. Ltd. v/s ITO , it was noticed by the Hon'ble ITAT that there was no discreet nexus or live link between the information received and the satisfaction recorded by the AO. The AO had entertained a belief merely on the basis of unfounded and non-existent information supplied by DC IT, CC-6, Kolkata, without making any effort to satisfy himself as to whether the information received from the office of the DCIT,CC-66, Kolkata is based on some relevant material or not. In the case of CIT v/s Indian Sugar and General industry Export Import Corp Ltd (supra), the Hon'ble High court of Delhi found that the case of the assessee was reopened on the basis of objection raised by the audit party and the AO had failed to apply his mind to the objections raised by the audit. On these fac~; and circumstances, the Hon'ble court held that the reasons disclosed was nothing but merely a change of opinion.

As discussed earlier, the facts and circumstances of the present case of the appellant are clearly distinguishable from

the facts of the cases relied upon. by the appellant. In the present case, there is live link or direct nexus between the information received and satisfaction recorded for reopening of the case u/s 147/148 of the IT Act. Therefore, the contention of the appellant regarding the reopening of the case is hereby rejected.”

4. We are in agreement with these findings of Id. CIT(A), because the reopening has been done on the basis of specific information in possession of AO, on the basis of which he prima facie had reason to believe that income had escaped assessment. Accordingly, the ground raised by the assessee in its cross objection is rejected.

5. Before Id. CIT(A) the assessee filed copies of letter dated 19.12.2012 and confirmation from the parties namely, Navneet Kumar Jain & Sons and Vee Kay International. From these confirmations, it transpired that during the period relevant to AY 2005-06 the assessee had made total purchases from these parties as under:

Navneet Kumar Jain & Sons	Rs. 1,77,00,076/-
Vee Kay International	<u>Rs. 1,44,63,206/-</u>
Total:	<u>Rs. 3,21,63,282/-</u>

6. The assessee pointed out that out of these total purchases, the AO had only considered the purchases to the tune of Rs. 62,48,000/- as bogus purchases.

7. It was further pointed out that the AO had accepted the trading results filed vide profit & loss a/c. Further, complete quantitative details of purchases and sales made by the assessee were also filed vide Annexure attached to the tax audit report and the same had not been controverted by the AO. Therefore, the sales and purchases in quantitative and financial terms had been accepted. It was further submitted that on one hand the AO had accepted the sales and on the other hand he held that purchases were bogus, which was contradictory stand because there could not be any sales without purchases. Ld. CIT(A) called for following documents in order to verify the assessee's contention.

- a) Copy of sales tax assessment order.
- b) Copies of sales bills along with supporting documents evidencing movement of goods.
- c) Details of trading account bifurcating the purchases made from the above parties and other parties and the corresponding sales and gross profit earned and declared by the assessee.
- d) Copies of bank accounts from where the payments for purchases made.

8. The assessee filed copies of sales bills along with copies of GRs issued by Roadways carriers and other statutory documents such as form C & H, evidencing the movement of goods inter state and out of country (for

exports), which had also been filed before the Sales tax authorities for assessment purposes. The assessee had also filed stock movement details and stock summary for the FY 2004-05. The assessee had also prepared a detailed trading account, duly bifurcating the purchases from the alleged accommodation entry providers and other parties and the gross profit earned on corresponding sales.

9. On consideration of these documents, Id. Cit(A) observed that the sales of the assessee were genuine and he further observed that since the sales had taken place, therefore, there must also be purchases.

10. As regards purchases, Id. CIT(A) observed that AO had taken a contradictory stand by treating purchases to the extent of Rs. 62,48,000/- out of Rs. 3,21,63,282/- as bogus. Considering the total sales being of Rs. 5,38,89,008/-, Id. CIT(A) observed that he was of the opinion that the assessee had indulged in arranging accommodation entries in the form of purchases to substitute his purchases from some other source which had been utilized to make sales. He observed that assessee had used the accommodation entries to cover up the purchase from some other parties at lower rates resulting in inflation of purchases of suppression of gross profit rate declared before the department. He noted that the assessee had earned gross profit rate of 7.85% on the manufacturing operations and had declared

gross profit rate of 2.23% on the sales effected utilizing the purchase of Rs. 3.21 crores arranged from the entry operators. He, therefore, determined the G.P. rate of 7.85% on entire sales made by the assessee and accordingly restricted the addition to Rs. 18,49,921/- as against Rs. 62,48,000/- made by AO. Being aggrieved with the order of Id. CIT(A) the department is in appeal before us and has taken following grounds of appeal:

“On the facts and circumstances of the case and in law CIT(A) has erred in-

1. Restricting the addition of Rs. 32,48,000/- to Rs. 18,49,921/- made by AO whereas the assessee failed to prove the genuineness of the so called purchases claimed to have been made from M/s. Navneet Kumar Jain & Sons and M/s. Vee Kay International respectively.

2. Admitting additional evidence without granting opportunity to the Assessing Officer to counter the same.

3. The appellant craves the right to add, alter or amend any ground of appeal.”

11. We have considered the rival submissions of the parties and have perused the material available on record. In our considered opinion, the reasoning given by Id. CIT(A) does not require any interference because he has clearly demonstrated that the sale to the extent of Rs. 5 crores and odd could not have taken place without there being substantial purchases.

However, keeping in view the fact that specific information was received regarding provision of accommodation entries by these two suppliers to assessee, he rightly concluded that the entire effort of the assessee was to cover up the purchases from some other parties at lower rates, resulting in inflation of purchases or suppression of gross profit rate. He has rightly applied the g.p. rate of 7.85% on the entire sales. We, accordingly, do not find any reason to interfere with the order of Id. CIT(A). It is pertinent to observe that the assessee has not filed any cross appeal against the addition of Rs. 18,49,921/- sustained by Id. CIT(A).

12. In the result, revenue's appeal as well as assessee's cross objection stand dismissed.

Order pronouncement in open court on 03/02/2016.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 03/02/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER