

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E': NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER,

ITA No. 5510/Del /2012
Assessment Year: 2003-04

M/s M.G. Portfolio Limited
WZ-447, 3rd Floor, M.S. Block
Hari Nagar, Delhi.

Vs.

The I.T.O
Ward 6(1)
New Delhi

PAN : AACCM 7473 N

[Appellant]

[Respondent]

Date of Hearing : 15.02.2016
Date of Pronouncement: 19.02.2016

Assessee by : Shri Pradeep Dinodia, CA
Shri R.K. Kapoor, CA

Department by : Shri P. DAM Kanunjna, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A)-IX, New Delhi dated 31/08/2012 for A.Y 2003-04 in first appeal No. 106/10-11.

2. At the outset of the opening of the hearing, both the rival parties agreed that Ground Nos. 2 and 3 of the assessee challenging the reopening of assessment u/s 147/148 of the Income tax Act, 1961 [for short, 'the Act'] may be taken up for adjudication first.

3. We have heard the rival submissions and have perused the relevant material on record. The ld. AR firstly drew our attention towards page 1 of the assessment order and submitted that the AO has noted the reasons for reopening of assessment and initiation of proceedings u/s 147 of the Act in the assessment order wherein he mentioned that the information has been received from the Directorate of Income tax [Inv], New Delhi that during the relevant A.Y this assessee had received cheque amounts in the nature of accommodation entry and in pursuance thereto, notice u/s 147 of the Act dated 26.3.2010 was issued to the assessee and reasons for reopening were provided to the assessee on 12.10.2010.

4. The ld. AR vehemently contended that after mentioning that this assessee had received certain amount, which is in the nature of accommodation entries. Thereafter, the AO has tabulated 7 parties who were identified as entry providers to the assessee. Placing

reliance on the recent decision of the Hon'ble Jurisdictional High Court in the case of Oriental Insurance Company Ltd Vs. CIT reported in 378 ITR 421 [Del], the ld. AR pointed out that reopening done on the basis of erroneous facts is illegal and bad in law. The ld. AR further placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Tupperware India Pvt. Ltd reported in 236 Taxman 494 [Del] submitted that the requirements of section 147 of the Act cannot be dispensed with even in a case where assessment made u/s 143(1) of the Act is sought to be reopened. The ld. AR finally submitted that the basis of information available at assessee's paper book pages 79 to 98 would reveal that even the name of the assessee does not appear anywhere, hence the contention is required to be declared as null and void on the sole ground only as reasons recorded itself has no basis.

5. Replying to the above, the ld. DR placing reliance on the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Nova Promoters and Finlease Pvt. Ltd reported in 342 ITR 169 [Del] contended that the information from Investigation Wing of the department can be sole basis for reopening of assessment and initiation of proceedings u/s 147 of the Act and notice issued u/s 148 of the Act in this regard should be held as valid. However, on specific

query from the bench, the ld. DR could not assist us whether the name of the assessee appeared in the information received by the assessee from Investigation Wing of the department which is available at pages 79 to 98 of the assessee's paper book.

6. Placing rejoinder to the above contentions of the ld. DR, the ld. AR submitted that the Hon'ble Jurisdictional High Court in its recent judgement in the case of Jetlite India Vs. CIT reported in 379 ITR 185 by referring to the judgment of CIT Vs. Lovely Exports Pvt. Ltd reported in 299 ITR 268 and thereafter CIT Vs. Nova Promoters [supra] contended that the AO without conducting any enquiry proceeded to initiate reassessment proceedings and making addition in the hands of the assessee cannot be held as correct and justified in invoking the said provisions and in the present case, the AO has not conducted any enquiry regarding material received from Investigation Wing of the department as to whether the name of the assessee is appearing therein or not.

7. On a careful consideration of the above facts and circumstances of the case as well as the submissions of the rival representatives, we find that the AO initiated reassessment proceedings and issued notice

u/s 147/148 of the Act against the assessee on 26.3.2010 by recording following reasons:

“The investigation wing of the Income Tax Department had unearthed a huge money laundering mechanism wherein it was established that bogus accommodation entries were being provided/taken. These accommodation entries are received in lieu of payment of cash of equivalent amount plus commission thereon to the entry operator. For obvious reasons, these cash transactions are not routed through the books of account of the assessee. In this case, information has been received from Directorate of Income Tax, (Investigation), New Delhi that during the relevant assessment year, this assessee had received the following cheque amount(s) in nature of accommodation entry:

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. OF ENTRY GIVING ACCOUNT
1000000	30871	12-Mar-03	MAESTRO MKT. & ADV.	KVB	KAROLBAGH	CA 2815
1000000	TO CLG : 00254866	12-Mar-03	FAIR SQUARE EXPORTS P. LTD.	SB INDORE	ROHINI	50058
500000	257106	25-Mar-03	PARKASH PUNIT COMMERCE & CONSUL.	CORPN BANK	PASCHIM VIHAR	52364
700000	257218	25-Mar-03	RUBIK EXPORTS LTD.	CORPN BANK	PASCHIM VIHAR	52199
1000000	O 29936	15-Mar-03	POLOLEASING & FINANCE P. LTD.	VIJAYA	RAMNAGAR	2846
400000	309647	31/3/2003	NU LOOK FINANCE AND LEASING LTD	ALLAHBAD BANK	OKHLA	106974
500000	450654	15/2/2003	VED FINLEASE PVT LTD	ALLAHBAD BANK	OKHLA	106973

Therefore, I have reason to believe that an income of Rs.51,00,000/- plus commission @ 2% thereon amounting to Rs. 1,02,000/-, totaling to Rs.52,02,000/- has escaped assessment during the assessment year. On the basis of this information, I have reason to believe that the incomes described above have escaped assessment and the case is fit for issuing. Notice u/s 148 of Income Tax Act, 1961.”

Further, we perused the information received by the AO from the Investigation Wing available at pages 79 to 98 of the assessee's paper book and on careful perusal of the same, it is vivid that the name of the assessee is not appearing in this material. Hence, it can safely be presumed that the AO in the reasons wrongly stated that the assessee had received cheques in the nature of accommodation entry as per information received from the Director of Income-tax [Inv], New Delhi. In the light of the above facts, when we consider the dicta laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Oriental Insurance Company Ltd [supra] then we note that their Lordships categorically held that the condition precedent for issuance of notice u/s 148 of the Act is that there must be reason to believe for the AO that the income had escaped assessment and reason to believe must be based on cogent material and notice base on erroneous assumption of facts, the reassessment proceedings pursuant thereto are not valid.

The relevant paragraph of the judgment of Hon'ble Jurisdictional High Court of Delhi is being reproduced for the sake of completeness in our conclusion, which reads as under:

“12. The assumption that the Assessee had not credited the profits in question to the Profit and Loss Account is also, admittedly, factually incorrect. Thus, the reasons which led the AO to form a belief that income of the Assessee had escaped assessment are admittedly based on palpably incorrect assumptions. It is well established that reasons to believe that income had escaped assessment is a necessary precondition for the AO to assume jurisdiction. Clearly, it would be difficult to sustain that this pre- condition is met if such reasons to believe that income of an Assessee has escaped assessment are based on palpably erroneous assumptions. The reason to believe must be predicated on tangible material or information. A reason to suspect cannot be a reason to believe; the belief must be rational and bear a direct nexus to the material on which such a belief is based. In the present case, the very assumption on the basis of which the AO is stated to have formed his belief that the Assessee's income had escaped assessment has been found to be erroneous. There was no basis for the AO to assume that the Assessee had not credited the profits from the sale of investments, which are alleged to have escaped assessment in its Profit and Loss account.

13. *Before the Tribunal, the Revenue had contended that the errors in the reasons recorded were minor errors, which did not detract from the fact that income had escaped assessment. In our view, this contention is without merit as reasons to believe that income had escaped assessment is a necessary pre-condition which enables the AO to assume jurisdiction to proceed further. In the event such reasons are found to be erroneous, the AO would not have the jurisdiction to make an assessment and any proceedings initiated on the basis of palpably erroneous reasons would be without authority of law. Therefore, even if it is assumed that, infact, the Assessee's income has escaped assessment, the AO would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the assessment, the question of assessing or reassessing income under [Section 147](#) of the Act would not arise.*

14. *Thus, in our view, the proceedings under [Section 147](#) of the Act are liable to be quashed as being without jurisdiction.”*

8. In the present case the AO has not complied with the precondition for reopening of assessment and issuance of notice u/s 147/148 of the Act and the proceedings have been initiated and notice

has been issued without application of mind and without even perusal of the information received from the Directorate of Information [Inv.] and which shows non application of mind and in this situation we are inclined to held that at the time of initiation of proceedings and issuance of notice, the AO has no reason to believe that the income had escaped assessment and the AO proceeded with incorrect assumption of facts and without any basis to initiate proceedings of reassessment u/s 147 of the Act and for issuance of notice u/s 148 of the Act which is not sustainable in the facts and in the light of the dicta laid down by the Hon'ble Jurisdictional High Court in the case of Oriental Insurance Company Limited [supra]. At this stage, we respectfully note the dicta laid down by Hon'ble Jurisdictional High Court of Delhi in the case of Tupperware India Pvt. Ltd [supra] wherein it was also held that the erroneous reasons cannot be improved in the re assessment order passed u/s 143(3) r.w.s 147 of the Act. Finally on the basis of foregoing discussion we have no alternative but to hold that reopening of assessment and issuance of notice u/s 147/148 of the Act was not a valid assumption of jurisdiction which was void ab initio and cannot be held as sustainable and the same deserve to be quashed and we order accordingly. Accordingly, Ground Nos. 2 and 3 of the assessee are allowed.

9. Since by the earlier part of this order we have quashed reassessment proceedings and issuance of notice u/s 147/148 of the Act being without valid jurisdiction and bad in law, therefore, the other grounds of the assessee on merits become academic and infructuous and we dismiss the same being infructuous without any adjudication.

10. In the result, the appeal of the assessee is allowed on legal grounds in the manner as indicated above.

The order is pronounced in the open court on 19.02.2016.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(C.M. GARG)
JUDICIAL MEMBER**

Dated: 19th February, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi