

आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष
Before Shri Joginder Singh, Judicial Member,**

**ITA No.1879/Mum/2014
Assessment Year: 2004-05**

Classis Shares & Stock Broking Services Ltd. Radha Bhavan, 1 st Floor, 121, Nagindas Master Road, Mumbai-400023	बनाम/ Vs.	ACIT, Central Circle-40, Aayakar Bhavan, M.K. Marg, Mumbai-400020
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No.AACCC5745P		

निर्धारिती की ओर से / Assessee by	Shri Rajiv Khandelwal
राजस्व की ओर से / Revenue by	Shri P.Daniel-DR

सुनवाई की तारीख / Date of Hearing	10/03/2016
आदेश की तारीख / Date of Order:	11/03/2016

आदेश / ORDER

The assessee is aggrieved by the impugned order dated 22/01/2014 of the Ld. First Appellate Authority, Mumbai. The first ground raised in this appeal pertains to

reopening of assessment u/s 147/148 of the Act by contending that the notice u/s 148 is bad in law and needs to be quashed.

2. During hearing, the ld. counsel for the assessee, Shri Rajiv Khandelwal, advanced arguments which are identical to the ground raised by explaining that original assessment order was passed u/s 143(3) for which our attention was invited to page-1 of the paper book and the reasons recorded by the Assessing Officer (page-5 of the paper book). It was contended that no tangible material was available with him. Our attention was invited to pages 9 and 10 of the paper book containing ledger account and reconciliation available at page-9 of the paper book. It was also asserted that the reopening is beyond the period of four years but within six years and the ld. Assessing Officer was expected to reopen the assessment till March, 2011, which he has done. It was explained that the difference in the amount does not belong to this year as the difference arose in A.Y. 2001-02. The crux of the argument is that there was no escapement of income being the amount involved was no taxable. The ld. counsel clarified in A.Y. 2005-06, the same entry was passed in books of accounts on 01/04/2004 showing the same as prior period entry and the same was taxed in A.Y. 2005-06. On appeal, the ld. First Appellate Authority decided the issue in favour of the assessee for which my

attention was invited to page 20 of the paper book (relevant page 26 para 20).

2.1. On the other hand, Dr. P. Daniel, ld. Special Counsel for the Department defended the reopening and consequent addition by contending that firstly the assessee did not appear before the Assessing Officer and secondly no evidence was filed in support of its claim. The crux of the argument is that the factual matrix was not explained before the Assessing Officer.

2.2. I have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee company, at the relevant time, was engaged in the business of shares and securities. Original assessment u/s 143(3) of the Act was completed, determining the total income at Rs.89,819/-, as against the returned loss of Rs.89,820/-. The ld. Assessing Officer, on perusal of record, observed that in schedule-G of the balance sheet of M/s Triumph Securities ltd. (for F.Y. 2003-04), the assessee was sundry debtor to the extent of Rs.80,01,089/-, whereas, in the statement of account of the assessee, the unsecured loans, borrowed from M/s Triumph Securities Ltd. was shown at Rs.87,78,589/-, resulting into difference of Rs.7,77,500/-, which has to be treated as “undisclosed income” and is liable to brought to tax. After recording the reasons and getting approval u/s 151(1) of the Act, notice u/s 148 was

issued to the assessee. Thereafter, notice u/s 143(2) of the Act, dated 23/08/2011 was issued to the assessee. Since, the assessee did not appear before the Assessing Officer, therefore, again notice u/s 142(1) along with 271(1)(b) was issued to the assessee. The assessee attended the proceedings but asked for time to file the details. The assessee did not file the necessary details, therefore, the assessment was framed u/s 144 r.w.s 147 of the Act.

2.3. On appeal, before the ld. Commissioner of Income Tax (Appeals), the assessee preferred written submissions and appeared on various dates. Since, the assessee did not appear before the ld. Assessing Officer, the stand taken in the assessment order was affirmed. The assessee is in further appeal before this Tribunal.

2.4. Under the facts, narrated hereinabove and considering the arguments advanced before this Tribunal, fact remains that the same amount was taxed subsequently in A.Y. 2005-06. However, the ld. DR contended that it is not ascertainable whether the same amount was taxed. The Bench asked the ld. counsel for the assessee to explain the factual matrix. The ld. counsel, stated at bar that the amount of Rs.7,77,500/- is the same amount and was taxed subsequently in A.Y. 2005-06. Thus, considering the statement of the ld. counsel for the assessee at bar then the same amount cannot be taxed twice.

So far as, reopening u/s 147/148 is concerned, the relevant provisions of section 147 is reproduced hereunder for ready reference and analysis:-

“**147.** If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that

the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been under assessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”

2.5. If the aforesaid provision of the Act is analyzed with the facts of the present appeal, undisputedly, the assessee did not furnish the necessary details before the Assessing Officer in spite of providing opportunities to the assessee. In such a situation, the ld. Assessing Officer had reason to believe that income had escaped assessment. I am of the view that such belief was reasonable, because, the ld. Assessing Officer from Schedule G of the balance sheet of M/s Triumph Securities Ltd. (F.Y. 2003-04) found that the assessee is a sundry debtor to the extent of Rs.80,01,089/-, whereas, in the statement of account, the unsecured loans borrowed

by the assessee from M/s Triumph Securities Ltd. was shown at Rs.87,78,589/-, thus, he reasonably believed that the difference amount of Rs.7,77,500/- had escaped assessment. At the same time, the assessee did not appear before the Assessing Officer nor filed any details as required by the Assessing Officer, therefore, so far as, reopening is concerned, the ld. Assessing Officer was under a bona-fide belief that income has escaped assessment, therefore, the issue of reopening is decided in favour of the Revenue.

3. So far as, the next ground for making the addition of the same amount as undisclosed income u/s 68 of the Act is concerned, from page 9 of the paper book, it is noted that the entry is on account of dividend income which is at the relevant time was exempt u/s 10(33) (A.Y. 2001-02) and now u/s 10(34) of the Act. In A.Y. 2005-06, this entry was passed in books of accounts on 01/04/2004 showing the same as prior period entry and in A.Y. 2005-06, the Assessing Officer taxed the same amount, therefore, as mentioned earlier, the same amount cannot be taxed again. The claim of the assessee is further fortified by the fact that the ld. Commissioner of Income Tax (Appeals) decided the issue in favour of the assessee vide order dated 11/09/2008 (relevant page 26 of the paper book). The finding contained in para 20 is reproduced hereunder:-

“Similarly, the Assessing Officer has rightly taxed the dividend as income of the year. However, the same would be exempted u/s 10(34). The reasons given in para 15 above w.r.t. ground no.4 hold good in the matter. The Assessing Officer is directed to allow such exemption.”

It is also noted that the Tribunal in ITA No.4290 & 4229/Mum/2004, order dated 11/09/2007, in group concerns case namely M/s Triumph International Finance India Ltd. allowed similar claim, thus, in the absence of any contrary fact, I find merit in the contention of the assessee. Even otherwise, in para 16 of the order of the ld. Commissioner of Income Tax (Appeals) dated 11/09/2008, there is finding that in earlier year, the assessee received dividend income of Rs.7,77,500/- which is exempted u/s 10(34) of the Act. In para 17 of the aforesaid order, there is mention that the assessee received dividend income of Rs.7,77,500/- in the year 2001-02 which was exempt u/s 10(33) of the Act. In its written submission, the assessee explained vide note B(16) of Schedule-9, annexed thereto that the dividend of Rs.7,77,500/- pertain to financial year relevant to A.Y. 2001-02 and the Assessing Officer ought to have allowed the same as exempted. On the basis of material facts available on record and after considering the explanation from both sides and more specifically the assessee, the addition has been made merely on presumption. The assessee has satisfactorily explained the

genuineness of the impugned amount firstly, it was exempt income and secondly, it was offered for taxation in A.Y. 2005-06. Thus, there is no loss to the Revenue. Even otherwise, for making addition u/s 68 of the Act, the addition can be made, when no explanation is offered by the assessee with respect to nature and source thereof and further any explanation, if offered and found unsatisfactory in the opinion of the Assessing Officer, only then, it can be charged to tax or addition can be made. I find that the assessee has satisfactorily explained the nature, source and genuineness of the impugned amount, therefore, no addition is warranted u/s 68 of the Act. Thus, this ground is decided in favour of the assessee.

Finally, the appeal of the assessee is partly allowed in terms indicated hereinabove.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 10/03/2016.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11/03/2016

Shekhar, P.S/निजी सचिव

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai