

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1632/Del./2017
Assessment Year 2009-2010

Anant Concrete Products Pvt. Ltd., 226, Prem Puri, Railway Road, Meerut. PAN AACCA8060D	vs.	The Income Tax Officer Ward-1(1) Meerut.
(Appellant)		(Respondent)

For Assessee :	Shri Premjit S. Kashyap, C.A.
For Revenue :	Shri Kaushlendra Tiwari, Sr. D.R.

Date of Hearing :	03.11.2017
Date of Pronouncement :	08.11.2017

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), Aligarh, dated 11th January, 2017 for A.Y. 2009-2010.

2. Briefly the facts of the case are that assessee filed its original return of income on 16th September, 2009 at Rs.1,66,990 at Meerut. Later on, information was received from DIT (Inv.), New Delhi that search under section 132 of the Act had been conducted by the Investigation Wing, New Delhi, in the case of Shri S.K. Jain group of cases, who have provided accommodation entry at Rs.9 lakhs to the

assessee company. On the basis of this information, action under section 147 was taken. Notice under section 148 of the I.T. Act was issued on 3rd July, 2013 by Income Tax officer, Ward-1(1), Ghaziabad. The case of the assessee-company was transferred to ITO, Ward-1(1), Meerut being jurisdiction lies with this Ward. The A.O. after completing the re-assessment proceedings on merit, made addition of Rs. 9 lakhs under section 68 of the I.T. Act vide re-assessment order under section 147/143(3) of the I.T. Act, dated 31st March, 2015. The assessment was completed by ITO, Ward-1(1), Meerut.

2. The assessee challenged the addition on merit before Ld. CIT(A). However, the appeal of assessee has been dismissed on merit. The also raised additional ground of appeal before Ld. CIT(A) challenging the re-assessment order as bad in law, illegal and without jurisdiction. The Ld. CIT(A) however, noted that re-assessment has been initiated on the basis of information received from Investigation Wing. Therefore, additional ground was also dismissed and appeal of assessee was accordingly dismissed.

3. The assessee in the present appeal has challenged the initiation of re-assessment proceedings under section 148 of the I.T. Act as there was addition of Rs.9 lakhs under section 68 of the I.T. Act, 1961.

4. I have heard the learned Representatives of both the parties and perused the material on record. The Ld. D.R. also produced assessment record and filed the correspondence between the A.O. and the assessee on record.

5. It is well settled law that validity of re-assessment is to be determined with reference to the reasons recorded for reopening of the assessment under section 147/148 of the I.T. Act. The assessee filed copy of the reasons recorded for issuing of notice under section 148 of the I.T. Act at page 45 of the paper book which reads as under:

“Name & Address of the Assessee :

*M/s. Anant Concrete Products (P) Ltd.,
226-Prempuri Railway, Meerut.*

Assessment Year - 2009-10

PAN - AAECA5788Q

“Reasons for issue of notice n/s 148 of I.T. Act, 1961

Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee had obtained accommodation entries received from various paper companies of Shri Surendra Kumar Jain group in lieu of cash during the period relevant to assessment year : 2009-10.

I have perused the information contained in the report and evidences gathered. The report provides detail of modus operandi and explains how the unaccounted money of the beneficiaries are ploughed back in its books of accounts in the form of bogus share capital/premium/loan after routine the same through bank account(s) of the entry operators floated by Shri Surendra Kumar Jain group. Entry operators were identified after thorough investigation on the basis of definitive analysis of their identity, creditworthiness and. the source of the money ultimately received by the beneficiaries. In the instant case, the assessee is found to be the beneficiary of accommodation entry of Rs.9,00,000/- from such entry operators controlled by Shri Surendra Kumar Jain group during the F.Y. 2008-09 relevant to assessment year 2009-10 as per the specific detail of transaction.

The transactions made by the above referred concerns are without-any security and this company is not much known in the market, therefore, any transaction made by the above referred

company is without any credence and is beyond human probability.

The assessee has received unexplained sums from the entry operators as -per the above detail as per information available with the undersigned. As explained above, the identity, creditworthiness and genuine-ness of the transactions with the persons found to be entry operators cannot be established.

I, therefore, have reason to believe that on account of failure on the part of the assessee to disclose fully and truly-all. material facts necessary for the above assessment year, the income chargeable to tax to the extent of entry mentioned above for A.Y. 2009-10 has escaped assessment within the meaning, of section 147 of the I. T. Act, 1961 and is a fit case for issue of-notice u/s 148 of the I. T. Act.

*Sd/-xxx 9-07-2013
ITO, W-1(1), GZB.”*

5.1. The above reasons would show that reasons have been recorded by ITO, Ward-1(1), Ghaziabad when re-assessment order have been passed by ITO, Ward-1(1), Meerut. The A.O. in the re-assessment order dated 31st March, 2015, specifically recorded that the case of the assessee-company transferred to ITO, Ward-1(1), Meerut being jurisdiction lies with this Ward.

5.2. The Ld. D.R. filed copy of the letter dated 20th May, 2014 written by the assessee-company to ITO, Ward-1(1), Ghaziabad on receipt of notice under section 142(1) and notice under section 143(2) of the I.T. Act. The assessee in this letter explained to ITO, Ward-1(1), Ghaziabad who issued notice under section 148 and recorded reasons for the same that he has been allotted PAN at Meerut and one more PAN was issued wrongly by the Department hence first PAN have already been surrendered by the assessee at Meerut. The assessee had already filed return of income at Meerut on 16th September, 2009. The assessee, therefore, prayed that notice under section 142(1) and 143(2) may be dropped in the interest of justice. The A.O. in pursuance of this request of the assessee and material on record, did not proceed with the re-assessment proceedings at Ghaziabad and vide letter dated 31st July, 2014 transferred the case record to ITO, Ward-1(1), Meerut who was having jurisdiction for the case of the assessee. The Ld. D.R. submitted that as per record ITO, Ward-1(1), Meerut did not record any fresh reasons under section 148 of the I.T. Act so as to proceed with the matter. The Ld. D.R. also admitted that there is no transfer order available on record for

transfer of reasons or record from ITO, Ghaziabad to ITO, Meerut of any competent authority. Both the Ghaziabad and Meerut Districts are separate and control by different Commissioners. Therefore, without the approval and sanction of the Competent Authority, the reasons and record of Ghaziabad ITO, cannot be transferred to ITO, Meerut. The assessee in pursuance of letter of the ITO at Meerut, submitted to ITO, Ward-1(1), Meerut, that he has already filed return at Meerut on 16th September, 2009, the said return may be considered in compliance to the notice under section 148. The identical issue have been considered by Division Bench of ITAT, Agra Bench in the case of S.N. Bhargava vs. ITO reported in (2014) 147 ITD 306 in which in paras 8 and 9 it was held as under :

“8. We have considered the rival submissions and the material available on record. The assessee in the paper book filed letter issued by ITO 3(4), Mathura dated 08.12.2003 at page 8 of the paper book, in which same facts have been recorded regarding reopening of assessment by AO at Agra and thereafter transferred the case to him at Mathura. Copy of reasons are filed at page 9 of the paper book, which tally with the reasons supplied by the ld. DR from the record. Copy of the reasons supplied by the ld. DR are reproduced as under :

"An information has been received from the DDIT(Inv.),Gurgaon vide letter F.No.DDIT(Inv.)/GGN/02-03 dated 12.03.2003 regarding transaction of shares resulting into Long Term Capital Gains that has been found bogus as a result of inquiries made by the said Wing. On inquiries it has been found that the bank a/c from which money has been transferred to various beneficiaries have been operated by certain stock brokers, who have been providing entries to the beneficiaries by showing them transactions made by them in purchase / sale of shares of certain companies, which in fact never took place."

The assessee is also one of the beneficiary figuring in the list supplied by the DDIT Wing, Gurgaon and an amount of Rs.5,92,809 has been remitted to the assessee through Draft No. DD. 186676 dated 12.04.97 from a/c. No. CA-3097 held in Corporation Bank, Karol Bagh, New Delhi in the name of M/s. R.K. Agarwal & Company, 1748/55, Naiwala, Karol Bagh, New Delhi. The said amount is found credited in the Bank A/C. No. SB/8069, Canara Bank, Vibhav Nagar, Agra which belongs to the assessee. Since the said transaction of purchase and sales of the shares has been found to be bogus and therefore, entire amount of sale proceeds of shares claimed to have been received by the assessee by Bank Draft, is the income of assessee from undisclosed sources, which has escaped assessment within the meaning of section 147 of the IT Act, 1961.

Since, no regular assessment has been made in the assessee's case for A.Y. 98-99, approval u/s. 151(2) of the IT Act is considered necessary to assess the above said income by issuing a notice u/s. 148 of the IT Act, 1961.

From the above, it is clear that above reasons were recorded by the ITO 1(4), Agra, which on approval by Addl. CIT, Range-I, Agra, the ITO 1(4), Agra issued notice u/s. 148 of the IT Act to the assessee. There is no other reasons available on record as produced by the ld. DR. It would mean that the AO at Mathura did not record any reasons at his own, but merely followed the same reasons which were recorded by the ITO at Agra. No material is produced before us to counter the submissions of the ld. counsel for the assessee. The details noted in the assessment order and the appellate order would also clarify that initially the re-assessment proceedings were initiated at Agra and the Revenue department finding no jurisdiction over the assessee transferred the case to the ITO, Mathura and the ITO Mathura also without recording fresh reasons proceeded u/s. 148 against the assessee on the basis of same reasons recorded by the ITO, at Agra. When the assessee seriously contested the jurisdiction of the Assessing Officer at Mathura because he could not proceed on the basis of reasons recorded at Agra, the AO at Mathura issued fresh notice u/s. 148 on dated 13.01.2004 with the approval of Addl. CIT, Range-3, Mathura and the same was served upon the assessee. The Assessing Officer has nowhere

recorded in the assessment order if any fresh reasons have been recorded at Mathura before issuing notice u/s. 148 on dated 13.01.2004. The AO merely recorded in the assessment order that fresh notice u/s. 148 was issued on 13.01.2004 with the approval of additional CIT, Range-3, Mathura, but there is no whisper of recording any fresh reasons at Mathura by the present AO in the assessment order. Even the ld. DR during the course of arguments, when produced assessment records before us, accepted that there is no other reasons recorded by the AO at Mathura. It was, therefore, clearly proved that the AO at Mathura merely acted upon the reasons recorded at Agra, copy of which is placed on record and was also supplied to the assessee (PB-9). In the aforesaid reasons, it is clear that the AO has nowhere recorded the necessary ingredients of section 147 of the IT Act that the AO has reason to believe that any income chargeable to tax has escaped assessment for the assessment year under appeal. Further, the reasons have not been recorded by the Assessing Officer of the present assessee. Further the concerned AO at Mathura has nowhere reason to believe that any income chargeable to tax has escaped assessment. The Assessing Officers at Mathura and Agra did not examine any of the information received from DDIT (Inv.) Gurgaon before proceeding with the matter. The AO at Mathura merely followed the reasons recorded at Agra and proceeded with the matter. Hon'ble Delhi

High Court in the case of Signature Hotels P. Ltd. vs. ITO, 338 ITR 51 held as under :

"Held, allowing the petition, that the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company,, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs.90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed."

8.1. *Hon'ble Rajasthan High Court in the case of CIT vs. Shree Rajasthan Syntex Ltd., 313 ITR 231 held as under :*

"The assessee company had leased out certain plant and machinery to another company under agreements executed on different dates for a specified period of time. The depreciation claimed by the assessee on the capital assets leased out to the lessee under section 32 of the Income-tax Act, 1961 for the assessment years 1996-97, 1997-98 and 1998-99 was allowed by the Assessing Officer. The lessee had claimed revenue expenditure for the lease rent paid to the assessee but the Assessing Officer had allowed depreciation on the capital value of the plant and machinery. On noticing this fact, the Assessing Officer of the assessee initiated proceedings under section 147 of the Act and made an addition to the income of the assessee. The Commissioner (Appeals) upheld the addition made by the Assessing Officer for the assessment years 1996-97 and 1997-98 but deleted the addition made by the Assessing Officer for the assessment years 1998-99 and 2001-02. On the finding that that the reassessment proceedings had been initiated on borrowed satisfaction and that the lease agreements being operating leases the assessee was the owner of the leased assets which were leased out to the lessee company for a rent and thereby the assessee was also a user of the assets, the Tribunal held that the assessee was entitled to depreciation under section 32 of the Act. On appeals :

Held, (i) that the reassessment proceedings had been initiated only on account of the opinion of the Assessing Officer of the lessee and the Tribunal was right in fixing that it was "borrowed satisfaction" which

was not sufficient to confer power on the Assessing Officer to initiate reassessment proceedings against the assessee."

Aforesaid decision has been confirmed by the Hon'ble Supreme Court by dismissing the departmental Special Leave Petition as is reported in 313 ITR (Statute) 27.

9. *Considering the above discussion, it is clear that the Assessing Officer at Agra was not having jurisdiction over the assessee. Therefore, he should not have recorded the reasons for reopening of assessment and further he did not examine any information supplied by DDIT(Inv.) and that he was having no reasons to believe that income chargeable to tax has escaped assessment and such facts are also not mentioned in the reasons recorded for reopening of assessment. The AO at Mathura did not do anything in the matter and merely followed the reasons recorded by ITO at Agra and that he has initiated the proceedings u/s. 148 against the assessee on borrowed satisfaction of ITO, Agra. He has also not examined any record of the case or the information received from DDIT(Inv.). The reasons which are not in accordance with law have been recorded at Agra by the ITO, who was not authorized to do so and was not having jurisdiction over the assessee and the Assessing Officer having jurisdiction over the assessee at Mathura did not do so and merely acted on the above borrowed satisfaction. In our view the initiation of re-assessment proceedings u/s. 147 of the IT Act is clearly bad in*

law and against the provisions of law. The Assessing Officer at Mathura has, therefore, not validly assumed the jurisdiction to initiate the re-assessment proceedings because he has merely followed the reasons recorded by ITO at Agra, who was having no jurisdiction over the assessee. We accordingly set aside the orders of the authorities below and quash the reassessment proceedings u/s. 147 of the IT Act. In the result, all the additions would stand deleted. Therefore, there is no need to decide the additions on merits, which is wholly academic in nature.

10. In the result, the appeal of the assessee is allowed”.

6. Considering the facts of the case in the light of decision in the case of Shri S.N. Bhargava (supra), it is clear that ITO at Ghaziabad was not having jurisdiction over the assessee. Therefore, he should not have recorded the reasons for reopening of the assessment and further he did not examine any information supplied by Investigation Wing and that he was having no reasons to believe that income chargeable to tax has escaped assessment in his jurisdiction and such facts are also not mentioned in the reasons recorded for reopening of assessment. The ITO, Ward-1(1), Meerut, did not do anything in the matter and merely followed the reasons recorded by ITO at Ghaziabad and that he has initiated the

proceedings under section 148 against the assessee on borrowed satisfaction of ITO, Ghaziabad. He has also not examined any record of the case or information received from Investigation Wing. The A.O, Meerut did not record any reason for reopening of the assessment under section 148 of the I.T. Act. The reasons which are not in accordance with law, have been recorded at Ghaziabad by the ITO who was not authorised to do so and was having no jurisdiction over the assessee and the ITO having jurisdiction over the assessee at Meerut did not do so and merely acted on the above borrowed satisfaction of ITO, Ghaziabad. In my view, the initiation of re-assessment proceedings under section 147 of the I.T. Act is clearly bad in law and against the provisions of Law. The ITO at Meerut has, therefore, not validly assume the jurisdiction to initiate the re-assessment proceedings because he has merely followed the reasons recorded by ITO at Ghaziabad who was not having jurisdiction over the assessee. The issue is therefore, covered in favour of the assessee by order of Division Bench of ITAT, Agra Bench in the case of S.N. Bhargava (supra). I, accordingly, set aside the orders of the authorities below and quash the re-assessment proceedings under

section 147 of the I.T. Act, 1961. In the result, all the additions would stand deleted. Therefore, there is no need to decide the addition on merit which is wholly academic in nature.

7. In the result, appeal of assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 08th November, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.