

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 865/Del/2013 : Asstt. Year : 2008-09

Siya Real Estate Pvt. Ltd., UP-12, Pitampura, New Delhi-110034	Vs	Income Tax Officer, Ward-8(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAICS7889N		

**Assessee by : Smt. Rano Jain, Adv. &
Sh. Ashish Chadha, Adv.
Revenue by : Sh. T. Vasanthan, Sr. DR**

Date of Hearing : 21.09.2017	Date of Pronouncement : 20.12.2017
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ORDER

This is an appeal by the assessee against the order dated 21.12.2012 of Id. CIT(A)-XI, New Delhi.

2. Following grounds have been raised in this appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reopening and consequent reassessment, not being in accordance with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention that the assessment order passed by the AO in the absence of notice under section 143(2) is bad in law.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.13,00,000/- on account of unexplained cash credit.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the appellant that the addition of Rs.5,00,000/- on account of share capital received from Thar Steel Pvt. Ltd. is not legally sustainable during the year under consideration as this amount was not received during the year.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both V on facts and in law in confirming the addition of Rs 8,00,000/- on account of share capital received from Bhavani Portfolio Ltd despite the assessee bringing all material facts and evidences in support of its contention.*

7. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.*

3. Ground Nos. 1 & 7 are general in nature and Ground No. 3 was not pressed, so these grounds do not require any comments on my part.

4. Vide Ground No. 2, the grievance of the assessee relates to the validity of the reopening u/s 147 r.w.s. 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. Facts of the case in brief are that the assessee filed the return of income on 30.09.2008 declaring an income of Rs.2,900/- which was processed u/s 143(1) of the Act. Subsequently, the AO received information from Addl. Director of Income Tax (Investigation)-IV, Jhandewalan Extn., New Delhi, to the effect that assessee was one of the beneficiaries of accommodation entries provided by Entry Operator Sh. Tarun Goyal, Chartered Accountant, 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi. On the basis of the said report from the Investigation Wing, the AO came to the reasons to the belief that income had escaped assessment and the assessee was one of the beneficiaries who had taken a sum of Rs.13,00,000/- as accommodation entries from M/s Bhavani Portfilio Pvt. Ltd. amounting to Rs.8,00,000/- and M/s Thar Steel Pvt. Ltd. amounting to Rs.5,00,000/-, the companies created by Sh. Tarun Goyal. Accordingly, notice u/s 148 of the Act was issued. In response, the assessee filed the details vide letter dated 17.08.2010. However, the AO added a sum of Rs.13,00,000/- u/s 68 of the Act by holding that the explanation given by the assessee was not tenable and that the true fact was that the assessee's own unaccounted income had been routed through the companies created by Sh. Tarun Goyal who was providing accommodation entries.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the AO had written a very philosophical order and had made additions without giving even an iota of fact against the assessee with regard to the allegations made by him. It was further submitted that the AO had accepted that the assessee had filed confirmation etc. from the contributors, but he had travelled further in making additions on frivolous ground. It was further submitted that as per the provisions of Section 147 of the Act, the satisfaction has to be that of the AO, not of anyone else and that the AO cannot blindly issue a notice u/s 148 of the Act simply on any information available. It was stated that the amount received from all the three parties on account of share application money received had been clearly shown by the assessee in the computation of income filed alongwith return of income. Therefore, there was no reason to form an opinion that a sum of Rs.13,00,000/- had escaped assessment. It was contended that in the reasons recorded, there was no reference to any statement or any evidence on the basis of which a satisfaction had been reached by the AO. Therefore, the reopening of the assessment merely on the basis of doubt was unjustified and legally untenable. The reliance was placed on the following case laws:

- *ITO Vs Lakhmani Mewal Das 103 ITR 437 (SC)*
- *ITO Vs Dwarka Dass & Bros. 131 ITR 571 (Del.)*
- *United Electrical Company Pvt. Ltd. Vs CIT & Ors. 258 ITR 317 (Del.)*
- *IAC Vs Nasik Eggs. Enterprises 42 ITD 105 (Pune)*

- *Raja Bahadur Motilal Pvt. Ltd. Vs K.R. Vishwanathan, ITO & Ano 183 ITR 80 (Bom.)*
- *C.D. Singh Vs ITO (2002) 77 TTJ 282 (All-Tri)*
- *Panchananhati Vs CIT 115 ITR 336 (Cal.)*
- *Sheonarain Jaiswal Vs ITO 1989 (1796) ITR 352 (Pat.)*
- *Ganga Saran & Sons (P) Ltd. (1981) 130 ITR 1 (SC)*
- *CST Vs Bhagwan Industries (P) Ltd. (1973) 31 STC 293 (SC)*
- *Calcutta Discount Co. Ltd. Vs ITO (1961) 41 ITR 191*
- *Ashok Kumar Sen Vs ITO 132 ITR 707 (Del.)*
- *Sheo Nath Singh Vs AAC (1971) 82 ITR 147 (SC)*
- *Technocraft Industries Vs AO (1990) 186 ITR 514*
- *Murlidhar Bhagwandas (1961) 52 ITR 335 (SC)*
- *Gardhara Singh (1980) 125 ITR 340 (P&H)*
- *Phool Chand Bajrang Lal (1993) 203 ITR 456 (SC)*
- *ITO Vs Rajeev Aggarwal 89 TTJ 1095 (Del.)*
- *Kishenchand Chellaram Vs CIT 125 ITR 713 (SC)*
- *ACIT Vs G. M. Infrastructure IT(SS) No. 133/Ind/2008 to 135/Ind/2008*
- *Jyoti Pat Ram Vs ITO (2007) 92 ITD 423 (Luc.)*
- *ACIT Vs Smt. Jyoti Devi (2004) 84 TTJ 689 (Jai)*
- *CIT Vs Mudra G. Nanavati (HC-Bom)*
- *CIT Vs Mudra G. Nanavati (HC-Bom)*
- *Mudra G. Nanavati Vs WCIT (2007) 30 DTR 217 (Mum Trib)*
- *MS. C. Malathy Vs ITO (2004) 88 ITD 37 (Chennai)*
- *Smt. Amarjeet Kaur Vs ACIT(2009) 17 DTR 127 (Del Trib)*
- *Aegis Chemical Ind. Limited Vs ITO (1998) 65 ITD 147 (Mum)*
- *Sat Narain Vs ITO (2005) 94 TTJ 499 (Del)*
- *Shringer verlag GmbH vs DCIT (2005) 97 TTJ 269 (Del)*
- *DCIT VS Indian Syntans Investments Private Limited (2007) 107 ITD 457 (Cehnnai)*
- *ACIT VS Santosh Kumar & Ors (2003) 87 ITD 107 (AH)*
- *CIT VS PAwan Gupta & Ors (2009) 22 DTR 291 (Del)*
- *CWT Vs HUF of H.H.Late Shri J.M. Scindia (2008) 300 ITR 193 (Bom)*
- *R Dalmia & Another VS CIT 236 ITR 480 (SC)*

7. It was further submitted that the assessee did not receive any sum on any account from M/s Thar Steel Pvt. Ltd. during the year under consideration. Therefore, the addition made by the AO alongwith reason recorded were bad in law and against the case of the assessee and that the addition of Rs.5,00,000/- was liable to be deleted. It was also stated that the assessee in order to satisfy the AO regarding the receipt of Rs.8,00,000/- from M/sBhavani Portfolio (P) Ltd. produced confirmations, share application forms, balance sheet, PAN details etc. related to various parties before the AO who disbelieving the explanation filed by the assessee with respect to the said parties added the amount in the hands of the assessee by stating that the said transactions were done with the bogus companies which was a mere belief as the AO never put on the record any evidence supporting his contention. It was also pointed out that the AO issued notices to the parties u/s 133(6) of the Act which were duly replied by them and that the assessee had produced the following details with regard to every transaction related to the share capital/application money:

- a) PAN details*
- b) Certificate of incorporation*
- c) Copy of Memorandum and Articles of Association*
- d) Audited Balance sheet & profit and Loss A/c*
- e) Copy of Share Application Form*
- f) Copy of Compliance Certificate from C.S.”*

8. It was contended that the assessee had discharged primary onus to prove the identity, genuineness and creditworthiness of the share

applicant. Therefore, no addition could have been made on the basis of material collected at the back of the assessee. The reliance was placed on the following case laws:

- *CIT Vs Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC)*
- *CIT Vs Steller Investment Ltd. (2001) 251 ITR 263 (SC)*
- *CIT Vs Sophia Finance Ltd. (1993) 205 ITR 98 (Del.)*
- *CIT Vs Achal Investments Ltd. (2004) 268 ITR 211 (Del.)*
- *CIT Vs Divine Leasing & Finance Ltd. 299 ITR 268 (Del.)*
- *CIT Vs Orissa Vs Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC)*
- *CIT Vs Value Capital Services Pvt. Ltd. 307 ITR 334*
- *Sarthak Securities Co. (P) ltd. Vs ITO 329 ITR 110 (Del.)*

9. The Id. CIT(A) after considering the submissions of the assessee observed that there were sufficient reasons for the AO to belief that the income had escaped assessment and proceedings were initiated after recording the reasons and that reassessment was valid if there was *prima facie* reason to belief that income had escaped assessment. He further observed that the information was received by the AO and reasons were recorded that there was escapement of income. The Id. CIT(A) also confirmed the addition to Rs.13,00,000/- made by the AO. The reliance was placed on the following case laws:

- *Ratnachudamani S. Utal Vs ITO (2004) 269 ITR 212 (Karn)*
- *ITO & Others Vs Shree Bajrang Commercial Co. (Pvt.) Ltd. (2004) 269 ITR 338 (Cal.)*
- *Raymond Woolen Mills Ltd. (1999) 236 ITR 34 (SC)*
- *ACIT Vs Rajesh Jhaveri Stock Brokers (P.) Ltd. 161 Taxman 316 (SC)*

10. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO initiated the reassessment proceedings only on the basis of information received from DIT(Inv.), without any independent application of mind and this fact was clearly evident from the reasons recorded for reopening the assessment. Our attention was drawn towards page no. 12 of the assessee's paper book. It was further submitted that the reasons recorded by the AO did not disclose the basis on which he termed the receipt of money by the assessee towards share application money as accommodation entries and that the alleged information provided by the DIT(Inv.) had been accepted as gospel truth without any verification by the AO. Therefore, the blind acceptance of the information could not have formed the reasons leading to the belief of any escapement of income. It was further submitted that the reasons recorded by the AO clearly shows that there was no independent finding to the effect that the assessee had failed to disclose true and full material facts or regarding the fact that any income had escaped assessment. The reliance was placed on the following case laws:

- *Pr. CIT Vs Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677*
- *Pr. CIT Vs RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5*
- *Pr. CIT Vs G & G Pharma India Ltd. (2016) 384 ITR 147 (Del.)*
- *Sabharwal Properties Industries Pvt. Ltd. Vs ITO (2016) 382 ITR 547 (Del.)*
- *CIT Vs Independent Media Pvt. Ltd. in ITA No. 108/2015 order dated 19.11.2015*
- *ITO Vs Navodaya Castles Pvt. Ltd. in ITA No. 4613/Del/2010 order dated 24.08.2016*

➤ *Pr. CIT Vs G & G Pharma Ltd. 384 ITR 147 (Del.)*

11. In his rival submissions, the ld. DR strongly supported the orders passed by the authorities below and reiterated the observations made therein.

12. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not in dispute that the AO reopened the assessment only on the basis of information received from the Investigation Wing i.e. from the Addl. DIT, (Investigation)-IV, Jhandewalen Extension, New Delhi. In the present case, the AO had the reason for belief that the income had escaped assessment only on the basis of information received from the Investigation Wing and did not apply his own mind.

13. On a similar issue the Honøble Jurisdictional High Court in the case of Principal Commissioner of Income Tax-4 Vs G & G Pharma Ltd. 384 ITR 147 (supra) held as under:

“The basic requirement of law for reopening an assessment is application of mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.”

It has further been held as under:

“Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment.”

14. Similarly, the Honorable Jurisdictional High Court in the case of Pr. CIT Vs Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (supra) held as under:

“That while the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation. In the assessee's case, the crucial link between the information made available to the Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the conclusion in the investigation report received from the Director (Investigation). It was a "borrowed satisfaction". The expression "accommodation entry" was used to describe the information set out without explaining the basis for arriving at such a conclusion. The basis for the statement that the entry was given to the assessee on his paying "unaccounted cash" was not disclosed. Who was the accommodation entry giver and how he could be said to be a "known entry operator" were not mentioned. The source for all the

conclusions was the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment. No error had been committed by the Appellate Tribunal in concluding that the initiation of the reassessment proceedings under section 147/148 to reopen the assessments for the assessment year 2004-05, was not legal.”

15. On a similar issue the Honøble Jurisdictional High Court in the case of Pr. CIT Vs RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (supra) held as under:

“That no link between the tangible material and the formation of the reasons to believe that income had escaped assessment, could be discerned. The information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the Assessing Officer, who had deprived himself of that opportunity by proceeding on the erroneous premise that the assesses had not filed a return for the assessment year, 2004-05, when in fact it had. In his assessment order, the Assessing Officer had, instead of adding a sum of Rs. 78 lakhs, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crores and the basis for such addition had not been explained. No error was committed by the Appellate Tribunal in holding that reopening of the assessment under section 147 was bad in law.”

16. In the present case also the AO simply acted upon the information received from the Investigation Wing and did not apply his own mind. Therefore, the reopening u/s 147 by issuing the notice u/s 148 of the Act, only on the basis of information received from the Investigation Wing was not valid. Accordingly, the reassessment framed by the AO is quashed.

17. Since, I have quashed the reassessment proceedings, therefore, no findings are given on the remaining ground raised by the assessee on merit.

18. In the result, the appeal of the assessee is allowed.
(Order Pronounced in the Court on 20/12/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 20/12/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR