

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2417/Del/2014
(Assessment Year: 2004-05)

Garner Finance & Securities Pvt. Ltd, C-70, Ground Floor, Freedom Fighter Enclave, Neb Sarai, New Delhi PAN: AAACG2580J	Vs.	ACIT, Circle-12(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri R. S. Ahuja, CA
Revenue by:	Shri Amit Jain, Sr. DR
Date of Hearing	19/03/2018
Date of pronouncement	18/06/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-XV, New Delhi dated 28.02.2014 for the Assessment Year 2004-05.
2. The assessee has raised the following grounds of appeal:-
 - "(I) *That on the facts & circumstances of the case the learned ITO & CIT (A) erred in*
 - (a) *Reopening the matter u/s 147, which had been set at rest long back, purely on the basis of the information received from investigation wing of Income Tax without verifying the same from the records and framing his mind independently.*
 - (b) *Not confronting the Assessee with the copy of the statements recorded on the back of the appellant, of the persons/third parties, which have been relied and used against the appellant. The A.O. has also erred in not affording an opportunity to cross-examine the witnesses, whose statements have been relied to initiate proceedings u/s 147 against the appellant inspite of request by Assessee.*
 - (c) *Treating the proceeds received against sale of investments and refund of share application money as unexplained cash credits inspite of the appellant providing all necessary*

documents with regard to the genuine sale of investments and of the purchasers/ share application money refund.

- (d) Applying section 68 inspite of the fact that there have been no unexplained cash credits and no addition to the Equity Share Capital.*
- (e) Confirming the addition of Rs. 5,07,000/- inspite of complete details of transactions furnished by Assessee.*
- (f) Order passed by A.O. is erroneous and unsustainable in law as well as on merits and so additions made therein should be deleted. Further, the order of A.O. is bad in law and against the principles of natural justice."*

3. Brief facts shows that assessee is a company who filed its return of income on 3/6/2005 showing income of Rs. 858/-. The Investigation wing of the Department, Delhi informed that assessee has taken accommodation entries from the entry operators and therefore notice under section 148 of the income tax act was issued on 13/3/2011. The assessee was provided with the copy of the reasons recorded along with details of the specific transactions. Assessee filed its objection, which were disposed of by speaking order on 4/11/2011.
4. Based on the information case of the assessee was reopened. It shows that assessee has shown sale of investments to various parties and has taken the entries through accommodation entries, which according to the AO are sham transactions and the amount belongs to be assessee. Therefore, according to the AO, assessee has received cheques amounting to Rs. 82.80 Lacs are accommodation transactions. Further assessee failed to prove genuineness and creditworthiness of the persons who purchased shares from the assessee company. The submission of the assessee before the AO was that appellant is a registered nonbanking financial company, which has, in the year sold some of the shares held by it. These shares were out of the opening stock of investment of Rs. 3, 60, 90, 000/-. It was further stated that the sale of equity shares held as investments cannot be classified as unexplained cash credit and therefore the addition cannot be made under section 68 of the income tax act. The assessee submitted the complete details of the buyers of the sale such as confirmation, balance sheet etc, and name and address of the buyers. Further, The assessee submitted that out of the total transaction of Rs. 8

2.80 Lacs the transaction of Rs. 5.90 Lacs pertain to the financial year 2003 – 04. this cannot be questioned in this year. the Ld. assessing officer reduced the above sum of Rs. 5.90 Lacs from the total amount of Rs. 8 2, 80, 000/- and made an addition of Rs. 7 6.90 Lacs **as** total income of the assessee as unexplained cash credit under section 68 of the income tax act. Consequently assessment under section 143 (3) read with section 147 of the act was passed on 26/12/2011 wherein the total income was assessed at Rs. 7 6, 90, 860/- against the returned income of Rs. 8 58/-.

5. On appeal before the Ld. CIT (A), assessee challenged reopening of the assessment proceedings as well as the addition on merits. The appellant reiterated submissions made before the Ld. assessing officer. The Ld. CIT (A), further asked details of sale by the appellant as per para No. 5.13 of his order. Assessee submitted these details. The Ld. CIT upheld the reassessment proceedings ruling that there was no assessment under section 143 (3) of the act in the case of the assessee and details were not available before Id AO in return of the assessee. Hence, he dismissed the ground against reopening. On the merits of the case, he deleted the part of addition holding that when the shares are available as opening stock then there is no reason to make the above addition. He held that despite the furnishing complete detail before the assessing officer the Ld. AO did not even examine the balance sheet of the appellant to verify whether it was holding those shares in its opening stock or not. Therefore, prima facie he deleted the addition to the extent of the opening stock held by the assessee in absence of any efforts made by the Ld. AO to verify the nature of cash credit. He therefore deleted the addition of RS 71.83 Lacs as the assessee holds stocks in the opening stock. However the credit of Rs. 5.7 Lacs in respect of the claim of sale of shares of Mangalam Portfolio Pvt Ltd was not before him and therefore he deleted the addition of Rs. 71.83 lacs and upheld the addition to the extent of Rs. 5.07 Lacs. Therefore, assessee aggrieved has preferred an appeal before us.

6. As the Ld. CIT appeal has deleted the substantial addition made by the Ld. assessing officer, we made a specific query to the departmental representative whether revenue has filed any appeal against the order of the Ld. CIT – A. In response, the departmental representative could not give us any specific information about it. As there is no information available about appeal of revenue against deletion of addition by revenue against the order of the Ld. CIT (A), this appeal is decided on the merits of the case independently. It is clarified that it will not have any impact on appeal filed by the revenue against the order of the Ld. CIT – A, if any, as revenue is not able to trace it at present.
7. Coming on the appeal before us, The Ld. authorized representative vehemently objected to the reopening proceedings and submitted that there was no application of mind by the Ld. assessing officer as no Inquiry was made by him prior to issue of the notice under section 148 of the act and he simply did not apply his mind and issued notice on the basis of information received from the investigation wing. He further stated that the Ld. AO even did not get to look at the information provided by the investigation wing that whether they pertain to the financial year or not. Therefore, it was contended the reopening is invalid. On addition sustained by the Ld. CIT (A) it was submitted that when it is a sale of share which are held by the assessee as investment, the same cannot be added under section 68 of the income tax act when the assessee has furnished the complete details about the buyer. He further stated that assessee has applied before the Ld. assessing officer on fourth of November 2011, to grant the cross-examination of the witnesses, which have been relied upon by the Ld. assessing officer to initiate action against the assessee. He therefore submitted that no opportunity of cross-examination was given to the assessee.
8. The Ld. departmental representative vehemently supported the order of the Ld. CIT (A) stating that the Ld. CIT (A) has correctly upheld addition when the assessee could not show that the assessee held such shares as opening stock. He further stated that assessee is holding shares of the companies and purpose of those shares is not known. He further stated

that when the assessee has sold the shares assessee has showed sales of lakhs of rupees, but no profit was earned. He submitted that the transactions itself shows that when the shares of Rs. 83 Lacs have been sold by the assessee no profits earned. He further referred to the modus operandi mentioned by the Ld. assessing officer in his assessment order. He further stated that the reopening has been made by the Ld. AO based on the information received from investigation wing. The return filed by the assessee could not be traced and enquiry made by the Ld. assessing officer is shown in the reasons. In absence of any return shown by the assessee, it cannot be said that the Ld. assessing officer has reopened the assessment proceedings merely based on information received from the investigation wing. He therefore submitted that on the merits as well as on the reopening to the extent of addition sustained by the Ld. CIT – A, no infirmity is shown.

9. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case, the original return filed by the assessee was not picked up for the scrutiny. Ld. AO received information from the investigation wing that assessee has received accommodation entries of 82.80 Lacs from several companies which are stated to be the bogus transactions. The Ld. assessing officer has specifically mentioned in the reasons recorded that he has examined the investigation carried out and the directorate of investigation compiles the date of search beneficiaries. He further stated that the name of the assessee figures as one of the beneficiaries of these alleged bogus transactions. In view of this, it cannot be stated that the Ld. assessing officer has initiated reopening of assessment proceedings merely based on information received from the investigation wing. Furthermore, it is apparent that there is no information available about the sale of those shares in the annual accounts of the assessee. The assessee has shown meager sales of Rs. 12.71 lakhs whereas the sales shown by the report of the investigation wing is Rs. 82.80 Lacs. Further, no capital gain or profit on sale of shares is shown. In view of this we do not find any infirmity in the order of the Ld. CIT – A in confirming the reopening of the

assessment under section 147 of the income tax act. In the result ground No. 1 (A) – (B) are dismissed.

10. Coming to the merits of the case, the assessee could not furnish the details of purchase and sale of shares of Mangalam portfolio private limited. The Ld. CIT – A noted that on examination of the opening stock and the purchases made by the appellant during the year, he could find that in respect of the said shares only 30,000 shares were available in the opening stock. No such shares were also purchased during the year. Therefore, according to him the credit of Rs. 5.07 Lacs in respect of the claim of the sale of shares of that company does not stand proved. Before us the assessee has submitted an attachment in the paper book showing complete reconciliation of all shares in the form of opening balance, purchases, sales and resultant closing stock at page No. 72 – 76 of the paper book it is the claim of the assessee that a sum of Rs. 5 07, 000 has been shown under the heading “others” and not investment. It was stated that this fact was not examined by the Ld. CIT – A. However, the shareholder registers or certificates of mangalam Portfolio Private Limited in the name of the assessee was not shown to us. Further, it was also not shown to us when it was purchased and what are the distinctive numbers of those shares and from whom they are purchased. It was also not clear why those shares were shown in any other heading other than investments. It may also be examined that whether the assessee is an NBFC having the registration as investment company or not. The Ld AR also could not show us the resolution of purchases of share by the company and allotment of shares by Manglam Portfolio Limited. All these details need detailed examination. We also reject the contention of the assessee that shares sale cannot be taxed u/s 68 of the act. Any credit, which is not genuine, can fall for taxation u/s 68 of the act. In view of this, we set aside this issue to the file of the Ld. assessing officer to examine the availability of those shares with the assessee for sale. The AO may examine the identity of the buyer and its creditworthiness, genuineness of the transaction may be examined independently. Therefore, assessee is directed to produce details before the Ld. AO who

will examine the details furnished by the assessee and then after decide about the addition of Rs. 5.07 Lacs afresh. In the result ground No. 1 (C) – (F) are allowed with above direction.

11. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 18/06/2018.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/06/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi