

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 638/JP/2015
निर्धारण वर्ष/Assessment Year : 2005-06.

M/s. Orbit Polytech 9India) Ltd., Jeen Mata Nagar-5, Kalwar Road, Jhotwara, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACO 3228 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dilip Shivpuri (Advocate)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 29.05.2018.
घोषणा की तारीख / Date of Pronouncement : 12/07/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 18TH May, 2015 of Id. CIT (A)-1, Jaipur for the assessment year 2005-06. The assessee has raised the following grounds of appeal :-

- " 1(a) In the facts and circumstances of the case and in law the Id. AO has erred in reopening the assessment u/s 147 of Income Tax Act, 1961. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.

- (b) In the facts and circumstances of the case and in law the Id. CIT (A) has erred in not adjudicating the issue of validity of reassessment proceedings raised during appellate proceedings. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.
2. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO erred in making addition of Rs. 10,18,358/- as alleged unexplained cash credit under section 68 of Income Tax Act, 1961. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 10,18,358/-.
3. The assessee company craves its right to add, amend or alter any of the grounds on or before the hearing.

Ground No. 1 is regarding validity of reopening of the assessment.

2. The assessee company is engaged in the business of trading of sprinkler systems and equipments. The assessee filed its return of income on 28.12.2005 declaring Nil income. The return was processed under section 143(1) on 26.07.2006. Subsequently, as per the out-come of the appellate proceedings in case of M/s. Rasal Builders and Developers Pvt. Ltd. after two rounds of appeal, the AO reopened the assessment by issuing notice under section 148 on 26th March, 2012. The AO proposed to reassess the income on account of loan of Rs. 18,27,583/- given to M/s. Rasal Builders and Developers Pvt. Ltd. as it was given after deposit of cash in the bank account of the assessee. The AO completed the reassessment by making an addition of Rs. 10,18,358/- on account of the cash deposit in the bank account of the assessee. The assessee challenged the action of the AO before the Id. CIT (A) and thereafter the issue of validity of reopening but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that the assessment was reopened by the AO on the basis of the communication dated 23rd September, 2011 by the Id. CIT (A) in case of M/s. Rasal Builders & Developers Pvt. Ltd. and, therefore, the reopening is based on the borrowed satisfaction and not the AO's own satisfaction of forming belief that the income assessable to tax has escaped assessment. The Id. A/R has relied upon the decision of Hon'ble Delhi High Court in case of SKY View Consultants Pvt. Ltd. vs. ITO, 397 ITR 673 (Delhi) and submitted that the AO has failed to satisfy the reasons to believe that the income has escaped assessment as the assessment was reopened on the basis of the subsequent development in case of M/s. Rasal Builders & Developers Pvt. Ltd. and as per the letter dated 23rd September, 2011 the Id. CIT (A) asked the AO to take the action in the case of the assessee. He has also relied upon the decision of Hon'ble Allahabad High Court in case of CIT vs. Baldev Plaza, 225 Taxman 276 (Allahabad) and submitted that the opinion of the other authority cannot be considered as an information for the purpose of reopening of the assessment under section 147 of the Act. The AO has to apply his mind to the information, if any collected and must form belief thereon. The reopening based on the directions of the Id. CIT (A) is not sustainable. The Id. A/R has also relied upon the decision in case of Smt. Kaushalya Devi & Ors. Vs. Assistant Director, Urban Lands & Buildings Tax, Jodhpur & Ors., RLR 1988(2) 800. Thus, the Id. A/R has submitted that the reopening in this case is bad in law and, therefore, the same may be quashed.

3.1. On the other hand, the Id. D/R has submitted that though the AO received a communication from the Id. CIT (A) dated 23rd September, 2011, however, the

reasons recorded by the AO are independent of the said communication and, therefore, the reopening is based on the reasons independently recorded by the AO by application of mind and not as per the letter dated 23rd September, 2011 issued by the Id. CIT (A). The Id. D/R has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The AO proposed to reopen the assessment by recording the reasons as under :-

" The assessee had filed its return of income on 28.12.2005 declaring total income of Rs. Nil. The return of income was processed u/s 143(1) of the IT Act, 1961 on 26.07.2006 at the returned income.

Later on assessment for the A.Y. 2005-06 was completed u/s 143(3) on 28.12.2007 in the case of M/s. Rasal Builders and Developers Pvt. Ltd., Jaipur by making addition u/s 68 of the IT Act, 1961 of Rs. 15,80,000/- on account of unexplained credits in the name of unsecured loan received from M/s. Orbit Polytech Pvt. Ltd. in the books of the assessee company.

Further in the case of M/s. Rasal Builders and Developers Pvt. Ltd., Jaipur for the A.Y. 2005-06 the Hon'ble ITAT, Jaipur Bench, Jaipur had set aside the assessment vide its order dated 24.04.2009. The set aside assessment was completed u/s 143(3)/250/set aside on 06.12.2010. During the course of appellate proceedings Shri Raghuvver Singh who is director of M/s. Rasal Builders and Developers Pvt. Ltd. and M/s. Orbit Polytech (India) Ltd. has admitted before the Id. CIT (A) that M/s. Orbit Polytech (India) Ltd. was engaged in the business of manufacturing and sale of sprinkler sets during the year. Further there was no corroborative evidences for the cash deposits of Rs. 10,18,358/- out of the total cash receipts of Rs. 18,27,583/- shown in the cash book of M/s. Orbit Polytech (India) Ltd. Further he

admitted that no manufacturing activity was carried out during the A.Y. 2005-06 or in subsequent years and finally the factory was sold in F.Y. 2010-11.

Further it was seen that the company was claiming depreciation on plants and machinery. Besides, the Id. CIT (A) has deleted the addition in the case of M/s. Rasal Builders and Developers Pvt. Ltd., Jaipur stating that "M/s. Orbit Polytech Pvt. Ltd. is a company which has a distinct entity from the appellant company. From the statement of its director it is clear that its accounts could not be explained properly. In such case the department is free to proceed to reopen the individual assessment of the said company considering the cash deposits remained unexplained in his book."

Moreover the Id. CIT (A) has also forwarded an information vide her letter No. 340 dated 23.09.2011 regarding above facts and for taking appropriate action in the above mentioned case."

Thus it is clear that the reopening is based as per the order of Id. CIT (A) in case of M/s. Rasal Builders and Developers Pvt. Ltd. who has shown the loan from the assessee of Rs. 15,80,000/-. The AO disallowed the said amount of Rs. 15,80,000/- while completing the assessment in case of M/s. Rasal Builders and Developers Pvt. Ltd. The matter was carried to this Tribunal by M/s. Rasal Builders and Developers Pvt. Ltd. in ITA No. 1500/JP/2008 and the Tribunal vide order dated 24th April, 2009 set aside the matter to the record of the AO for further examination and verification of correctness of the claim and then to decide the same afresh after affording an opportunity of being heard to the assessee. In the set aside proceedings, the AO repeated the addition and thereafter when M/s. Rasal Builders and Developers Pvt. Ltd. again filed an appeal before the Id. CIT (A), the Id. CIT (A) vide order dated 19th

September, 2011 deleted the addition made by the AO. However, a letter dated 23rd September, 2011 was written to the AO for taking appropriate action in the case of the assessee before us. It is pertinent to mention that the ITO Ward 3(1), Jaipur is having jurisdiction over the assessee as well as M/s. Rasal Builders and Developers Pvt. Ltd. Hence, this fact of making the addition in the hands of M/s. Rasal Builders and Developers Pvt. Ltd. under section 68 on account of cash credit from assessee was known to the AO at the time of assessment completed under section 143(3) in case of M/s. Rasal Builders and Developers Pvt. Ltd. At the time of making the said addition of cash credit in the hands of M/s. Rasal Builders and Developers Pvt. Ltd. the AO was of the view that it was the money of M/s. Rasal Builders and Developers Pvt. Ltd. and the transaction was not genuine. Even in the second round of litigation and in the set aside proceedings, the AO repeated the addition in the hands of M/s. Rasal Builders and Developers Pvt. Ltd. of the said amount shown as unsecured loans from the assessee. Only when the Id. CIT (A) in the second round of appeal in the case of M/s. Rasal Builders and Developers Pvt. Ltd. sent a letter dated 23rd September, 2011 and on the basis of the statement of the Director of the assessee, the AO proposed to reopen the assessment. Therefore, it is a clear case of forming the opinion on borrowed satisfaction as evident from the letter dated 23rd September, 2011 as well as the reasons recorded by the AO. We further note that the AO in the assessment proceedings of M/s. Rasal Builders and Developers Pvt. Ltd. disallowed the claim of loan of Rs. 15,80,000/- taken from the assessee on the reason that the total sale of the assessee for the last two years was Rs. 11,51,805/- only and, therefore, the AO did not accept the claim of loan for want of the source

of the said credit in the hands of the assessee. The AO further noted that the cash was deposited in the bank account of the creditor just before giving the loan to M/s. Rasal Builders and Developers Pvt. Ltd. and no evidence was produced to prove that the said cash was out of sales of the assessee company. Thus all the material and facts as pointed out by the Id. CIT (A) in the letter dated 23rd September, 2011 as well as the facts recorded in the reasons for reopening of the assessment were already known to the AO at the time of framing the assessment in case of M/s. Rasal Builders and Developers Pvt. Ltd. as well as at the time of completing the set aside proceedings by the AO. Hence the subsequent reopening of the assessment in compliance of the letter dated 23.09.2011 of Id. CIT (A) clearly a case of reopening on the basis of the satisfaction of the Id. CIT (A) that the addition should have been made in the hands of the assessee and not in the hands of M/s. Rasal Builders and Developers Pvt. Ltd. The powers to reopen the assessment under section 147 can only be exercised by the AO and cannot be abdicated by any other authority. Hence the AO has no jurisdiction to reopen the assessment in compliance of the letter dated 23.09.2011 of Id. CIT (A). The AO has maintained a stand and taken a view in the assessment proceedings of M/s. Rasal Builders and Developers Pvt. Ltd. that the amount of loan of Rs. 15,80,000/- shown in the name of the assessee was not explained satisfactorily and, therefore, it was considered as the income of M/s. Rasal Builders and Developers Pvt. Ltd. The only fresh material after two rounds of proceedings in the case of M/s. Rasal Builders and Developers Pvt. Ltd. was the letter issued by Id. CIT (A) dated 23rd September, 2011. Therefore, when the same AO repeated the addition of cash credit in the set aside proceedings in case of M/s.

Rasal Builders and Developers Pvt. Ltd. vide order dated 06.12.2010, the reopening after the order of Id. CIT (A) is nothing but based on the satisfaction of the Id. CIT (A). Therefore, the AO reaffirming its stand in the case of M/s. Rasal Builders and Developers Pvt. Ltd. in two rounds of proceedings cannot be allowed to resort to provisions of section 148 of the Act when his stand was reversed by the Id. CIT (A) in the second round of litigation. What the AO failed to do on his own cannot be done on the basis of the order of the appellate authority in the case of other assessee. The notice issued under section 148 was only after receiving the letter dated 23rd September, 2011 and, therefore, the reopening is only in compliance of the said letter and not based on the opinion and independent application of mind of the AO. Hence, in view of the above facts and circumstances of the case, we set aside and quash the reopening of the assessment being not sustainable in law and consequently the reassessment order is set aside.

5. Ground No. 2 raised by the assessee on the merits of the issue becomes infructuous.

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

Order pronounced in the open court on 12/07/2018.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/07/2018.

das/

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-M/s. Orbit Polytech (India) Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO, Ward 3(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 638/JP/2015}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar