

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR
श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 624/JP/2018
निर्धारण वर्ष / Assessment Year :2009-10

M/s G.B. Impex, B-172, Rajendra Marg, Bapu Nagar, Jaipur.	बनाम Vs.	Income Tax Officer Ward-6(4), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAGFG 3052 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 800/JP/2018
निर्धारण वर्ष / Assessment Year :2010-11

M/s G.B. Impex, B-172, Rajendra Marg, Bapu Nagar, Jaipur.	बनाम Vs.	Income Tax Officer Ward-5(3), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAGFG 3052 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 18/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the two separate orders dated 23/02/2018 and 27/03/2018 of Id. CIT(A)-2, Jaipur

for the A.Y. 2009-10 and 2010-11 respectively. For the assessment year 2009-10, the assessee has raised following grounds of appeal:

- “1. Under the facts and circumstances of the case, the notice issue U/s 148 and consequent order passed U/s 147 is illegal and bad in law.*
- 2. The Id. CIT(A) has erred on facts and in law in confirming the trading addition of Rs. 62,44,358/- by applying G.P. rate of 9% as against G.P. rate of 5.68% declared by the assessee. She has further erred in overlooking the fact that the A.O. in the original assessment after invoking provisions of Section 145(3) made a trading addition of Rs. 2,50,000/- on the basis of the same books of account, application of G.P. rate of 9% and thereby, confirming trading addition of Rs. 62,44,358/- is whimsical, arbitrary and on surmises and conjectures.*
- 3. The assessee craves to amend, alter and modify any of the grounds of appeal.*
- 4. Necessary cost be awarded to the assessee.”*

2. Ground No.1 of the appeal is regarding validity of initiation of proceedings U/s 147/148 of the Income Tax Act, 1961 (in short the Act) and consequential reassessment order passed U/s 147 of the Act. The Id AR of the assessee has submitted that the assessee filed its return of income of 30th September, 2009 declaring total income of Rs. 54,350/-. The Assessing Officer completed the assessment U/s 143(3) of the Act on 22/12/2011 whereby the books of assessee were rejected U/s 145(3) of the Act and a trading addition of Rs. 2,50,000/- was made by the Assessing Officer. The Id AR has pointed out that the Assessing Officer in the original assessment framed U/s 143(3) of the Act has verified all the

purchases made by the assessee and made a trading addition after rejection of books of account on specific grounds that certain purchases were found unverifiable apart from non-maintenance of stock register. Thus, the Id AR has submitted that the issue of purchase was considered and examined by the Assessing Officer while passing the original assessment then the subsequent reopening of the assessment on the same issue and that too after expiry of four years is not sustainable in law and liable to be quashed. The case falls in the proviso to Section 147 wherein the assessment cannot be reopened after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Once the Assessing Officer examined the issue including the purchases made by the assessee and made a trading addition while passing the original assessment U/s 143(3) of the Act then in absence of failure on the part of the assessee to disclose all material facts necessary for assessment, the reopening on the ground of bogus purchases is not permitted. The Id AR has referred to the reasons recorded by the Assessing Officer and submitted that even the Assessing Officer was not sure about the income assessable to tax has escaped assessment whether on account of bogus share application money or bogus unsecured loan or

bogus sale and purchases. Thus, it is apparent from the reasons that the Assessing Officer has not applied his mind while forming the believe that it is a borrowed satisfaction based on the report of the DIT (Investigation) for reopening of the assessment, which is not permissible under the law. In support of his contention, he has relied upon the following decisions.

- (i) M/s Dwarka Gems Ltd. Vs DCIT ITA No. 71/JP/2017 order dated 27/03/2018 (Jaipur)(Trib).
- (ii) Nirmala Agarwal Vs ACIT ITA No. 995 & 996/JP/2016 order dated 11/04/2018 (2018) 58 Taxworld 280 (Jaipur)(Trib).
- (iii) M/s Karwasra Developers Pvt. Ltd. ITA No. 393/JP/2016 order dated 11/06/2018 (Jaipur)(Trib).
- (iv) Dynacraft Air Controls Vs. Sneha Joshi & ors. (2013) 355 ITR 102 (Bom)(HC).
- (v) CIT Vs. Eco Media (P) Ltd. (2012) 81 CCH 85 (Mad.)(HC)

The Id AR has submitted that the Coordinate Benches of this Tribunal in the cases cited (supra) have considered an identical issue and found that the reopening was not valid when the original assessment was completed U/s 143(3) of the Act and the assessment was reopened after expiry of four years.

3. On the other hand, the Id DR has submitted that the assessment was reopened which is based on new facts and information came to the knowledge of the Assessing Officer on the basis of the report of DIT(Inv.) as well as statement recorded by the Investigation Wing of one Shri Vijay

Narendra Kothari who has admitted to have provided accommodation entries in respect of share application money, purchases and loan. The assessee has claimed purchases from M/s Kothari Impex which was found indulged in providing accommodation entries, therefore, the reopening is based on tangible material in the shape of report of Investigation Wing as well as statement of Shri Vijay Narendra Kothari recorded on 10/10/2013. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the original assessment was completed U/s 143(3) of the Act on 22/12/2011 whereby the Assessing Officer made a trading addition of Rs. 2,50,000/- after rejecting the books of account of the assessee U/s 145(3) of the Act. The reasons for rejection of books of account by the Assessing Officer in the original scrutiny assessment was non-maintenance of stock register, unverifiable purchases and valuation of stock. Thus, the Assessing Officer after conducting enquiry in respect of purchases made by the assessee found that some of the purchases were not verifiable. However, the Assessing Officer has not commented on the genuineness of the purchases made from M/s Kothari Impex. Subsequently, the Assessing Officer vide notice issued U/s 148

dated 12/03/2016 has reopened the assessment while recording the reasons as under:

“On the basis of information available on record it is gathered that during the year assessee has taken accommodation entry in the nature of bogus share application money/ bogus unsecured loan/ bogus sale and purchase. The assessee has obtained following accommodation entries:-

S. No.	Name of concern/ entry provider	Transaction Amount	Group	Beneficiary Name
1.	Kothari Impex	Rs.2,79,35,857/-	Gautam Jain Group, Surat	G.B.Impex
	Total	Rs. 2,79,35,857/-		

The above concern is indulged in providing accommodation entries in lieu of cash obtained from the beneficiary and not doing any genuine business activities as divulged during the course of search and seizure proceeding in Dharmichand Jain Group, Surat. The assessee has failed to disclose fully and truly all material facts necessary for its assessment. Therefore, I have the reason to believe that, the income of Rs.2,79,35,857/- which is chargeable to tax, has escaped assessment within the meaning of section 147 of the IT Act 1961 ”

It is manifest from the reasons recorded by the Assessing Officer proposed to reopen the assessment on account of income as escaped assessment of Rs. 2,79,35,837/-, however, the Assessing Officer has not specified the nature of transaction in the reasons recorded but has stated that on the basis of the information it is gathered that during the year the assessee has taken accommodation entries in the nature of **bogus share application money/bogus unsecured loan/ bogus sale and purchases.** This statement of the Assessing Officer in the reasons recorded clearly shows that the Assessing Officer was not sure about the exact nature of transaction as

accommodation entry availed by the assessee from M/s Kothari Impex. Whereas as per the record, the assessee has made purchases of the said amount from M/s Kothari Impex and no other transaction is either recorded in the books or is found as per search and seizure proceedings. It clearly reveals that the reasons recorded by the Assessing Officer are very vague in nature without specifying the transaction whether it is share application money or unsecured loan or sale or purchases. It is not the case of transaction first time came into light only after the report of the Investigation Wing, was received by the Assessing Officer but the original assessment was completed U/s 143(3) of the Act and the Assessing Officer has conducted an enquiry and taken a decision that some of the purchases made by the assessee were unverifiable and accordingly a trading addition of Rs. 2,50,000/- was made after rejection of books of account. Hence, the transaction of purchases made from M/s Kothari Impex was duly disclosed in the return of income and was also examined by the Assessing Officer while completing the assessment U/s 143(3) of the Act. Hence, the reopening based on the information of Investigation Wing is only to conduct a further enquiry to ascertain the correct nature of transaction or whether a transaction was in the nature of bogus share application money or bogus unsecured loan or bogus sales and purchases. In our considered view, the Assessing Officer cannot resort to the provisions of Section

147/148 of the Act only to conduct a roving and fishing the enquiry and then to decide whether any income assessable to tax has escaped assessment or not. In this case, the Assessing Officer has finally concluded that the transaction of purchases made by the assessee are in the category of unverifiable purchases instead of holding the bogus transaction and finally made an addition of 25% of such purchases. Therefore, the Assessing Officer has estimated the income of the assessee in the reassessment order passed U/s 143(3) read with Section 147 of the Act which was further estimated by the Id. CIT(A) by applying G.P. rate of 9%. It is pertinent to note that the original assessment was completed on the income which is also estimated by the Assessing Officer after rejection of books of account and a trading addition of Rs. 2,50,000/- was made, therefore, reassessment was done by the Assessing Officer only to re-estimate the income of the assessee. There is no dispute that the notice issued U/s 148 of the Act on 12/3/2016 is after the expiry of four years from the end of the assessment year under consideration, hence, the reopening has to be tested with the compliance of the conditions set out in the proviso to Section 147 of the Act. We note that the Coordinate Benches of this Tribunal have considered an identical issue in the cases relied upon by the assessee (supra) and in the case of M/s Dwarka Gems Ltd. Vs DCIT (supra), the Tribunal has analysed the provisions of Section

147 of the Act as well the facts which are identical to the facts in the case in had and has held in para 4 as under:

“4. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the original assessment was completed under section 143(3) on 27th December, 2010 after an addition on account of unverifiable/bogus purchases was made by the AO. Thus it is manifest from the record that the AO while completing the original assessment under section 143(3) has conducted an enquiry in respect of the purchases made by the assessee and finally concluded that the purchases made by the assessee from the 12 parties were not verifiable and accordingly an addition of 25% of such purchases were made by the AO. Therefore, the issue of genuineness of purchases was duly examined by the AO while completing the scrutiny assessment under section 143(3). The AO, thereafter, issued a notice under section 148 on 21.11.2014 which is after four years from the end of the assessment year under consideration. The reasons recorded for reopening of the assessment are as under :-

“As per information it had been established that bogus sales entries were made in favour of M/s Dwarka Gems on various dated during F.Y. 2007-08 i.e. A.Y. 2008-09 total amounting to Rs. 31,40,818/-. These entries were provided by M/s Meridian Gems & M/s Millenium Stars which are some of the bogus concerns of Bhanwar Lal Jain & Group.”

Thus it is clear that the reopening of the assessment is based on the information received and to assess the income in respect of the purchases made by the assessee which was examined by the AO during the original scrutiny assessment under section 143(3). The AO after an enquiry and investigation during the original assessment proceedings held that the purchases made from 12 parties are not verifiable/genuine. Thus except the purchases made from those 12 parties, the AO has accepted the genuineness of the purchases including the two parties, namely M/s.

Maridian Gems and M/s. Millennium Star. Even if the subsequent information received from the DIT Investigation Wing Mumbai renders the assessment order passed under section 143(3) defective and erroneous for want of proper verification and investigation, the same would not turn the case in the category that the assessee has failed to disclose fully and truly all the particulars necessary for assessment. It is not the case of the AO that the assessee has not furnished the requisite documents and details of purchase rather the AO conducted a detailed enquiry during the original assessment on the issue of genuineness of purchases. Thus the information received by the AO from Investigation Wing Mumbai would not amount to non disclosure of particulars by the assessee, rather it was the subject matter of enquiry by the AO in the original assessment. Therefore, if the AO failed to conduct proper enquiry regarding the genuineness of the purchases, the same would not give jurisdiction to the AO to review the order or remove the defect based on subsequent information. The statute has provided segregation of powers and jurisdiction between the hierarchy of the taxing authorities and, therefore, the power and jurisdiction vested with one authority cannot be assumed by the other authority. Section 263 is a provision of check and balances and, therefore, in case of failure on the part of the AO to conduct a proper enquiry as revealed by a subsequent material and information came to the knowledge of the Commissioner, the provisions of section 263 can be invoked by the revisionary authority. Therefore, the remedy for any defect or default in the order of the AO is provided under section 263 of the Act and not under section 147. The reopening after four years from the end of the assessment year completed under section 143(3) is not permissible without satisfying the condition precedent as provided under the provisions of section 147 of the Act. The subsequent information received by the AO cannot remove or relax the said condition provided under the provisions of section 147 that the assessee failed to

disclose fully and truly all the material necessary for assessment. In the case in hand, when the AO has already conducted an enquiry on the issue and the assessee is not expected to furnish more than what was already furnished during the assessment proceedings, then the reopening based on the information from the Investigation Wing on the same issue is nothing but change of opinion and to review the order passed by the AO under section 143(3) which is not permissible under law. Accordingly, in the facts and circumstances of the case, we hold that the reopening is not valid and, therefore, the reassessment framed by the AO is without jurisdiction and consequently the reassessment order passed is quashed.”

Thus, the reopening in the said case was also based on the report of the Investigation Wing, Mumbai and the Assessing Officer proposed to reopen the assessment to assess the income on account of accommodation entries received by the assessee. However, the Tribunal found that when the assessee disclosed all the relevant facts and produced all the material, which was required to be produced then even if the Assessing Officer failed to conduct a proper enquiry regarding genuineness of the purchases while passing the scrutiny assessment U/s 143(3) of the Act, the same would not give the jurisdiction to the Assessing Officer to review the order or remove the defect based on the subsequent information. In the case in hand, the Assessing Officer has duly examined the purchases made by the assessee and also observed that some of the purchases are not verifiable and accordingly made the addition being trading addition of Rs. 2,50,000/-

while passing the order U/s 143(3) of the Act and therefore, the reopening after four years is not permitted just to review the earlier order passed by the Assessing Officer U/s 143(3) of the Act based on the information received from the Investigation Wing on the same issue, which was subject matter of enquiry and investigation by the Assessing Officer while passing the order U/s 143(3) of the Act. Even otherwise the reasons recorded by the Assessing Officer are very vague which suggests that the Assessing Officer has not applied his mind and just recorded the reasons as borrowed from the report of the Investigation Wing without specifying the nature of transaction whereas the assessee had only one transaction of purchase from the said party namely M/s Kothari Impex. Hence, in view of the facts and circumstances of the case as well as the decision of the Coordinate Bench (supra) we hold that the reopening is not valid and the same is liable to be quashed. Accordingly, the Assessing Officer has framed reassessment without jurisdiction and therefore, the reassessment order is not valid and the same is set aside.

5. Since we have quashed the reopening and reassessment made by the Assessing Officer, therefore, we do not propose to go into the ground No. 2 of the appeal on the merits of the addition, which becomes infructuous.

6. In the case for A.Y. 2010-11, the assessee has raised following grounds of appeal:

- “1. Under the facts and circumstance of the case, the notice issued u/s 148 and consequent order passed u/s 147 is illegal and bad in law.*
- 2. The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the purchases of Rs. 1,71,03,970/- made from Kothari Impex as bogus by not considering the various evidences filed by the assessee.*
- 2.1 The Ld. CIT(A) has erred on facts and in law in making addition of Rs.70,45,465/- (1,74,32,920- 1,03,87,455) by applying g.p. rate of 9% on turnover of Rs.19,36,99,119/- as against addition of Rs.42,75,990/- made by AO by disallowing 25% of the purchases of Rs.1,71,03,970/- made from Kothari Impex, thereby enhancing the addition by Rs.27,69,475/-. She has further erred in making the addition by applying g.p. rate of 9% of the turnover. She has further erred in making the addition by application of g.p. rate ignoring that Hon'ble ITAT in ITA No.429/JP/15 dated 13.05.2016 in the assessee's own case for the same AY has disapproved the application of g.p. rate applied by the AO and restricted the addition at 15% of the alleged unverifiable purchases.*
- 3. The assessee craves to amend, alter and modify any of the grounds of appeal.*
- 4. Necessary cost be allowed to the assessee.”*

7. Ground No.1 of the appeal is regarding the validity of initiation of proceedings U/s 147/148 of the Act and consequential reassessment order passed U/s 147 of the Act. The assessee filed its return of income on 12/10/2010 declaring total income of Rs. 55,360/- on which scrutiny assessment U/s 143(3) of the Act was passed on 25/3/2013. The

Assessing Officer while passing the scrutiny assessment, rejected the books of account and also observed that the purchases made by the assessee from 12 parties were not verifiable and accordingly, the Assessing Officer estimated the income of the assessee by applying G.P. rate of 6.06% as against the G.P. rate declared by the assessee as 5.36%. Consequently, the Assessing Officer made trading addition of Rs. 13,50,711/-. The said order of the Assessing Officer was subsequently rectified by the Assessing Officer while passing the order U/s 154 of the Act dated 06/09/2013 wherein the Assessing Officer applied G.P. rate @ 8.32% and accordingly enhanced the addition to Rs. 57,83,670/-.

8. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and vide order dated 06/2/2015, the Id. CIT(A) had confirmed the disallowances by applying 15% of unverifiable purchases and consequently the addition was restricted to Rs. 7,84,442/-.

9. The revenue filed an appeal against the said order of the Id. CIT(A) before this Tribunal. However, the Tribunal vide order dated 13/5/2016 dismissed the appeal filed by the revenue in ITA No. 429/JP/2015 and upheld the order passed by the Id. CIT(A). Thereafter the Assessing Officer reopened the assessment by issuing the notice U/s 148 dated 25/3/2017 by recording the reasons as under:

“The assessee firm has filed its return of income from the year under consideration on 12/10/2010 declaring total income of Rs. 55,360/-. Further on the basis of information available on record it is gathered that during the year assessee has taken accommodation entry in the nature of bogus purchase. The assessee has obtained accommodation entry from following concern as under:-

S. No.	Name of concern/ entry provider	Transaction Amount	Group	Beneficiary Name
1.	Kothari Impex	Rs.1,71,03,970/-	Gautam Jain & Ors.	G.B. Impex
	Total	Rs.1,71,03,970/-		

The above concerns of Gautam Jain & Others Group Surat is indulged in providing accommodation entries in lieu of cash obtained from the beneficiary and not doing any genuine business activities as divulged during the course of search and seizure proceeding in Gautam Jain & Others Group Surat. The assessee has failed to disclose fully and truly all material facts necessary for its assessment. Therefore, I have the reason to believe that, the income of Rs.1,71,03,970/- which is chargeable to tax, has escaped assessment within the meaning of section 147 of the IT Act 1961 ”

Thus, the Assessing Officer has recorded an identical reasons except the fact that for this year the Assessing Officer has specified the transaction as bogus purchases made from Kothari Impex. Further the information received by the Assessing Officer includes the statement of a different person namely Shri Gautam Jain instead of Shri Vijay Narendra Kothari. Thus the Assessing Officer while recording the reasons for two years considered two different statements in respect of transactions of purchases made from the same party. All other facts are identical to the facts for the A.Y. 2009-10. Undisputedly the original assessment was completed U/s 143(3) of the Act and the reopening is after expiry of four

years from the end of the assessment year and therefore, the proviso to Section 147 of the Act is attracted to the case of the case. Both the parties have advanced their arguments identical to the arguments advanced in the case for A.Y. 2009-10.

10. Having considered the rival submissions as well as the relevant material on record, we find that the issue of validity of reopening for the A.Y. 2010-11 is identical to the issue for the A.Y. 2009-10. All other relevant facts and circumstances are also identical for both the years, accordingly our findings in the case of A.Y. 2009-10 shall apply mutatis mutandis in this year also. Hence we hold that the reopening is not valid and is hereby quashed.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 18/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18th September, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s G.B. Impex, Jaipur.
2. प्रत्यर्थी / The Respondent- (i) The ITO, Ward-6(4), Jaipur
(ii) The ITO, Ward-5(3), Jaipur.

3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 624 & 800/JP/2018)
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar