

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", 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. 878/JP/2018
निर्धारण वर्ष / Assessment Year : 2007-08

Smt. Kanta Chaudhary Prop. M/s Monu Jewellers, Purohiton Ka Mohalla, Chomu, Distt. Jaipur (Raj)	बनाम Vs.	The ITO, Ward-7(3), Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AATPC 8533 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 19/11/2018
उदघोषणा की तारीख / Date of Pronouncement : 06/12/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Jaipur dated 10.05.2018 for Assessment Year 2007-08 wherein the assessee has taken the following grounds of appeal:-

"1. That the Id. AO as well as CIT(A) have erred in law and on facts in rejecting the objection of the appellant without proper appreciation of correct facts. This objection was raised in connection with recording of wrong facts for initiation of

reassessment proceedings. It is therefore sincerely requested that the whole proceedings may please be declared null and void.

2. That the Id. CIT(A) has erred seriously on facts in sustaining an addition of Rs. 5,49,645/- being 15% of alleged bogus purchases as against an addition of Rs. 9,16,075/- being 25% of alleged bogus purchases of Rs. 36,64,300/- and hence allowing only a relief of 10% of such alleged bogus purchases. Relief may please be provided by deleting the addition of Rs. 5,49,645/- sustained by Id. CIT(A).

3. That the Id. CIT(A) erred on facts in holding that the alleged bogus purchases is through accommodation entries only, without carrying his independent enquiries.

4. That the Id. AO as well as Id. CIT(A) erred on facts and in law in making the above said addition on account of alleged bogus purchases by relying merely on certain informations received from investigation wing of the department and without allowing any opportunity to the appellants to cross examine the witnesses of the department, on account of which the order so passed may kindly be held null and void as had been passed without following the principles of natural justice."

2. Firstly, ground no. 3 was not pressed during the course of hearing. Hence, the same is dismissed as not pressed.

3. In respect of other grounds of appeal, the Id AR submitted that the facts of the case are that the Id. AO based on information received from Investigation Wing of the department about a search conducted on Shri Pravin Kumar Jain group wherein it was inferred that M/s. New

Planet Trading Co. P Ltd. was a concern managed and controlled by them and was engaged into providing accommodation entries and the appellant was one of the beneficiary. The Id. AO also observed that the assessee did not file her original return and hence notice u/s 148 of the Income Tax Act, 1961 was issued. During scrutiny proceedings, the appellant was asked to prove genuineness of purchases made from above named parties. In response, the appellant had submitted copies of the bills, bank statements, stock records etc. The Id. AO alleged that he had sent his Inspector to the office address of the above named party where no such office was found and hence the Id. AO inferred that the appellant had purchased goods from some other party and took accommodation bills from the above named party. Accordingly he disallowed a sum of 25% of alleged unverifiable purchases and added the same to income of the appellant.

3.1 It was further submitted that on appeal before the Id. CIT (A), the latter's attention was drawn to the order of this Bench of ITAT in the case of M/s. Allied Gems Corporation (ITA No. 794/JP/2011) wherein it was held that in such cases, estimation of correct income of the assessee has to be made on the basis of past history of the appellant. However, the Id CIT(A) not fully convinced with the same reduced the disallowance to 15% and granted relief for 10% of such purchases.

3.2 In the above factual background, it was submitted by the Id AR that as per the reasons recorded for reopening, the Id. AO stated that

the appellant did not file her original return on the basis of AST system of the department whereas the correct fact is that the appellant had filed her regular return on 31.07.2007. It proves that the Id. AO acted merely on the basis of information passed on by Investigation wing, Mumbai and he did not apply his mind before issuing notice u/s 148 of the Income tax Act, 1961. The appellant had objected to such reopening before Id. AO which was settled by him by stating that in the information received, he only had the name of the proprietary concern of the assessee and did not have details about PAN and name of proprietor and hence in the reasons, it was mentioned that the assessee did not file original return.

3.3 The Id. AR further submitted that in all such cases normally all details such as name of proprietor, address, PAN etc. are received. It was further submitted that one thing is very clear that the Id. AO did not apply his independent mind before issuance of notice u/s 148 and he has proceeded merely on the basis of borrowed satisfaction of the investigation wing of Mumbai. Reliance is placed on PCIT -5, Mumbai v/s M/s. Shodiman Investments P Ltd. (ITA No. 1297 of 2015 – Mumbai HC vide order dated 16.04.2018) wherein the Hon'ble Mumbai High Court has held as under :-

"13 In this case, the reasons as made available to the Respondent Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the

conclusion that the Respondent Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment.

It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14 Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a reopening notice on the basis of intimation regarding reopening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that reopening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

15 Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found fault with. This view of the Tribunal is in accordance with the settled position in law.”

3.4 The Id. AR further submitted that the assessee also objected to reopening on the ground that same has been taken on untenable grounds. In the reasons, it has been stated by the Id. AO that the assessee did not file original return u/s 139(1) and the said fact is wrong as the assessee had filed her return u/s 139(1) on 31.07.2007.

The information for above transaction of purchases from above named party was received by the Id. AO from Investigation wing, Mumbai but after receiving the same the Id. AO did not make any independent enquiry about the true facts of the case and therefore, it has been wrongly observed that no return was filed by the assessee. Therefore the notice so issued is purely on the basis of receipt of certain information and merely on this basis the case was reopened. Under such circumstances all the proceedings undertaken u/s 147 & 148 are liable to be quashed. Such view was held by the Jaipur Tribunal in the case of Narain Dutt Sharma v. Income-tax Officer, Ward- 6 (1), Jaipur (ITA NO. 203/2017 vide order dated 07.02.2018) wherein it was held :-

"We have heard the rival contentions and perused the material available on record. Firstly, it is noted that in the instant case, the notice under section 148 in exercise of powers under section 147 has been issued on 23.03.2014 after the expiry of period of four years from the end of the impugned assessment year i.e, AY 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year. The contention of the Revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impugned assessment year and the same was not reflected in the IT system. Per contra, the Id AR has submitted that return of income for the AY 2007-08 was filed by the assessee manually with ITO Ward 6(1) Jaipur vide acknowledgment no. 2611000925 on 21.05.2008. It is relevant to

note that the return of income so filed manually is with ITO Ward 6(1) who is the same officer who has subsequently issued the notice u/s. 148 of the Act and therefore, Revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the Revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of reassessment proceedings and where there is fault on the part of the assessee in filing his return of income.

3.5 In the present case, it was submitted that the proceedings were undertaken beyond four years of the end of the relevant year and there was no failure on the part of the assessee in disclosing all relevant facts. It is therefore sincerely requested that the notice so issued is liable to be declared as illegal and the whole proceedings are liable to be quashed.

4. The Id. DR has vehemently argued the matter and has relied on the order of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. On perusal of the reasons so recorded by the AO before issuance of notice u/s 148 of the Act, we find that on the basis certain information received from the Investigation Wing Mumbai, the AO has not just formed an opinion but has finally concluded that the assessee has benefitted by obtaining accommodation entries from M/s New Planet Trading Co Ltd. Further, the AO has stated that since the assessee has not filed the return of income as per AST system of the department, he has reasons to believe that income has escaped

assessment. To our mind, such an approach of the AO where, based on information received in context of a third party, even before issuance of notice u/s 148 has concluded that assessee has obtained accommodation entries and income to that extent has escaped assessment is not a correct approach in the eyes of law. In the instant case, it is an undisputed fact that the assessee has filed her return of income on 31.07.2007 where she has shown purchases of Rs 36,64,300 and which are the only purchases during the year and which are alleged to be accommodation entry as per the reasons issued u/s 148 of the Act. The assessee has shown the corresponding sales of Rs 39,44,220 and reported a gross profit of Rs 3,41,752. As held by the Bombay High Court in case of M/s Shodiman Investments, the material in possession of the AO has to be further linked by any reason to come to conclusion that the assessee has indulged in any activity which could give rise to reason to believe that income chargeable to tax has escaped assessment. In other words, unless the AO carries out the further examination after receipt of initial information from the Investigation wing, how can he conclude that income has escaped assessment. It is a fact that the assessee has filed her return of income. The AO should have examined her return of income and carried out initial investigation before coming to the conclusion that income has escaped assessment. In the entirety of facts and circumstances of the case, the notice issued under section 148 cannot be sustained and the same is held to be bad in law. In the result, the reassessment proceedings are hereby quashed and set-aside. The grounds on merit have thus become infructuous and are not adjudicated upon.

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

Order pronounced in the open Court on 06/12/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/12/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- Smt. Kanta Chaudhary, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO. Ward- 7(3), 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. 878/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar