

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.42/Ahd/2015
(Assessment Year : 2006-07)

Biography Investment Pvt. Ltd., 9 th Floor, B. D. Patel House, Naranpura, Ahmedabad – 380 013.	Vs.	The ITO, Ward – 1(2), Ahmedabad – 380 015.
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[PAN No. AABCB 6854 F]

(Appellant)

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(Respondent)

Appellant by :	Shri G. C. Pipara, A.R.
Respondent by :	Shri Uma Shankar Prasad, Sr.D.R.

Date of Hearing	04/09/2018
Date of Pronouncement	29/11/2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been preferred before us by the assessee against the order dated 14.10.2014 passed by the Commissioner of Income Tax(Appeals)-XVI, Ahmedabad under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 arising out of the order dated 21.03.2013 passed by the Income Tax Officer, Ward - 1(2), Ahmedabad for the Assessment Year 2006-07 with the following grounds :

1. *“The ld. CIT(A) has erred in law in confirming the validity of notice u/s.148 of the Act and the pursuant reassessment proceedings without proper consideration and appreciation of the facts of the case vis-a-vis legal position. The since the notice u/s.148 of the Act prima facie appears to have been issued on mere change of opinion and verification of details*

*already available on record as admitted by the AO himself in the reasons recorded, the impugned reassessment order requires to be quashed as void-ab-initio as held by the **Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SO and Hon'ble Gujarat High Court In the case of Mihir Textiles Ltd. Vs. Jt. CIT (2010) Tax LR 417 (Gui.) apart from host of other decisions.***

2. *The Ld. CIT(A) further erred in relying upon the decision of Rajesh Jhaveri Stock Brokers Pvt. Ltd. [291 KR 500] and Usha International Ltd. to conclude that reassessment proceedings can be validly initiated in case where return is processed u/s.143(1) of the Act without properly appreciating the ratio laid down in the said decisions. The appellant states that it is not its case at all that an "intimation" cannot be subjected to section 147 proceedings; all that is contended is that if the revenue wants to invoke section 147 it should play by the rules of that section and the expression "reason to believe" cannot have two different standards or sets of meaning as categorically held by the Hon'ble Apex Court in the case of Rajesh Jhaveri Stock Brokers.*
3. *The appellant states that the Id. CIT(A) has thus failed to appreciate that the assessments, both u/s.143(1) or 143(3) cannot be reopened without there being any tangible material available or brought on record to justify reopening. In the instant case as evident from the reasons recorded, since no tangible material having been brought on record except mere review or verification of the same material available on record, the reopening of assessment is bad in law and thus requires to be quashed as void-ab-initio.*
4. *The Ld. CIT(A) has further erred in not adjudicating the ground of appeal contending that the Ld. AO had erred in not passing a speaking order against the objections raised before him by the appellant challenging the validity of notice u/s.148 of the Act before proceeding with the reassessment as laid down by the **Hon'ble Supreme Court in the case of GKN Driveshaft India Ltd. vs. ITO 259 ITR 19 (SC)** failing which the assessment could not be sustained as held by the **Jurisdictional High Court i.e. Hon'ble Gujarat High Court in the case of MGM Exports vs. Dy. CIT(2010)323 ITR 331 (Guj.)***
5. *The Id. CIT(A) has erred in not adjudicating and/or giving findings on the ground of appeal contending that the AO had erred in not furnishing the copy of entire material gathered as a result of enquiries conducted u/s.133(6) of the Act and in not granting an opportunity of cross-examination of the persons/entities from whom the enquiries were gathered and used for drawing adverse inference in case of the appellant. The*

assessment order thus having been passed in gross violation of the principles of natural justice and equity ought to have been quashed as invalid and void-ab-initio.

6. *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.10,00,000/- made by the AO u/s.69 of the Act on account of alleged unexplained investment in shares of Infocity Club & Resorts Pvt. Ltd. without appreciating the fact the AO having categorically accepted the factum of investment in the said shares. In view of elaborate facts, submissions and evidences filed coupled with legal position, the impugned addition of Rs.10,00,000/- requires to be deleted.*
7. *The Ld. CIT(A) has further erred in law and on facts in confirming the addition of Rs.10,00,000/- made by the AO u/s.68 of the Act on account of alleged unexplained cash credit being sale proceeds received from M/s. Anmol Enterprise and M/s. Ahmedi Traders on sale of shares of Infocity Club & Resorts Pvt. Ltd. on the ground that no documentary evidences or confirmation of the parties were furnished. In view of facts, submissions and evidences filed, more particularly the complete address and PAN of the parties concerned, the impugned addition of Rs.10,00,000/-requires to be deleted.*

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.”

3. The assessee herein has mainly challenged the order passed by the Learned Assessing Officer in not disposing off by a speaking order against the objection raised before him challenging the validity of the notice u/s 148 of the Act before the reassessment proceeding has been finalized.

4. The assessee filed its return of income for Asst Year 2006-07 on 30.12.2006 it was processed u/s 143(1) of the Act on 23.08.2007 subsequently. On the basis of information from ACIT, Circle Gandhinagar, the matter was considered for reassessment for the reasons recorded by the Learned Assessing Officer. A notice u/s 148 of the Act thereupon was issued on 21.03.2012 and served upon the assessee on 29.03.2012 followed by a

fresh notice dated 18.05.2012 due to change of incumbency in the office. A notice u/s 142(1) was also served on 12.06.2012 in response whereof reply dated 18.06.2012 was made by the assessee asking for providing it the reasons recorded by the Learned Assessing Officer for such reassessment. The reasons recorded for reopening of the case was thereafter provided to the assessee on 07.09.2012 followed by a show-cause notice. The assessee vide letter dated 28.02.2013 in addition to the submissions made denying the allegation made against him raised objection to the initiation of reassessment proceedings. It appears from the record, particularly the order passed by the AO that the said objection was not disposed of by him before framing the reassessment order dated 21.03.2013 culminating into the order of addition of Rs.10,00,000/- treating the same as unaccounted cash credit u/s 68 of the Act which was claimed by the assessee company to have been received in the name of sale of shares. The said legal infirmity though placed before the first appellate authority by the assessee in appeal the same was not considered in its proper prospective. In fact, there is no such deliberation made by the Learned CIT(A) on this particular aspect of the matter. The appeal, however, was dismissed against the assessee. Hence, the instant appeal before us.

5. At the time of hearing of the instant appeal the Learned Counsel for the assessee relied upon the judgment passed by the Co-ordinate Bench dealing the identical question of law in favour of the assessee. However, the Learned Representative of the Department relies upon the order passed by the authorities below and failed to rebut the argument advanced by the Assessee's Representative on the point of non disposal of objection raised by the assessee against such reassessment.

6. We have heard the Learned counsel appearing for the parties, we have perused the relevant materials available on record. It reveals from records particularly the order passed by the Learned Assessing Officer that the objection raised by the assessee against

initiation of reassessment proceedings was disposed off in the order of assessment itself and not before the finalization of such reassessment. Further that though this particular point was argued even by way of written submission before the Learned CIT(A), no deliberation, whatsoever, has been made by the First Appellate Authority while passing the order impugned before us. We have also perused the judgment passed by the Learned Co-ordinate Bench in deciding the identical issue. The relevant portion whereof is as follows:

“3. We notice at the outset that the assessee's case before the CIT(A) qua its legal ground challenging validity of reopening was that the Assessing Officer had not disposed of its objections before framing the re-assessment in question dated 21.03.2013 culminating in the remaining two additions of Section 69 & 68 of the Act in the nature of unapproved investments and cash credit respectively to the tune of Rs. 35 lacs each. The CIT(A)'s order under challenge does not specifically rebut this factual position. Same is the position during the course of instant second appellate proceedings before us. We notice in this backdrop that hon'ble jurisdictional high court's decision in Banaskantha District Oilseeds Growers Co-op. Union Ltd. vs. ACIT (2015) 59 taxmann.com 328 (Guj) holds that in case an Assessing Officer does not decide a tax payer's objections against reopening reasons before framing final re-assessment, the issue has to be remitted back for necessary compliance as per hon'ble apex court's judgment in GKN Driveshaft (India) Ltd. ITO 259 ITR 19 (SC). We therefore draw support from hon'ble jurisdictional high court's above stated judgment in remit the instant appeal back to the Assessing Officer for his apt adjudication qua the assessee's objections filed during the course of re-assessment. The assessee's instant appeal is therefore accepted for statistical purposes.

3. This assessee's appeal is allowed for statistical purposes.”

7. Having heard the Learned Counsel appearing for the respective parties, having regard to the facts and circumstances of the case and particularly the ratio laid down by the order passed by the Co-ordinate Bench, we are of the considered opinion that the assessee's objection relating to the initiation of proceeding since not disposed off prior to the final reassessment, the issue is required to be remitted to the file of the Assessing Officer for fresh adjudication of the same filed during the course of reassessment. Hence,

the order of reassessment is quashed and the Learned Assessing Officer is directed to act in terms of the observation made hereinabove. The assessee's appeal is thus disposed off for statistical purposes.

8. In the result, the assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on

29/11/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 29/11/2018

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XVI, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad