

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 4540/De!/2014
AY: 2005-06

M/s Rathi Ceramics Pvt. Ltd. 26/A, Sadhana Enclave, New Delhi – 17 (PAN : AAACR 4592F) (APPALLANT)	vs.	Income Tax Officer, Ward 15(3), New Delhi (RESPONDENT)
(Appellant)		(Respondent)

Assessee by : Sh. Ashish Goel, CA
Revenue by : Sh. Surender Pal, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the assessee against the order passed by the Ld. CIT(A) dated 12.06.2014 relating to assessment year 2005-06 on the following grounds:-

1. That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals)-XVIII, New Delhi [briefly "the CIT(A)"] has erred in upholding the reopening of assessment under section 147 of the Income tax Act, 1961 (briefly "the Act").

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that the proviso to section 147 of the Act was applicable. Subsequent to original assessment u/s 143(3), assessment was reopened in May 2009 allegedly for the reason that that the assessee has received accommodation entries. Having made the assessment u/s 147/ 143(3), second notice u/s 148 of the Act has been issued after the expiry of four years from the end of assessment year, though there was no failure on the part of the assessee to disclose fully and truly material facts necessary for the assessment.
3. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that there was no application of mind to the alleged information received from Investing Wing that the assessee was amongst the beneficiaries of the bogus accommodation entries. There was no tangible material to reopen the assessment.
4. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that reopening of assessment on second occasion was nothing but a change of opinion.

5. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the assessment at total income of Rs.50,38,750/-, as against returned income of Rs. 1250/-. The Appellant denies its liability to be assessed at income of Rs.50,38,750/-.

2. The brief facts of the case are that assessee company filed its return of income originally on 29.10.2005. The said return was taken up for scrutiny and assessment order under section 143(3) of the Income Tax Act, 1961 (in short "Act) was passed on 27.12.2007. Thereafter the assessment was reopened under section 147 of the Act on the basis of a report received from Investigation Wing regarding share capital of Rs.50,00,000/- being received from the two companies of Mr. Tarun Goyal. The re-assessment was framed by making addition of Rs.50,37,500/- which included Rs.37,500/- on account of commission in receiving the above entries of Rs.50,00,000/- and reassessment was completed at Rs. 50,38,750/- u/s. 147/144 of the I.T. Act, 1961 vide order dated 01.03.2013. Aggrieved by the order of the A.O, assessee filed appeal before the Ld. CIT(A), who vide his impugned order dated 12.06.2014 dismissed the appeal of the assessee. Against the impugned order, the assessee is in appeal before us.

3. At the threshold, the Ld. AR of the assessee did not press the ground no. 1 to 4, hence, the same are dismissed as such. With regard to ground no. 5 & 6, it was contended by the Ld. AR that the addition in this case has been made on account of the share capital received from following two companies.

M/s Geefcee Finance Limited Rs. 45,00,000/-

M/s Maha Nivesh India Limited Rs.5,00,000/-

3.1 It was further submitted that the issue of the share capital from these two companies have been subject matter of appeal before the coordinate bench of the ITAT. The ITAT on similar issue relating to same investor party and similar sets of allegations in the case of ITO vs. M/s Vivsun Properties Pvt. Ltd. ITA No. 4786/Del/2011 Dated 01.03.2016 has deleted the additions on the ground that assessee has discharged its onus of providing the basic details which were required for verifications to fulfill the conditions viz. identity and credit worthiness of the investor and genuineness of the transactions. It was further submitted that in the present case also assessee has submitted all the details related to the share applications received from these two alleged companies to discharge its onus of providing the basic details which were required for verifications to fulfill the conditions viz. identity of the creditor, credit worthiness of the creditor

and genuineness of the transactions. It is also mentioned that that the case of the assessee has already been assessed thrice and all the details were before the AO during all the three proceedings. It was further contended that the AO in the assessment order has simply made a reference to the report of the investigation wing without pointing out how it is related to the assessee. The AO has not carried out any inquiry by exercising powers given under section 133(6) or 131(1) of the Act. In support of his contention, the Ld. AR placed reliance on the judgment of Hon'ble Jurisdictional High Court in the case of CIT v. Laxman Industrial Resources Pvt. Ltd. in ITA No. 169/2017 dated 14.03.2017. Further reliance was also placed on the following judgments:

- (i) Rajasthan High Court in the case of CIT v. Jalan Hard Coke Ltd. in ITA No. 419/2008 dated 31.07.2017. The SLP filed by Revenue in this case before the Apex Court has also been dismissed in SLP (Civil) Diary No. 16078/2018 dated 15.05.2018
- (ii) Bombay High Court in the case of Pr. CIT v. Paradise Inland Shipping Pvt. Ltd. in ITA No. 66 of 2016 dated 10.04.2017. The SLP filed by Revenue in this case before the Apex Court has also been dismissed in SLP (Civil) Diary

No. 12644/2018 dated 23.04.2018

- (iii) Rajasthan High Court in the case of CIT v. ARL Infratech Ltd. [2017] 394 ITR 383
- (iv) Delhi High Court in the case of CIT v. Russian Technology Centre (P.) Ltd. in ITA Nos. 547/2013 dated 15.12.2016
- (v) ITAT Delhi in the case of ITO v. Softline Creations (P.) Ltd. in ITA No. 744/Del/2012 dated 10.02.2015, which has been upheld by the Hon'ble jurisdictional High Court in ITA No. 504 of 2016 dated 31.08.2016
- (vi) Delhi High Court in the case of CIT v. Fair Finvest Ltd [2013] 357 ITR 146
- (vii) Delhi High Court in the case of CIT v. Gangeshwari Metal Pvt. Ltd. [2013] 214 Taxman 423

4. In reply the Ld. DR supported the order of the Ld. CIT(A). It was submitted that the issue is covered in favor of the Revenue by the orders passed by the various authorities including the recent judgment in the case of Pr. CIT NDR Promoters Pvt. Ltd. ITA 49/2018 vide dated 17.01.2019.

5. We have considered the rival submissions and perused the

relevant records, especially the impugned order as well as the Paper Book containing pages 1-110 in which assessee has attached the records of the assessment and submissions made before the Ld. CIT(A). On going through the same we note that assessee has received share capital of Rs.45 Lakhs from Geefcee Finance Ltd. and Rs. 5 Lakhs from Mahanivesh (India) Ltd. It has filed confirmation, bank Financial Stock statement, ITR and Audited Financial Stock statement of both these companies. The assessment thereafter was completed under section 143(3) of the Act by the AO vide order dated 27.12.2007 meaning thereby the AO has accepted the contention of the assessee. Thereafter the assessment was reopened by issue of notice under section 148 of the Act. After reopening of assessment the AO has not made any further inquiry. In fact, in the assessment order after making a reference to the report received from investigation wing, the AO has not stated anything particular to the assessee. The AO has also not commented adversely on any of the document available on record regarding these two companies. In view of these facts, the document submitted by the assessee were not rebutted by the AO. It is noted that the reliance placed by the AR on the various judgments supports the case of the assessee whereby it has been held that in the absence of any inquiry made by the AO the

addition on this account can't be sustained. The reliance placed by the Ld. DR on the judgment in the case of NDR Promoters Pvt. Ltd. has also taken note of this distinction in para 13 which reads as under:

"As we perceive, there are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received thorough banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries were conducted. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which should be

satisfied in such cases is, identification of the creditors/shareholder, creditworthiness of creditors/shareholder and genuineness of the transaction. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct. ”

5.1 We further note that in the above order relied upon by the Ld. DR, it has been stated that the said case falls in the category where the AO has not kept quiet and has made inquiries. As against this the present case falls in the other category as the assessment order is silent about the documents available on record in support of the share capital received by the appellant company. We find that there is no adverse observations or comment about the document available on record and submitted by the assessee in support of the share capital received by it in the original assessment proceedings on the basis of which assessment order dated 27.12.2007 was passed under section 143(3) of the Act. The AO having got the information from the investigation wing, the least he could do to make inquiry from the shareholders, the details of which were already on the record. In the case of CIT vs. Fair Finvest Pvt. Ltd. a similar issue has arisen. In the

case of CIT vs Fair Finvest Ltd 357 ITR 146 (Del.) the Hon'ble Jurisdictional High Court has held as under:-

"6. This Court has considered the submissions of the parties.

In this case the discussion by the CIT(Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the Directors, Form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the assessing officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the assessing officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors.

No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the assessing officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of Section 68.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra). 8. The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the assessing officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators; such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material. No substantial question of law arises. The appeal

is accordingly dismissed.”

6. Keeping in view of the facts and circumstances of the case and respectfully following the precedent as aforesaid, we delete the addition in dispute and allow the grounds raised by the assessee.

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

Order pronounced on 04.02.2019.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dt. 04-02-2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order,

ASSISTANT REGISTRAR

ITAT Delhi Benches