

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**Before Sh. N. S. Saini, Accountant Member  
And**

**Sh. N. K. Choudhry, Judicial Member**

**ITA No. 121/Asr./2017 : Asstt. Year : 2011-12**

Ambey Construction Company, #21605, Street No. 7, Power House Road, Bathinda	Vs	Asstt. Commissioner of Income Tax, Circle-1, Bathinda
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AANFA7199K</b>		

**Assessee by : Dr. Rakesh Gupta**

**Revenue by : Sh. M. P. Singh, CIT DR**

**Date of Hearing :19.02.2019**

**Date of Pronouncement : 21.02.2019**

**ORDER**

**Per N. S. Saini, AM:**

This is an appeal filed by the assessee against the order of CIT(A), Bathinda dated 30.01.2017.

2. The assessee has taken following grounds of appeal:

*"1. The Ld. CIT(A), Bathinda erred on facts and law in confirming the action of the AO of assessing the income vide order u/s 143(3) of IT Act, 1961 dated 14-03-2016 at Rs.16,73,54,700/- as against the income declared in the return at Rs.1,66,42,143/-.*

*2. The Ld. CIT(A) erred on facts and law in confirming the validity of proceedings initiated u/s 147/148 by the Ld. AO despite the established fact that notice u/s 148 of the Act was not served in accordance with the provisions of section 282 of the IT Act, 1961. The specific objection was raised during the course of assessment proceedings and the same has not even not rebutted by the AO during assessment proceedings and*

*this fact has even been admitted by him in the remand report.*

*3. The Ld. CIT(A) erred on facts and law in confirming the action of the AO in rejecting the books of accounts u/s 145(3) despite the fact that no specific defect in the books of account produced during the course of assessment proceedings, has been noticed/pointed out by the AO.*

*4. The Ld. CIT(A) erred on facts and law in rejecting the specific request of the assessee to provide the copies of the statements recorded by the department of Sh. Deepak Nimesh & Others at the back of the assessee and to allow an opportunity to cross examine them, despite the fact that the AO relied on his statement to make uncalled for addition . The action of the CIT(A) is in complete violation of principles of natural justice and binding judgment of the Hon'ble Supreme Court in the case of Andaman Timber Industries as reported in 281 CTR 241.*

*5. The Ld. CIT(A) erred on facts and law while directing the AO to assess the work contract receipts amounting to Rs. 15,00,00,000/-, assessed by the AO as income from other sources, as deemed income u/s 68. The explanation furnished during the course of assessment proceedings has been ignored summarily.*

*6. Notwithstanding the above grounds of appeal, the CIT (A) without giving any notice of enhancement or any other show cause notice, has erred in confirming the action of the Assessing Officer in sustaining the addition of Rs.15 crores and treating it as 'cash credits u/s 68' instead of 'income from other sources', as assessed by the Assessing Officer. This mode of change by the CIT(A) could not have been made without giving a notice to the appellant and, thus, the treatment of Rs. 15 crores as addition u/s 68 is uncalled for and the finding of the CIT(A) on this issue cannot be sustained at all.*

*7. The Ld. CIT(A) has erred on facts and law in confirming the action of the AO in applying net profit rate of 8%, after rejecting the books of account u/s 145(3), on the gross receipts while adjudicating the alternative grounds of appeal*

*of the assessee. The explanation furnished during the course of assessment proceedings has not been considered properly.*

*8. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

3. At the time of hearing, the assessee has raised additional grounds of appeal which reads as under:

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 147 to re-open the assessment and passing the impugned reassessment order, more so when such jurisdiction could not be assumed in law and reassessment order could not be passed in law, inter-alia for the following reasons:*

- a) Because the objections to the re-opening were not disposed.*
- b) Because the jurisdiction was assumed qua non-existent entity.*

*2. In any view of the matter and any case, action of Ld. AO in re-opening the impugned assessment and passing the impugned assessment order is bad in law.*

*It is submitted that the above grounds are purely legal, go to the root of the matter and do not require any fresh facts to be investigated and in any case are expansion of Ground Nos. 1 and 2 of appeal memo. These may please be admitted in view of the decisions of **Hon'ble Supreme Court** in the case of **National Thermal Power Co. Ltd. Vs CIT reported in 229 ITR 383 and Singhad technical Education Society reported in 397 ITR 344."***

4. The AR of the assessee submitted that this is a legal ground requiring no fresh investigation of facts and therefore, can be admitted by the Tribunal and for this he relied on the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. reported in 229 ITR 383 and Singhad Technical Education Society reported in 397 ITR 344.

5. The DR has not objected to the admission of the above additional grounds of appeal. Therefore, they were admitted and the parties were allowed to make their submissions thereon.

6. The AR of the assessee submitted that notice u/s 148 of the Act was issued on 13.02.2015 on the firm M/s Ambey Construction Company. He pointed out from page no. 1 of the paper book filed by the assessee where notice issued u/s 148 of the Act dated 13.02.2015 is placed. He submitted that the notice has been issued on the firm M/s Ambey Construction Company whose PAN No. is AAKCA0933H. He submitted that the assessee firm was dissolved on 31.12.2011. He submitted that this is evident from the impugned assessment order wherein the Assessing Officer at page no. 2 para 4 of its order has stated that during the proceedings, on perusal of the work cum agreement between M/s PACL and M/s Ambey Construction Company now it has been converted into company M/s Ambey Construtech Pvt. Ltd. He submitted that it will be observed from page no. 144 of the paper book volume no. II that statement of Sh. Harvinder Pal Singla was recorded on 11.02.2015 and in this statement in reply to question about activities of the company M/s Ambey Construction Pvt. Ltd. He

submitted that I brought to your notice that earlier the business was carried out in the name of partnership firm, M/s Ambey Construction Company and the same was dissolved on 31.12.2011. Further, it was a submission that on page nos. 156 & 157 of the paper book statement of Sh. Karandeep, Executive Manager of M/s Ambey Construction Pvt. Ltd. was recorded on 10.02.2015 is placed. In the said statement in reply to question no. 3, it was submitted by Sh. Karandeep that earlier the business was carried out in the name of partnership firm, M/s Ambey Construction Company and the same was dissolved on 31.12.2011. It was thus, his statement that it was well within the knowledge of the department that the firm was dissolved on 31.12.2011 and even after that the Assessing Officer passed reassessment order on 14.03.2016 and hence, the reassessment order of the AO was bad in law as it was passed on a firm which was already dissolved prior to the date of passing of the assessment order. For this, reliance was placed on the following decisions:

- *Saraswati Industrial Syndicate Ltd. vs. CIT [(1990)186 ITR 0278] (SC)*
- *CIT vs. M/s Spice Entertainment LTD., Civil Appeal No. 285 of 2014, Order Dated 02.11.2017 (SC)*
- *Spice Entertainment LTD vs. CIT, (2012) 247 CTR 500 (Del.)*
- *PCIT vs. Nokia Solutions & Network India (P) LTD., (2018) 90 taxmann.com 369 (Del.)*
- *Nokia Solutions & Network India PVT. LTD. vs. DCIT, (2017) 50 CCH 0177, ITAT Delhi.*
- *CIT vs. Micra India (P.) Ltd., (2015) 231 Taxman 0809 (Del.)*
- *PCIT vs. Kaizen Products (P) Ltd., ITA No. 466/2017 dated 25.07.2017 (Del.)*
- *PCIT vs. Images Credit and Portfolio (P) Ltd., ITA Nos. 582,584,431 - 433,533/2015 dated 19.08.2015 (Del.)*

- *M/s Images Credit & Portfolio (P) Ltd., ITA Nos. 5301 - 5306, 5418- 5423/Del/2013 dated 19.12.2014, ITAT Delhi*
- *I. K. Agencies (P) Ltd. vs. Commissioner of Wealth Tax [(2012) 347 ITR 0664] (Cal.)*
- *Rustagi Engineering Udyog (P) Ltd. & Ors. Vs. DCIT & Ors., (2016) 382 ITR 0443 (Del.)*
- *CIT vs. Vived Marketing Servicing (P). Ltd., ITA No. 273/2009 dated 17.09.2009 (Del.)*
- *CIT vs. Dimension Apparels (P) Ltd., (2015) 370 ITR 0288 (Del.)*
- *Impsat (P) Ltd. vs. ITO, (2004) 91 ITD 0354, ITAT Delhi*
- *Modi Crop. Ltd. vs. JCIT, (2006) 105 TTJ 0303, ITAT Delhi*
- *Pampasar Distillery Ltd. vs. ACIT, (2007) 15 SOT 0331, ITAT Kolkata*
- *Rajesh Marketing Services Ltd. vs. ITO, ITA No. 1029/Del/2013 dated 23.08.2013, ITAT Delhi*
- *M/s Computer Engineering Services India (P) Ltd. vs. ACIT, ITA Nos. 5874-5878/del/2013 dated 29.05.2015, ITAT Delhi*
- *M/s Anujay ITycare Products Pvt. Ltd. vs ITO, ITA No. 4411/Del/2017 dated 06.04.2018, ITAT Delhi*
- *Shri Ishwarbhai Maganbhai Desai vs. ITO, ITA No 90/Ahd/2017 dated 23/04/2018, ITAT Ahmedabad*

7. It was submitted that therefore the issue of notice and passing of assessment order in the present case on a non-existing person is bad in law. It was also submitted that recently the Hon'ble Delhi High Court in the case of Skylight Hospitality LLP Vs ACIT, WP(NO) 10870/2017, dated 02.02.2018 which also got confirmed by the Hon'ble Supreme Court in SLP(C) No. 7409/2018 dated 06.04.2018 wherein the Hon'ble High Court had distinguished an earlier judgment in the case of Spice Infotainment (supra) stating that in that case order passed was in the name of amalgamated company and not the amalgamating company and in the present case issue is of notice and no of order in the name of erstwhile entity. In

this manner, the order passed in the name of a non-existent entity will still remain illegal. The relevant findings of the Hon'ble High Court are as follows:

*"18. Petitioner relies on Spice Infotainment Ltd. Vs. CIT [2012] 247 CTR 500 (Delhi). Spice Corp. Ltd. The company that had filed return, had amalgamated with another company. After notice under section 147 /148 of the Act was issued and receive in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice u/s 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provision of the Companies Act. Order was in the name of non-existing person and hence void and illegal."*

8. The Ld. Counsel thereafter submitted that the assessee raised objection to the issuance of notice u/s 148 of the Act on 08.03.2016 wherein the assessee raised objection to the reopening of the assessment. The Assessing officer has not disposed off the objection of the assessee and therefore, the reassessment order passed on 14.03.2016 was bad in law. For this, he relied on the following decisions:

- *PCIT Vs Tupperware India (P.) Ltd. (2016) 284 CTR 0068 (Del.)*
- *Shiva Rubber Industries Vs ITO in ITA No. 2212/2015, order dated 25.04.2017, ITAT Delhi*
- *S. Power Pvt. Ltd. Vs ITO in ITA No 6544/2014, order dated 29.04.2016, ITAT Delhi*

➤ *Suresh Chandra Vs ITO in ITA No 3061/2012, order dated 13.03.2015, ITAT Delhi*

9. The AR of the assessee further argued and submitted that the reasons for reopening of assessment are not valid reasons. He submitted that the Assessing officer assumed jurisdiction u/s 147 of the Act based on the reason recorded which would show that there was no independent application of mind and there was no belief of escaped income which could have been formed. It was submitted that reasons are divided into five unnumbered paragraphs. First paragraph speaks of report of Investigation Wing which speaks about search at PACL group and the finding of search and merely says about the amount paid by PACL to the appellant. Second paragraph of the reason recorded speaks about survey conducted on the premises of the appellant and does not say anything about the impugned amount received from PACL to be in the nature of appellant's income. Further, in paragraph nos. 3, 4 & 5 of the reason speak of the expenditure incurred by the appellant and further that sum of Rs.15 crores received by the appellant from PACL group formed part of income being part of gross receipts. Hence, when the sum of Rs.15 crores as per reason was already part of gross receipts shown to the credit of profit and loss account, how could the belief be formed that the said income has escaped assessment. Thus, first there was no independent application of mind and in any case, there can be no belief of escapement of income which could have been formed on the basis of the reason recorded and hence reopening is bad in view of the following decisions:

➤ *Shipra Srivastava & Anr Vs ACIT (2009) 319 ITR 221 (Delhi)*

- *Balkrishna Hiralal Wani Vs ITI (2010) 321 ITR 519 (Bom.)*
- *Pr. CIT Vs Meenakshi Overseas (P) Ltd. (2017) 395 ITR 0677 (Delhi)*
- *Pr. CIT Vs RMG Polyvinyl (I) Ltd. (2017) 396 ITR 0005 (Delhi)*
- *Pr. CIT Vs G & G Pharma India Ltd. (2015) 384 ITR 0147 (Delhi)*
- *Northern Exim (P) Ltd. Vs DCIT (2013) 357 ITR 586 (Delhi)*

10. Alternatively, without prejudice to the above submissions, the AR of the assessee submitted that estimation of income by the Assessing Officer by applying rate of 8% on business receipts of Rs.29,72,75,966/- and making addition of Rs.2,37,82,077/- and making further addition of Rs.15 crores being amount received from PACL was not justified. It was submitted that in the immediately preceding assessment year 2013-14 profit rate of 3.09% was accepted by the revenue in an order passed u/s 143(3) of the Act. Further, it was submitted that assessee had already shown an income of Rs.24,42,562/- on the amount of Rs.15 crores received from PACL and therefore, making addition of Rs.15 crores separately to the income of the assessee was not justified.

11. On the other hand, the DR relied on the orders of the lower authorities.

12. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. During the year under consideration, the assessee firm was engaged in business of civil contract work. The original return of income was filed by the assessee firm on 29.09.2011 disclosing total income at Rs.1,66,42,143/-. The assessee firm

was converted into a Private Limited Company on 31.12.2011. Thereafter a notice u/s 148 of the Act was issued on 13.02.2015 in pursuance to which impugned order of reassessment u/s 143(3) r.w.s. 147 of the Act was passed on 14.03.2016.

13. The legal contention of the assessee are that notice u/s 148 of the Act dated 13.02.2015 was issued in the name of assessee firm which was not in existence on the date of issuance of notice. Further, it contended that objection filed by the assessee firm on 08.03.2016 against issuance of notice u/s 148 was not disposed off by passing a separate order before passing of impugned order of assessment. Lastly, he also contended that the reasons recorded in the instant case are not a reason to belief as envisaged u/s 147 of the Act and therefore, assumption of jurisdiction on 13.02.2015 was bad in law. For all the above reasons, the impugned order of reassessment is unsustainable.

14. We find that reasons which were recorded in the instant case before issuance of notice u/s 148 of the Act are as under:

*"In this case, an information was received from the Dy. Director of Income-tax (Inv.)-I, Gurgaon that M/s Ambey Construction Co. had received Rs.30 crores from M/s PACL for developing of land in the financial year 2010-11 relevant to assessment year 2011-12. As per this information it was stated that a search operation u/s 132 of the Income Tax Act was undertaken on PACL Ltd., Canaught Palace, New Delhi on 20.06.2013. The search revealed that M/s PACL Ltd. has taken deposits/advances from the public against offer of giving the plots of land (mainly agriculture) to such persons. The land was purportedly sold to depositors, after it has been supposedly developed by PACL Ltd. These lands are*

*situated in the states of Rajasthan, Madhya Pradesh, Tamil Nadu etc. The activities of land development are supposedly done by contractors on behalf of PACL Ltd. These contractors are located in various parts of the country, including M/s Ambey Construction Co. (Now Ambey Construction Co. Pvt. Ltd.), Bathinda. The evidence unearthed in search strongly suggests that land development expenditure claimed by PACL Ltd., were fictitious. The contractors, who have supposedly done land development work, are mostly paper entities. Even those contractors, who have a physical presence, do not possess machinery and equipment, capability or expertise to undertake land development work. Field inquiries at the addresses of the contractors have shown that multiple entities have a common address in localities/premises occupied by persons of no means. The assessee has got Rs.15 crores from the PACL to develop the land in the above states.*

*In view of the above, a survey operation was conducted on the business premises of the above noted assessee at House No. 21605, Street No. 7, Power House Road, Bathinda. During the course of survey a number of incriminating documents found and impounded. During survey and post-survey investigations, statements of Sh. Puneet Garg and Sh. Harwinder Pal Singla, Directors of the company have been recorded and confronted the issue with regard to development of land of the PACL by them against which they have received Rs.15 crores from the PACL. In his statement, the assessee was asked whether they have visited the site which was claimed to be developed by them or the sub-contractors who has executed such contract on behalf of their firm/company and was also confronted the shape and nature of land at the time or before entering into agreement for development. However, it was found that assessee was not aware of the land- which was stated to be developed on behalf of PACL and even not aware the nature of land.*

*From the above discussion, it is clear that the above noted company has received an amount of Rs.15 crores from the PACL whereas from the enquiries, it was emerged that the assessee was not able to justify the work done for the company of PACL Ltd. The assessee has taken this amount in its gross receipt for the A.Y. 2011-12 and after claiming the huge business expenses, the assessee has shown net profit of Rs. 1,66,07,805/- against the total receipt of Rs.44,72,75,966/- @ 3.71% whereas the amount under consideration of Rs.15 crores is required to be assessed under the head 'income from other source' as the assessee firm is not entitled to allow the business expenses as claimed this amount as the same is not received by the firm against the any execution of any work done of the PACL as discussed above.*

*In the light of the above, I have reasons to believe that the assessee company has escaped assessment an amount of Rs.15,00,00,000/- by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.*

*Accordingly, notice u/s 148 is to be issued to reassess the income which has escaped assessment besides any other income chargeable to tax which would have escaped assessment and would come to my notice subsequently in the course of assessment proceedings under this section, within the meaning of section 147 of the Income Tax Act, 1961."*

15. On a careful perusal of the above recording, we find force in the contention of the assessee that the above is not a reason to believe within the meaning of Section 147 of the Act which alone can justify reopening an assessment after lapse of several years. In the above recording in the first line, the AO has stated that it received information about receipt of Rs.30 crores by the assessee from M/s PACL for developing of land. However, in the same recording, later on, the AO changed that

amount to Rs.15 crores which is admittedly the correct amount. This shows the casual manner in which alleged reasons were recorded for reopening an assessment which is a serious matter. Be that as it may. The AO has found that receipt of Rs.15 crores was duly recorded by the assessee and included in its gross receipt of Rs.44,72,75,966/- shown in the return of income. Thus, the receipt of Rs.15 crores was already subjected to assessment is not in dispute. The crux of the recordings relevant to the issue of escapement of income as recorded are as under:

*"During survey an post-survey investigations, statements of Sh. Puneet Garg and Sh. Harwinder Pal Singla, Directors of the company have been recorded and confronted the issue with regard to development of land of the PACL by them against which they have received Rs.15 crores from the PACL. In his statement, the assessee was asked whether they have visited the site which was claimed to be developed by them or the sub-contractors who has executed such contract on behalf of their firm/company and was also confronted the shape and nature of land at the time or before entering into agreement for development. However, it was found that assessee was not aware of the land which was stated to be developed on behalf of PACL and even not aware the nature of land.*

*From the above discussion, it is clear that the above noted company has received an amount of Rs.15 crores from the PACL whereas from the enquiries, it was emerged that the assessee was not able justify the work done for the company of PACL Ltd.."*

16. The above shows that the AO has recorded only his conclusion after conclusions in the recordings and has not recorded any cogent and relevant reason and material for the same. From the reading of the above, it could not be

understood how and why the AO concluded that assessee was not aware of the land which was stated to be developed on behalf of PACL and even not aware of the nature of land. It states that the above conclusion was drawn on the bases of the answers given by Shri. Puneet Garg and Shri. Harwinder Pal Singla, Directors of the company to the questions posed to them at the time of recording their statement during the course of survey. However, the relevant questions and answers were not quoted in the recordings made nor those statements formed part of the recordings made.

17. Similarly, a further conclusion was drawn by the AO that from the enquiries, it was emerged that the assessee was not able to justify the work done for the company of PACL Ltd. However, the details of enquiries on the basis of which the above conclusion was drawn is not recorded.

18. From a reading of the above entire recordings, it seems that the opinion of the AO was that though Rs.15 crores was received by the assessee from PACL for developing of land and the receipts was also duly disclosed but the expenses claimed in respect of the same were not allowable as it was not actually incurred as he was of the opinion that the actual development work of the land was not done. However, we find the recording could not point out as to what was the expense claimed by the assessee which was allegedly not incurred by the assessee and the basis of such belief. As there was no material before the AO at the time of making of recording on the issue to show that any expense claimed by the assessee was not allowable as deduction and as the receipt of Rs.15 crores was duly disclosed

as income by the assessee, in our considered view, there was no valid reason to believe that any income of the assessee which was chargeable to tax has escaped assessment for the year under consideration. Consequently, the assumption of jurisdiction to reopen the assessment, in the instant case, was bad in law. Hence, the impugned order of reassessment is hereby cancelled.

19. In view of our above finding, the other issues and grounds raised by the assessee in this appeal have become infructuous and therefore are not separately adjudicated. Thus, the grounds of appeal of the assessee are allowed.

20. In the result, the appeal of the assessee is allowed.  
(Order Pronounced in the Open Court on 21/02/2019)

Sd/-  
**(N. K. Choudhry)**  
**Judicial Member**

Sd/-  
**(N. S. Saini)**  
**Accountant Member**

**Dated: 21/02/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**