

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.2621/Del/2018  
Assessment Year: 2010-11

Stay Application No.48/Del/2019  
(ITA No.2621/Del/2018)  
Assessment Year: 2010-11

Buniyad Developers Pvt. Ltd.,  
A-54, Naraina Industrial Area,  
Phase I,  
New Delhi.

Vs ITO,  
Ward-5(2),  
New Delhi.

PAN: AAACB1149A

(Appellant)

(Respondent)

Assessee by	:	Shri Rajiv Saxena & Shri R.P. Mall, Advocate,
Revenue by	:	Ms Ashima Neb, Sr. DR
Date of Hearing	:	18.02.2019
Date of Pronouncement	:	01.03.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 23<sup>rd</sup> March, 2018 of the CIT(A)-35, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 9<sup>th</sup> August, 2011 declaring a loss of Rs.8,06,064/-. The case of the assessee was reopened by issue of notice u/s 148 of the Act on 22<sup>nd</sup> March, 2016.

However, there was no compliance to this notice till the date of passing of the order. In the reasons recorded, it is mentioned that information was received from the Investigation Wing that during the course of search and seizure operation in the case of Jain brothers (Shri Virendera Jain and Shri Surinder Kumar Jain) and their group concerns on 14<sup>th</sup> September, 2010, certain materials were found and seized which contain incriminating information such as giving accommodation entries by the group concerns to the various entities. The name of the assessee also appears in the list of beneficiaries who have taken accommodation entries. As per such information, the assessee had received accommodation entry of Rs.75,00,000/-. The Assessing Officer accordingly recorded the reasons and issued notice u/s 148 of the Act. Subsequently, notice u/s 142(1) of the Act was also issued. However, there was no compliance again. Subsequently, the Assessing Officer could telephonically contact the directors of the assessee company and asked them to attend the ongoing proceedings.

3. The counsel for the assessee appeared before the Assessing Officer and filed a letter dated 7<sup>th</sup> December, 2016 objecting to the validity of notice issued u/s 148 on the ground that the assessee company i.e., M/s IEC Sprinkler Industries (India) Pvt. Ltd. had amalgamated with M/s Buniyad Developers (P) Ltd. as per order of the Hon'ble High Court of Delhi and had ceased to exist on the date of issue of notice u/s 148 and, therefore, the notice should be treated as invalid. The copy of the order of the High Court was also furnished. According to the Assessing Officer, there was no effective

date of amalgamation which is apparent in the order. The Assessing Officer, therefore, disposed of the objections filed by the assessee by mentioning as under:-

1. Till the date of issue of notice u/s 148, in question, no intimation/information was provided to this office regarding the amalgamation of M/s IEC Sprinkler Industries (India) Pvt. Ltd. with M/s Buniyad Developers (P) Ltd.
2. No application for surrender of PAN-AAACI6589D, M/s IEC Sprinkler Industries (India) Pvt. Ltd. has been received by this office. Moreover, even as on date the PAN-AAACI6589D has allotted to M/s IEC Sprinkler Industries (India) Pvt. Ltd.
3. As per the Amalgamation order passed by the Hon'ble High Court (Delhi) no effective date of amalgamation has been provided.
4. The Assessing Officer during the course of assessment proceedings asked the assessee to substantiate the amount of Rs.75 lakhs received on account of accommodation entries. Since there was no proper compliance and the assessment was getting barred by limitation, the Assessing Officer, invoking the provisions of section 68 of the Act added an amount of Rs.75 lakhs to the total income of the assessee. The Assessing Officer further made addition of Rs.1,31,250/- being the commission @ 1.75% required for arranging the above entry of Rs.75 lakhs. Thus, in effect, the Assessing Officer made an addition of Rs.76,31,250/- and determined the total income at Rs.76,22,586/- after setting off the loss of Rs.8,664/- declared in the return of income filed.

5. Before the CIT(A), the assessee, apart from challenging the addition on merit, also challenged the validity of the reassessment proceedings on the ground that the assessment made on the assessee is without jurisdiction, illegal and contrary to statutory provisions. Mandatory notices under the provisions of the IT Act were neither issued nor served upon the assessee for completing the assessment. The assessment order was made merely on the basis of information received from the DIT (Investigation) without independent application of mind by the Assessing Officer. Further, despite being informed about the non-existence of the assessee company, the Assessing Officer erroneously and without serving a notice u/s 143(2) of the Act, framed the order of assessment u/s 144/147 of the IT Act. Since no notice u/s 143(2) of the Act was issued and the assessment has been framed on a non-existent company and the Assessing Officer had reopened the assessment only on the basis of information received from the Investigation Wing and not applied his mind, therefore, it was argued that the entire reassessment proceeding is *void ab initio*. It was further submitted that the Addl. CIT and Pr. CIT while giving approval had not applied their minds and simply mentioned: 'Yes, I am satisfied' and 'Yes, it is a fit case to issue notice u/s 148.' It was accordingly argued that the reassessment proceedings not being in accordance with the law should be quashed.

5.1. So far as the merit of the case is concerned, it was argued that the assessee filed the requisite details substantiating the identity and credit worthiness of the investors and the genuineness of the transactions. Therefore, the addition made by the Assessing Officer should be deleted.

6. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings as well as the addition on merit. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming the order of Assessing Officer which was bad in law because

(a) It was without jurisdiction illegal and contrary to statutory to the provision of the income tax.

(b) Notices u/s 148 and 143(2) were neither issued in the name of the assessee nor served upon the assessee within statutory limits before initiating or completing the assessment which was mandatory for initiating or completing the assessment.

(c) The assessment proceedings were initiated on the company M/s IEC Sprinkler Industries (India) Pvt. Ltd. which was already amalgamated w.e.f 01.04.2009 and so non-existent and the AO was duly informed about the same.

(d) The assessment was reopened merely on the basis of information received from DIT(Inv.) without application of mind or necessary enquiry in order to form reason to believe for reopening the assessment.

2. That Ld. Commissioner of Income has erred in law as well as facts in not holding the addition made by the AO amounting Rs. 75,00,000/- invested by shareholder submitting all the requisite documents and Rs. 1,31,250/- on the presumptive basis are bad in law because

(a) She has failed to appreciate that all the share capital was invested through account payee cheques by a company having its corporate entity, through board resolution, filing ITRs, Bank statements and shares have already been allotted long back.

(b) The AO did not make any enquiry either from the assessee or from the investors or any other person in order to arrive at conclusion that the investment is bogus.

(c) The additions made by the AO were without application of mind and merely on the basis of information from DIT(Inv.) on the behest of the superiors.

It is therefore prayed that assessment made be quashed being bad in law and additions made be deleted.”

7. The ld. counsel for the assessee strongly challenged the order of the CIT(A). He submitted that no notice u/s 143(2) was issued and, therefore, the entire assessment proceedings should be held as illegal. Although such argument was specifically taken before the CIT(A), however, the order of the CIT(A) is silent on this. Similarly, when the notice was issued to a non-existent company and when it was specifically brought to the notice of the Assessing Officer and CIT(A), however, they have not considered the same in the light of the various decisions. The approving authorities have also given approval for reopening of the assessment in a mechanical manner without proper application of mind. He accordingly submitted that the entire reassessment proceedings should be held as *void ab initio*. Referring to the decision of Hon'ble Delhi High Court in the case of *CIT vs. Chetan Gupta, reported in 382 ITR 613* he submitted that where the assessment was made on the company without issuing notice u/s 148 and no notice was served upon the assessee, it was held that the reassessment proceedings were liable to be quashed. Referring to the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Micron Steels Pvt. Ltd. reported in 373 ITR 386 (Del)*, he submitted that the assessment could not be made on the company which does not exist. Similar view has been taken in the case of *CIT vs. Dimension Apparels Pvt. Ltd. reported in 52 taxmann.com 356* and *M/s Spice Entertainment vs. CIT vide ITA No.475 of 2011, order dated 3<sup>rd</sup> August, 2011*. Referring to the decision of the Hon'ble Supreme Court in the case of *ACIT vs. Hotel Blue Moon reported in 321 ITR 362*, he

submitted that the assessment u/s 147 is bad in law if no notice u/s 143(2) of the Act is issued and served on the assessee company. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. G & G Pharma India Ltd., reported in 384 ITR 147* and the decision of the Tribunal in the case of *M/s RKG International Pvt. Ltd. vs. ITO, ITA No.101/Del/2013*, he submitted that the assessment u/s 147 cannot be made in absence of tangible material and merely on the basis of information received from Investigation Wing. Referring to the decision of the Hon'ble Supreme Court in the case of *Kishinchand Chellaram vs. CIT, 125 ITR 713 (SC)* and the decision in the case of *CIT vs. SVP Builders (India) Ltd., reported in 238 taxman 653*, he submitted that where assessment has been made relying on the material/evidence, but, no opportunity of cross examination was provided, then, addition cannot be made. He, accordingly submitted that the entire reassessment proceedings made by the Assessing Officer and upheld by the CIT(A) not being in accordance with the law, should be quashed. So far as the merit of the case is concerned he submitted that the assessee had filed necessary documents to substantiate the identity and credit worthiness of the share applicant and the genuineness of the transaction. Therefore, the addition made by the Assessing Officer u/s 68 which has been upheld by the CIT(A) should be deleted.

8. The ld. DR, on the other hand, relied on the orders of the Assessing Officer and CIT(A). So far as the validity of the reassessment proceedings are concerned, she submitted that Hon'ble Supreme Court in the case of *Sky Light Hospitality LLP vs. ACIT*, the Hon'ble Supreme Court has held that wrong name given in the notice was

merely a clerical error which could be corrected u/s 292B of the IT Act and accordingly the SLP filed by the assessee against the order of the Hon'ble Delhi High court was dismissed. She accordingly submitted that the arguments of the Id. counsel for the assessee that the company was not existent and notice was given to the wrong company will not invalidate the reassessment proceedings. So far as the other limbs of his argument challenging the validity of reassessment proceedings are concerned, she submitted that the Id.CIT(A) has given a finding that the reopening of the assessment was in accordance with the law, therefore, the same should be upheld. So far as the addition of Rs.76,31,250/- is concerned (i.e., the amount of Rs.75 lakhs as share application money and Rs.1,31,250/- towards commission), she submitted that the assessee could not discharge the onus cast on it in terms of section 68 of the I.T. Act, 1961 regarding the identity and credit worthiness of the share applicants and the genuineness of the transaction. Therefore, the addition made by the Assessing Officer and sustained by the CIT(A) should be upheld.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decisions cited before us. We find the Assessing Officer on the basis of the information received from the Investigation Wing of the Department, reopened the assessment by issue of notice u/s 148. Since there was no compliance from the side of the assessee to his satisfaction, the Assessing Officer invoked the provisions of section 68 of the Act and made addition of Rs.75 lakhs being the share application money received by the

assessee. In the process, he also made addition of Rs.1,31,250/- being the commission required for arranging such accommodation entry @ 1.75% of the total amount. We find, the assessee, apart from challenging the addition on merit, challenged the validity of reassessment proceedings before the CIT(A). However, there was no success and the Id.CIT(A) dismissed the appeal filed by the assessee on both counts. It is the submission of the Id. counsel for the assessee that elaborate arguments were made and written submission filed which appears in the body of the order of the CIT(A) wherein the assessee has challenged the reassessment proceedings on various grounds. It was argued that no notice u/s 143(2) was issued and, therefore, the assessment order passed u/s 147 has to be quashed. It was also argued that the notice u/s 148 was issued to a non-existent company. Further, the approval by the Addl. CIT and the Pr. CIT were given in a very mechanical manner. It was also argued that the reopening was made on the basis of information received from the Investigation Wing and the Assessing Officer has not applied his mind independently. However, the Id.CIT(A) in a very cryptic manner dismissed all these arguments advanced before him and upheld the reassessment proceedings. We find some force in the above argument of the Id. counsel for the assessee. A perusal of the order of the CIT(A) shows elaborate arguments advanced by the assessee regarding the validity of the reassessment proceedings on various grounds as well as the reopening of the assessment of a non-existent company since the earlier company had amalgamated with another company. We find the order of the CIT(A) is very cryptic and he has simply mentioned that there appears to be no violation of jurisdiction by the Assessing Officer and the Assessing

Officer has both legally and procedurally followed all the procedures of the Income-tax Act. The various other aspects as argued before the CIT(A) challenging the reassessment proceedings remained unanswered or have not been adjudicated by him in the light of the binding decisions of the Jurisdictional High Court. Considering the totality of the facts of the case, we are of the considered opinion that the matter requires a revisit to the file of the CIT(A) who shall adjudicate the various issues raised by the assessee before him challenging the validity of the reassessment proceedings such as:

- (a) non-issue of notice u/s 143(2);
- (b) re-opening of the assessment on the basis of information received from the Investigation Wing and no independent application of mind by the Assessing Officer;
- (c) approval by the Addl. CIT and the Pr. CIT simply by mentioning: 'Yes, I am satisfied' and 'Yes, it is a fit case to issue notice u/s 148' without giving their opinion in the light of the various decisions of the Hon'ble jurisdictional High Court;
- (d) issue of notice to a non-existent company when the company amalgamates with another company.

10. The Id.CIT(A) shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. He shall also keep in mind the various decisions relied on by the Id. counsel for the assessee which were mentioned in the

preceding paragraphs. Since we are restoring the issue to the file of the CIT(A) for adjudicating the legal grounds raised before us, therefore, we are not deciding the issue on merit at this juncture. The appeal filed by the assessee is accordingly allowed for statistical purposes.

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11. The assessee through this stay application requests the Tribunal to stay on the realization of the outstanding demand of Rs.42,20,919/-. Since the appeal of the assessee has been heard and the matter has been remanded to the file of the CIT(A), the stay application filed by the assessee becomes infructuous. However, the assessee, if so advised, may approach appropriate authority for stay on realization of outstanding demand.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application filed by the assessee is dismissed.

The decision was pronounced in the open court on 01.03.2019.

Sd/-

(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated:01<sup>st</sup> March, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi