

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.7012/Del/2014
Assessment Year: 2006-07**

**Dy. Commissioner of Income-tax,
Central Circle -13, New Delhi.** vs **M/s Supertech (India) Pvt. Ltd.
2/19, Kalkaji Extension,
New Delhi.
PAN: AAAC0082K**

Appellant

Respondent

**Assessee by Shri P.C. Yadav, Advocate
Revenue by Shri S.S. Rana, CIT DR**

**Date of Hearing 27.02.2019
Date of Pronouncement 14.03.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 29.10.2014 in Appeal No.72/2013-14 passed by the Learned Commissioner of Income-tax (Appeals)-XII, New Delhi {"CIT(A)"} for Assessment Year 2006-07, revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a private limited company. For the Assessment Year 2006-07, they have filed their return of income on 25.11.2016 declaring the total taxable income of Rs.31,58,878/- and assessment

u/s 143(3) of the Income-tax Act, 1961 (“the Act”) was complete by 7.4.2008 At the returned income. Subsequently, learned AO recorded reasons that on the information received from DIT(Inv), Delhi that during the search and seizure action on M/s Sawhney Rubber Inds. And its concerned persons, certain documents entries have been seized pertaining to the assessee relating to construction of a factory at Greater Noida showing that the assessee had accepted cash/cheques amounting to Rs.1,28,34,748/- from one Shri Puneet Sawhney, Director of M/s Sawhney Rubber Inds. Thereupon, the learned AO formed the belief that there was an escapement of income to the tune of Rs.1,28,34,748/- occasioned due to the failure on the part of the assessee to truly and fully disclose all the material facts necessary for assessment. Learned AO, therefore, issued notice u/s 148. Assessee submitted that the original return may be treated as return in response to notice under Section 148 and sought the copy of reasons for reopening. Assessee received the reasons and filed, what according to the assessee are the objections but what according to the ld. AO was the detailed submissions. Learned AO considered the contents of the letter dated 18.4.2012 through which the assessee communicated their response to the reasons recorded by the ld. AO. According to the learned AO, the assessee had no material evidence to prove the creditworthiness and genuineness of Shri Puneet Sawhney and the sum of Rs.1,28,34,748/- in respect of the construction of factory at Greater Noida was the assessee’s own undisclosed money introduced in the business in the form of share capital. On that premise, learned AO proceeded to make an addition of Rs.1,28,34,378/-.

3. Aggrieved by the said addition, assessee preferred an appeal before the learned CIT(A). Assessee’s contention was twofold. First contention was that

the initiation of proceedings u/s 148 was void ab initio and barred by limitation and the reasons recorded were not bonafide and not based on any relevant record. Second contention of the assessee was that the addition of any amount u/s 68 of the Act was bad under law since no cash credit was found in the books of the assessee during the AY 2006-07 and as a matter of fact, the assessee had not received any share application money/share capital much less Rs.1,28,34,748/-.

4. Learned CIT(A) held that the notice u/s 148 was issued well within time prescribed under the Act, the copy of the reasons was furnished to the assessee at his request and there are no valid ground for assumption of jurisdiction by the Id. AO. Learned CIT(A), therefore, dismissed the first contention of the assessee as to the legality and validity of the reopening.

5. In so far as the second contention of the assessee as to the issuance of the share capital, as a matter of fact, Id. CIT(A) found that the assessee had neither issued nor allotted any share to any person and the paid up share was increased by Rs.300/- during the year as reflected by the audited balance sheet. On this finding of fact, learned CIT(A) held that in the absence of any evidence to prove that an amount of Rs.1,28,34,748/- was received by the assessee from Shri Puneet Sawhney in view of the contents of the audited balance sheet, there is no justification to make any addition by the learned AO and such an addition made by him has to be deleted.

6. The revenue is,therefore,before us in this appeal contending that the deletion of the addition is erroneous in law and on facts and the learned AO is justified in making the additions u/s 68 of the Act because such amount is undisclosed money introduced in the form of share capital. It is the submission of the learned DR

that there is failure on the part of the assessee to establish the creditworthiness and genuineness of the transaction with Shri Puneet Sawhney, Director of M/s Sawhney Rubber Inds. And therefore, the learned AO has rightly made the addition.

7. Per contra, the submission of the ld.AR is twofold. Firstly, as is evident from the assessment order, the assessee made objections having received the reasons recorded by the ld.AO and without disposing of the objections, it is not open for the AO to proceed any further to make any addition. According to him, in the submissions made by the assessee by letter dated 28.1.2013, the validity and legality of the notice u/s 148 was challenged stating that the reasons recorded were very vague without referring to any specific details or to the modus operandi and also the documents that were seized during the search on M/s Sawhney Rubber Inds. do not pertain to M/s Supertech India P. Ltd., as such, the assessment was said to be reopened basing on suspicion but not on belief, therefore, such submissions are in the nature of objections to the reasons recorded and have to be disposed of before proceeding to make any assessment as is laid down by the Hon'ble Supreme Court in the case of M/s GKN Driveshaft, 259 ITR 19 (SC).

8. Other submission of the learned AR is that the learned AO in the reasons recorded had stated that the assessee received an amount of Rs.1,28,34,748/- from Shri Puneet Sawhney for construction of a property at Greater Noida but while concluding the assessment order, he recorded a finding that this amount was treated as assessee's own undisclosed money introduced in the business in the form of share application money/share capital but as a matter of fact during the year, the assessee had neither issued nor allotted any share to any person as the

increase in the paid up share capital was only Rs.300/-. He drew out attention to the audited balance sheet of the assessee for the year ending on 31.3.2006 incorporated in the paper book.

8. We have gone through the record and the submissions on either side. As could be seen from the assessment order, the assessee sought the copy of the reasons recorded and having received the same, he raised objections to the legality and validity of the reopening by way of letter dated 28.1.2013. The contents in the letter are incorporated in the assessment order at page 2 and having gone through the same, we have no hesitation in our mind to believe that such objections were raised against reopening of the assessment. Further, as is evident from the written submissions made before the learned CIT(A) at page 9 thereof, which is to be found in the paper book, the grievance of the assessee ventilated before the ld. CIT(A) was that though the assessee filed the objections, the learned AO totally ignored the objections and proceeded to make the addition. It is not the case of the revenue that the learned AO disposed of the objections raised by the assessee in the letter dated 28.1.2013.

9. Further, the reasons recorded by the ld. AO are incorporated in para 2 of the assessment order. The reasons are seriously lacking any verifiable detail at the end of assessee like any instrument number, bank details, the modus operandi as to the obtaining of the entries or the mode of obtaining money either cash or through banking channels and also in respect of the date and time so on and so forth. It is also matter of record that in the reasons, learned AO recorded that the entires in the documents seized during the search and seizure action on M/s Sawhney Rubber Inds. pertain to construction of the factory at Greater Noida by the assessee to show that the assessee had accepted cash/cheque. However,

learned AO concluded the assessment stating that the assessee received the entries from M/s Sawhney Rubber Inds to bring back their own undisclosed money into the business in the form of share application money/share capital. It is not known from the assessment order whether the assessee accepted cash or cheque from Shri Puneet Sawhney or whether the assessee obtained only an accommodation entry to bring back their own money into the business. Assessment order is quite vague on this aspect.

10. Further, as could be seen from the audited balance sheet as rightly apprised by the learned CIT(A) during the year under consideration paid up share capital was increased only by Rs.300/- by allotment of three equity shares out of share application money of Rs.7767/- received during the year. Absolutely, there is no material on record to relate to the amount of Rs.1,28,34,748/- with the assessee. Neither the books of accounts nor the audited financials of the assessee would whisper anything about the money. All the circumstances cumulatively go to show that without any solid foundation, learned AO recorded some general reasons by stating that there is escapement of income due to the failure on the part of the assessee to truly and fully disclose all the material facts necessary for assessment. It is not the case of the learned AO that any such information was unearthed either at the time of recording to assessment order or during the appellate proceedings.

11. Assessee placed reliance on the decisions of Hon'ble Delhi High Court reported in the case of (i) Atma Ram Properties, 343 ITR 141 (Del); (ii) HCL Technologies, 397 ITR 469; and (iii) Sabh Infrastructure Ltd. vs ACIT, 100 CCH 28 (Del) to the effect that mere mentioning of language in reasons is not enough

to say that there is any failure on the part o the assessee to disclosed the material facts fully and truly.

12. In view of our discussion in the preceding paragraphs, we are of the considered opinion that the assessment order is bad in law for non disposal of the objections raised by the assessee. Even otherwise also, the findings of fact recorded by the learned CIT(A) that there is no share capital introduced in the business of the assessee during the year to the tune of Rs.1,28,34,748/- and the audited financials reveal the increase of Rs.300/- only, there is no illegality or irregularity in the learned CIT(A) deleting the additions made by the ld.AO. Appeal of the revenue being devoid of merits, same is dismissed.

13. In the result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on 14th March, 2019.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 14th March, 2019.
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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