



आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

मजनीय श्री पवन सिंह , न्यायिक सदस्य एवं
मजनीय श्री मनोज कुमार अग्रवाल, लखनसदस्य कासमक्ष।

BEFORE HON'BLE SHRI PAWAN SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No. 7400/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

| | | |
|--|----------------------|---|
| Medico Remedies Pvt. Ltd. 50, Juhu Supreme Shopping Centre Gulmohar Cross Road No. 9 Juhu, Mumbai-400 049. | बनाम/ Vs. | DCIT-8(2) Aaykar Bhavan M.K. Road Mumbai-400 020. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCM-8349-L | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|--------------------|---|-------------------------------|
| Assessee by | : | Shri Sanjay R. Parikh- Ld. AR |
| Revenue by | : | Shri M.K. Singh- Ld.DR |

| | |
|--|------------|
| सुनवाई की तारीख/ Date of Hearing | 21/02/2019 |
| घोषणा की तारीख / Date of Pronouncement | 19/03/2019 |

आदश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2010-11 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-17 [CIT(A)], Mumbai, Appeal No. CIT(A)-17/12/13-14 dated 27/10/2014 on following grounds of appeal: -

Aggrieved by the order of the Learned DCIT (The Learned A.O.) as confirmed by the Commissioner of Income Tax (Appeals) [CIT(A)], your appellant prefers an



appeal against the same on following grounds, which it is prayed may be considered **without prejudice** to one another:

- (1) Learned CIT (A) erred in confirming that reopening of the assessment u/s 147 of I.T.Act, 1961 by the AO is valid.
- (2) Learned CIT(A) erred in confirming additions of Rs.20,00,000/- made by the AO in reassessment of the appellant u/s143(3) read with section 147 of the I.T.Act, 1961.

The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax-8(2), Mumbai [AO] u/s 143(3) read with Section 147 on 22/03/2013 wherein the income of the assessee was determined at Rs.53.07 Lacs after sole addition of *bogus share application money* of Rs.20 Lacs as against returned income of Rs.33.07 Lacs filed by the assessee on 21/08/2010 which was processed u/s 143(1). The assessee being *resident corporate entity* was stated to be engaged in the business of *pharmaceutical and drug manufacturing*. The addition of Rs.20 Lacs made by Ld. AO u/s 68 is the sole subject matter of present appeal before us.

2.1 The reassessment proceedings got triggered pursuant to search & seizure action u/s 132 on 25/11/2009 in the case of *M/s Mahasagar Securities Private Limited* belonging to *Shri Mukesh Choksi Group* wherein it transpired that the assessee obtained accommodation entries in the shape of *Share Application Money* aggregating to Rs. 20 Lacs i.e. Rs.10 Lacs each from *M/s Buniyad Chemicals Ltd. & M/s Talent Infoways Ltd.* during impugned AY which escaped assessment. Accordingly, notice u/s 148 dated 02/03/2012 was issued to the assessee.

2.2 The assessee vide reply dated 14/03/2012 requested for copy of reasons recorded for reopening of the assessment and stated that it had already filed return of income on or before due date and there was nothing further to declare. The assessee was asked to file the return u/s 148 and



also provided with copy of reasons recorded for reopening of the assessment vide letter dated 02/07/2012. At the same time, the assessee was also requested to furnish the details of *Share Application money* and demonstrate genuineness and creditworthiness of the transactions with bank statements. No response could be received from the assessee until its letter dated 15/03/2013 wherein the assessee submitted that the original return filed earlier should be treated as return u/s 148. Accordingly, notice u/s 143(2) was issued to the assessee on 20/03/2013 for compliance.

2.3 The search proceedings revealed that *Shri Mukesh Choksi* had floated more than 36 companies and no genuine business was being carried on by any of these entities including aforesaid two entities and they all were engaged in issuing *bogus bills* as well as *Share Application Money* in return for cash. The statement of *Shri Mukesh Choksi* as recorded during search proceedings was also perused, wherein it transpired that the two companies existed on paper only and their business was to provide accommodation entries to other concerns / companies seeking it. Further, these companies were getting certain commission in respect of bogus entries provided to the other concerns. It was further stated by *Shri Mukesh Choksi* that the companies seeking accommodation entries used to deposit cash in these companies and later on cheques were issued in favor of the respective companies.

2.4 Although the assessee defended the transactions by submitting that the transactions were through banking channels and in support, submitted confirmation from these two parties, however, not convinced, Ld. AO opined that the assessee failed to substantiate source, genuineness and



creditworthiness of the stated transactions. Accordingly, the same was treated as unaccounted money of the assessee and added to the income as *unexplained cash credit* u/s 68.

3. Aggrieved the assessee challenged the reassessment proceedings on legal grounds and additions on merits, however, without any success, before Ld. CIT(A) vide impugned order dated 27/10/2014. On legal grounds, the prime contention of the assessee revolved around the fact that no independent inquiries were made by Ld. AO while reopening the assessment. The attention was drawn to that fact that the assessee, vide letter dated 06/05/2014 requested Ld. AO to furnish the copy of the statement and computer data found during the course of search & seizure proceedings which was never supplied. However, Ld. first appellate authority, after due consideration of factual matrix as well as assessee's submissions, confirmed the stand of Ld.AO. Aggrieved the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], *Shri Sanjay Parikh*, at the outset, submitted that the additions have been made merely on the basis of third-party statements which have not been confronted to the assessee and no opportunity to cross-examine the concerned persons have been provided by Ld. AO which was in violation of principle of natural justice and therefore, the additions could not be sustained in terms of judgment of Hon'ble Apex Court rendered in *M/s Andaman Timber Industries [Civil Appeal No. 4228 of 2006 dated 02/09/2015]* & various other judgments as placed on record. The reassessment proceedings have been contested by submitting that the same has been triggered by Ld. AO on borrowed satisfaction. On merits, our attention has been drawn



to the documents placed in the *paper-book* to submit that the primary ingredients of Section 68 have been satisfied by the assessee. Per *Contra*, Ld. Departmental representative [DR], submitted that the assessee has received *bogus share application money* from the tainted parties which justifies the impugned additions.

5.1 We have carefully considered the rival submissions and perused relevant material on record including reasons recorded by Ld. AO to reopen the assessment. So far as the validity of reassessment proceedings is concerned, we find that the original return was processed u/s 143(1) and there was no occasion for Ld. AO to examine the impugned transactions therein. Subsequently, some tangible material in the shape of information from investigation wing of the department came into the possession of Ld. AO. After perusal of the said information, it was found that numerous entities floated by *Shri Mukesh Choksi & group* were engaged in providing bogus entries of varied nature. It was noted that the assessee obtained accommodation entries in the form of *Share Application Money* aggregating to Rs.20 Lacs from two concerns and therefore, there was an escapement of income. Applying the provisions of Explanation 2(b) to Section 147, the case was reopened by issuance of notice u/s 148 dated 02/03/2012.

5.2 After careful perusal of the above, we find that Ld. AO, after considering the new information & with due application of mind, came to a conclusion that there was escapement of certain income in the hands of the assessee and it was not a case of mere borrowed satisfaction. The reassessment proceedings have been initiated in terms of Explanation 2(b) to Section 147. At this stage, in our opinion, nothing more was



required to trigger the reassessment proceedings since the material received by Ld. AO in the shape of information, *prima-facie*, indicated possible escapement of income in the hands of the assessee. Therefore, we decline to concur with Ld. AR's submissions in this regard.

6. The Ld. AR has also contended that the opportunity of cross-examination was not provided to the assessee and adverse material was never confronted to the assessee. However, a perusal of the assessment order reveal that the assessee failed to respond to reassessment proceedings which got triggered on 02/03/2012, until 12/03/2013 i.e. towards fag end of time limit for completion of assessment, wherein the assessee, for the first time vide letter dated 15/03/2013, submitted that the original return filed be treated as a return in response to notice u/s 148. This was only after multiple notices issued by Ld. AO from time to time requesting assessee to furnish the requisite details. Further, the material on record reveal that the assessee has requested for such examination vide its letter dated 06/05/2014 i.e. much after the completion of the assessment and therefore, no cognizance of the same could be taken by Ld. AO at that time. Another important point to be noted is that Ld. CIT(A), at *para 1.3.12*, has made certain observation about cross-examination of *Shri Mukesh Choksi* on 11/03/2013, which *prima-facie*, do not seem to be factually correct. Nevertheless, the overall conduct of the assessee do not inspire us to accept these contentions, at this stage.

7. Proceeding further, so far as the merits of the case are concerned, the Ld. AR has submitted that the assessee has demonstrated the fulfilment of primary ingredients of Section 68 and therefore the additions were not justified. Keeping in view the fact that the assessment was



completed on 22/03/2013 whereas the first submissions were made by the assessee only on 15/03/2013 which suggest that the assessment was completed in a very short time, we deem it fit to restore the matter, on merits, back to the file of Ld. AO for re-appreciation of the evidences being filed by the assessee in support of the transactions. The assessee, in turn, is directed to substantiate his stand in this regard failing which Ld. AO shall be at liberty to adjudicate the same on the basis of material on record.

8. In nutshell, ground no.1 stands dismissed whereas ground No. 2 stands allowed for statistical purposes.

9. The appeal stands partly allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 19th March, 2019.

Sd/-

(Pawan Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 19/03/2019

Sr. PS Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.