

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.7791/Del/2018
Assessment Year : 2009-10

M/s SBS Realtors (P) Ltd.,
B-14/C, First Floor,
Freedom Fighters Enclave,
Neb Sarai,
New Delhi – 110 068.
PAN : AALCS5106R.
(Appellant)

Vs. Income Tax Officer,
Ward-22(4),
New Delhi – 110 002.

(Respondent)

Appellant by : Shri Kapil Goel and
Shri Rajesh Jain, CAs.
Respondent by : Shri S.S. Rana, CIT-DR and
Shri Rajesh Kumar, Additional CIT.

Date of hearing : 11.03.2019
Date of pronouncement : 01.04.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the assessee for the assessment year 2009-10 is directed against the order of learned CIT(A)-28, New Delhi dated 16th November, 2018.

2. Ground No.1, 1.1 and 1.2 read as under :-

“1. That the learned Commissioner of Income Tax (Appeals), has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, completion of assessment u/s 147/143(3) of the Act which were without jurisdiction and deserves to be quashed as such.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was no

tangible, relevant, specific and reliable material on record on the basis of which, it could be held that, there was any reason to believe with the learned Assessing Officer that income of the appellant had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable. The reasons as noted by the Assessing Officer were mechanical on information received from Investigation Wing. The satisfaction of the Assessing Officer was borrowed satisfaction.

1.2 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that approval granted u/s 151 of the Act was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid."

3. At the time of hearing before us, it is stated by the learned counsel that in this case, the assessee has filed the return on 20th September, 2009 which was processed under Section 143(1) on 17th January, 2011. The assessment was reopened under Section 148 vide reasons recorded on 20th September, 2015. He has taken us through the reasons recorded and stated that the assessment has been reopened for the verification of the amount received by the assessee from Shri S.K. Jain group of cases. That the assessment cannot be reopened for the purpose of verification for which there is already a specific provision under the Income-tax Act i.e., Section 143(2). If the Assessing Officer has failed to make necessary verification under Section 143(2), the same cannot be done under the garb of Section 148. He also alleged that there is no independent application of mind by the Assessing Officer. The assessment has been mechanically reopened on the basis of some information claimed to have been received from DIT(Investigation). In the reasons recorded, no reason has been given for the allegation that the amount received from Shri S.K. Jain group of cases is bogus accommodation entries. The Assessing Officer has mechanically reopened the assessment without any independent verification at his end. He, therefore, stated that the alleged reopening of assessment is not valid. He also stated that not

only the reasons recorded is mechanical, even the approval given by the Additional Commissioner is mechanical and without application of any independent mind. In support of his contention, he relied upon the following decisions :-

- (i) Sarthak Securities Co.P.Ltd. Vs. ITO – [2010] 329 ITR 110 (Delhi).
- (ii) Signature Hotels P.Ltd. Vs. ITO – [2011] 338 ITR 51 (Delhi).
- (iii) PCIT Vs. G And G Pharma India Ltd. – [2016] 384 ITR 147 (Delhi).
- (iv) PCIT Vs. RMG Polyvinyl (I) Ltd. – [2017] 396 ITR 5 (Delhi).
- (v) PCIT Vs. Meenakshi Overseas Pvt.Ltd. – [2017] 395 ITR 677 (Delhi).

4. Learned DR, on the other hand, stated that it is a case where the original return was accepted under Section 143(1) and there was no regular assessment under Section 143(3). The Assessing Officer had received the specific information from DIT(Investigation) that on search in the case of Shri S.K. Jain group of cases, New Delhi, it was found that they were indulging into providing accommodation entries to various assessees. Shri S.K. Jain group of cases were entry operators and on the basis of information gathered during the course of search of their premises, it was gathered that various companies of Shri S.K. Jain group have provided accommodation entries to the extent of ₹2,35,00,000/-. The Investigation Wing has supplied the complete information i.e., the name of the company who provided the entry, the cheque numbers, name of the bank, date of cheque and names of middlemen. The Assessing Officer has verified the above entries from the assessee's balance sheet and thereafter has arrived at the conclusion that there is escapement of income. Therefore, reopening of assessment by the Assessing Officer was perfectly in accordance with law and the same has rightly been upheld by the learned CIT(A). In support of his contention, he relied upon the following decisions :-

- (i) PCIT Vs. Paramount Communication (P) Ltd. – 2017-TIOL-253-SC-IT.
- (ii) PCIT Vs. Paramount Communication (P) Ltd. – [2017] 392 ITR 444 (Delhi).
- (iii) Aradhna Estate (P) Ltd. Vs. DCIT – [2018] 91 taxmann.com 119 (Gujarat).
- (iv) Pushpak Bullion (P) Ltd. Vs. DCIT – [2017] 85 taxmann.com 84 (Gujarat).
- (v) Ankit Financial Services Ltd. Vs. DCIT – [2017] 78 taxmann.com 58 (Gujarat).
- (vi) Aaspas Multimedia Ltd. Vs. DCIT – [2017] 83 taxmann.com 82 (Gujarat).

5. We have carefully considered the arguments of both the sides and perused the material placed before us. The reasons recorded for issue of notice under Section 148 read as under :-

Name of the assessee : M/s SBS Realtors P.Ltd. A.Y. 2009-10
PAN : AALCS5106R
Assessment Year : 2009-10

Reasons for Issue of Notice u/s 148 of the Income Tax Act, 1961

The return of income for the A.Y. 2009-10 has been filed by the assessee company on 20.09.2009 declaring NIL total income. The same was processed u/s 143(1) on 17.01.2011. No assessment u/s 143(3) for the A.Y. 2009-10 has been made in this case.

In this case information has been shared by DIT(Investigation)-II (letter flagged as Annexure A) on the basis of search in the case of Sh. Surendra Kr. Jain group of cases (entry operator) New Delhi that during the financial year 2008-09 the aforementioned assessee has introduced its own money by way of taking bogus accommodation entries provided by Sh. S.K. Jain group of cases (entry operator) the details of accommodation entry amount received as beneficiary is given as under as provided by Investigation Wing :

<i>S.No.</i>	<i>Beneficiaries</i>	<i>Name of Entry Provider</i>	<i>Amount</i>	<i>Total Amount</i>

1	M/s SBS Realtors P.Ltd.	S.K. Jain group	235,00,000/-	235,00,000/-
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In the light of information provided by the investigation wing, it is necessary to examine and verify the genuineness, identification and creditworthiness of the aforesaid transaction.

I have perused details of the cheques/PO received by the above company, the amount, the issuing company, the recipient company, middlemen bank etc. as tabulated below:

S.No.	From company name	To company name	Name of the issuing bank	Chq./RTGS/ PO	Ch./Date	Amount	Name of the middle men
1	AD Fin Capital Services P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.023905	17.04.2008	1,000,000/-	Rajesh Aggarwal
2	Shakini Holding Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.025624	10.06.2008	3,000,000/-	Rajesh Aggarwal
3	Mani Mala Delhi PRO Pvt.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.025623	10.06.2008	2,500,000/-	Rajesh Aggarwal
4	Euro Asia Mercantile Pvt.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.025622	10.06.2008	2,500,000/-	Rajesh Aggarwal
5	Virgin Capital Services P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.025711	13.06.2008	1,000,000/-	Rajesh Aggarwal
6	Victory Software P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.026398	09.07.2008	2,500,000/-	Rajesh Aggarwal
7	Humtum Marketing P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.026397	09.07.2008	2,000,000/-	Rajesh Aggarwal
8	Eagle Infatech	SBS Realtors Pvt.Ltd.	Axis	P.O. No.027056	02.08.2008	1,500,000/-	Rajesh Aggarwal
9	Victory Software P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.027055	02.08.2008	1,000,000/-	Rajesh Aggarwal
10	Lotus Realcom P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.027123	04.08.2008	2,500,000/-	Rajesh Aggarwal
11.	Zenith Automotive P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.027201	18.03.2009	2,000,000/-	Rajesh Aggarwal
12	Mega Top Promoters P.Ltd.	SBS Realtors Pvt.Ltd.	Axis	P.O. No.027200	18.03.2009	2,500,000/-	Rajesh Aggarwal

I have reason to belief that the income pertaining to the Asstt. Year 2009-10 has escaped assessment to the extent of Rs.23500000/- upon receipt of the above information, I have compared the figures in the balance sheets filed by the assessee vide e-return for AYs 2008-09 & 2009-10. It is found that in AY 2009-10 issued subscribed and paid up share capital has increased by Rs.23,50,000/- and securities premium has increased by Rs.2,11,50,000/- i.e., both totalling to Rs.235,00,000/-. The same has escaped assessment on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment for the AY 2009-10. In order to verify the genuineness, identification and creditworthiness of the aforesaid transaction the case needs to be reopened u/s 147 of the I.T. Act 1961.

Since more than four year have been elapsed from the end of the relevant A.Y. i.e. 2009-10, necessary statutory approval u/s 151(2) of the I.T. Act may kindly be accord to issue notice u/s 148 for the A.Y. 2009-10 for the purpose of reopening of the case u/s 147 of the I.T. Act, 1961.

*Sd/-
(R.O. Bhutia)
Income Tax Officer
Ward-22(4), New Delhi"*

6. From a perusal of the above reasons, it is seen that the Investigation Wing has supplied certain information to the Assessing Officer with regard to receipt of cheques by the assessee from various companies who are considered to be S.K. Jain group companies by the Investigation Wing. As per the Investigation Wing, the above cheques paid by S.K. Jain group companies were accommodation entries to M/s SBS Realtors Pvt.Ltd. i.e., the assessee. However, what is the material found during the course of search of S.K. Jain group cases which had led to form the belief that all those companies are providing accommodation entries is not mentioned in the reasons recorded. It is also not mentioned whether any of the directors of the above companies have provided accommodation entries to M/s SBS Realtors Pvt.Ltd. It is also not mentioned whether any document was found which led to the belief of giving of accommodation entries by those twelve companies to the assessee. On receipt of above information,

the Assessing Officer compared the figures in the balance sheet of the assessee filed for assessment year 2009-10 and he found that the share capital has increased by ₹2,35,00,000/-. After recording the above factual finding, the Assessing Officer has concluded "*The same has escaped assessment on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment for the AY 2009-10. In order to verify the genuineness, identification and creditworthiness of the aforesaid transaction the case needs to be reopened u/s 147 of the I.T. Act 1961.*" The conclusion of the Assessing Officer at the end of the reasons recorded as noted above is contradictory. In the first two lines, the Assessing Officer has recorded the finding that the sum of ₹2,35,00,000/- has escaped assessment but in the last two lines, he has recorded that the case is being reopened to verify the genuineness, identification and creditworthiness of the aforesaid transactions. If the case is being reopened for the purpose of verification of the genuineness, how can there be satisfaction of escapement of income. Any satisfaction with regard to escapement of income or otherwise can be recorded only after the verification of genuineness, identification and creditworthiness of the transaction and not earlier. Thus, we are of the opinion that the Assessing Officer has reopened the case under Section 147 for the purpose of verification of genuineness, identification and creditworthiness of the transactions mentioned in the information supplied by the DIT (Investigation) and this is what the Assessing Officer has concluded at the end of the reasons recorded for issue of notice under Section 148. Now, the question remains whether an assessment can be reopened under Section 147 for the purpose of verification of genuineness, identification and creditworthiness of any transaction. In our opinion, the reply is clearly NO. There is Section 143(2) of the Income-tax Act under which the Assessing Officer can issue notice for the purpose of verification. The said Section reads as under :-

“143(2). Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.”

7. Thus, if the Assessing Officer considered it necessary to ensure that the assessee has not understated the income, he can issue the notice under Section 143(2). However, proviso to above Section provides the time limit within which such notice can be issued. Once that time limit is expired, in our opinion, the Assessing Officer cannot invoke Section 148 just for the purpose of verification. Therefore, in our opinion, in the case under consideration, the reopening of assessment for the purpose of verification of genuineness, identification and creditworthiness of the transaction is not permissible under law and is liable to be quashed.

8. The learned counsel for the assessee has also mentioned that the notice has been issued mechanically without application of mind and the satisfaction by the Assessing Officer is only the borrowed satisfaction of the Investigation Wing. The Assessing Officer, without applying his mind, has simply on the basis of information of the Investigation Wing jumped to the conclusion that there is escapement of income. From a perusal of the aforesaid reasons, we do not find any application of mind by the Assessing Officer for reaching to the

conclusion that there was escapement of income except the information from the Investigation Wing. After getting the information from the Investigation Wing, the Assessing Officer compared the figures in the balance sheet and has found that the assessee has issued share capital of ₹2,35,00,000/-. The issue of share capital by itself is not sufficient to reach to the conclusion of escapement of income. The Investigation Wing has alleged that 12 companies who have given cheques to the assessee company were accommodation entries. However, the basis of such allegation is not mentioned in the reasons recorded. Whether such conclusion is reached by the Investigation Wing on the basis of statement of director of any company or on the basis of some material seized during the course of search of those companies, is not mentioned in the reasons recorded. Whether there was any material with the Assessing Officer while issuing notice under Section 148 is not clear. Therefore, from the reasons recorded, we do not find any basis for reaching to the conclusion that there was escapement of income by the Assessing Officer. Learned DR has relied upon the decision of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Paramount Communication Pvt.Ltd. – [2017] 392 ITR 444 (Delhi), wherein on the basis of report of the Investigation Wing, Hon'ble Jurisdictional High Court has upheld the issue of notice under Section 148. Their Lordships held as under :-

“Held, that having regard to the contents of the notice issued under section 148 of the Income-tax Act, 1961, the findings of the Appellate Tribunal were not sustainable. It constituted reference to tangible material “outside” the record which was information based upon the investigation of the Commissioner of Central Excise. To have required the Revenue to disclose further details regarding the nature of documents or of contents thereof would be rewriting the conditions in section 147 which merely authorised the issuance of notice to reopen with conditions. For the assessment years 2004-05 and 2005-06, the notes disclosed the source of information, the

Directorate of Revenue Intelligence, which had sent information based upon the Commissioner of Central Excise's investigations. To add further conditions to be nature of discussions or reasons that the Officer authorizing the notice would have to discuss in the note or decision was beyond the purview of the courts and was not justified. The orders of the Appellate Tribunal could not be sustained. The Appellate Tribunal was directed to hear the Department's appeals on their merits."

9. On the other hand, learned counsel for the assessee has relied upon the catena of judgment before and after the date of above judgment of Hon'ble Delhi High Court wherein the notice under Section 148 simply on the basis of report of the Investigation Wing has been quashed. The same is as under:-

- (i) Sarthak Securities Co.P.Ltd. Vs. ITO – [2010] 329 ITR 110 (Delhi).
- (ii) Signature Hotels P.Ltd. Vs. ITO – [2011] 338 ITR 51 (Delhi).
- (iii) PCIT Vs. G And G Pharma India Ltd. – [2016] 384 ITR 147 (Delhi).
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- (v) PCIT Vs. Meenakshi Overseas Pvt.Ltd. – [2017] 395 ITR 677 (Delhi).

10. Learned DR has also relied upon few decisions of Hon'ble Gujarat High Court. However, when there are large number of decisions of Hon'ble Jurisdictional High Court, the same would be binding on us. Therefore, we consider all the decisions of Hon'ble Jurisdictional High Court relied upon by either side.

11. We find that the earlier decisions of Hon'ble Jurisdictional High Court in the case of Sarthak Securities Co.P.Ltd. (supra), Signature Hotels P.Ltd. (supra) and G And G Pharma India Ltd. (supra) were not brought to the knowledge of their Lordships while deciding the case of Paramount Communication (P) Ltd. (supra). We find that the decision in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas

Pvt.Ltd. (supra) are subsequent to the decision of Paramount Communication (P) Ltd. (supra). However, it seems that neither in the case of Meenakshi Overseas Pvt.Ltd. (supra) nor in the case of RMG Polyvinyl (I) Ltd. (supra), the decision of Paramount Communication (P) Ltd. (supra) was brought to the knowledge of their Lordships. Thus, there are two views by the Hon'ble Jurisdictional High Court. While in the case of Paramount Communication (P) Ltd. (supra), the issue of notice on the basis of information from Intelligence Wing of the Income Tax Department has been upheld, in the case of Sarthak Securities Co.P.Ltd. (supra), Signature Hotels P.Ltd. (supra), G And G Pharma India Ltd. (supra), RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt.Ltd. (supra), the notice issued on the basis of DIT(Investigation) has been quashed. It is a settled law that when there are two views, the view in favour of the assessee is to be followed and moreover, there are at least two decisions subsequent to the decision of Paramount Communication (P) Ltd. (supra), wherein their Lordships have quashed the notice issued under Section 148 on the basis of information from the Investigation Wing. The facts in the case of the assessee are almost identical to the facts in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt.Ltd. (supra). Therefore, they would be squarely applicable to the case of the assessee. Consequently, we hold the notice issued under Section 148 of the Act to be invalid for two reasons :-

- (i) the notice is issued for the purpose of verification of genuineness, identification and creditworthiness of the transaction, which is not permissible;
- (ii) the Assessing Officer has recorded his satisfaction on the basis of mere report from the Investigation Wing. There is no crucial link between the information made available to the Assessing Officer and the formation of belief of escapement of income. There is no basis for

coming to the conclusion that the assessee received accommodation entries. The Investigation Wing alleged that the companies which issued cheques to the assessee company are companies of Shri S.K. Jain group and they are entry providers. However, the basis for such conclusion is missing. There is no mention that any document was seized from Shri S.K. Jain group or any director of the 12 companies which have given cheques to the assessee has given the statement that they have provided accommodation entries to the assessee. The Assessing Officer has simply reopened the case on the basis of information provided by the Investigation Wing without any independent application of mind. There is no tangible material which formed the basis for the belief that income has escaped assessment.

12. While taking the above view, we derive support from the latest decision of Hon'ble Jurisdictional High Court in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt.Ltd. (supra). In view of the above, we quash the notice issued under Section 148 of the Act and consequently, the assessment completed in pursuance thereto. Accordingly, ground Nos.1, 1.1 and 1.2 of the assessee's appeal are allowed.

13. Since the notice issued u/s 148 is quashed, the assessment order passed in pursuance to such notice is also quashed. Once the assessment order itself has been quashed, the other grounds raised by the assessee in its appeal do not require any adjudication on merits.

14. In the result, the appeal of the assessee is allowed.

Decision pronounced in the open Court on 01.04.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **M/s SBS Realtors (P) Ltd.,
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Neb Sarai, New Delhi – 110 068.**
2. Respondent : **Income Tax Officer,
Ward-22(4), New Delhi – 110 002.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar