

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3595/Del/2009  
Assessment Year: 2001-02

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| Income Tax Officer,<br>Ward-223, C.R. Building, IP<br>Estate, New Delhi | <b>Vs.</b> | Sh. Ravinder Kumar<br>Aggarwal,<br>301, G.K. House, 187-A,<br>Sant Nagar, East of Kailash,<br>New Delhi |
| <b>PAN :ACBPA8839L</b>  |            |   |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>   |

**And**

C.O. No.353/Del/2009  
[In ITA No.3595/Del/2009]  
Assessment Year: 2001-02

|   |            |   |
|---|------------|---|
| Sh. Ravinder Kumar<br>Aggarwal,<br>301, G.K. House, 187-A, Sant<br>Nagar, East of Kailash, New<br>Delhi | <b>Vs.</b> | Income Tax Officer,<br>Ward-223, C.R. Building, IP<br>Estate, New Delhi |
| <b>PAN :ACBPA8839L</b>  |            |   |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>   |

|               |                             |
|---------------|-----------------------------|
| Department by | Sh. Surender Pal, Sr.DR     |
| Assessee by   | Sh. Saubhagya Aggarwa, Adv. |

|                       |            |
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| Date of hearing       | 13.03.2019 |
| Date of pronouncement | 18.03.2019 |

**ORDER****PER O.P. KANT, A.M.:**

This appeal by the Revenue and cross objection by the assessee are directed against order dated 15/05/2009 passed by the Ld. Commissioner of Income-tax (Appeals)-XVIII, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2001-02 .

**2.** The grounds raised by the Revenue in the appeal are reproduced as under:

1. *On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has erred in deleting the addition made u/s 68 of the I.T. Act of Rs.3,20,40,000/-. The Ld. CIT(A) has not appreciated that the amount has been received from an accommodation entries provided.*
2. *On the facts and in the circumstances of the case as well as in law, Ld. CIT(A) has erred in granting the relief to the assessee by admitting fresh explanation and evidences (non produced before the AO during the course of assessment) without allowing proper time to AO to enquire to such fresh evidence.*
3. *The appellant craves to be allowed to add, delete or amend any other grounds of appeal.*

**3.** The grounds raised in the cross objection by the assessee are reproduced as under:

1. *The learned CIT(A) has erred by dismissing Ground No.2, 3, and 4 and sustaining the reopening of the case u/s 147 when the same are not applicable on the facts of the case.*

**4.** Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on

30/10/2001, declaring total income of Rs.1,91,440/-, which was processed on 21/06/2002, under section 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, on receipt of information from the Additional Director of Income Tax (Investigation), Agra, that the assessee is beneficiary of accommodation entries provided one share broker, the case was reopened and notice under section 148 of the Act was issued on 31/03/2008, requiring the assessee to furnish return of income. In response, the assessee vide letter dated 28/04/2008, submitted to treat the original return of income filed on 30/10/2001 as return of income filed in response to notice under section 148 of the Act. On 28/04/2008, the assessee also submitted a letter challenging that notice under section 148 of the act was illegal, barred by limitation and out of jurisdiction. The Assessing Officer in para 10 below the table has mentioned that the queries/objections raised by the assessee vide letter dt. 28.04.2008 were disposed of vide letter dated 09/06/2008. The Assessing Officer in the assessment order has reproduced as how the objection of assessee on notice barred by limitation and reopening being out of jurisdiction were rejected. The assessee further requested to supply the reasons to believe recorded, which were also supplied to him on 09/06/2008. The Assessing Officer has reproduced the reasons recorded in para -4 of the assessment order. Thereafter, the Assessing Officer issued statutory notices under section 143(2) and 142(1) of the Act, however, there was no compliance on the part of the assessee. On subsequent notices issued, also there was no compliance either on the one or other ground. The Assessing Officer also issued

final show cause notice, however, same was also not complied and Assessing Officer completed assessment under section 144 read with section 147 of the act on 03/12/2008. In the assessment, the Assessing Officer has reproduced relevant part of the report of the Assistant Director of Income Tax (Investigation), Agra. It is mentioned in the report that in the course of survey under section 133A of the Act at the premises of M/s Aayushi Stock Brokers Private Limited (in short "Aayushi"), large number of incriminating materials including books of accounts, bills, loose papers, diaries were found and impounded. During assessment proceeding of the said party, it was found that the said share broker was involved in money laundering business on a very large scale and in the garb of share broking business, he was actually involved in providing accommodation entries in the shape of bogus share money, share application money, long-term capital gain and short-term capital gain etc. A list of accommodation entries having total amount of Rs.3,20,40,000/- obtained by the assessee, have been reproduced by the Assessing Officer in the impugned assessment order. According to the Assessing Officer, the assessee deliberately avoided the assessment proceeding, accordingly, he made the addition for the amount of Rs.3,20,40,000/- under section 68 of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A), raising the grounds challenging the legality of the reassessment proceeding as well as merit of the addition. Before the Ld. CIT(A), the assessee claimed that amount received from "Aayushi" comprised of Rs.2,92,38,729/- as sale of shares of listed companies; Rs.5,00,000/- from sale of shares of non-listed

companies; Rs.2,80,000/- towards salary and reimbursement and Rs.11,50,000/- towards refund of advances. The assessee also filed additional evidence consisting of purchase and sale bills, brokers note, confirmation, bank statement etc. to support its claim of receipt of money from "Aayushi". The Ld. CIT(A) forwarded all those additional evidences to the Assessing Officer. The Ld. Assessing Officer objected admission of the additional evidences vide remand report dated 04/03/2009 and 09/04/2009. According to Ld. CIT(A), due to confusion of the assessment year and thereafter due to illness of the assessee, the assessee was prevented by sufficient reasons to produce the documents before the Assessing Officer and accordingly, he admitted those additional evidences and after considering submission of the assessee, he allowed the appeal of the assessee on merit, though on legal grounds challenging the notice under section 148, issue of limitation and jurisdiction of reassessment proceeding, he rejected the contention of the assessee. Aggrieved, with the finding of the Ld. CIT(A), both the Revenue and the assessee are before the Tribunal by way of the appeal and the cross objection respectively.

**5.** Before us, the Ld. counsel of the assessee filed a paper book containing pages 1 to 122. The Ld. counsel of the assessee referred to the letter dated 28/04/2008 available on page 8 of the paper book, which is a copy of the objection filed by the assessee before the Assessing Officer against the notice issued under section 148 of the Act. The Ld. counsel also referred to para 7 of the assessment order and submitted that said objections of the assessee challenging issue of notice under section 148 were

disposed off only in the assessment order and not before. Supporting the cross objection, he submitted that the Assessing Officer has not disposed of the objections of the assessee before completion of the assessment, which being in violation of the decision of the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs Income Tax Officer and Others reported in 2002-TIOL-634-SC-IT, the reassessment proceedings are illegal and bad in law. In support of the contention, he relied on the following decisions:

1. *General Motors India Ltd. Vs. DCIT, 354 ITR 244,*
2. *M/s. Bharuch Enviro Ltd. Vs. Dy. Comm. Of Income Tax, Bharuch; ITA No. 731 & 732/AHD/2007, dated 05.08.2014*

**6.** The Ld. counsel also submitted that the reasons recorded are mere suspicion and being without any enquiry by the Assessing Officer, need to be quashed. In support of the contention he relied on the following decisions:

1. *G & G Pharma India Ltd. Vs. Income Tax Officer, ITA No. 3149/Del/2013, order dated 09.01.2015;*
2. *ACIT Vs. Devesh Kumar, ITA No.2068/Del/2010, order dated 31<sup>st</sup> October, 2014,*
3. *Income Tax Officer Vs. Arti Khatter, ITA No. 2395/Del/2012, order dated 22<sup>nd</sup> August, 2014,*
4. *CIT Vs. Dr. Pradeep Gupta, 303 ITR 95 (Del.)*
5. *Pr. CIT Vs. G & G Pharma, ITA No. 545/2015, order dated 08.10.2015 (Del. H.C.)*

**7.** On the merit of the addition, he submitted that all the credits received from M/s Aayusha Share Brokers Private Limited

stands explained before the Ld. CIT(A). Accordingly, he submitted that on merit, the order of the Ld. CIT(A) might be sustained.

**8.** On the contrary, the Ld DR filed a paperbook containing pages 1-112 and on the issue of cross objection, he submitted that the objections raised on the issue of notice under section 148 vide letter dated 28/04/2008 by the assessee contesting it as illegal due to barred by limitation and beyond jurisdiction, were disposed of by the Assessing Officer on 09/06/2008 and in the assessment order he has merely reproduced the ground of rejection. Thus, he rejected the contention of the Ld. counsel that objections of the assessee have been disposed off only in assessment order and not in a separate order prior to the assessment order. He also submitted that said objections were filed before filing of the return of income by the assessee and in response to notice under section 148 of the Act, and, therefore, same were even not in accordance with the procedure laid down by the Hon'ble Supreme Court in the GKN Driveshaft (supra).

**9.** He further submitted that the assessee has not challenged the reasons to believe either before the Assessing Officer or before the Ld. CIT(A). The Ld. DR submitted that this ground is not emanating from the order of the Ld. CIT(A) and, thus, cannot be raised in the grounds of the appeal and it can be raised only by way of additional grounds, which the Ld. counsel has not raised.

**10.** On the issue of the merit of the addition he submitted that the Ld. CIT(A) has not followed the procedure laid down in Rule 46A of the Income Tax Rules, 1962, with regard to the additional evidences. He referred to page 17-22 of the paper book, which is a copy of the remand report dated 04/03/2009 wherein the

Assessing Officer has objected to that admission of the additional evidences. He also referred to page 16 of the paperbook, which is a copy of the remand report dated 09/04/2009, wherein the Assessing Officer has mentioned that notices issued to various parties under section 133(6) remain non-complied and, thus, additional evidence remains unverified. The Ld. DR submitted that in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs Manish Buildwell Private Limited (245 CTR 397), the Ld. CIT(A) after admitting the additional evidences was required to forward those additional evidences for comments of the Assessing Officer on merit, however he has allowed the appeal, without comments on merit of the additional evidences from the Assessing Officer. The Ld. DR submitted that this action of the Ld. CIT(A) being in violation of the provisions of Rule 46A of the Income Tax Rules, the matter need to be restored back to the file of the Ld. CIT(A) for following the procedure as laid down in the decision of the Hon'ble Delhi High Court in the case of Manish Buildwell Private Limited (supra). The Ld. DR also filed a list of cases in support of the addition made by the Assessing Officer under section 68 of the Act.

**11.** In the rejoinder, the Ld. counsel of the assessee also could not controvert the fact that after admission of the additional evidences, no report has been called for from the Assessing Officer in terms of Rule 46A of the Income Tax Rules (in short 'the Rules').

**12.** We have heard the rival submission and perused the relevant material on record. In view of the ex parte assessment completed, the assessee filed various documents including

purchase bills, sale bills, broker's note etc. before the Ld. CIT(A) as additional evidences in terms of Rule 46A of the Income Tax Rules. The Assessing Officer objected admission of the additional evidences. The Ld. CIT(A) after citing the reasons, accepted the additional evidences. The Rules required that the Ld. CIT(A) must provide opportunity to the Assessing Officer for rebutting those additional evidences or cross-examine any witness produced. In the case of Manish Buildwell Private Limited (supra), the Hon'ble Delhi High Court has held that not providing opportunity to the Assessing Officer for rebutting the additional evidences filed render the entire procedure of Rule 46A of the Income Tax Rules futile. Accordingly, respectfully following the finding of the Hon'ble Delhi High Court in the case of Manish Buildwell Pvt. Ltd. (supra), we feel it appropriate to restore the issue of merit of the addition to the file of the Ld. CIT(A) for deciding afresh in accordance with law and after following due procedure of Rule 46A of Income Tax Rules, 1962. It is needless to mention that both the parties should be allowed adequate opportunity of being heard.

**13.** As far as the cross objection related to non-compliance of procedure laid down in the decision of the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Limited (supra), is concerned, we find that the objections raised by way of letter dated 28/04/2008 on the issue of notice under section 148 of the Act challenging limitation and jurisdiction have already been disposed of by the Assessing Officer vide letter dated 19/06/2008 as mentioned in the assessment order and, thus, the contention of the Ld. counsel that no separate order for disposing of the

objection has been passed is factually incorrect and accordingly the contention of the Ld. counsel on this issue are rejected. The contention of the Ld. counsel challenging the reasons to believe for escapement of income are concerned, we find that no such challenges was raised before the Ld. CIT(A) hence, those grounds are not emanating from the order of the Ld. CIT(A) and accordingly, same can only be raised by way of additional grounds, which has not been done and, therefore, we are not adjudicating those arguments of the Ld. counsel of the assessee. The cross objection filed by the assessee are accordingly dismissed.

**14.** In the result, the appeal of the Revenue is allowed for statistical purposes, whereas cross objection of the assessee is dismissed.

***Order pronounced in the open court on 18<sup>th</sup> March, 2019.***

Sd/-  
**[BHAVNESH SAINI]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 18<sup>th</sup> March, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi