

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 136/JP/2017  
निर्धारण वर्ष / Assessment Year : 2009-10

The ACIT, Central Circle-3, Jaipur.	बनाम Vs.	M/s Siyaram Exports India Pvt. Ltd., 18, Siyaram Street, Tonk Road, Durgapura, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKCS 1420 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA) &  
Shri Rohan Sogani (CA)  
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/05/2019  
उदघोषणा की तारीख / Date of Pronouncement: 17/06/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 23.12.2016 of CIT(A), Jaipur for the assessment year 2009-10. The Revenue has raised the following ground:-

*"1. Whether on the facts and in the circumstances of the case the CIT(A) was justified in deleting the addition of Rs. 65,00,000/- made by A.O. on account of unexplained cash credit U/s 68 of the Income Tax Act, 1961.*

*2. Whether on the facts and in the circumstances of the case the CIT(A) was right in allowing the appeal of the assessee holding that in absence of any incriminating material, the completed assessment cannot be interfered with by the AO while making assessment U/s 153A only on the basis of some incriminating material unearthed during the course of search which were not produced or not already disclosed.*

*3. The appellant craves, leave or reserves the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

The Revenue has also raised additional ground:-

*"Whether on the facts and in the circumstances of the case the CIT(A) was right in allowing the appeal of the assessee holding that in absence of any incriminating material, the completed assessment cannot be interfered with by the AO while making assessment u/s 153A only on the basis of some incriminating material unearthed during the course of search which were not produced or not already disclosed."*

2. The assessee company engaged in the business of manufacturing of textiles & home furnishing and trading in bullion. The assessee filed his return of income U/s 139(1) of the Act, on 30.09.2009 declaring total income of Rs. 51,03,870/-. The scrutiny assessment U/s 143(3) of the Act was completed on 23.12.2011 at the total income of Rs. 62,97,619/-. Thereafter a search and seizure action U/s 132 of the Act was carried out on 31.07.2012 in the case of Siyaram (katta) Group, Jaipur to whom the assessee belongs. During the course of search and

seizure action various assets/books of accounts and documents were found, inventorised and seized. In pursuant to the search and seizure action, the AO issue notice U/s 153A of the Act on 28.01.2013 and in response to the said notice the assessee e-filed its return of income on 09.05.2014 declaring total income of Rs. 51,03,870/- as declared in the return of income filed U/s 139(1) of the Act. After issuing notice U/s 143(2) of the Act as well as notices U/s 142(1) of the Act the AO made addition U/s 68 of the Act in respect of share application money received from M/s Ansh Marchandies Pvt. Ltd. of Rs. 65,00,000/- based on the information received from the Investigation Wing, Mumbai that it was accommodation entries provided by Shri Praveen jain group through his concerns. The assessee challenged the action of the AO before the Id. CIT(A) and raised a legal objection that the addition made by the AO on account of share application money treating as unexplained cash credit on the basis of information received of Investigation Wing, Mumbai is not sustainable in law as it is not based on any incriminating material or documents found or seized during the course of search and seizure action in case of the assessee. The Id. CIT(A) deleted the addition made by the AO on this legal issue and

aggrieved by the impugned order of the Id. CIT(A) the Revenue has filed the present appeal.

3. Before us, the Id. DR has submitted that as per the provisions of Section 132 r.w.s 153A of the Act the AO is bound to issue the notice for initiation of proceedings U/s 153A of the Act to assess or reassess to the total income of 6 assessment years immediately preceding assessment year, relevant to the previous year in which such search is conducted or requisition is made. The Id. DR has thus contended that the proceeding U/s 153A are mandatory in nature and there is no escapement of the assessment or reassessment proceedings pursuant to the search and seizure action U/s 132 of the Act. There is no prejudice if the AO made the addition U/s 68 of the Act in the proceeding U/s 153A based on the information received from Investigation Wing, Mumbai disclosing the fact that the share application money shown by the assessee is nothing but accommodation entries provide by Shri Praveen Jain Group when it was opened to the AO to initiate the proceeding U/s 147/148 of the Act at that point of time but due to the mandatory nature of the provisions of Section 153A of the Act the AO has proceeded in accordance with the provisions of law. The Id. DR has thus contended that even if the said

material which was received by the Assessing Officer was not found and seized in the search and seizure action in case of the assessee however, the same was deducted in the other search and seizure action and therefore, the case would not fall in the category when the said material was already available with the AO at the time of passing of order U/s 143(3) of the Act. The Id. DR has thus contended that the Id. CIT(A) has followed the decision where the additions were made on the basis of the material which was available with the AO at the time of passing the assessment order U/s 143(3) of the Act. He has relied upon the order of the Assessing officer.

4. On the other hand, Id. AR of the assessee has submitted that the assessment was completed prior to the date of search and seizure action on 31.07.2012 and therefore the assessment was not pending as on the date of search. Since, the assessment was not pending on the date of search therefore, it has not got abated by virtue of search and consequently as per Section 153A of the Act the AO was to reassess the total income of the assessee based on the incriminating material found and seized during course of search and seizure action in case of the assessee. The Id. AR has thus contended that when there was no incriminating material found and seized in respect of the addition made

by the AO on account of share application money then even if the proceeding U/s 153A of the Act are mandatory in nature the AO was required to reiterate the order which was passed U/s 143(3) of the Act. In support of his contention, he has relied upon the following decisions:-

- Saumya Construction (P.) Ltd. (2017) 81 taxmann.com 292.
- Sunrise Finlease (p.) Ltd. (2018) 89 taxmann.com 1.
- Deepak Kumar Agarwal (2017) 86 taxmann.com 3
- Jignesh P. Shah (2018) 99 Taxmann.com 111
- Harjeev Aggarwal (2016) 70 taxmann.com 95
- Best Infrastructure India Pvt. Ltd. ITA nos. 1698 to 1701 & 1753/Del/2014.

He has also relied upon the decision dated 16.05.2019 of this tribunal in case of Smt. Aruna Sankhla vs. DCIT in ITA No. 483/JP/2016. Thus, the Id. AR has contended that the Id. CIT(A) has deleted the addition by following various decisions on this point including the decision of Hon'ble jurisdictional High Court in case of Jai Steel India vs. ACIT 259 CTR 281.

5. We have considered the rival submissions as well as the relevant material on record. There is no quarrel on the point that in view of the

binding precedents of Hon'ble High Courts the AO in the proceeding U/s 153A of the Act in respect of the assessment year which is not pending as on the date of search cannot make addition in the absence of any incriminating material found during the course of search and seizure U/s 153A of the Act. Section 153A gives the power to the taxing authority to reopen 6 assessment years relevant to the previous year in which the search took place. Though the assessment or reassessment of these six years is mandatory in nature pursuant to the search and seizure action however, in case of completed assessment as on the date of search no addition in the reassessment proceedings U/s 153A can be made de hors incriminating material found during the search and seizure action. On the contrary where the assessment is pending on the date of search the same shall abate and the proceedings of assessment U/s 153A of the Act would be considered as regular assessment proceeding not reassessment. In the case in hand, the Assessing Officer after initiation of proceeding U/s 153A received the information from Investigation Wing, Mumbai and based on the said information the AO has made the addition of Rs. 65 lacs on account of share application money by treating the same as unexplained cash credit. The relevant finding of the AO in para 7 and 8 is as under:-

"7. It was seen that, during the year under consideration, assessee had received share application money from M/s Ansh Marchandise Pvt. Ltd. (New. Planet Trading Co P. Ltd.) amounting to Rs. 65,00,000/-. Information was received in the case of Shri Praveen Jain Group is a leading entry provider of Mumbai. The group provides accommodation entries of share application money, bogus unsecured loans and advances through various benami concerns operated and managed by Praveen Jain and Others. A search and seizure action was carried out by the Investigation Wing, Mumbai on 01/10/2013. The search revealed various incriminating documentary evidences were seized. In addition, statements of various persons ( who assist Praveen Jain in providing bogus loan and advances through Benami Concern to the beneficiaries) were recorded. All the above clearly establish the modus operandi employed by Praveen Jain. In his operation accommodation entries pertaining to **BOGUS SHARE APPLICATION MONEY, BOGUS LOAN & ADVANCES** indulged in by the Group. The entire bogus nature of the transactions has also been admitted by the Praveen Jain in his statement recorded u/s 132(4) of the Income Tax Act. As per this information, the name of the assessee is appearing in the list of beneficiaries who have taken the accommodation entry in the form of unsecured loans.

8. In view of the fact, the assessee was requested to show cause as to why an amount of Rs.65,00,000/- should not be added back to your returned income under section 68 of the Income Act, 1961. No reply has been filed by the assessee in this regard.

Therefore, based on the information with the investigation department, statement recorded u/s 132(4) of Shri Praveen Jain and various incriminating documentary evidence found from the search and seizure carried out by investigation wing, Mumbai on the said group on 01.10.2013, and the existence of nexus as briefed above cannot be considered

*as a co-incidence specially when Shri Praveen Jain has categorically admitted that his group was indulged in providing accommodation entries of bogus unsecured loans and advances through BENAMI CONCERNS operated and managed by him and Others. Thus, under such facts and circumstances M/s Ansh Marchandise Pvt. Ltd. (New Planet Trading Co P. Ltd.) is nothing but a Benami Concern of Shri Praveen Jain Group.*

*From the above case laws and discussion, it is crystal clear that-*

*(a) The primary onus is on the assessee to establish the genuineness of the transaction.*

*(b) If the investigation done by the department leads to doubt regarding the genuineness of the transactions it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction.*

*(c) payment by account payee cheque is not sacrosanct.*

*In light of the various judicial pronouncements and the above discussions it is to be seen whether the assessee was able to establish the genuineness of the transactions claimed by it or it has failed in discharging this onus. The information received from investigation wing and statement of Shri Praveen Jain and group clearly explains the modus operandi of this bogus transactions.*

*8. In the present case, assessee has received Share Application Money of Rs. 65,00,000/-, from M/s Ansh Marchandise Pvt. Ltd. (New Planet Trading Co P. Ltd.), a benami concern of Shri Praveen Jain Group, and this party is only providing bogus accommodation Share Application Money, unsecured loans and advances for the reasons given in detail in the above para. Therefore, the Share Application Money from M/s Ansh Marchandise Pvt. Ltd. (New Planet Trading Co P. Ltd.) may be*

*treated as unexplained cash credit u/s 68 of the I.T. Act, 1961. I hereby make an addition of Rs.65,00,000/- to the declared income of the assessee u/s 68 of the I.T. Act, 1961. Penalty proceedings u/s 271(1)(c) of the IT Act, 1961 is initiated for concealment of income/for furnishing inaccurate particulars of income."*

The question before us is limited about the sustainability of the addition made by the AO based on the material which was received by him subsequent to the search and seizure action in the case of the assessee but gathered during the search and seizure action in case of the Shri Praveen Kumar Jain group. Though technically the AO cannot reassessed the income of the assessee U/s 153A of the Act when the assessment was not pending as on the date of search and there was no incriminating material found or seized during the course of search and seizure in the case of the assessee to support the said addition. However, the question arises whether the AO had any other option and second recourse of proceedings to assess the said income of Rs. 65 lacs treated as accommodation entries received by the assessee on account of share application money. There is no quarrel the AO was bound to proceed U/s 153A of the Act in pursuant to the search and seizure action however, if there is no incriminating material to reassess the income of the assessee then the Assessing Officer legally cannot make the addition based on the information

and evidence received from the Investigation Wing, Mumbai and consequently ought to have completed the reassessment U/s 153A of the Act without making any addition. But at the same time he could initiate the proceeding U/s 147/148 of the Act to reassess the income of the assessee on the basis of the information and evidence received from the Investigation Wing, Mumbai. Accordingly, in view of the various decisions on this point as relied upon by the Id. AR of the assessee, we do not find any error or illegality in the impugned order of the Id. CIT(A) in deleting the addition made by the AO while passing the order U/s 153A of the Act. It is always open to the AO to initiate the proceeding U/s 147/148 of the Act if the time limit for initiation of the said proceedings was still available as on the date of passing the order U/s 153A of the Act. We find that even on the date of assessment order passed U/s 153A of the Act on 31.03.2015 the time limit for issuing the notice U/s 148 of the Act was still available with the AO. Therefore, even if the AO had no jurisdiction to make the addition U/s 153A however, it was opened to the AO to proceed to initiate the proceeding U/s 148 of the Act. Accordingly, in the facts and circumstances of the case we uphold the order of the Id. CIT(A) in deleting the addition made by the AO due to legal hurdle of

making such addition without incriminating material but if the material and evidence received by the AO during the course of reassessment proceedings U/s 153A of the Act which was not available with the AO at the time of passing the assessment U/s 143(3) of the Act then, it is open to the AO to initiate the proceeding U/s 147/148 of the Act instead of making the addition in the proceeding U/s 153A of the Act. Since, in the case in hand the time was available with the AO as on the date of assessment order therefore, it is open to the AO to initiate the proceeding U/s 147/148 of the Act.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17/06/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17/06/2019.

\*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ACIT, Central Circle-3, Jaipur.
2. प्रत्यर्थी / The Respondent- Sh. M/s Siyaram Exports India Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 136/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar