

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 374/Bang/2019
Assessment Year : 2008-09

Shri Siddarth Bohra [HUF], # 44, Flat No. 201, 2 nd Cross, 7 th Main Road, Srirampuram, Bangalore – 560 021. PAN: AARHS4202B	Vs.	The Income Tax Officer, Ward – 2 [2] [1], Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Ganesh R. Ghale, Standing counsel for Dept.
Date of hearing	:	25.09.2019
Date of Pronouncement	:	11.10.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-2, Bangalore dated 18.12.2018 for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under.

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. Without prejudice to the above, the learned CIT[A] is not upholding the additions of Rs.84,925/- and Rs.2,34,025/- in respect of sale of diamonds made to the Surat parties and credited to the capital account on the ground that the same could not be verified by the learned A.O. in course of the remand proceedings under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in upholding the additions of Rs.2,74,025/- and Rs.84,925/- being the clearing credits in the bank account in respect of the sale of diamonds on the ground that the same

could not verified by the learned A.O. in course of the remand proceedings, under the facts and in the circumstances of the appellant's case.

5. The learned CIT [A] is not justified in upholding addition of Rs.9,44,000/- in respect of the cash deposits made in the bank account without appreciating that the entire cash deposits were made out of explainable sources of funds of the appellant under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s.234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

7. For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. It was submitted by Id. AR of assessee that ground no. 1 is general. Regarding ground no. 2 in respect of validity of reassessment proceedings, it was submitted by him that the reasons recorded by the AO for reopening are available on page no. 9 of the paper book as per which the reopening is done on the basis of some statement recorded in course of search conducted u/s. 132 of the IT Act on 13.10.2013 in the case of Sri Rajendra Jain group, Sri Sanjay Choudary Group and Sri Dharmichand Jain Group, Mumbai in which it was stated that those groups were engaged in providing accommodation entries in the nature of bogus sales and bogus unsecured loans for commission to various parties who normally purchase diamonds in cash from undisclosed parties and need bills to show purchases against sales in their books. He further pointed out that in the reasons recorded by the AO, it is also stated by the AO that the present assessee is one of the beneficiaies of accommodation entries obtained from Sri Rajendra Jain and others for Assessment Year 2008-09 for Rs. 6,29,664/-. Thereafter he pointed out that the AO made addition of this amount also along with some other additions made by the AO which are in dispute as per various grounds on merit raised before the Tribunal but this addition of Rs. 6,29,664/- was deleted by Id. CIT(A) as per para no. 6.3 of his order with a categorical finding that there is no such transaction with Sri Rajendra Jain group. He submitted that since this is a categorical finding of Id.

CIT(A) that there is no such transaction with Sri Rajendra Jain group, then the reopening is on the basis of suspicion only without any material on record and therefore, the reopening is bad in law. As against this, the Id. DR of revenue supported the orders of authorities below in this regard.

4. I have considered the rival submissions. I am aware of the judgment of Hon'ble Karnataka High Court rendered in the case of N. Govindaraju vs. ITO, 377 ITR 243 in which it was held that Once proceedings had been initiated on valid notice, it becomes duty of AO to levy tax on entire income that may have escaped assessment and comes to his notice during course of proceedings initiated u/s. 147. Hence, it is not material as to whether addition is made in respect of the item for which reopening is made if the reopening is made as per a valid notice. Hence, I have to examine and decide as to whether the notice issued for reopening is a valid notice or not. Para 18 of this judgment is relevant in this regard and therefore, I reproduce this para. It reads as under:-

“18. This would clearly mean that the issuance of notice is justiciable. If the assessee chooses not to challenge the notice or if it is challenged and found to be valid, then in either case, such notice is to be treated as valid and final. Since the validity of the notice issued under section 148(2) can be challenged or is subject to judicial scrutiny, in our view, the assessment or reassessment of 'any other income' in the case of a validly issued notice cannot be said to be a case of fishing and roving enquiry. The assessee has the opportunity to challenge the notice, and if it is held to be invalid for not giving adequate reasons for reopening the assessment, the entire reopening proceedings would lapse. In such a case there would be no question of assessment of either 'such income' of the first part of section 147 or 'any other income' of its second part. But if the notice is either not challenged or if challenged and found to be justified, it would be a case of reopening the assessment on the basis of a valid notice.”

5. As per above para, it comes out that notice for reopening is invalid if adequate reasons for reopening are not given. In the present case, the reasons given for reopening is the statement of Sri Rajendra Jain group, Sri Sanjay Choudary Group and Sri Dharmichand Jain Group, Mumbai in which it was stated that those groups were engaged in providing accommodation entries in the nature of bogus sales and bogus unsecured loans for commission to various parties

who normally purchase diamonds in cash from undisclosed parties and need bills to show purchases against sales in their books. The AO has also stated in the reasons that the present assessee is one of the beneficiaries of accommodation entries obtained from Sri Rajendra Jain and others for Assessment Year 2008-09 for Rs. 6,29,664/-. But it was found that there is no such transaction of Rs. 629,664/- of the assessee with that group for the present year. Hence, it is seen that the very basis of reopening is nonexistent. The case will be different if the said transaction is there but on enquiry, it is found that there is no escaped income on that account and because of this, no addition is made on that account. But in the present case, the finding is this that there is no such transaction and therefore, it comes out that the basis of reopening is not there and under these facts, it has to be held that reopening is invalid because no adequate reasons for reopening is given by the AO. I hold accordingly. Ground No. 2 is allowed.

6. In view of above, other grounds do not require any adjudication.
7. In the result, the appeal filed by the assessee is allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th October, 2019.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.