

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 218/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10.

M/s. Akarsh Steels Pvt. Ltd., Plot No. 350, Road No. 15, VKI Area, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 4(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAGCA 2927 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

राजस्व की ओर से / Revenue by: Shri Abhishek Sharma (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01.10.2019.

घोषणा की तारीख / Date of Pronouncement : 04/10/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 18.12.2017 of Id. CIT (Appeals)-2, Udaipur for the assessment year 2009-10. The assessee has raised the following grounds of appeal :-

- " 1. On the facts and in the circumstances of the case Id. ITO Ward 4(1) Jaipur erred and Id. CIT (A) erred in sustaining the addition u/s 68 of the I.T. Act, 1961 amounting to Rs. 19,20,000.00 received on subscription of share capital, in spite of the fact that all the evidences of identification, genuineness and creditworthiness were proved. Hence the addition was unjustified and liable to be quashed.
2. On the facts and in the circumstances of the case Id. ITO Ward 4(1) Jaipur erred and Id. CIT (A) erred in sustaining the addition of Rs. 9600.00 on account of commission, simply on assumption and presumption, which is unjustified and liable to be quashed."

The assessee has also raised an additional ground which reads as under :-

“ Under the facts and circumstances of the case, the notice issued u/s 148 and consequent order passed u/s 147 is illegal and bad in law.”

2. Since the additional ground raised by the assessee challenging the validity of notice issued under section 148 and consequential assessment order is a pure legal issue and adjudication of the same do not require any investigation or verification of fresh facts, therefore, the additional ground raised by the assessee is taken up for hearing and adjudication.
3. The Id. A/R of the assessee has submitted that the additional ground is a legal ground and does not require any verification of facts and can be decided on the basis of material available on record. Therefore, the same may be admitted for adjudication. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of CIT vs. NTPC, 229 ITR 383 (SC). The Id. A/R has also referred a letter dated 15.06.2015 whereby the assessee raised objection against the notice issued under section 148 of the IT Act and submitted that the AO has not disposed off the said objection raised by the assessee by a separate speaking order prior to the reassessment order passed by the AO.
4. On the other hand, the Id. D/R has objected to the additional ground raised by the assessee and submitted that the assessee has not raised this ground either before the AO or before the Id. CIT (A). The alleged letter dated 15.06.2015 is not available on the assessment record, therefore, the additional ground raised by the assessee be dismissed in limine.

5. I have considered the rival submissions as well as the relevant material on record. The issue raised in the additional ground is purely legal in nature and does not require any investigation or verification of new facts but the said issue can be adjudicated on the basis of the facts and material available on record. For considering the material available on record, the Id. D/R was directed to produce the assessment record and consequently the assessment record was produced before the Tribunal. Thus in the facts and circumstances when the additional ground raised by the assessee is legal in nature and goes to the root of the matter and adjudication of the same does not require any fresh material or facts, then in view of the judgment of the Hon'ble Supreme Court in case of CIT vs. NTPC (supra), the additional ground raised by the assessee is admitted for adjudication.

Validity of initiation of proceedings under section 147/148 of the IT Act.

6. The Id. A/R of the assessee has submitted that the assessee filed its return of income on 18.09.2009 declaring total income of Rs. 2,80,000/-. The return was processed under section 143(1). Subsequently, the AO reopened the assessment by issuing notice under section 148 of the IT Act on 14.05.2015 based on the information received from Investigation Wing, Mumbai. The Id. A/R has referred to the reasons recorded by the AO and submitted that the AO has made the averments which are very vague and without specifying the facts as to how the assessee has availed the alleged accommodation entries on account of share premium. The Id. A/R has further submitted that the AO has referred to report of the Investigation Wing but has not pointed out even the correct amount of the share premium received by the assessee on issue of shares to various concerns. The reasons

recorded by the AO are very vague and without application of mind. Thus it is a case of initiation of reassessment proceedings on borrowed satisfaction without any application of mind as well as the examination of so called material and information received from the Investigation Wing. In support of his contention, he has relied upon the decision of Delhi Benches of the Tribunal in case of Pioneer Town Planners Pvt. Ltd vs. DCIT, 170 DTR 237 (Del. Trib.). Thus the Id. A/R has submitted that the bare reading of the reasons shows that the AO mechanically and blindly acted upon the information received from the Investigation Wing without applying his own mind to form the belief that income of the assessee has escaped assessment. Hence the reopening of the assessment only at the instance of Investigation Wing is illegal and bad in law. The Id. A/R has also relied upon the decision of Agra Bench of the Tribunal in case of Deepraj Hospital Pvt. Ltd. vs. ITO, 65 ITR 663 (Agra Trib.) and submitted that the Tribunal has held that if the reopening is based on information received from Investigation Wing, then the reasons must show that the AO independently applied his mind to the information and formed his own opinion. The AO, in the reasons, has thus stated the information received and did not state as to how he has arrived to the conclusion about the escapement of income of the assessee. Therefore, the reasons recorded by the AO are not in accordance with law. Consequently, the initiation of re-assessment proceedings are not sustainable in law. The Id. A/R has then relied upon the decision of Hon'ble Delhi High Court in case of Sarthak Securities Co. Pvt. Ltd. vs. ITO, 329 ITR 110 (Del.).

7. On the other hand, the Id. D/R has submitted that the AO has received the information from the Investigation Wing Mumbai which clearly reveals the fact that the companies managed and controlled by Shri Praveen Kumar Jain were engaged in

providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales etc. Along with the said information, the copies of the statement recorded during the search and survey were also received by the AO. Coupled with the information and statement received from the Investigation Wing, Mumbai, when the assessee also received share premium from the companies controlled and managed by Shri Pravin Kumar Jain, then it constitute a tangible material to form the belief that income assessable to tax has escaped assessment. He has further submitted that the AO also conducted an enquiry prior to the recording of reasons and issuing notice under section 148. Therefore, it cannot be said that the AO has not applied his mind at the time of reopening of the assessment.

8. I have considered the rival submissions as well as the relevant material on record. The original return of income filed by the assessee was though processed under section 143(1), however, on receipt of the information from Investigation Wing Mumbai vide letter dated 07.03.2014 the AO issued the notice under section 133(6) to the assessee calling upon the relevant details and record regarding the share application money received by the assessee during the year under consideration. In response to the notice issued by the AO under section 133(6), the assessee filed the relevant details and financial statements including Balance Sheet, ledger account, bank statement etc. Thus it is clear that prior to the recording of the reasons, the AO was aware about the relevant facts of issuance of shares by the assessee to four companies. The exact amount of share capital and share premium on the allotment of shares by the assessee to those four companies were also known to the AO when the AO has conducted an enquiry by issuing notice under

section 133(6). Thus when all the relevant details, facts and material were available before the AO prior to the recording of reasons, then the facts recorded in the reasons should have manifest the out-come of the enquiry conducted by the AO. The reasons recorded by the AO for reopening of the assessment are as under :-

" The DGIT (Inv.), Mumbai vide his letter No. DGIT (Inv.) Information/PJ/2013-14 dated 07.03.2014 has sent a list of beneficiaries and list of accommodation entry providers. On verification of the same, it is noticed that the assessee company has taken accommodation entry from the companies controlled by Shri Praveen Kumar Jain.

A search and survey action was carried out in the case of Shri Praveen Kumar Jain, Mumbai and his group on 01.10.2013. The search action resulted into collection of evidences and other findings which conclusively proved that the assessee through a web of concerns run and operated by him is engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales, etc.

During the course of statements recorded u/s 132(4) / 131 of the IT Act, 1961, these Directors / Proprietors admitted that they were merely dummy Directors and used to sign different papers for nominal consideration given by Shri Praveen Kumar Jain.

During the AY 2009-10, the assessee had received share premium of Rs. 14,40,000/-. Hence, the assessee has received accommodation entries from companies controlled and managed by Shri Praveen Kumar Jain.

Looking to the facts mentioned above, I have reasons to believe that income of Rs. 14,40,000/- has escaped assessment within the meaning of Section 147 of the IT Act, 1961. Therefore, it is a fit case to issue notice u/s 148 of the IT Act, 1961."

The AO has also referred to the information received from Investigation Wing and the statements recorded by the Investigation Wing of one Shri Praveen Kumar Jain and other Directors of various companies. The facts relating to the assessee are

discussed only in the last two paragraphs of the reasons stating that the assessee has received share premium of Rs. 14,40,000/- from the companies controlled and managed by Shri Praveen Kumar Jain. However, the names and details of these companies were not mentioned by the AO in the reasons recorded. The amount of Rs. 14,40,000/- is also not correct as the assessee has allotted the share to four companies, the details of which are given by the AO at page 3 as under :-

	Name of concern controlled and managed by Praveen Kumar Jain
1	Ansh Merchandise P Ltd. (Newplane Trading Co P Ltd.)
2	Duke Business P Ltd. (JPK Trading Pvt. Ltd.)
3	M/s. Raghunandan Rayons Ltd.
4	M/s. Magic Buildgwell Pvt. Ltd

It is also pertinent to note that the AO while passing the reassessment order has made an addition of Rs. 19,20,000/- being accommodation entries received by the assessee from four companies and not an addition of Rs. 14,40,000/-. The AO has discussed the information received from the Investigation Wing at page 4 which gives the details of three companies out of four companies from whom the assessee received the share capital against the allotment of shares. Therefore, it is clear that the information received by the AO from the Investigation Wing was incomplete and once the AO has conducted the enquiry under section 133(6), then the reasons recorded by the AO should have reflected the correct facts as emerged from the enquiry conducted by the AO. The reasons clearly demonstrate that the AO has not applied his mind on the information and facts available with him prior to recording the reasons and issuing the notice under section 148 of the IT Act. Even the reasons do not spell out the details of the companies to whom the shares were allotted and

the price and premium at which the shares were allotted by the assessee to those companies. Therefore, the AO has proceeded to initiate the proceedings under section 147/148 on the basis that the assessee has received the accommodation entries in the garb of share premium from the companies managed by Shri Praveen Kumar Jain. However, neither the names of the companies are mentioned in the reasons recorded nor the correct amount of share premium is given in the reasons recorded. What is given by the AO in the reasons recorded is the information received from the Investigation Wing and subsequently it was found that the said information was not complete and, therefore, these reasons based on incomplete and incorrect information cannot be said with due application of mind by the AO while forming the believe that income assessable to tax has escaped assessment. It is on the face of record that in the reasons recorded by the AO apart from reproducing the information received from Investigation Wing, reveals no other fact which ought to have come as an outcome of the enquiry conducted under section 133(6) of the Act. Even the information received from the Investigation Wing has not been co-related with the facts available on record regarding the shares issued by the assessee to four companies at a premium. Thus in the absence of the correct fact recorded by the AO in the reasons, the formation of belief based simply on the information received from the Investigation Wing which turned out to be an incorrect and incomplete information not leading to a conclusion that income assessable to tax has escaped assessment. The Hon'ble Delhi High Court in case of Sarthak Securities Co. (P) Ltd. vs. ITO, 329 ITR 110 (Del.) while considering an identical issue has held in para 23 as under :-

"23. The obtaining factual matrix has to be tested on the anvil of the aforesaid pronouncement of law. In the case at hand, as is evincible, the Assessing Officer was aware of the existence of four companies with whom the assessee had entered into transaction. Both the orders clearly exhibit that the Assessing Officer was made aware of the situation by the investigation wing and there is no mention that these companies are fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind. True it is, at that stage, it is not necessary to have the established fact of escapement of income, but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof is not germane at this stage but the formation of belief must be on the base or foundation or platform of prudence which a reasonable person is required to apply. As is manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence is not disputed. What is mentioned is that these companies were used as conduits. In that view of the matter, the principle laid down in Lovely Exports (P.) Ltd.'s case (supra) gets squarely attracted. The same has not been referred to while passing the order of rejection. The assessee in his objections had clearly stated that the companies had bank accounts and payments were made to the assessee-company through banking channel. The identity of the companies was not disputed. Under these circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It is totally unwarranted."

Thus when the AO was aware or ought to have known the facts that the assessee issued and allotted the shares to four companies and received the premium of more than Rs. 16 lacs, then the said facts should have been the basis of reasons recorded by the AO to form the belief that the income assessable to tax has escaped assessment instead of reproducing the information received from the Investigation wing which turned out to be incomplete and incorrect. Therefore, the bare perusal

of the reasons recorded clearly manifest that there is no independent application of mind on the part of the AO at the time of recording the reasons and arrived to the conclusion that the income assessable to tax has escaped assessment. The AO has not made any inference to the relevant material on which a person of ordinary prudence can reasonably form the belief that income assessable to tax has escaped assessment. Accordingly, in view of the above facts and circumstances, the reopening of the assessment is not valid and the same is quashed. Since the reopening of the assessment and consequential reassessment order is quashed being invalid, therefore, the other grounds raised by the assessee on the merits of the addition become infructuous and not taken up for adjudication.

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

Order is pronounced in the open court on 04/10/2019.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 04/10/2019.

Das/

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

1. The Appellant- M/s. Akarsh Steels Pvt. Ltd., Jaipur.
2. The Respondent – The ITO Ward 4(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 218/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

