

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1063/Del/2019
Assessment Year: 2010-11

Agroha Fincap Ltd.,
Raj Kumar & Associates, CAs,
L-7A (LGF), South Extension Part-II,
New Delhi.

Vs.

ITO,
Ward-1(4),
New Delhi.

PAN: AAACA8075G

(Appellant)

(Respondent)

Assessee by : Shri Raj Kumar, CA
Revenue by : Shri S.L. Anuragi, Sr.DR

Date of Hearing : 13.08.2019
Date of Pronouncement : 17.10.2019

ORDER

This appeal by the assessee is directed against the order dated 19th December, 2018 of the CIT(A)-1, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company and had filed its return of income on 12th October, 2010 declaring the total income at Rs.9,912/-. The Assessing Officer received information based on the search and seizure operation conducted u/s 132 of the IT Act, 1961 in the case of Shri Surendra Kumar Jain group of cases on 14th September, 2010 that Shri Surendra Kumar Jain, through a large number of dummy companies floated by him provided accommodation entries to

various beneficiaries. In the list of beneficiaries so obtained, the name of the assessee also appears. He noticed the *modus operandi* of the Jain brothers was that they have received cash from the various beneficiaries which were deposited in the bank accounts of various entities as cash received against sales and were immediately transferred to various dummy companies of Jain brothers. The money is then routed through a maze of transactions through a web of dummy concerns managed by Jain brothers. Subsequently, cheques were given to the beneficiaries in lieu of cash given initially from the account of the concerns which is at the last step of money trail and in this process, Jain brothers used to earn a certain percentage of commission. He also referred to the assessment order in case of S.K. Jain wherein the Assessing Officer had applied the commission @ 1.8% on account of accommodation entries provided by them. The order of the Assessing Officer was confirmed by the CIT(A) and the Tribunal had also approved the fact that Shri S.K. Jain and Shri V.K. Jain are involved in providing accommodation entries. In view of the above, the Assessing Officer reopened the case of the assessee u/s 147/148 of the Act after recording satisfaction and prior approval u/s 151(1) of the Act by the PCIT, Delhi-1. In response to notice u/s 148, the assessee filed its return of income on 30th March, 2017 declaring an income of Rs.9,912/-. During the course of assessment proceedings, the Assessing Officer asked the assessee to substantiate the amount of Rs.20 lakhs received by him towards 20000 shares of Rs.10/- each at a premium of Rs.90/- per share. Rejecting various explanations given by the assessee, the Assessing Officer held that the assessee failed to discharge the onus cast on it to prove the identity and capacity of the

creditor and the genuineness of the transaction and made an addition of Rs.20 lacs to the total income u/s 68 of the IT Act. Similarly, the Assessing Officer also made addition of Rs.36,000/- being commission @ 1.8% for arranging the accommodation entries. Thus, the Assessing Officer completed the assessment at a total income of Rs.20,45,912/- as against the returned income of Rs.9,912/-.

3. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer in making the addition of Rs.20,36,000/- and also upheld the validity of the reassessment proceedings.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That under the facts and circumstances initiation of proceedings under section 147/148 are without jurisdiction, on borrowed satisfaction, without application of mind, unwarranted, mechanical and unsustainable in law and on merits. I

2. That the Ld. A.O., since failed in adjudicating all objections against reopening proceedings, properly, as per law and in totality and as per the directions of Hon'ble Supreme Court in the case of G.K.N. Drive Shafts, hence consequential proceedings and impugned asstt. is illegal and without jurisdiction.

3. That under the facts and circumstances, the approval under section 151 is fatally defective, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted.

4. That under the facts and circumstances, the Ld. A.O, erred in law and on merits in making addition of Rs,20,00,000 under section 68 of the I.T. Act.

4.1 That under the facts and circumstances, addition of Rs. 20,00,000 under section 68 for the share capital / share premium received from Utsav securities (P)

ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.

4.2 That the findings of A.O. are unsustainable for addition of Rs.20,00,000 in the absence of providing the copies of all materials used against the assessee and by not providing cross-examination of persons whose statements have been relied upon, thus no proper and reasonable opportunity of hearing has been allowed and principles of natural justice is grossly violated which makes the impugned asstt. unsustainable in law.

5. That the Ld. A.O. erred in making addition of Rs.36,000 as unexplained expenditure under section 69C for alleged commission expenses @1.8 percent of Rs.20,00,000, the amt. of total sale consideration received of both the shares, although there is no material and evidence for the same.”

5. The ld. counsel for the assessee submitted that the initiation of reassessment proceedings was made in a mechanical manner, on borrowed satisfaction and without application of mind. Referring to the copy of the reasons supplied by the Assessing Officer, copy of which is placed at page 225 of the paper book, he submitted that the initiation is purely on the basis of the report received from the Investigation Wing and the Assessing Officer before initiating the reassessment proceedings had not conducted any inquiry even to know and understand that the information as per the Investigation Report is *prima facie* correct. He submitted that at the time of initiation of proceedings, the Assessing Officer was not having even the material before him on the basis of which the Investigation Wing had sent its report. The Assessing Officer assumed and worked only on the satisfaction of the Investigation Wing. Relying on the following decisions, he submitted that when the proceedings were initiated mechanically and on borrowed satisfaction and without application of mind, such reassessment proceedings are a nullity:-

- i) Pr. CIT vs. RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del);
- ii) Pr. CIT vs. Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del);
- iii) Pr. CIT vs. G and G Pharma India Ltd., 384 ITR (2016) (Delhi) 147; and
- iv) Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del).

6. The ld. counsel for the assessee further submitted that the assessee filed objections against the reopening vide letter dated 16th August, 2017, copy of which is placed at page 6 to 7 of the paper book. Referring to page 8 to 10, he drew the attention of the Bench to the disposal of the objections by the Assessing Officer. He submitted that vide para 2 of the objection letter dated 16th August, 2017, it was requested that to file complete objections, the materials relied upon by the Investigation Wing for sending the report to the Assessing Officer and such other material including the statement of persons recorded at the back of the assessee should be supplied. However, the Assessing Officer had not provided any of these documents on the ground that the relevant material is internal documents of the Department and cannot be shared. He accordingly submitted that the Assessing Officer by not providing the above documents has not disposed of the objections fully as per the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft. Referring to the following decisions, he submitted that incomplete disposal of objections makes the assessment invalid.

- i) Sabh Infrastructure Ltd. vs. ACIT, 398 ITR 198;
- ii) Pr. CIT vs. Tupperware India (P) Ltd., 127 DTR 161 (Del);

iii) Scan Holding (P) Ltd. vs. ACIT, 402 ITR 290 (Del); &

iv) Goa State Copr. Bank Ltd. vs. ACIT 7 Ors., (2017) 295 CTR (Bom) 369.

7. The ld. counsel for the assessee submitted that the approval u/s 151 is in a mechanical manner and without application of mind. Therefore, it is fatally defective. He submitted that the PCIT while giving approval has simply mentioned: 'I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act.' Referring to the decisions of the Hon'ble Delhi High Court in the case of *PCIT vs. NC Cables Ltd.*, 391 ITR 11 (Del) and *United Electrical Company Pvt. Ltd. vs. CIT & ors*, 258 ITR 317 and the decision of the Hon'ble M.P. High Court in the case of *CIT vs. S. Goyanka Lime & Chemical Ltd.* (2015) 56 taxmann.com 390, he submitted that the courts have unequivocally held that where the satisfaction has been given in a mechanical manner and without application of mind for issuing notice u/s 148, such reopening of assessment is invalid. He submitted that the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue against the decision of the Hon'ble MP High Court in the case of *Goyanka Lime & Chemical Ltd.* (supra).

8. So far as the merit of the case is concerned, he submitted that to substantiate the identity and credit worthiness of the share applicant and the genuineness of the transaction, the assessee has filed the audited financial statement, income-tax return, copy of bank statement, copy and confirmation of Utsav Securities Pvt. Ltd. The assessee also filed Form No.2 filed with ROC dated 29th June, 2010, a copy of form No.2 filed before ROC intimating the issue of 20000 shares to Utsav Securities Pvt.

Ltd. at a premium of Rs.90/- per share. He submitted that the balance sheet of Utsav Securities Pvt. Ltd. shows its share capital at Rs.1.26 crores and the reserves and surplus at Rs.8.66 crore. He submitted that Utsav Securities Pvt. Ltd. has an investment of Rs.8.92 crore and current assets, loans and advances of Rs.1.14 crore. He submitted that the smallness of the income cannot be a reason for not accepting the credit worthiness of the said company. Relying on various decisions, he submitted that when the assessee has discharged its onus by proving the identity and credit worthiness of the investor and the genuineness of the transaction, no addition u/s 68 can be made. The ld. counsel further submitted that the assessee was never provided with the photo copy of page No.2 of diary of Shri S.K. Jain and Shri V.K. Jain claimed to have been seized on search at the residence of Shri Jain. Despite specifically asking the Assessing Officer to provide the documents relied by the Department for making the addition and asking to give opportunity to cross examine, the same were never provided. Relying on various decisions, he submitted that since the addition is based purely on presumptions and surmises and the relevant materials were not provided to the assessee, therefore, the addition so made is not sustainable. So far as the addition of Rs.36,000/- being the commission for getting the accommodation entry is concerned, he submitted that it is an estimated addition and there is no basis or material or information based on which such addition could have been made. He accordingly submitted that the addition made by the Assessing Officer and upheld by the CIT(A) should be deleted.

9. The ld. DR, on the other hand, submitted that the Assessing Officer, in the instant case, has duly applied his mind and has made a thorough analysis of the documents and after analyzing the documents has recorded his satisfaction and reopened the assessment. The ld. Addl. CIT had perused the note and had recorded his satisfaction that income pertaining to assessment year 2010-11 has escaped assessment and, hence, the case is required to be reopened u/s 147. The Pr. CIT had given his satisfaction u/s 151 separately as mentioned at page 5 of the paper book filed by the ld. counsel for the assessee. The Assessing Officer, in the instant case, has disposed of the objections by passing a speaking order, therefore, it is wrong to say that the assessment was reopened in a mechanical manner and the approving authorities have given the approval in a mechanical manner without due application of mind. He submitted that the reassessment proceedings were not initiated in a mechanical manner or on borrowed satisfaction and without application of mind since the perusal of the reasons recorded clearly show that there is a thorough application of mind by the Assessing Officer and the approving authorities have also given valid reasons for reopening of the case. So far as the merit of the case is concerned, the ld. DR submitted that S.K. Jain group of cases are known to be accommodation entry providers and the assessee, in the instant case, has obtained the accommodation entry of Rs.20 lacs and has failed to discharge the onus cast on it by proving the identity and capacity of the loan creditor and the genuineness of the loan transaction. Therefore, the ld.CIT(A) was fully justified in sustaining the addition of Rs.20 lacs made by the Assessing Officer and also the addition of Rs.36,000/- added by the Assessing Officer

being commission for the accommodation entries. He accordingly submitted that both factually and legally the Id.CIT(A) has passed a reasoned order and, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

10. I have considered the arguments of both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered various decisions cited before us. At the outset, I deem it proper to adjudicate the legal ground raised by the assessee challenging the validity of the reassessment proceedings in absence of proper approval given u/s 151 of the IT Act. A perusal of the copy of approval given u/s 151, copy of which is placed at page 13 of the paper book, shows that the Addl. CIT, while giving approval has simply mentioned: "Yes. I am satisfied that it is a fit case for reopening of assessment u/s 148." Similarly, the PCIT, while giving approval has also simply mentioned: "I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act." From the above, it is clear that none of the supervisory authorities have applied their mind. I find, the Hon'ble Delhi High Court in the case of *CIT vs. N.C. Cables Ltd., 391 ITR 11(Del)*, has observed as under:-

" Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed

assessee's appeal on merits-Revenue appealed against appellate order on merits- Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s [Section 151](#) as a pre- condition for issuing notice u/s 147/148-Held, [Section 151](#) stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

11. Similar view has been taken by the coordinate Benches of the Tribunal in a number of cases where it has been held that merely giving approval by mentioning, "Yes. I am satisfied that it is a fit case for reopening of assessment" is not a valid approval. Accordingly the reassessment proceedings have been quashed. Since, in the instant case, both the superior authorities have merely given their approval in a mechanical manner without independent application of mind, therefore, respectfully following the decision of the jurisdictional High Court in the case of N.C. Cables (supra), I hold that the reassessment proceedings are bad in law. Accordingly, the same is quashed. Since the reassessment proceedings have been quashed, the subsequent order passed by the Assessing Officer becomes bad in law and accordingly the same is quashed. Since the assessee succeeds on the legal grounds, the grounds raised by the assessee become academic and, therefore, are not being adjudicated.

12. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 17.10.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 17th October, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi