

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.5731/Del./2014
Assessment Year 2003-2004

The Income Tax Officer, Ward- 5 (3), Room No.305, C.R. Building, New Delhi – 002.	vs.,	M/s. KVF Securities (P) Ltd., Plot No.54, Mahatta Towers, Community Centre, Janak Puri, New Delhi – 110 058. PAN AABCK0591Q
(Appellant)		(Respondent)

C.O.No.169/Del./2015
Arising out of
ITA.No.5731/Del./2014 - Assessment Year 2003-2004

M/s. KVF Securities (P) Ltd., Plot No.54, Mahatta Towers, Community Centre, Janak Puri, New Delhi – 110 058. PAN AABCK0591Q	vs.,	The Income Tax Officer, Ward- 5 (3), Room No.305, C.R. Building, New Delhi – 002.
(Cross Objector)		(Respondent)

For Revenue :	Shri Deepak Garg, Sr. D.R.
For Assessee :	Shri Ved Jain, Sr. Advocate And Shri Himanshu Aggarwal, CA

Date of Hearing :	17.10.2019
Date of Pronouncement :	01.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

The Departmental Appeal as well as Cross Objection by Assessee are directed against the Order of the Ld. CIT(A)-VIII, New Delhi, Dated 29.08.2014, for the A.Y. 2003-2004.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that the assessee-company filed its return of income on 02.12.2003 declaring Rs.24,102/- which was processed under section 143(1) on 28.03.2004. The A.O. received information from Investigation Wing. On that basis, A.O. recorded reasons for reopening of the assessment. The assessee in response to the notice under section 148 filed letter stating therein that original return of income filed may be treated as return filed in response to notice under section 148 of the I.T. Act. The assessee filed objections to the same which were disposed of

by the A.O. The A.O. noted that assessee company was asked to file the details of loans and advances, increase in share capital during the year and bank statement as required in the questionnaire Dated 13.07.2010. This information was provided by assessee on various dates and vide letter Dated 09.12.2010 has stated that details of accounts has reflected in the statement provided showing transaction in bank account of Rs.10,24,42,961/- as under:

Credit Amounts :

- On account of sales
- On account share application received
- Income (Profit on sale of shares)
- Amounts received back from parties i.e., paid for purchases.

Debit Amounts :

- On account of purchases
- On account of shares application received, amounts returned on non-allotment.
- Sales advance returned.

3.1. The assessee has further submitted the details of investments/shares, loan advances and paid up capital and share premium. The gist of the same is reproduced in the assessment order. The assessee company has also filed details of paid-up capital and share premium for the year under consideration along with complete address PAN details and amount of share capital allotted to them and also filed confirmation of share holders, copies of their Income Tax Ack. receipt and share application forms and copy of the bank statement showing amounts have been given through cheques. It was submitted that all the share applicants are income tax assesseees and in all cases amounts have been received through the account payee cheques only. The assessee relied upon Judgment of Hon'ble Supreme Court in the case of CIT vs., M/s Lovely Exports (P) Ltd., [2009] 319 ITR (St.) 5 (SC). The A.O, however, did not accept the contention of assessee and noted that summons under section 131 have been issued to the Investors to attend the O/o. Assessing Officer personally, but, none of the Investor attended, but,

documents have been filed through post. The A.O. noted that the verification from the Investors could not be done, therefore, documentary evidences and confirmations filed by assessee were rejected. The A.O. noted that assessee has received credit of Rs.3,24,50,000/- on account of share premium and share capital through transaction where no real transaction was took place. The A.O, therefore, made an addition of this amount under section 68 of the I.T. Act. The A.O. also made addition of 1% of this amount i.e., Rs.3,24,500/- and made total addition of Rs.3,27,74,500/-.

4. The assessee challenged the reopening of the assessment as well as addition before the Ld. CIT(A). The assessee contended that assumption of jurisdiction under section 147 by the A.O. was without proper appreciation of information received by him from Investigation Wing of the Department. The assessee furnished complete documents to prove identity of the Investors, their creditworthiness and genuineness of the transaction. It was further submitted that out of the total amount, the addition of Rs.29 lakhs do not pertain to the assessment year under appeal as no

amount have been received in assessment year under appeal which pertain to earlier years. Details of the same have been submitted and noted in the appellate order. It was further submitted that addition of Rs.80,50,000/- out of the total addition is made on incorrect assumption that this amount was received from 16 parties as mentioned at pages 4 and 5 of the order which were included by Investigation Wing in a mechanical manner. There were no basis for reopening of the assessment. The assessee relied upon several decisions in support of the contention that assumption of jurisdiction under section 147 is invalid and bad in law. The Ld. CIT(A), however, did not accept the contention of assessee and noted that information have been received from Investigation Wing and return is only processed under section 143(1), therefore, reopening is justified.

4.1. The assessee as regards the addition on merit submitted that assessee has explained source and credit of Rs.80,50,000/- which was not included in information received from Investigation Wing which pertain to allotment

of shares by assessee. The assessee filed complete details to show that assessee entered into genuine transaction. Since Investors did not appear before A.O. is no ground to make the addition. The assessee filed complete details and share applications. Therefore, on mere non-appearance of the Investors, no addition could be made against the assessee because A.O. did not make further enquiry into the matter on the documentary evidences filed by assessee. The assessee relied upon Judgments of Hon'ble Delhi High Court in the cases of CIT vs., Victor Electrodes Ltd., [2010] 42 DTR 152 (Del.) and CIT vs., Winstral Petrochemicals (P) Ltd., [2010] 233 CTR 392 (Del.) as well as CIT vs., Dwarkadhish Investment (P) Ltd., [2010] 45 DTR 281 (Del.). Several other case Law were also relied upon. The Ld. CIT(A) asked the A.O. to file remand report. However, no remand report was furnished. Reminder was further issued and ultimately, remand report Dated 13.12.2013 was received from the A.O. In the remand report A.O. has reproduced the contentions of earlier remand report and also attached copies of statements of various persons recorded on

16.01.2004 by Addl. DIT (Inv.). The A.O. reiterated the addition made by A.O. at assessment stage. The assessee also filed rejoinder in which it was also explained that A.O. himself has stated that statement of 08 parties have been recorded. The parties have also filed confirmations. Since all documentary evidences have been filed and A.O. did not make any enquiry on the same, therefore, the addition is wholly unjustified.

5. The Ld. CIT(A) examining the record noted that remand report was silent on issue of examination on oath of various shareholders confirming their investments with the assessee company. The assessment record also shows A.O. had sent communication Dated 04.04.2013 confirming that 08 parties had appeared before him till the date of communication. The record shows that confirmation of these parties have been filed and appeared before A.O. for examination. However, it is not explained as to why the A.O. did not furnish copies of the statements on oath of the shareholders recorded during the course of remand proceedings to the O/o. Ld. CIT(A). The assessee also filed

Affidavit before the Ld. CIT(A) stating therein that 14 additional parties had also been examined on oath by the A.O. during the course of remand proceedings, after receipt of communication from the A.O. confirming examination of 08 parties wherein they have confirmed their share investment in assessee-company. Their statements on oath have been recorded. The A.O. in his letter Dated 04.04.2013 confirmed this fact. It was, therefore, noted that 22 parties have been appeared before the A.O. who has recorded their statements at remand proceedings and some of them filed their confirmations directly to the A.O. The Ld. CIT(A), therefore, noted that addition did not deserve to survive. The Ld. CIT(A) in view of the material on record and examination of remand proceedings accepted the explanation of assessee that assessee received genuine share application money and accordingly, both the additions have been deleted. The Ld. CIT(A) also noted that amount of Rs.29 lakhs pertain to earlier year which fact have not been examined by the A.O. The appeal of assessee was, therefore, partly allowed.

6. The Revenue is in appeal challenging the deletion of addition on merits. The assessee in the Cross Objections challenged the reopening of the assessment under section 147/148 of the I.T. Act and addition of Rs.5 lakhs in respect of M/s. Kuldeep Textiles (P) Ltd., under section 68 of the I.T. Act, 1961.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-16 which is reasons for reopening of the assessment. He has submitted that perusal of the reasons recorded by the A.O. clearly show that A.O. has simply acted upon the information received from Investigation Wing and did not apply his own mind to the said information. The contents of the reasons recorded by the A.O. for reopening of the assessment proceedings are summarized as under :

- i. Introduction about the Investigation carried by Investigation Wing.
- ii. Modus operandi of entry providers.
- iii. Summing-up enquiry of Investigation Wing

- iv. Information received from Investigation Wing.
- v. Conclusion reached by the A.O. that assessee has taken accommodation entries
- vi. Statement that income of assessee has escaped assessment.

7.1. The perusal of above reasons would show that A.O. has straightaway concluded that assessee had taken accommodation entries. The A.O. has not brought anything on record on the basis of which any nexus could have been established between the material and escapement of income. In the instant case, the reasons recorded do not show any application of mind nor the same shows any belief independently arrived at by the A.O. which is the basic pre-requisite for issuance of notice under section 148 of the I.T. Act, 1961. The A.O. recorded incorrect facts in the reasons. Annexure-A attached to the reasons shows credit side of bank account of the assessee for a sum of Rs.10,24,42,961/-. However, A.O. made a small addition against the assessee. PB-7 is balance-sheet as on 31.03.2003 which shows share capital of assessee of

Rs.2,60,92,500/-and as on 31.03.2002 it was Rs.2,44,70,000/-. It is, therefore, not clear that on what account the amount is received and how the addition of Rs.3,27,74,500/- have been made by the A.O. This fact is not clear in the reasons. The reasons are recorded merely on doubts and suspicion. He has submitted that in the reasons, the statement of Shri Govind Ram Saini have been referred to which is recorded by Investigation Wing. However, in his statement, name of assessee has not been mentioned. He has submitted that A.O. in the reasons noted that creditworthiness of the lenders have not been established which is beyond comprehension because no assessment was pending before A.O. at that stage and A.O. merely noted that the transaction with these parties seems to be non-genuine. The A.O. was not sure as to on what account and for what amount reopening shall have to be done. All the Investors are assessed to tax. Learned Counsel for the Assessee, therefore, submitted that since incorrect facts have been recorded in the reasons and that A.O. has not applied his mind to the information received from

Investigation Wing, therefore, reopening of the assessment is invalid and bad in law and is liable to be quashed. In support of this contention, he has relied upon Judgments of Hon'ble Delhi High Court in the case of Pr. CIT vs., G and G Pharma India Ltd., [2016] 384 ITR 147 (Del.), Pr. CIT vs., Meenakshi Overseas Pvt. Ltd., [2017] 395 ITR 677 (Del.) and Pr. CIT vs., RMG Polyvinyl (I) Ltd., [2017] 396 ITR 5 (Del.).

8. The Ld. D.R, however, relied upon Order of the A.O. and produced the assessment record. The Ld. D.R. also placed on record copy of the order sheet recorded by the A.O. and Annexure-A attached to the reasons recorded for reopening of the assessment. The Ld. D.R. after going through the record have stated that the letter dated 13.03.2006 referred to in the reasons is not available on record. The Ld. D.R. placed on record copies of statements recorded by A.O. at remand proceedings as well as filed copy of statement of Shri Govind Ram Saini referred to in the reasons Dated 13.05.2005. The Ld. D.R. submitted that specific information was received that income chargeable to tax has escaped assessment. In this case return is only

processed under section 143(1), therefore, reopening of the assessment is justified. The Ld. D.R. relied upon following decisions :

- i. Judgment of Hon'ble Supreme Court in the case of ACIT vs., Rajesh Jhaveri Stock Brokers Pvt. Ltd., [2007] 291 ITR 500 (SC).
- ii. Central Provinces Manganese Ore Co. Ltd., vs. JTO [1991] 191 ITR 662 (SC)
- iii. Raymond Woollen Mills Ltd., vs. ITO [1999] 236 ITR 34 (SC)
- iv. Phool Chand Bajrang Lal vs., ITO [1003] 203 ITR 456 (SC)
- v. Calcutta Discount Co., Ltd., vs. ITO [1961] 41 ITR 191 (SC).

8.1. The Ld. D.R, therefore, submitted that reopening of the assessment is justified in the matter.

9. We have considered the rival submissions. It is well settled Law that validity of re-assessment proceedings is determined on the basis of the reasons recorded by A.O,

for reopening of the assessment. The assessee has filed copy of the reasons recorded for reopening of the assessment at pages 16 and 17 of the paper book. The same reads as under :

“M/s KVF Securities P Ltd

ASSTT. YEAR 2003-2004

Investigations were conducted by the Investigation wing of the Department on certain persons engaged in providing accommodation entries to beneficiaries of their services, in return of commission, it has been revealed that many persons were using services' of accommodation entry operators to channelise their own unaccounted money in their regular books of accounts by routing the same through the accounts of Accommodation entry providers.

2. *The modus operandi of these entry providers and beneficiaries of their services, was detected to be as under :*

2.1. *Entries were being broadly taken for two purposes:*

01. *To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*

02. *To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.*

2.2. *The assessees who had unaccounted money (called as entry takers or beneficiaries) and wanted to introduce the same in the books of accounts without paying tax, approached another person (called as entry operator) and handed over the cash (plus commission) and had taken cheques/DDs/POs. The cash was being deposited by the entry operator in a bank account either in his own name or in the name of relative/friends or*

other person hired by him, for the purpose of opening bank account. In most of these bank accounts the introducer was the main entry operator and the cash deposit slips and other instruments, were filled by him. The other persons (in whose name the A/c is opened) only used to sign the blank cheque book and hand over the same to the main entry operator. The entry operator then used to issue cheques/DDs/Pos in the name of the beneficiary from the same account (in which the cash is deposited) or another account in which funds were transferred through clearing in two or more stages. The beneficiary in turn deposited these instruments in his bank accounts and the money came to his regular books of account in the form of gift, share application money, loan etc through banking channels.

2.3. *The operators gave the account holders amounts ranging from Rs 1000 to 2000 per month. These account holders were masons, plumbers, electricians, peons, drivers etc, whose earnings are not*

sufficient for a living. They earned normally Rs 3 to 5 thousand per month in their normal work and by working for the entry operators earned extra income of Rs 2 to 4 thousand per month. Their signatures were taken on blank gift deeds, cheque books, share application money etc. In fact these persons signed all types of papers they were asked to sign. They were made directors of companies, partners of firms and proprietor of different concerns solely for operation of these accounts. Actually, many of them were not even aware of the tax implications etc. Their only concern was with the few thousand rupees given to them by the entry operators.

3. Summing up, the report as a result of these extensive enquiries carried out by the D.I.T. (Inv.), New Delhi has established the non-genuineness of transactions, whether shown by beneficiaries as inflow of Share Capital or receipt of Gifts or consideration for sale-purchase. The creditworthiness of the persons/

persons controlling the concerns who have given these credit entries/share capital/gifts/sale consideration has also not been established as they have been seen to be man of no means.

4. The said report of Investigation wing of the Department, on the investigations conducted in the case of various accommodation entry providers along with the list of the beneficiaries of their services, was forwarded to this office through Addl.CIT, Range-5, vide letter F.No.Addl.CIT/Range-5/2005-06/759, dated 13.3.2006.

4.1. Enquiries revealed that one Shri GOVIND RAM SAINI along with his close associates and confidants Shri Vinesh, Sarique Kamal, Pradeep Kumar etc. was controlling a number of bank accounts in various names & was using various persons operate these accounts. In this regard, statements on oath u/s 131 of the I. T. Act, 1961 was recorded by Addl.DIT (Inv). Unit-I, New Delhi In his statement he has admitted to have opened bank

accounts in the names of various individual. Firms and companies which were being used for providing accommodation entries.

5. In the instant case of the assesses, M/s. KVF Securities Ltd., information has been received that the assessee has taken the accommodation entries amounting to Rs.10,24,42,961/- as per annexure-A.

6. In view of the findings of the investigation report, the creditworthiness of the lenders has not been established and the transactions with these parties seem to be non-genuine. I, therefore have reasons to believe that this amount of Rs.10,24,42,961/- represents income of the assessee chargeable to tax which has escaped assessment for A.Y. 2003-04.

*Sd/- (KULBIR SINGH)
Income Tax Officer,
Ward-5(3), New Delhi”.*

9.1. The Ld. D.R. also filed copies of statements recorded by A.O. at remand proceedings as well as filed copy of the statement of Shri Govind Ram Saini recorded by Investigation Wing. Dated 13.05.2005 on record. The Ld. D.R. stated that the letter Dated 13.03.2006 which is the basis of recording reasons for reopening of the assessment is not available in assessment record. In the letter Dated 13.03.2006 referred to in the reasons, the Investigation Wing. Referred to the statement of Shri Govind Ram Saini which is the basis for reopening of the assessment. However, in his statement there is no reference to the assessee for providing any accommodation entry. The A.O. in the re-assessment order also mentioned that information provided by the assessee at re-assessment proceedings stated that details of accounts as reflected in the statement provided showing transaction in bank account of Rs.10,24,42,961/-. Therefore, contention of Learned Counsel for the Assessee is correct that this is the amount which has appeared at credit side of the bank account of the assessee. The A.O. has taken the entire amount deposited in

the Bank account of the assessee as accommodation entry without verifying any fact. The assessee explained before A.O. that the amount in his Bank account reflected on credit side pertain to sales, share application money, income and amount received back from the parties i.e., paid for purchases. Therefore, A.O. did not apply his mind to the information received from Investigation Wing. vide letter Dated 13.03.2006 which is also not produced before the Tribunal for examination as it was not part of the record. It has also shown that the credit side of the assessee Bank account contain several items, therefore, entire amount could not have been representing share application money. The A.O. ultimately accepted this fact and did not make addition of the entire amount reflecting on the credit side of Bank account of the assessee. It may also be noted here that out of the total addition, Rs.29 lakhs in which shares have been allotted to 04 parties pertain to the preceding assessment year as no amount have been received in assessment year under appeal of Rs.29 lakhs which fact have been accepted by the Ld. CIT(A). The assessee also

explained before the authorities below that Rs.80,50,000/- in respect of 16 parties have not been mentioned in the information supplied by the Investigation Wing, then there were no reason for the A.O. to say that both these amounts are accommodation entries received by the assessee in assessment year under appeal. These facts clearly show that A.O. recorded incorrect facts in the reasons recorded for reopening of the assessment. The Hon'ble Punjab & Haryana High court in the case of Atlas Cycle Industries 180 ITR 319 (P & H) held that *"when incorrect facts are mentioned in the reopening of the assessment, the reopening of the assessment is not valid and liable to be quashed."* In the present case, as noted above the reasons to believe contain no reasons but conclusion of the A.O. one after other. The A.O. recorded incorrect facts in the reasons. Thus, there is no independent application of mind by the A.O. to any tangible material which form the basis of reasons to believe that income chargeable to tax has escaped assessment. The conclusion of the A.O. are at best re-production of the conclusion of investigation report. The

A.O. in the reasons has not recorded as to from whom assessee has received unaccounted money. The A.O. has merely referred to Annexure-A in the reasons which is credit side of the bank account of the assessee which ultimately found to be correct that the entire bank deposits are not accommodation entries. There were no proceeding pending before the A.O. at the time of recording of reasons, thus, there was no reason for assessee to establish the creditworthiness of the Investors as is noted in the reasons. The A.O. merely on doubts or suspicion recorded the reasons that amount of Rs.10,24,42,961/- represents income of assessee chargeable to tax which has escaped assessment. The issue is, therefore, covered by Judgment of Hon'ble Delhi High Court in the case of G and G Pharma India Ltd., Meenakshi Overseas Pvt. Ltd., and RMG Polyvinyle (I) Ltd., (supra). Considering the totality of the facts and circumstances of the case, we are of the view that assumption of jurisdiction under section 147/148 by the A.O. is invalid and bad in law and is liable to be quashed. In view of the above discussion, we set aside the Orders of the

authorities below and quash the reopening of the assessment in the matter which resulted into deletion of all the additions. The Cross Objection of assessee is accordingly allowed. Since Ld. CIT(A) has already deleted addition on merit based on documentary evidences on record, on which, A.O. has also not made any investigation, therefore, the same is left with academic discussion only and there is no need to decide the Departmental Appeal. Appeal of the Department is dismissed.

10. In the result, Cross-Objection of the Assessee allowed and appeal of Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.