

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri Prashant Maharishi, Accountant Member**

**ITA No. 1832/Del/2016
Assessment Year: 2006-07**

Lenzing Polypacks Ltd., 26 Sadhna Enclave, New Delhi. PAN- AAACL1675M (Appellant)	vs.	Income-tax Officer, Ward 4(3), New Delhi (Respondent)
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Appellant by	Sh. Ved Jain, Advocate
Respondent by	Sh. N.K. Bansal, Sr. DR

Date of Hearing	25.09.2019
Date of Pronouncement	13.11.2019

ORDER

Per Amit Shukla, J.M.

The aforesaid appeal has been filed by the assessee against the order dated 28.01.2016, passed by Ld. CIT (Appeals)-5, Delhi for the quantum of assessment passed u/s 143(3)/148 for the A.Y. 2006-07. In grounds of appeal assessee has raised following grounds:-

“1. That on the facts and circumstances of the case and the provisions of the law, CIT(A) has erred in not appreciating that there was no application of mind to the alleged information received from Investing Wing that the assessee was amongst the

beneficiaries of the bogus accommodation entries. There was no tangible material to reopen the assessment.

2. That on the facts and circumstances of the case and the provisions of the law, the CIT (A) has erred in not accepting that fact the assessee has filed the objections however the objections filed has not been discharged by the Ld. Assessing Officer. The procedure followed during the assessment proceedings are against the principle of natural justice and hence be quashed. That the Ld. AO has not considered the request for providing the copy of statement of Mr. S.K. Jain and opportunity of cross examine. The Hon'ble CIT (A) has called the assessment records and find out that such objection was no on records in view of that they have rejected the appeal.

3. That on the facts and circumstances of the case and provisions of the law, CIT(A) has erred in confirming the addition of Rs.90,00,000/- under section 68 of the Act as bogus accommodation entry.

4. That the appellant crave leave to add, amend or vary any ground of appeal before or at the time of hearing.”

2. The facts in brief are that, assessee company had filed its return of income declaring income of Rs.1,370/-. Later on, the assessment was reopened by issue of notice under section 148 on the basis of information received from Investigation Wing that assessee has taken accommodation entry of share capital from 3

parties, namely, i) Hillridge Investment Ltd.; ii) Brite Indu. Ressources Ltd.; and iii) Nisha Holding Ltd. for sums aggregating to Rs. 90 Lakhs. In response to the same the assessee filed the return of income and attended the proceedings from time to time. The Assessing Officer has observed that in response to notices u/s 133(6) no replies were received. Though assessee had filed the confirmations, and other documents but none of the directors of these companies were produced. Accordingly, he completed the assessment at an income of Rs.91,81,370/- after treating the share capital as unexplained credit u/s 68.

3. Aggrieved by the order of the AO the assessee filed appeal before the CIT(A), who vide order dated 28.01.2016 has confirmed the action of the assessing officer in his detail order.

4. On behalf of the assessee, Ld. AR submitted that the assessment in this case was reopened by issue of notice under section 148. In response thereto the assessee has file the return of income and has also asked for the copy of the reasons for issue of notice under section 148. Thereafter, the assessee has filed objection to the reopening of the assessment. The AO did not consider the objections and has completed the assessment ignoring the same. Such an objection was also raised before Ld. CIT (A), but he too has rejected the assessee's contention on this issue. He further submitted that this issue of not disposing of the objection goes to the root of the reassessment proceeding and the consequent

assessment order passed by the AO. Ld. AR further submitted that this issue was agitated before the CIT (A) who has rejected this contention of the assessee and also ignoring various evidences submitted by the assessee in support of its contention. The Ld. AR further submitted that the additions are otherwise untenable in law in view of the various evidences and documents submitted by the assessee in support of its contention. However, he contended that matter can be restored back to the file of Assessing Officer to decide the objections and also consider the evidences.

5. In reply the Ld. DR placed reliance on the order passed by the AO and the CIT (A). He submitted that the assessment has been rightly opened by the AO after following the due procedure. The assessee had asked for the copy of the reasons which were supplied by the AO. The contention of the assessee that objection has not been disposed of is not correct. Further, he submitted that the addition has been confirmed on merit both by the CIT (A) after examination of all evidences and documents submitted by the assessee.

6. We have considered the rival submissions and perused the order passed by the authorities below. The Ld. AR has raised the issue of not disposing of the objection to the reopening of the assessment by the AO. In this regard, he has invited our attention to the letter which was submitted to the AO during the course of the

reassessment proceedings after 'reasons' have been supplied to it. From the assessment order, it is evident that assessing officer has not disposed of the objections. The CIT (A) too has confirmed the action of the AO doubting the fact that assessee has filed letter objecting to the reopening of the assessment. On going through the paper book, we find that assessing officer has issued notice for reopening of the assessment. In compliance thereto the assessee filed the return and has also asked for the reasons for reopening of the assessment. This fact is not being doubted by the AO and the CIT (A). If it is so, then the normal presumption will be that assessee having specifically asked for the reasons the next course of action would be to file objection to such reasons. The contention of the assessee is that it has filed objection to the reopening of the assessment. Considering all these facts and looking to the fact that, the objections have not been dealt with by the AO before proceeding with the reassessment proceeding, we are of the view that there is irregularity in framing the reassessment. Thus, in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee and after following the procedure mandated by the Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. Income-Tax officer and others 259 ITR 19 (SC); and also consider the evidences filed by the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 13th November, 2011.

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Amit Shukla)
Judicial member

Dated: 13th Nov., 2019

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Copy of order forwarded to:

(1) *The appellant*
(3) *Commissioner*
(5) *Departmental Representative*

(2) *The respondent*
(4) *CIT(A)*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi