

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 2975/Del/2017

Shiv Shakti Creations Pvt. Ltd. 2249/67, Naiwala, Gurudwara Road, Karol Bagh, New Delhi – 110 005 PAN AAGCS2612H	Vs.	Pr. CIT, 8 New Delhi.
(Appellant)		(Respondent)

Asstt. Year: 2007-08

Assessee by:	Shri Gaurav Bansal, CA
Department by :	Shri S.S. Rana, CIT (DR)
Date of Hearing	09/12/2019
Date of pronouncement	30/12/2019

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') wherein, vide order dated 24.3.2017, the Ld. Principal Commissioner of Income Tax, Delhi – 8 {Pr. CIT} has set aside the reassessment order passed in the assessee's case by the Assessing Officer (AO) on 30.3.2015 for assessment year 2007-08

by noting that the said reassessment order was not only prejudicial to the interest of the revenue but was also erroneous in so far as the AO had failed to look into the seized material.

2.0 Brief facts of the case are that a search and survey action was conducted by DDIT (Investigation), Unit VI (2,) New Delhi on 14.9.2010 at the various premises of Shri Surender Jain and Shri Virender Jain and during such survey operations u/s 132 and 133A of the Act various documents and information were unearthed which led to belief that Shri Surender Jain and Shri Virender Jain were in the business of providing accommodation entries. The information culled out from the relevant seized documents led the AO to believe that the assessee had taken accommodation entry from M/s Sunny Cast & Forge Ltd. amounting to Rs. 4,90,000/- through cheque No. 066964 on 17.10.2006. Since the assessment for the relevant assessment year had been completed u/s 143(1) of the Act wherein the matter relating to the share capital share premium share application money etc. had not been verified, the AO proceeded to reopen the case of the assessee u/s 148 of the Act. Subsequently, the AO completed the reassessment u/s 147 /143(3) of the Act at the returned income.

2.1 Thereafter, the Ld. PR.CIT issued notice u/s 263 of the Act on 23.1.2017 wherein the assessee was asked to show cause as to why the reassessment order should not be set aside as the AO had failed to examine the seized material and had also failed to tax the amount of Rs. 4,90,000/- as unexplained credit since the amount had been received through one Shri Y. K. Gupta. The Ld. Pr. CIT also noted that the relevant copies of the seized material relating to the assessee were not given to the assessee. It was the contention of the assessee before the Ld. Pr. CIT that the assessee had not received any fresh share application money or share capital during the year and that the AO had also examined this issue during the proceedings u/s 148 of the Act and had found nothing wrong.

2.2 However, the Ld. PR. CIT was of the opinion that the assessee was shown as a beneficiary in the documents seized from Shri Surender Jain and Shri Virender Jain group of cases as was evident from seized material annexure A-62 page 17 wherein, along with the name of the assessee company, the name of Shri Y.K. Gupta was mentioned. The Ld. Pr. CIT also noted that the cheque number mentioned in the seized material was found to be credited in the bank account of the assessee

company. The Ld. Pr. CIT also noted that the evidence of cash deposits of Rs. 4,90,000/- against the name of Shri Y.K. Gupta was mentioned at Annexure A-113 page 20. The Ld. Pr. CIT noted that in view of this, the order passed by the AO was passed without considering the relevant seized material which showed that the cheques had been issued in lieu of cash receipts. The Ld. Pr. CIT went on to hold that the reassessment order was erroneous in so far as it was prejudicial to the interest of the revenue and, therefore, the same deserved revision. The order of the AO was set aside with a direction to the AO to examine the seized material, confront the assessee with the same and, thereafter, pass a fresh order.

2.3 Aggrieved by this order passed u/s 263 of the Act, the assessee is now before the Tribunal challenging the order passed u/s 263 of the Act.

3.0 The Ld. Authorised Representative (AR) submitted that earlier the assessee's case was reopened u/s 147/148 of the Act on the same issue and since the AO had made proper verification and inquiry and had, thereafter, held that the amount of Rs. 4,90,000/- pertained to sale of old stock of Rs. 5 lac for an

amount of Rs. 4,90,000/-, there was no justification for revising the order u/s 263 of the Act. It was submitted that during the course of reassessment proceedings the assessee company had submitted the supporting documents in respect of transaction of sale of shares which were confirmed by M/s. Sunny Cast & Forge Ltd. (whose name was appearing in the seized documents). It was also submitted that during the course of assessment proceedings the AO has asked the assessee regarding seized material which was duly explained and thereafter no addition was made by the AO. The Ld. AR submitted that the observation of the Ld. Pr. CIT that the AO had not confronted the assessee with the seized material and had not examined the seized material was in fact incorrect. The Ld. AR drew our attention to an affidavit of the assessee which was filed before the Tribunal on 6.9.2018 wherein the Chartered Accountant appearing on behalf of the assessee has deposed that oral inquiries and submissions pertaining to impugned amount of Rs. 4,90,000/- had been made at the time of the reassessment proceedings. The Ld. AR also drew our attention to copy of the order sheet entry dated 9.3.2015 wherein it has been mentioned that notice u/s 133(6) was issued and order sheet entry dated 26.3.2015 wherein it has been mentioned

that reply in response to notice u/s 133(6) was received. It was submitted that M/s. Newage Concepts India Pvt. Ltd. had responded to the notice issued u/s 133(6) of the Act and had confirmed the transaction and, therefore, no addition was made by the AO. The Ld. AR also submitted that Shri Y.K. Gupta was not known to the assessee and, therefore, his name could not be linked to the assessee. The Ld. AR submitted that, on the facts of the case, the order passed u/s 263 deserved to be quashed.

4.0 In response, the Ld. CIT (DR) submitted that the bench had directed the department on an earlier occasion to file a counter affidavit in response to the affidavit filed by the assessee and the same has been received. It was submitted that it has been submitted by the AO in the counter affidavit that there was nothing in the order sheet entries, the questionnaire issued in the reassessment proceedings or even in the assessee's replies filed during the re-assessment proceedings which would indicate that the AO had confronted the assessee with any of the seized material. It was submitted that it has been averred in the counter affidavit that the contention of the assessee that the AO had showed himself some seized papers had no basis at all and was misleading. The Ld. CIT (DR) also submitted that the

submissions of the assessee had not credibility and was not acceptable to the department. Further, the Ld. CIT (DR) also submitted that the ITAT Delhi Bench had decided the issue on identical facts against the assessee/s in the following cases:-

- 1) M/s. Surya Jyoti Software Pvt. Ltd. vs. PCIT in ITA No. 2158/Del/2017 vide order dated 25.10.2017
- 2) Surya Financial Services Ltd. vs. PCIT in ITA No. 2915/Del/ 2017 vide order dated 8th January, 2018
- 3) Shanker Tradex Pvt. Ltd. vs. Pr. CIT in ITA No. 2999/Del/2017 vide order dated 16.4.2018
- 4) Shri Sai City Promoters and Developers Pvt. Ltd. vs. Pr. CIT in ITA No. 6905/Del/2017 vide order dated 14.1.2019
- 5) Surya Irrigation Private Limited vs. Pr. CIT in ITA No. 2182/Del/2017 vide order dated 14.1.2019
- 6) M/s. SNB Enterprises Pvt. Ltd. vs. Pr. CIT in ITA No. 2544/Del/2017 vide order dated 14.1.2019
- 7) SSE Commodities Pvt. Ltd. vs. Pr. CIT in ITA No. 2544/Del/2017 vide order dated 14.1.2019

4.1 The Ld. CIT (DR) submitted that in all the above cases, revision by the Pr. CIT was upheld on the ground that though the assessment has been reopened u/s 148 of the Act on the issue of accommodation entries taken from Shri S.K. Jain groups of cases, the AO had not examined the seized material (in the form of account books or books containing the details of cheques issued by such concerns). The Ld. CIT (DR) further submitted that while dismissing the assessee's appeals in these cases, the Tribunal had noted that the appraisal report along with the scanned copies of seized material sent by the Investigation Wing to the AO had not been looked into by the AO nor had been examined by him during the course of reassessment proceedings and, therefore, the action u/s 263 of the Act was justified.

5.0 We have heard the rival submissions and have perused the material on record. We find that Ld. Pr. CIT, in exercise of his revisionary jurisdiction under section 263 of the Act, from the examination of records before him, has noted that though the assessment was reopened under section 148 of the Act on the allegation of accommodation entry taken from Shri S.K. Jain group of cases, which were subjected to search on 14/9/2010 by the Investigation Wing, the Assessing Officer had not examined

the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search which indicated accommodation entry pertaining to assessee also. The Ld. Pr. CIT further noted that an appraisal report along with scanned copy of seized material was sent by the Investigation Wing to all the Assessing Officers through their respective CITs, which has neither been looked into by the Assessing Officer nor has been examined by him during the course of re-assessment proceedings. Accordingly, the Ld. Pr. CIT issued a show cause notice under section 263 of the Act, the contents of which have been incorporated by him at pages 2 and 3 of the impugned order, wherein he has specifically brought out that the Assessing Officer had failed to consider the relevant seized material pertaining to the assessee-company, which was evident from 'Annexure A-62, page 17 of the seized material, wherein there is a categorical mention that an amount of Rs. 4,90,000/- was taken by the through cheque No. 066964 dated 17/10/2006 through Shri Y.K. Gupta which was found to be credited in the bank account of the assessee and was also appearing in Annexure A-113, page 20. It is seen that the Ld. Pr.

CIT, after considering the entire gamut of facts, material on record as well as the submissions made by the assessee, has noted that many incriminating documents were found during the course of investigation and search & seizure action in the case of Shri S.K. Jain group which was seized during the course of search by the Investigation Wing on 14/9/2010. He has further noted that these seized papers clearly reveal various accommodation entries provided by such companies to various beneficiaries. The appraisal report was forwarded by the Investigation Wing in the month of March, 2013 to the then CIT-III in hard copy and various other seized materials running into thousands of pages were scanned and soft copies of the relevant seized materials were sent to the jurisdictional Commissioners and then to the Assessing Officers. The relevant extracts of certain seized documents have also been scanned and reproduced by the Ld. Pr. CIT in the impugned at pages 7 and 8 of his order. However, the assessment order, which has since been revised by the impugned order, makes only a reference to the appraisal report but does not state whether the relevant seized material was examined by him or whether the assessee was ever confronted with the seized documents. The order sheet

entries, relied upon by the assessee, also fail to lead us to reach a contrary conclusion. The fact of the matter remains that the assessee's name figured in the list of beneficiaries, as culled out from the seized documents. It is also undisputed that the cheque number/amount mentioned in the seized documents was found duly credited in the books of accounts of the assessee. However, the re-assessment order, which has since been revised by the impugned order, miserably fails in bringing to light as to whether or not these aspects were examined by the AO. Thus, evidently, the AO has failed to make the enquiry on the issue for which the assessee's case was reopened. In view of the facts and circumstances, we are of the considered opinion that Assessing Officer did not examine the relevant seized material despite the fact that entries in the seized material showed that assessee was also one of the beneficiaries of the accommodation entries given by the concerns of S.K. Jain group. The Assessing Officer was mainly trying to verify the existence of the parties, rather than making enquiries regarding the genuineness of the transactions and as to whether cheque was issued in lieu of cash or not as was appearing in the seized material. From the perusal of the case records of the assessee for the relevant assessment year,

there is nothing on record to show that the Assessing Officer has ever confronted the assessee on such seized documents and had the Assessing Officer examined the seized material, he should have made some noting either in the order sheet or in the questionnaire issued to the assessee or any kind of reference would have been made in the submissions made by the assessee before the Assessing Officer. Accordingly, it is our considered view that the Ld. Pr. CIT has rightly set aside the re-assessment order on the ground that the Assessing Officer has not made any proper verification/enquiries and, therefore, the said assessment order is deemed to be erroneous and insofar as prejudicial to the interest of the Revenue in terms of amended provisions inserted in section 263 of the Act by way of Explanation 2. The Pr. CIT has amply demonstrated in his impugned order that this issue was neither enquired into nor was verified by the Assessing Officer once the information and the material in hard copy and in form of CD was made available to him. The AO should have verified the genuineness of the transaction and also should have carried out adequate enquiry to come to a logical conclusion that either there is no accommodation entry and the contents found *qua* the assessee being one of the beneficiary of the accommodation entry

in the books of account of the concerns of S.K. Jain group are false or bogus; or assessee had amply demonstrated and substantiated before the AO regarding the genuineness of the transaction of the accommodation entry. In absence of such a mandate which was cast upon the AO, we are of the opinion that the assessment order is not only erroneous but also prejudicial to the interest of revenue, as the issue definitely required proper enquiry and verification by the AO. Once adequate or proper enquiry has not been done, then in terms of Explanation 2 inserted in section 263 of the Act by the Finance Act, 2015, w.e.f. 1.6.2015, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interest of Revenue.

5.1 We also note that the present case is squarely covered by the decision of the ITAT, 'G' Bench, passed in ITA No. 2158/Del/2017 (AY 2009-10) in the case of Surya Jyoti Software Pvt. Ltd. vs. Pr. CIT, which was passed on identical set of facts. We further note that the present case is also covered against the assessee by the judgment of the Hon'ble Supreme Court of India in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017, wherein the Hon'ble Supreme Court of India has dismissed the SLPs in cases where the AO did

not make any proper inquiry while making the assessment and accepted the explanation(s) of the assessee(s) insofar as receipt of share application money was concerned.

5.2 In the background of our aforesaid observations and respectfully following the precedents, as aforesaid, we hold that the Ld. Pr. CIT has rightly exercised his jurisdiction under section 263 of the Act in setting aside the order of the Assessing Officer being erroneous in so far it is prejudicial to the interest of the Revenue. Accordingly, we confirm the order of the Ld. Pr. CIT and dismiss the grounds raised by the assessee before us.

6.0 In the final result the appeal of the assessee stands dismissed.

Pronounced in open court on 30th December, 2019.

Sd/-

Sd/-

(N.K.BILLAIYA)

(SUDHANSHU SRIVASTAVA)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Dated: 30/12/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi