

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 1284/Del/2018  
Assessment Year : 2008-09

M/S GIGGLE INFOTECH PVT.  
LTD.,  
C/O D. OSTWAL & ASSOCIATES,  
310, COMPETENT HOUSE,  
F-14, MIDDLE CIRCLE,  
CONNAUGHT PLACE,  
NEW DELHI - 110 001  
(PAN: AACCG6898F)  
(Appellant)

Vs. ITO, WARD 10(1),  
NEW DELHI

(Respondent)

Assessee by : Sh. Deepak Ostwal, FCA  
Department by : Sh. Pradeep Singh Gautam, Sr.DR..

**ORDER**

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-35, New Delhi on 09.11.2017 in relation to the assessment year 2008-09 on the following grounds:-

1. On the facts and in the circumstances of the case, the CIT(A) has erred both on facts and in law, in upholding the illegal action of the ITO to issue notice and reopen assessment of the appellant under section 147 and the perverse order passed by the ITO ought to have been vacated and failure to do so has vitiated the impugned order as the entire action, order and notice for reassessment are illegal, without jurisdiction,

unsustainable and hence liable to be vacated as being nonest in law.

2. The CIT (A) has erred in upholding the action of the AO of in framing impugned assessment order without removing the objection raised by the appellant regarding illegal assumption of jurisdiction by Ld. A.O. by passing a speaking order should therefore be set aside and quashed.

3. The CIT (A) has erred in upholding the action of the AO and passing the impugned order by obtaining behind the back of the appellant some alleged statements /information none of which had been made available to the appellant nor any opportunity provided to rebut the same and there was not even a show cause notice specifically proposing to make any addition nor any effective opportunity of hearing and hence, the impugned order passed in violation of natural justice is liable to be quashed.

4. The CIT(A) has erred in not being guided by correct factual and legal position, records, and binding precedents placed before him and has passed the impugned order erroneously which is therefore liable to set aside and quashed.

5. The CIT(A) ought to have dealt with all the submissions and objections of the appellant and ought to have followed the binding decisions of the Courts and Tribunals placed before him but has unfortunately not done so and has thus passed the impugned order erroneously which is liable to be vacated in this appeal.

6. The CIT(A) has also erred in upholding the illegal addition of Rs. 8,00,000/- as unexplained cash credit u/s 68 perversely made by the ITO and impugned order are therefore liable to be quashed and the additions so illegally made and confirmed ought to be deleted.

7. The CIT CA) has also erred in upholding the illegal demands of tax as well as interest erroneously raised by the ITO to the extent of additions upheld by him and the entire illegal demands of tax as well as interest must be set aside and quashed as unsustainable both on facts and in law.

8. The appellant craves leave to raise additional grounds and file necessary paper book before the Hon'ble Tribunal takes up hearing of the case and records of both lower authorities be directed to be placed before the Tribunal by the Revenue.

2. The facts in brief are that assessee filed its return of income at Rs. NIL on 29.9.2008 and the assessment was completed u/s. 143(3) of the Income Tax Act, 1961 (in short "Act"). Subsequently, notice u/s. 148 of the Act was issued on 13.3.2015 after recording reasons. In response to the same, the assessee vide its letter dated 02.04.2015 submitted that return filed u/s. 139 of the Act on 29.9.2008 may be treated as filed u/s. 148 of the Act. The assessee requested to provide the reasons for reopening u/s. 147/148 which were provided to the assessee. The assessee has filed the objections for initiating the proceedings u/s. 147/148 of the Act which was disposed of by passing a speaking order dated 26.2.2016. Further, notice u/s. 143(2) and 142(1) of the Act were also issued to the assessee. In response to the various statutory notices, issued, the AR of the Assessee attended the

proceedings from time to time and furnished the necessary information. The case of the assessee was reopened on the ground that the assessee during the assessment year in dispute was found to have received accommodation entries to the tune of Rs. 8 lacs from various paper companies floated by Sh. SK Jain and Sh. VK Jain, whose residential and business premises were searched u/s. 132 of the Act and it was established that they are in the business of providing accommodation entries through a number of paper and dummy companies in lieu of cash. The re-assessment was then completed u/s. 147/143(3) of the Act on 30.3.2016 after adding Rs. 8 lacs u/s. 68 of the Act as the genuineness and creditworthiness of the share application money received during the relevant assessment year was not proved by the assessee.

3. Aggrieved with the aforesaid assessment order dated 30.3.2016, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 09.11.2017 has affirmed the action of the AO and dismissed the appeal of the assessee.

4. During the hearing, Id. Counsel of the assessee has only argued legal ground no. 1 and stated the reassessment as made is without jurisdiction, without compliance with mandatory provisions of section 147/148 of the Act and as such the same deserves to be quashed. He further stated that the reasons recorded for the reassessment are at pager book page no.13-14 and the reasons are bald and do not contain even the prima facie view or reason to believe of the AO that income has escaped assessment to tax within the meaning of section 147 of the Act. There is no application of mind by the AO and no process of the matter by the AO before recording of the said reasons. It was further submitted that notice under section 148 was issued merely on the basis of information from DI, Jhandewalan, New Delhi that assessee has received accommodation entry of Rs. 8 lakhs. Nowhere is there any mention of any application of mind or any independent inquiry or any

link between any tangible material and formation of reason to believe that income chargeable to tax has escaped assessment. Nothing is independently examined or considered by the AO which can demonstrate application of mind by him. There is nothing to show that the cash is paid from coffers of the assessee. Reasons do not indicate as to who AO reached to the conclusion that the assessee received accommodation entry and escaped assessment. AO jumped on the conclusion the money is unaccounted money of the assessee without any basis. It was further submitted that AO has never alleged the failure of the assessee to disclose true and correct facts. To support his aforesaid contention, he relied the case law of Hon'ble Supreme Court of India in the case of ACIT vs. Dhariya Construction Co. (2011) 197 Taxman 202 (SC); Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyls (I) Ltd. (2017) 83 taxmann.com 348 (Delhi); Pr. CIT vs. Meenakshi Overseas ( ) Ltd. vs. ITO 395 ITR 677 (Del.); Signature Hotels Pvt. Ltd. vs. ITO (2012) 20 taxmann.com 797 (Del.); Pr. CIT vs. G&G Pharma India Ltd. 384 ITR 147 (Del.) and CIT vs. Sfil Stock Broking Ltd. 2010) 435 ITR 285 (Delhi). In view of above, he requested to quash the re-assessment.

5. On the contrary, Ld. DR relied upon the orders of the authorities below and the case laws referred therein and stated that Assessing Officer issued the notice u/s. 148 after due application of mind. He further stated that the AO has followed due procedure before issuing the notice u/s 148 of the I.T. Act, 1961. The Assessing Officer had tangible material in the form of information received from the Investigation Wing. The Assessing Officer did not proceed to any hearsay, conjecture or surmises. He stated that apart from relying on the order of the Ld. CIT(A), the following cases laws may kindly be considered with regard to reopening of cases u/s. 147 of the I.T. Act:-

1. *Sonia Gandhi vs. ACIT (Delhi High Court) 29018) 97 taxmann.com 150 (Delhi).*
  - i) *Where Congress Party gave loan to AJL and assigned said loan to non-profit YI which subsequently issued shares to assesses at a price less than FMV, non-disclosure by assesses of allotment of shares in YI would be a reason to initiate reassessment proceedings.*
  - ii) *Relying on PCIT vs. Meenakshi Overseas Pvt. Ltd. ITA No. 651/Del/2016 dated 11.1.2016 (Hon'ble Delhi High Court) approval u/s. 151 upheld.*
2. *Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 341 (Copy Enclosed) where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*
  - 2.1 *Yuvraj v. Union of India Bombay High Court [2009] 315 ITR 84 (Bombay)/[2009] 225 CTR 283 (Bombay) Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.*
3. *Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- IT*

*The likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice..*
4. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/[2014]*

223 Taxman 181 (Delhi)(MAG)/[2014] 362 ITR 417 (Delhi)

*In terms of section 148, law only requires that information or material on which Assessing Officer records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document.*

5. *PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)*

*Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*

6. *Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT*

*SLP of assessee dismissed. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*

7. *Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court [2018] 94 taxmann.com 393 (Gujarat)*

*Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.*

8. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court [2017] 83 taxmann.com 82 (Gujarat)*

*Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.*

9. *Murlibhai Fatandas Sawlani Vs ITO Gujarat High Court 2016-TIQL-370-HC- AHM-IT*

*It is not open to the assessee to object to the reopening by asking the AO to produce the source from where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.*

10. *Ankit Agrochem (P.) Ltd. Vs JCIT Rajasthan High Court [2018] 89 taxmann.com 45 (Rajasthan)*

*Where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.*

11. *Rakesh Gupta Vs CIT P&H High Court f20181 93 taxmann.com 271 (Punjab & Haryana)*

*Where Assessing Officer received information from Principle Director of Income Tax (Investigation) that assessee had received bogus loss from his broker by client code modification, reassessment on basis of said information was justified.*

12. *Home Finders Housing Ltd. Vs. ITO (2018) 94 taxmann.com 84 (SC).*

*SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO (2002) 125 Taxman 963 that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose objections by passing a speaking order, would not make reassessment order void ab initio.*

13. *Baldevbahi Bhikhabhai Patel vs. DCIT (Gujarat High Court) (2018) 94 Taxmann.co, 428(Gujarat)*

*Where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment alongwith reasons recorded by the Assessing Officer for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified."*

6. I have heard both the parties and carefully considered the rival submissions. I note that in this case the AO while recording the reasons for the belief that income has escaped assessment has recorded the reasons as under:-

OFFICE OF THE INCOME TAX OFFICER, WARD 10(1),  
ROOM NO.334-A, 3rd, FLOOR, C. R. BUILDING I P ESTATE NEW DELHI-110 002

F. No. ITO Ward 10(1)/148/Reason/2015-16/

Dated: 07.04.2015.

PAN: AACCG6898F

The Principal Officer,  
M/s. Giggle Infotech Pvt. Ltd  
E-4/5, 1st Floor, Sector-7,  
Rohini, New Delhi-110 085.

Sub: Application for getting copy of reasons – reg. ✓

Please refer to your Authorized Representative's letter dated 02/04/2015 received in this office on 06.04.2015, wherein it has been requested that a copy of the reasons recorded, based on which notice u/s 148 has been issued for A.Y. 2008-09, may be provided to the assessee company.

Keeping in view of the request made by you, I am providing you a copy of the reasons recorded and the same are reproduced hereunder:

**Reasons for the belief that income has escaped assessment in the case of**  
**M/s. Giggle Infotech Pvt. Ltd. for A. Y. 2008-09.**

Assessee filed its return of income for the A Y 2008-09 on 29-09-2008 declaring income Nil income.

✓  
Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/accommodation entries provided by Surendra Kumar Jain Group of cases. The assessee company is identified as one of the beneficiaries of these alleged bogus transactions by the Directorate after making the necessary enquiries. It has been revealed that the following entries have been received by the assessee.



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Cheque books dated	Company Name	To company/peson name	Name of the issuing bank	Cheques/ RTGS/PO No.	Cheques date	Amount	Name of the middleman
11.07.07	Finage Lease & Finance	Giggle Infotech Pvt. Ltd	Kotak	000001	11.07.07	4,00,000	Satish Goel
11.07.07	Lotus Realcon Pvt. Ltd	Giggle Infotech Pvt. Ltd	Kotak	000021	11.07.07	4,00,000	Satish Goel

The above amount of Rs. 8,00,000/- has been credited into assessee's bank account in F Y 2007-08. Investigation made by the Investigation Wing of the Department has found that assessee is a beneficiary of taking the aforesaid accommodation entries. I have also perused various materials and report from Investigation Wing and on that basis it is observed that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries. On perusal of the documents on record as well as the information received from the investigation wing, I am satisfied and have reason to believe that the income of the assessee company amounting to Rs. 8,00,000/- has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee company to truly and fully disclose all material facts necessary for assessment. Thus, it is fit case for initiation of proceedings u/s 147 of the Income Tax Act, 1961.

On the basis of the facts as stated above, I have reasons to believe that income chargeable to tax exceeding Rs. 1 Lac. has escaped assessment, as the assessee has not disclosed fully and truly all material facts necessary for his assessment for the relevant assessment year. Hence, a notice u/s 148 read with section 147 for reopening of assessment is required to be issued in this case.

Please acknowledge the receipt of this letter and make necessary compliance to this office notice u/s 142(1) enclosed herewith, for this your case is now fixed for 16.4.2015 at 03.30 PM.



*(Handwritten signature)*  
07/04/15

(Bhim Singh)  
Income-tax Officer,  
Ward-10(1), New Delhi.

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6.1 After perusing the aforesaid reasons recorded, I find that it is a case where action has been taken mechanically on the basis of information received from investigation wing, and, not on an independent application of mind and therefore on this ground, the proceedings are without jurisdiction. It is apparent from the fact that according to the AO, Investigation Wing has informed that assessee company has received accommodation entry of Rs. 8 lacs in the garb of share application money which is said to be as per inquiry made by the Directorate of Investigation (DI) on the persons said to be involved providing accommodation entries/ bogus share application. Based on inquiries made, DI is said to have provided details of persons who are beneficiaries of such accommodation entries and one such beneficiary is said to be the assessee. In this case notice u/s. 148 of the Act was issued merely on the basis of information from D.I. that the assessee has received accommodation entry of Rs. 8 lacs. There is no mention of any application of mind or any independent inquiry or any link between any tangible material and formation of reasons to believe that income chargeable to tax has escaped assessment. It is also noted that in the reasons recorded, the AO has made vague remarks that assessee has income chargeable to tax which has escaped assessment. The AO has not even specified as to what is the amount of alleged income escaping assessment, which shows that AO has merely recorded certain unsubstantiated allegations on the basis of some information received, which is against the principle laid down by the Hon'ble Delhi High Court in the case of CIT vs SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), wherein it was observed that reassessment proceedings were initiated on the basis of information received from investigation wing regarding alleged accommodation entries and it has been held by jurisdictional Delhi High Court that mere information received from DDIT(Inv) cannot constitute valid reasons for initiating reassessment proceedings in the absence of anything to show that A.O. had independently

applied his mind to arrive at a belief that the income had escaped assessment. Thus, the AO has acted mechanically and without any independent application of mind. The reasons recorded are therefore vague, highly non specific and reflect complete non-application of mind. It is also noted that there is no live link or direct nexus between alleged material and, inference. It is further noted that initiation of proceedings is also based on non application of mind much less independent application of mind but is a case of borrowed satisfaction. Nothing is independently examined or considered by the AO which can demonstrate application of mind by him. There is nothing to show that the cash is paid from coffers of the assessee. Reasons do not indicate as to who AO reached to the conclusion that the assessee received accommodation entry and escaped assessment. To support my aforesaid view, I draw support from the following decisions:-

***i) ACIT vs. Dhariya Construction Co. (2011) 198 taxman 202 (SC) wherein the Hon'ble Court has held that :***

*"Section 147 of the Income Tax Act, 1961 – Income escaping assessment – Non-disclosure of primary facts – Whether opinion of District Valuation Officer (DVO) per se is not an information for purposes of reopening of an assessment under section 147; Assessing Officer has to apply his mind to information, if any, collected and must form a belief thereon – Held, yes."*

***ii) Pr CIT v. RMG Plyvinyl (I) Ltd. (2017) 83 taxmann.com 348 (Hon'ble Delhi High Court has observed as under:-***

*11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one*

*regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.*

*12. Recently, in its decision dated 26th May, 2017 in ITA NO.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

*13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be*

*tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.*

*14. To compound matters further the in the assessment order the AO has, instead of adding a sum of 78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.*

*15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."*

**iii) 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd.**

*"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

*37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the*

*assessments for the AYs in question does not satisfy the requirement of law.*

*38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.*

6.2 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedents, as aforesaid, the proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction, hence, the assessment is quashed and ground no. 1 is allowed. The judicial decisions relied upon by the Ld. Sr. DR, have been duly considered. In my considered view, I do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Since no other grounds were raised by the Assessee's counsel, the same are dismissed as such. Accordingly, the assessee's appeal is partly allowed.

7. In the result, the Appeal filed by the Assessee stands partly allowed.

Order pronounced on 01-01-2020.

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Dated: 01-01-2020

SRB

**Copy forwarded to:**

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

AR, ITAT, NEW DELHI.