

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5220/MUM/2018  
Assessment Year: 2009-2010  
&  
ITA No. 5221/MUM/2018  
Assessment Year: 2010-2011**

Chitralkha, 25, Andheri Industrial Estate, Veera Desai Road, Andheri (West), Mumbai - 400053 PAN: AAFC1152B	<b>Vs.</b>	The Asst. Commissioner of Income Tax-17(1), Aayakar Bhavan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Ms. Aarti Vissanji (AR)  
Revenue by : Shri Kumar Padmapani Bora (DR)

Date of Hearing: 09/09/2019  
Date of Pronouncement: 29/10/2019

**ORDER**

**PER RAM LAL NEGI, JM**

These appeals have been filed by the assessee against the orders dated 22.06.2018 and 25.06.2018 passed by the Commissioner of Income Tax (Appeals)-55 (for short 'the CIT(A), Mumbai, for the assessment years 2009-10 and 2010-11 respectively, whereby the Ld. CIT(A) has dismissed the appeals filed by the assessee against the assessment order passed u/s 143 (3) and u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short the 'Act').

**ITA No. 5220/MUM/2018 (Assessment Year: 2009-2010)**

In this case, the assessee filed its return of income for the assessment year under consideration declaring the total income of Rs. 1,08,83,729/-. The AO completed the assessment u/s 143 (3) of the Act determining the total income at Rs. 1,36,60,920/-. The assessee challenged the assessment order before the CIT(A). The Ld. CIT (A) granted partial relief to the assessee.

Accordingly, the order giving effect was passed by the AO determining the total income of the assessee at Rs. 1,36,81,703/-. Subsequently, on the basis of information received from DGIT (Inv.) to the effect that the assessee had made purchases from suspicious party, the case was reopened by issuing notice u/s 148 of the Act. In response to the notice u/s 148, the assessee submitted that the original return filed may be treated as returned income in response to the notice u/s 148 of the Act. In fact, the information regarding obtaining bogus purchase bills by the assessee was received from the Sales Tax Department through DGIT (Inv.), Mumbai. As per the information the assessee had obtained bogus bills to the tune of Rs. 4,50,000/- from M/s Jupiter Multitrade Private Ltd. in order to show purchases. In response to the notice u/s 143 (2) of the Act, the authorized representative (AR) of the assessee furnished the details called for. During the course of assessment proceedings, the AO issued notice u/s 133(6) to the parties concerned. The notices were either returned un-served by the postal authorities or no reply was received. The AO further asked the assessee to produce parties and show cause as to why the said purchases from the above referred party should not be added back to the total income. The AR submitted that the purchases shown by the assessee from the purchases are genuine. It was further contended that the goods purchased from these parties were deployed as fixed assets and the purchases were capitalized. The payments were made through cheques/Electronic Fund Transfer and accordingly depreciation was claimed. The AO rejecting the contention of the AR made addition of Rs. 4,50,000/- and rejected the depreciation claimed to the tune of Rs. 3,00,000/-. The assessee challenged the assessment order before the CIT (A). The Ld.CIT (A) after hearing the parties upheld the findings of the AO and dismissed the appeal of the assessee. Against the said findings of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

*“The Learned Commissioner of Income Tax (Appeals) in the facts and circumstances of the case and in law ought to have held:-*

*1.1 That the re-assessment order passed u/s 143 (30 read with section 147 of the Act was illegal and bad in law.*

*1.2 The re-opening of the Assessment was illegal and bad in law as the reasons recorded by the Ld. Assessing Officer were on the basis of “certain borrowed information” from Sales Tax Department and therefore there was no opinion formed by the Ld. Assessing Officer of his own.*

*2. The purchase and acquisition of old press cutting machine from M/s Jupiter Multitrade Private Limited was a genuine and bonafide transaction of acquisition of the said machinery for the use in the business of the appellant and consequently depreciation in respect of the same was an allowable as a deduction.*

*3. It is humbly prayed that the reliefs as prayed and such other and further reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice, should be granted.”*

3. Before us, the Ld. counsel for the assessee submitted that the action of the Ld. CIT (A) in uphold the findings of the AO is contrary to the ratio laid down by the High Court in the case of *Commissioner of Income Tax vs. Shodimen Investment Pvt. Ltd.* 92018) 93 taxman.com 153 (Bom), wherein the Hon’ble High Court has held that were the Assessing Officer issued notice u/s 148 on the basis of information received from DDIT ((Inv.), Mumbai from entering into suspicious transaction which was clearly in breach of settled position of that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not in borrowed satisfaction. In the present case the

AO had issued notice u/s 148 of the Act without recording his satisfaction. The Ld. Counsel further pointed out that in the case of *PCIT vs. G& G Pharma India Ltd.*, the Hon'ble Bombay High Court has held that where the Assessing Officer did not form an opinion on information received from Directorate of Investigation regarding introduction of assessee's own unaccounted money in bank account by way of accommodation entry before issuing notice u/s 148 of the Act to the assessee, reassessment proceedings was not sustainable on merits. The Ld. Counsel for the assessee submitted that the assessee has rightly claimed the depreciation in this case as during the year relevant to the assessment year under consideration old and used Machine worth 4,00,000/- was purchased from Jupiter Multitrade Pvt. The Ld. counsel invited our attention to the details of documents furnished by the assessee before the AO during assessment proceedings to substantiate its claim. The Ld. counsel further pointed out that during the assessment proceedings the assessee asked for copies of statements recorded by the Sales Tax Department, however, the same were not provided to the assessee. The Ld. counsel further submitted that in view of the aforesaid facts and the settled position of law, the impugned order is not sustainable in law.

4. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld.CIT (A) submitted that since the purchases shown by the assessee was found bogus and the assessee during the assessment proceedings failed to establish the genuineness of transaction. The Ld.CIT (A) has rightly confirmed the addition made by the AO. So far as the point raised by the assessee regarding satisfaction of AO for reopening is concerned, the Ld. DR submitted that the AO has issued notice u/s 148 of the Act after due application of mind and satisfying himself that the income of the assessee has escaped assessment. The Ld. DR further submitted that in the light of the aforesaid facts that there is no infirmity in the order passed by the Ld. CIT (A) to interfere with the same.

5. We have heard the rival submissions of the parties in the light of the rival contention and also gone through the material on record including the

cases relied upon by the Ld. Counsel and the authorities below. It is clear from the orders passed by the authorities below that the information in this case regarding bogus purchases by the assessee was received from Sales Tax Department of the Maharashtra Government and the AO issued notice u/s 148 on the basis of the said information. The material on record also shows that the AO did not conduct any enquiry to ascertain the genuineness of the information received from the Sales Tax Department and issued notice u/s 148 of the Act. The Hon'ble Bombay High Court in the case of *PCIT vs. Shodiman Investment* (supra) has held that the notice issued by the AO on the basis of information received from the DDIT (Inv.) about a particular entity entering into suspicious transaction is clear breach of settled position of law that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction. The observations of the Hon'ble High Court are as under:-

- “13. In this case, the reasons as made available to the Respondent-Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reason even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.*
- 14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.). This is clearly in breach of the settled position in law that re-opening notice has to be issued by*

*the Assessing Officer on his own satisfaction and not on borrowed satisfaction.”*

6. Similarly, in the case of *PCIT vs. G & G Pharma Ltd.* (supra), the Hon'ble Delhi High Court has held that the notice issued u/s 148 of the Act by the AO on the basis of information received from the Directorate of Investigation regarding introduction of assessee's own unaccounted money for bank account by way of accommodation entries is not sustainable. The observations of the Hon'ble High Court are as under:-

*“12. In the present case, after setting out four entries, stated to have been received by the Assessee on single date i.e. 10<sup>th</sup> February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: “ I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries.” The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14<sup>th</sup> November 2004 and was processed under Section 143 (3) of the Act. Without forming a prima facie opinion on the basis of such material, it was not possible for the AO to have simply concluded: “it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries.” In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement*

*that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.”*

7. In the present case we find that the AO has initiated the proceedings u/s 147 of the Act without recording any satisfaction that the income of the assessee has escaped assessment. The AO has himself mentioned in its order that this case was reopened on the basis of information received from the sales Tax department to the effect that the assessee had obtained bogus bills from Jupiter Multitrade Private Ltd.

8. Even on merits, in the case of *PCIT vs. Chawla Interbild Construction Ltd.*, 412 ITR 152 (Bom.) the Hon'ble High Court has held that where the assessee brings on record the name and address of parties their PAN, TDS deduction, date of bill, date of cheque and its number etc, in order to establish the genuineness of transaction of purchases, in such cases the assessee should not be held responsible for not producing the parties before the concerned authority. In the present case the assessee has furnished the details including name and address of parties their PAN No., date of bill etc. Further, in the case of *CIT vs. Nikunj Exim Enterprises Ltd.* 372 ITR 619 (Bom), the Hon'ble Bombay High Court had held that merely because the suppliers have not appeared before the concerned authority, one cannot conclude that purchases were not made by the assessee. Moreover, there is no evidence on record to establish that the AO has conducted independent enquiry to ascertain as to whether the machinery in question was available at the place managed by the assessee. Hence, on the basis of information received from the Sales Tax Department it cannot be presumed that the assessee had not purchased the machinery in question. Further, the assessee has made the payments through cheque/electronic funds transfer and had made entries in the books of account. The details of addition of plant and machinery during the financial year ending 31<sup>st</sup> March 2009, furnished by the Ld. counsel before us further corroborate the contention of the assessee that old and used Seypa 92 paper Cutting Machine with microcut programme was purchased by the assessee on 20.02.2009 from

Jupiter Multitrade P.Ltd. for Rs. 4,00,000/-. The evidence on record suggest that the AO has passed the assessment order on the general statement made by the hawala parties without collecting any evidence to incorporate the same. Under these circumstances, we find that the findings of the Ld. CIT(A) are not in accordance with the evidence on record and the same has been passed contrary to the principles of law laid down in the cases discussed above. Hence, we set aside the impugned order passed by the Ld. CIT (A) and direct the AO to delete the addition made by him and to allow the depreciation claimed by the assessee.

**ITA No. 5221/MUM/2018 (Assessment Year: 2010-2011)**

The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

*The Learned Commissioner of Income Tax (Appeals) in the facts and circumstances of the case and in law ought to have held:-*

- 1.1 That the re-assessment order passed u/s 143 (3) read with section 147 of the Act was illegal and bad in law.*
- 1.2 The re-opening of the Assessment was illegal and bad in law as the reasons recorded by the Ld. Assessing Officer were on the basis of "certain borrowed information" from Sales Tax Department and therefore there was no opinion formed by the Ld. Assessing Officer of his own.*
- 2. The purchase and acquisition of old press cutting machine from M/s Jupiter Multitrade Private Limited was a genuine and bonafide transaction of acquisition of the said machinery for the use in the business of the appellant and consequently depreciation in respect of the same was an allowable as a deduction.*
- 3. It is humbly prayed that the reliefs as prayed and such other and further reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice, should be granted."*

2. The facts and the issues involved in this case is identical to the facts and the issues involved in the assessee's own case for the AY 2009-10 discussed above and since we have allowed the appeal of the assessee and directed the AO to delete the addition and allow the depreciation, our findings in the aforesaid case pertain to the AY 2009-10 would apply *mutatis mutandis* in the present case. Accordingly, we direct the AO to delete the addition made on account of bogus purchases and allow depreciation claimed by the assessee.

In the result, appeal filed by the assessee for assessment years 2009-10 and 2010-11 are allowed.

Order pronounced in the open court on 29<sup>th</sup> October, 2019.

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/10/2019

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai