

आयकर अपील अा अधकरण, अहमदाबाद ढायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2698/AHD/2014
अाधारण वर्ष/Asstt. Year: 2006-2007

Medha Projects Ltd., A/302, Arihantnagar, Opp. Shubh Complex, Sahibaugh, Ahmedabad. PAN: AABCM0496N	Vs.	I.T.O., Ward-(4)(4), Ahmedabad.
---	-----	---------------------------------------

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Tej Shah, A.R
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई का ताराख/Date of Hearing : 13/01/2020
घोषणा का ताराख /Date of Pronouncement: 05/02/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-VIII, Ahmedabad, dated 14/07/2014 (in short "Ld.CIT(A)") arising in the matter of Assessment Order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.28/01/2016 relevant to the Assessment Year 2006-2007.

The assessee has raised the following grounds of appeal.

- 1. The learned CIT (A) erred in law and on the facts of the case in confirming the protective order passed u/s. 143(3) r.w.s. 147 of the Act by the Ld.A.O. who has computed the income at Rs. 56,01,6107/- as against income declared by the assessee at Rs.1,610/-.*
- 2. The learned CIT (A) erred in law and on the facts of the case in confirming the addition of Rs. 56,00,000/- by treating the investment of Rs. 25,00,000/- in shares of Pradip Overseas Ltd and Rs. 31,00,000/- in shares of Pradip Enterprise Ltd as unexplained investment under section 69 of the I. T. Act, 1961.*
- 3. The learned CIT (A) erred in law and on the facts of the case in- confirming interest charged U/s. 234 B and 234 C of the Act.*
- 4. The appellant craves for leave to add, amend or alter all or any of the grounds of appeal before or during the course of hearing of this appeal.*

The assessee has also raised the additional ground of appeal which was received dated 25 July 2018 which reads as under:

- 1. The Ld.AO erred in law and in the facts of the case in reopening the case of the appellant u/s.147 of the act.*
The appellant craves for leave to add, amend or alter all or any of the grounds of appeal before or during the course of hearing of this appeal.

2. First, we take up the additional ground of appeal raised by the assessee. The assessee in the additional ground of appeal has challenged the reopening of the case under section 147 of the Act.

3. The facts in brief as culled out from the records available before us are that the assessee in the present case is a limited company and engaged in project consultancy viz a viz dealing investment in shares. The assessee filed its return of income dated 30th December 2006 declaring total income at NIL which was accepted under section 143(1) of the Act.

3.1 The assessee in the year under consideration has made investment by subscribing the shares of Pradip Overseas Ltd and Pradeep enterprise Ltd for Rs.

25 lakhs and 31 lakhs respectively. There was a search conducted under section 132 of the Act in Pradip Overseas Group wherein it was admitted by Shri Pradip Kumar J. Karia- the main/key person of the group in the statement furnished under section 132 (4) of the Act, that its companies have introduced undisclosed/unaccounted income in the form of share capital/premium. Furthermore, the name of the assessee was also appearing in the list of the companies which invested in the shares of the aforesaid companies.

3.2 The above fact was communicated to the AO of the assessee and therefore he (the AO) initiated the proceedings under section 147 of the Act by recording the reasons as detailed under:

In this case, the assessee has filed return of income on 30/12/2006 declaring NIL income. As per the information received, the assessee has made investment in shares of Rs.25,00,000/- in Pradip Overseas Ltd., and Rs.31,00,000/- in Pradip Enterprises Ltd. during the F.Y. 2005-06 relevant to A.Y. 2006-07. The information received also revealed that these investments made by the assessee in the above companies are fictitious. On verification of the balance-sheet part of the return of income filed by the assessee, it is noticed that the assessee has shown investment of rs.1,43,00,000/-. The source of investment made by the assessee is found to be fictitious, I have, therefore, reason to believe that the income of the assessee has escaped assessment within the meaning of Sec.147 of the Income-tax Act, 1961.

4. However, the learned AR before us 1st time challenged the proceedings initiated under section 147 of the Act on the ground that the investment in the aforesaid companies was disclosed by the assessee in its books of accounts. Therefore, there is no question of attracting the provisions of section 147 of the Act.

4.1 On the other hand, the learned DR before us submitted that the key person of Pradip Overseas Group has admitted in the statement furnished under section 132(4) of the Act, that its companies have received share capital/premium from its unaccounted/undisclosed income through the channel of various companies including the assessee. The learned DR also filed the details of both the

companies where the name of the assessee was appearing as subscriber of shares. The learned DR vehemently supported the order of the authorities below.

5. We have heard the rival contentions of both the parties and perused the materials available on record. The AO under section 147 of the Act has been empowered to initiate the proceedings under this section if he has reason to believe that income chargeable to tax has escaped assessment for any assessment year. There are various authoritative pronouncements which have interpreted the words 'reasons to believe' for initiating the proceedings under section 147 of the Act. However, we do not want to recapitulate all of them at this stage but suffice to say that

- i. The AO should have prime facie material in his hands to form the opinion that there is escapement of income. Furthermore, he is not expected to verify the sufficiency or correctness of the material at the time of recording his satisfaction for holding that there is escapement of income.
- ii. The word used 'reason' in the phrase "reason to believe" requires the AO to have justification for initiating the proceedings for the escapement of income. As such it is not necessary for the AO to finally ascertain the fact by evidences or other documents that the income has escaped assessment at the time of recording his satisfaction.
- iii. The AO acquires his jurisdiction for reopening the assessment under section 147 of the Act if some information comes to his possession from the outside sources /independent sources which are specific, reliable and relevant.

5.1 Now, coming to the present facts of the case, on reading the reasons recorded by the AO it is transpired that the AO on receiving the information about the investment as discussed above reached to the opinion that source of investment made by the assessee is found to be fictitious. Accordingly he proceeded to initiate the proceedings under section 147 of the Act.

5.2 At this juncture we are inclined to refer the judgment of Hon'ble Supreme Court in the case of Reymond Woollen Mills Ltd vs. ITO reported in 236 ITR 34 wherein it was held as under:

The Supreme Court had only to see 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 was not a thing to be considered at this stage. The Supreme Court could not strike down the reopening of the case in the facts of the instant case. It would be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee might also prove that no new facts came to the knowledge of the ITO after completion of the assessment proceeding. The Supreme Court was not expressing any opinion on the merits of the case. The questions of fact and law were left open to be investigated and decided by the assessing authority. The assessee would be entitled to take all the points before the assessing authority. The appeals were dismissed.

5.3 We are also inclined to refer the judgment of Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stockbrokers (P) Ltd reported in 291 ITR 500. The relevant extract of the order are reproduced as under:

Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' will mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income has escaped assessment, it can be said to have 'reason to believe' that an income has escaped assessment. The said expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers. [Para 16]

In view of the above, we hold that the AO proceeded to initiate the proceedings under section 147 of the Act after receiving some reliable information from the outside source. As such, the AO after receiving the information verified the balance sheet of the assessee wherein the investment was shown at Rs. 1.43 crore. Thus, the AO after receiving the information applied his mind by referring the balance sheet of the assessee and after that recorded his satisfaction under section 147 of the Act. Thus the allegation of the assessee that there is change of opinion is not sustainable. Accordingly we do not find any merit in the argument of the learned AR for the assessee. Hence the additional ground of appeal of the assessee is dismissed

6. The issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 56 Lacs under section 69 of the Act on protective basis.

7. The assessee has made investments in the shares of Pradip Overseas Ltd and Pradeep Enterprise Ltd for Rs. 25 lakhs and 31 lakhs respectively in the year under consideration. The assessee in support of such investments furnished the copy of the bank statement, return of income, list of investments.

7.1 However, the AO found that the assessee has not furnished the source of investments made in the aforesaid companies by furnishing the identity, genuineness and creditworthiness of the investments. Accordingly, the AO treated such investments as unexplained under section 69 of the Act. However, the AO was conscious to the fact that the same amount has already been added in the hands of Pradip overseas Ltd and Pradeep enterprise Ltd for Rs. 25 lakhs and 31 lakhs respectively on substantive basis. Accordingly, the AO to protect the interest of revenue added the amount of unexplained investment under section 69 of the Act on protective basis in the hands of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

8. The assessee before the learned CIT (A) furnished the details of the source of investments in the companies as discussed above. As per the assessee, it has received a sum of Rs. 56 Lacs from 9 parties. The assessee furnished the name of such parties along with confirmation, income tax return acknowledgement.

8.1 The assessee also filed the copy of the bank book, bank statements, ledgers of Pradip Overseas Ltd and Pradeep Enterprise Ltd reflecting the details of the Investments.

8.2 However, the learned CIT (A) observed that the assessee has not furnished the details of the parties, their confirmation and income tax returns before assessing officer from whom it has accepted the funds which were used for the investment in the aforesaid companies. Accordingly the learned CIT (A) denied accepting these new evidences.

8.3 The learned CIT (A) further on merit rejected the contention of the assessee by observing as under:

"However on merits as well, an examination of various documents, now submitted, show that the documents do not serve the purpose. The appellant has furnished a confirmation of an amount of Rs. 40 lakhs accepted by it as share capital from K C Bokadia films Ltd. However the confirmation has been signed under the Seal of Asian Films Production and Distribution Ltd. The source of this money is not explained though the bank account has been submitted. The bank account also show that there is a series of clearing and issuing of checks. It appears from the bank account that the money has been routed through, that bank account. It appears that various accommodation entries have been issued through that bank account as the cheques issued, in favour of Kajal Agro Farms Ltd, which has also given accommodation entries to the Pradeep Overseas group are also appearing in the bank account.

The appellant has given another confirmation from Hitesh Agrawal . A copy of acknowledgement of IT return for the assessment year 2006 - 07 has also been attached. An examination of the details shows that the depositor has earned an income of Rs. 122707/-. No further details in that respect are available. Accordingly the source has not been clearly explained by the appellant in that respect. Similar position is there in respect of the confirmations of Nitin Shah, Ranjeet Kumar K Sen, Vijndrasingh S. Choudhary, Alpaben N Shah, Suresh S Chauhan, Suman Bhanwarlal Swami and Sarveshdevi S Chauhan. The income shown in the IT return by these persons does not appear to be sufficient for giving that much amount of money as share capital in the appellant company.

In view of the above details and discussion, it is clear that the appellant has not been able to satisfactorily explain the source of the money that has been invested by it in Pradij Overseas group of companies, which has been treated as unexplained investment by the AO. The action of the AO is accordingly upheld and the addition on protective basis is confirmed."

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

9. The learned AR before us filed a paper book running from pages 1 to 35 and submitted that the investment made in the companies as discussed above were duly disclosed in the balance sheet of the assessee. Accordingly there is no

question of attracting the provision of section 69 of the Act which is applicable with respect to the investments not disclosed in the books of accounts. But that is not the case in the present facts. The learned AR in support of his contention drew our attention on page 29 to 31 of the paper book where the details filed to the ROC in form No. 20-B was placed disclosing the investments.

9.1 The learned AR also claimed that all the investments made through banking channels. Similarly, all the funds were received for such investments through banking channel. The learned AR in support of his contention drew our attention on pages 33 to 35 of the paper book where the bank statement was placed.

9.2 The learned AR further submitted that the assessee has furnished the details of the parties from whom the assessee has accepted the funds. But the same was not accepted by the learned CIT (A).

10. On the other hand, the learned DR before us filed a paper book running from pages 1 to 98 and vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the addition was made in the hands of the assessee on protective basis which implies that same amount has also been added in the hands of other companies as discussed above on substantive basis.

11.1 There is no specific provision in the Act for the purpose of making a protective assessment. However, now it is well-settled by judicial precedent that in order to protect the interest of the revenue, protective assessment can be made. A protective assessment comes to an end when the substantive assessment is made in the case of a different person.

11.2 Now, the controversy arises if the addition on substantive basis has been confirmed in the hands of the other parties and reached to the finality, then the addition on protective basis will not survive. Thus, it is necessary to ascertain the fact of the final outcome of substantive addition in the hands of other companies before reaching to the conclusion in the present case. But no such detail is arising from the order of the authorities below.

11.3 Besides the above, we also note that the assessee has filed certain additional/new evidences to justify the source of investment in the companies as discussed above which were not accepted by the learned CIT (A). These additional/new evidences were not admitted by the learned CIT (A) as the assessee has not given any reasonable reason for not filing the same before the AO during the assessment proceedings. In this regard, we note that there is a procedure prescribed under rule 46A of income tax rule for furnishing the additional evidences. But the assessee has not complied the same.

11.4 We are not oblivion to the fact that the provisions of section 69 of the Act are attracted in a situation where the investments have not been recorded in the books of accounts maintained by the assessee and furthermore the assessee offers no explanation about the nature and source of investments or explanation offered by him in the opinion of the assessing officer is not satisfactory. However, in the present facts of the case, admittedly the assessee has disclosed the investments in its books of accounts. Thus the question arises whether the addition can be made to the total income of the assessee under section 69 of the Act on account of such investments which was disclosed in the books of accounts. But, we do not want to comment on the same for the reason that 1st of all it is necessary to ascertain the status of the substantive assessment made in the hands of the companies as discussed above.

In view of the above, we are of the considered opinion that the entire issue needs to be examined afresh by the AO as per the provisions of law and in the

light of the above stated discussion. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

12. The issues raised by the assessee in ground No. 3 and 4 either are consequential or general in nature, therefore, no separate adjudication is required for the same at this stage. Accordingly we dismiss the same.

13. In the result, the appeal filed by the assessee is **partly allowed** for the statistical purposes.

Order pronounced in the Court on 05/02/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

**-Sd
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
05/02/2020
manish

आदेश का प्रतिलिपि भेजत/Copy of the Order forwarded to :