

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC ": NEW DELHI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 8279/Del/2018  
(Assessment Year: 2010-11)

Trilerank Marketing P. Ltd, 11/5B, Pusa Road, Karol Bagh, New Delhi PAN: AABCT1032D	Vs.	ACIT, Circle-25(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Sunil Kumar Gupta, CA
Revenue by:	Ms. Ekta Vishnoi, Sr. DR
Date of Hearing	17/10/2019
Date of pronouncement	13/01/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-9, New Delhi dated 15.10.2018 for the Assessment Year 2010-11, wherein, the action of the Id AO of reopening the assessment as well as making the addition of Rs. 729400/- to the total income of the assessee on account of disallowance of loss suffered on account of future and option trading was confirmed.
2. The assessee has raised the following grounds of appeal:-
  - “1. *That in the facts and circumstances of the case and in law the order passed by Ld AO dated 13.12.2017 and further order passed by Ld. CIT (A) dated 15.10.2018 are bad in law as the notice issued by AO u/s 148 by the ITO Ward 4(1), Kolkata is bad in law as he had no jurisdiction to issue such notice because the Regd. Office of the Appellant was shifted to New Delhi w.e.f. 30.10.2009 and the Appellant was regularly filing its ITRs at that address.*
  2. *That in the facts and in the circumstances of the case the Ld. CIT (A) has erred in sustaining the action of Ld. AO without appreciating the fact that he has made the additions solely on the basis of the Survey Report relating to Client Code Modification received by his office.*
  3. *That in the facts and circumstances of the case the Ld. CIT ( A) erred in sustaining the action of Ld. AO in making addition of Rs.7,29,400 to the Total Income on account of disallowance of loss suffered during the year under F & O.*

4. *That in the facts and in the circumstances of the case the Ld. CIT (A) has erred in sustaining the action of Ld. AO without appreciating the fact that the appellant had produced all the relevant documents in support of his claim of loss which in turn were directly obtained from the broker and no discrepancy was pointed out by the Ld. AO.*
  5. *That in the facts and in the circumstances of the case the Ld. CIT (A) has erred in sustaining the action of Ld. AO even when he has failed to provide any tangible material showing that the appellant / his broker has carried any Client Code Modification during the year for the alleged transaction.”*
3. Brief facts of the case shows that the assessee is a company, notice u/s 148 of the Act was issued on 20.03.2017 for the reason that survey report relating to client code modification is received by the ld AO wherein, it is seen that the assessee being a beneficiary client had taken contrive loss and shift out contrive profits during the FY 2009-10 resulting in net reduction of income due to client code modification of Rs. 729400/- for the purpose of evading of taxes.
  4. The assessee submitted that it has filed return of income on 13.04.2017 at Rs. 611240/- which may be treated as return filed in response to notice u/s 148 of the Act. AO further issued notice u/s 133(6) to the share broker of the assessee asking certain details. No such information was received. The assessee was also asked to show the reason that why the additions should not be made. The assessee submitted that it has suffered the loss of Rs. 746995/- in F &O Trading segment through Multiplex Capital Limited by two contract notes. Such contract notes were submitted. The assessee submitted that as a matter of regular practice the stock brokers makes modification in the client code on sales and purchase of any security after the trading is over. Such modification is to correct the errors at the time of punching the order wrongly entered into. It was stated that assessee cannot be held responsible for the client code modification. The assessee submitted contract notes and trade confirmations.
  5. The ld AO rejected the explanation of the assessee as both the parties, assessee as well as broker failed to submit certified copies of Form 10DB and to furnish the details of client modification. The ld AO held that client code modification is permitted only with certain restrictions and specified nature. The assessee cannot run away from discharging its onus. The ld AO therefore, made an addition of Rs. 729400/- and determine the total income

at Rs. 1340640/- as per order dated 13.12.2017 passed u/s 147 read with section 143 of the Act.

6. The assessee preferred an appeal before the Id CIT(A) who upheld the reopening of the assessment as well as on the merit of the addition. Therefore, the assessee is in appeal before us.
7. The Id AR submitted a detailed paper book and stated that reopening is bad in law as it has been made based on the information received from investigation wing. It was stated that no independent analysis was made and there is non-application of mind. He further referred to the survey report stating that it is merely information; however it does not give any reason for reopening of the assessment. In view of this, he submitted that there is no tangible material also for reopening of the assessment. He further submitted that the registered office of the appellant was shifted to New Delhi w.e.f 30.10.2009 and assessee is filing returns regularly showing the New Delhi address, therefore, the notice issued by the Id AO at Kolkata is bad. On the merits of the case, he submitted that there is no allegations of any shifting of profits or loss. He further submitted that issue is squarely covered by the decision of the SMC Bench of ITAT in ITA No. 2497/Del/2018 dated 31.01.2019 in case of Mohan Aggarwal Vs. ACIT wherein, on identical facts and circumstances therein coordinate bench in para 6.2 has held that the reopening is invalid as it has been mechanically done on the basis of alleged report of investigation wing. On the merits he reiterated the submissions before the lower authorities. He even stated that the approval given by the Id CIT(A)-2, Kolkata shows that he has mentioned only "Yes, I am satisfied" remark for issue of notice. He further submitted that such remark does not suffice the requirement of provision of section 151 of the Act. For this he relied upon the decision of the Hon'ble Madhya Pradesh High Court in case of CIT Vs. S Goenka Lime and Chemicals Ltd (2015) 56 Taxmann.com 390.
8. The Id DR vehemently stated that the approval of the proposal for reopening has been given by the Pr. CIT on 24.02.2017. Therefore, there is no infirmity in the same. On the merits of the case it was submitted that there is no bar in the reopening of the assessment where it has come to the knowledge of the AO on the basis of the report of investigation wing. On the merits it was

stated that there is no evidence submitted by the assessee for loss incurred. Even the said broker also did not respond to the queries. She therefore, stated that additions has rightly been made by the ld AO.

9. We have carefully considered the contentions and also perused the orders of the lower authorities. On perusal of the information submitted before us it is found that approval under ITBA for reopening of the assessment was given by Pr. CIT on 24.02.2017. However, as per letter of ACIT, Headquarter-2, Kolkata date of approval was 20.03.2017. In fact notice u/s 148 was also issued on 20.03.2017. The ITBA approval shown by the assessee of 24.02.2017, shows that the approval has been granted by the Pr. CIT on that date, however, letter dated 27.02.2017 of ITO- Wardd-4(1), Kolkata addressed to Pr. CIT-2, Kolkata titled as “request for approval of initiation of income tax proceedings u/s 147 of the Act in case of the assessee for Assessment Year 2010-11”. Thus as per this letter it is apparent that proposal was sent for approval of Pr. CIT by the ld AO on 27.02.2017, whereas the online approval shows at page No. 153 and 154 of the paper book that it was granted on 24.02.2017, thus, this infirmity was not explained by the revenue that how Pr. CIT could have approved the notice u/s 148 of the Act on 24.02.2017 where the letter was written by AO to Pr. CIT only on 27.02.2017, seeking approval for issue of notice u/s 148 of the Act. In view of above infirmity, we do not find any reason to sustain the reopening of assessment as approval is found anti date of ITBA and is not in conformity with the request of the AO. In the result, action of the ld AO in reopening of assessment deserves to be quashed, the order of the first appellate authority deserves to be reversed and ground No. 5 of the appeal deserves to be allowed. As we have quashed the reopening we do not adjudicate on the merits of the case.
10. Accordingly, appeal of the assessee is allowed holding that reopening is invalid.

Order pronounced in the open court on 13/01/2020.

-Sd/-  
(K.N.CHARY)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 13/01/2020  
A K Keot