

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2099/DEL/2019
[Assessment Year: 2009-10]

M/S AUTOAGE AUTOMOBILES PVT. LTD. Vs.
103, 16A, UDAY PLAZA PARK,
DELHI
(PAN: AAGCA7094M)
[Appellant]

ITO, WARD 3(4),
NEW DELHI

[RESPONDENT]

Assessee by: None
Revenue by : Ms. Parul Singh, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax [Appeals]-1, New Delhi dated 31.12.2018 pertaining to assessment year 2009-10 on the following grounds:-

1. That the order of Learned A.O, confirmed by the CIT(A) are bad in law and facts of the case.
2. That on facts and circumstances of the case in law the learned A.O. has erred in making the addition of Rs.20,00,000 as no specific show cause notice was served or issued before making such additions. The contention of the A.O regarding.

A. Information received from Investigation Wing: The A.O has merely relied on a letter received from investigation wing of Income Tax Department of Mr. Surender Kumar Jain and some so called accommodation entries. The mere finding of Diary entries in a third person premises cannot be deemed to an incision on another assessee's integrity.

B. Analysis of Information received: The contention of A.O in this case is hypothetical and as far as banking transaction is concerned the same is already on records and this hardly calls for any analysis.

C. Reasons for Formation of belief: The whole gambit of imagination and deduction there from are based by A.O and are based on documents seized at Mr. Surender Kumar Jain premise and Mr. Virendra Kumar Jain premises (His name has now appeared in A.O order and not earlier) This outcome of this seizure and search conducted by Income Tax department has not been mentioned anywhere in the order and mere

possession of certain documents does not give any conclusive evidence against the **assessee**.

D. Income chargeable to Tax Escaping assessment: Once again the learned A.O. has presumptive ideas and inferences without ascertaining from his own department the outcome of the search and seizure proceedings conducted at the premise of the person S.K Jain and Virender Jain.

It is abundantly clear that there was no cash transaction and the assessee only took the amount from the investors by cheque and there can be no good reason to add it to the Income of the assessee as unexplained cash credit and the proceedings if any are already there on the person/company giving this amount to us.

There are a number of cases in which higher courts have held in favour of the assessee

In the case of CIIT Vs Orissa Corp. Ltd 159 ITR 78 Hon'ble Supreme Court has observed that in the case assessee has given the name and address and PAN of the alleged creditors which was in the knowledge of the Revenue, the assessee cannot be held responsible as he cannot do anything more than this.

Similar views has been expressed by higher courts in

- CIT Vs Flex Plastic & Packaging Private limited 2007-211 CTR 607 Delhi
- CIT Vs Lalit Kumar Poddar(2015) 231 Taxman 816 Delhi.

The Learned A.O. has not even bothered to issue summon u/s 133(6) to the concerned parties namely Virgin Capital Services Private Limited. VIP Leasing & Finance Private Limited to ascertain their existence and credit worthiness and has based his findings and analysis on the basis of the investigation report of search and seizure proceedings of Mr. Surrender Kumar Jain and Virender Jain which are **still pending. Their** Companies are active and do not **include t** name of Surrender Jain and Virender Jain as **Director**.

3. **The** findings of the CIT that why a Premium was given by **the** investor is based on mere presumption not on facts. It is submitted that the company being a proposed auto mobile dealership Co. had purchased land in Solan (Shimla) for obtaining a dealership of Honda Cars and this being a lucrative bus proposal. The investors had willingly opted to pay the premium.

4. The so called S.K.Jain group namely. Mr. Surrender Kumar Jain and Virender Jain are not even directors, promoter or shareholder of these lending companies and in no way directly connected to this entry operating business.

5. Hence the addition is therefore prayed to be deleted.

6. Any other grounds of appeal that may be relevant in the case.

2. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issues involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, I am deciding the present appeal exparte qua assessee, after hearing the Ld. DR and perusing the records.

3. Ld. DR relied upon the impugned order.

4. I have heard the Ld. DR and perused the orders of the authorities below. I find that Ld. CIT(A) has passed the exparte impugned order without providing sufficient opportunity to the assessee. Hence, in my view the issues in dispute may be set aside to the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee. I hold and direct accordingly.

4.1 Keeping in view of the non-cooperation of the assessee, I am directing the assessee to appear before the Ld. CIT(A) on **23.04.2020 at 10.00 am** for hearing.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 19.02.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 19-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

