

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.3855/DEL/2017
Assessment Year 2010-11

Minal Systems Pvt. Ltd., D-5/4, Okhla Industrial Area, Phase-II, New Delhi.	v.	DCIT, Circle-16(1), New Delhi.
TAN/PAN: AACCT3905C		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Ms. Rakhi Vimal, Sr.D.R..		
Date of hearing:	02	01	2020
Date of pronouncement:	28	02	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 08.03.2017 passed by Commissioner of Income Tax (Appeals)-XXXIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2010-11. In various grounds of appeal, the assessee has challenged the validity of reopening u/s.147 and addition of Rs.30 lacs made u/s.68. The notice of hearing was sent to the assessee through RPAD and despite service of notice none appeared on behalf of the assessee. Accordingly, the appeal of the assessee is decided ex-parte qua the assessee after considering the relevant material placed on record.

2. The facts in brief are that the assessee has filed return of income of Rs. 56,17,217/- on 03.02.2011. Later on, information was received from the Investigation Wing based on investigation and inquiry carried out in the case of entry provider, Shri S.K. Jain that assessee is also one of the beneficiaries of accommodation entries aggregating to Rs.30 lac in the impugned assessment year through three entities vide following cheques as incorporated in the assessment order.

“Three entities vide Cheques No. 310950 & 310953 dated 15.09.2009 from M/s Victory Software P. Ltd. Rs.20,00,000/- , M/s. Cheque No. 3 10555 dated 18.09.09 from M/s. Zenith Automotive P. Ltd. Rs.5,00,000/- and Cheque No 310843 dated 21.10.2009 from M/s Humtum Marketing Pvt. Ltd. Rs.5,00,000/- , managed and controlled by Shri Surendra Kumar Jain and his brother Shri Virendra Kumar Jain.”

Based on this information following ‘reasons’ were recorded:-

“M/s. Minal Systems (P) Ltd. (previously Tulip Systems P. Ltd.) is assessed to tax with Circle-16(1), New Delhi. Enquiries of Investigation Wing, Delhi of the Department have unearthed huge accommodation entry racket being operated by accommodation entry operator Shri Surender Kumar Jain by way of more than 100 companies/firms etc. The Investigation Wing has compiled a report & data of the beneficiaries of such entries. The name of the assessee figures in the list of beneficiaries of share capital premium/loan etc.

I have gone through the report and data sent by the investigation wing. The report clearly indicates that accommodation entries

have been taken to plough back uncounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form share application money loans etc. and even describes the modus operandi of this scam.

The Investigation Wing's list of Beneficiaries (of such accommodation entries) gives comprehensive details of Beneficiaries Name, Entity from where entry received bank, cheque/RTGS, date and even the middleman through whom such entry is received.

This list contains the name of M/s. Tulip Systems (P) Ltd., which has taken such accommodation entry/entries of Rs.30,00,000/-"

3. In response to the notice u/s.148, the assessee submitted that the return of income filed on 03.02.2011 should be treated as return filed in response to notice u/s.148. Accordingly, the Assessing Officer supplied the copy of reason recorded. Ld. Assessing Officer in the course of proceedings has issued show cause notice to furnish various documents, in response to which, assessee has filed copy of ITR, copy of bank account, copy of audited balance sheet, etc. of the creditors. As per the Assessing Officer all the requisite details and information which was specifically sought for has not been furnished and no concrete evidence or justification has been filed to prove the identity, creditworthiness and genuineness of the transaction. Ld. Assessing Officer then issued summons to all the three creditors at the address given by the assessee for the personal deposition. However, none appeared on behalf of the said entities nor any written

submissions were filed. Again summons u/s.131 were issued to M/s. Victory Software Pvt. Ltd. and M/s. Hum Tum Marketing Pvt. Ltd. which however received back unserved. The assessee was further given further opportunity to produce the Director/Principal Officer of the three entities. However, the assessee showed its inability to produce any of the persons. After detailed discussion and report of the Investigation Wing and based on his own inquiry, the Id. Assessing Officer has made the addition of Rs.30 lacs.

4. The Ld. CIT (A) on the issue of validity of reopening has given very detailed findings which are as under:

“11. The first contention of the appellant is that the reason to believe is based on surmises and conjectures. I disagree with the contention. The basis of the reason was findings of the investigation wing which are duly recorded in the Assessment Order and the reasons were duly communicated to the appellant on 26.06.14. The reasons have been reproduced in Para 5 above. After carefully considering the reasons, I hold that the reason to believe has been formed after careful consideration and sound analysis of highly incriminating and self- explanatory material in possession of the Assessing Officer.

11.1 The second contention is that the A.O. did not apply mind. In this era of effortless cut- copy-paste, to decisively discern from reading a few paragraphs whether mind was applied or not may require a perception well beyond the cognitive powers and analytical skills of a judicial mind. The appellant’s contention that Assessing officer borrowed the belief without applying independent judicial mind also gives rise to the question as to how much mind is the Assessing Officer expected to apply before issuing a notice u/s 148 when certain

authenticated, categorical and specific information obtained through a legal process of search emanates from the duly seized documents and is lawfully communicated to the Assessing Officer through established channels?

11.1.1 This information is collected and analyzed by officers of the investigation wing of income tax department who fall within the definition of 'Assessing officer' within the scope and meaning of section 2 (7A). These officers derive the power to exercise or perform the powers and functions conferred on or assigned to the Assessing Officer by virtue of subsection (4) of section 120. I am of the opinion that after going through the specific and authentic information (reproduced in Para 5 above), received from such authorities, a belief is bound to get formed in any reasonable mind about income having escaped assessment.

11.1.2 Further, in my view the recording of reasons for the purpose of taking necessary administrative approval from the higher authorities in respect of the information received as above involves adequate application of mind not only of the Assessing Officer but also of the higher authorities. This process of administrative approval and recording of the reasons cannot be completed without due application of mind. The same process also results in formation of a belief in the mind of the Assessing Officer as well as the higher authority.

11.2 On the basis of above discussion, I find that the reassessment proceedings were initiated after adequate application of mind. In fact, after receipt of the above stated information from the Investigation Wing, the A.O. was duty-bound to do so. Regarding the third contention of the appellant that the Assessing Officer did not have the jurisdiction because the name of the company had changed, it is pertinent that the jurisdiction of the Assessing Officer emerges from assignment of PAN to different authorities through a computerized process. Unless PAN is migrated from one Assessing Officer to another, the jurisdiction does not change.

11.2.1 In the instant case, since long the assessing Officer who issued the notice u/s 148 had jurisdiction over the assessee. Further, Even though the name of the company was changed with effect from 16.12.09, there is no mention in the Assessment Order that the appellant submitted the incidence of change of name and/or made a request for transferring the case to another jurisdiction either before the Assessing Officer or before any other authority before the reassessment proceedings.

11.3 During the appellate proceedings the appellant did bring to the attention of the Assessing Officer vide letter dated 26.12.14 (i.e. 10 months after the issue of notice u/s 147 and about 3 months before the passing of the Assessment Order) the information regarding change of name. The information was communicated to the Assessing Officer just before the conclusion of the assessment proceedings. It is imperative that non communication of change of name to the Assessing Officer for 7 long years and racking up the issue just before the conclusion of the assessment proceedings were due to self serving design of the appellant. It is also possible that for earlier assessment years also the assessment was completed by the same Assessing Officer to which any objection raised by the appellant is not visible anywhere.

11.3.1 The Assessing Officer has passed the order in the name of 'M/s Minal systems (previously known as Tulip Systems Pvt. Ltd.)' which is the correct way to do it by taking into a/c the late information about name change.

11.4 The appellant has also contended that since the A.O. has not disposed of the objections raised by the Assessee against the reasons recorded before passing of the order u/s 147, the reassessment is null and void.

11.4.1 The appellant has claimed that it had raised objections to reopening vide letters dated 23.01.15 & 5.12.14.

11.4.2 The letter dated 23.01.15 reads as under:-

“1. This is in Continuation of my earlier submission made on 05/12/2014 in this matter. As requested in earlier submission, I again make my request to supply us copy of all the documents relied upon by the AO for making an opinion that income has escaped assessment. 2. The above clearly shows that Ld A.O. has merely acted on the report of investigation wing and has not applied his mind. Before issuing any notice U/s 148 the A.O must have reasons to believe that any income chargeable to tax has escaped assessment. Reason to believe can't be a reason to suspect merely. Mere surmise or suspicion can't be ground to reopen assessment. There must be direct nexus between the material coming to the notice of A.O and formation of the belief that there has been escapement of income of the assessee from assessment in a particular year. Since the documents relied upon in the reason for reopening of assessment has not been confronted with the assessee, the action of A.O for reopening of assessment is illegal and against the facts of the case and should be dropped.

3. The Ld. High Court of Delhi in a very recent judgment of Volvoline Cummine Ltd. (CIT Vs Volvoline Cummine Ltd) ITA 319/2014 dated 21/11/2014 made the following observation:

4. It was the responsibility of the Revenue to bring on record documents and material to show and establish that the "provisions" related to unascertained liability and the Assessing officer while forming his opinion and recording "reasons to believe" was in knowledge of or aware of "formation or material to show that what was shown under the head "provisions" was not certain and accrued liability. In the absence of any material 'or information "reasons to believe" of has to be held not relevant and meet the rest of satisfaction', requested to sustain the reopening use of heading or word provision on the balance sheet it is apparent become the material of or information to reopen. The word / expression "Provision" by itself and alone without other information/material, would not

reflect and indicate unascertained liability. Thus, the assumption drawn by the Assessing Officer in the "reasons to believe" is farfetched, vague, and a mere pretense. It is also extraneous and irrelevant to the issue and formation of belief that "unascertained liability" had been claimed and allowed as expenditure."

5. In the present case also A.O has merely acted on the report received from investigation wing and has not investigated further before reopening the assessment. This is evident from the fact that the documentary evidence supporting the contention of A.O. that there are accommodation entries taken by assessee has never been supplied and confronted with assessee. More so we are enclosing herewith copy of ITR, computation sheet and confirmation of those entities who have given this money as unsecured loan to the assessee. As the assessee has discharged it's onus to prove the identity and credit worthiness of the lenders, the A.O. is with in his power to investigate the lenders under Income Tax Act. This clearly shows that "reasons to believe" has been formed in a very mechanical and casual manner and rightly pointed out as above by Ld. Delhi High Court: that there is a difference between reason to believe and reason to suspect. Further also we have sought copy of statement and other documents where the name of assessee has been specifically stated for the alleged transactions.

6. Further to this Hon'ble Supreme Court has laid down procedure in GKN Driveshafts (India) Ltd v/s. ITO (2003) 259 ITR 19 (SC) for reassessments. As per the said Judgment, the assessee hereby objects to the issuance of notice u/s 148 for assessment year 2010-11 on the grounds that the reopening proceedings are just based on the conjunctures, surmises and imagination of A.O. and is not supported by any documentary evidence and also this case was not in the jurisdiction of the A.O. at the time of reopening of assessment. You are requested to pass a speaking order and dispose of the objections giving reference of Judgment of Hon'ble Supreme court in GKN

Driveshafts (India) Ltd Vs ITO (2003) 259ITR19(SC). 7. The perusal of above show that assessee has filed the documents necessary to prove the identity of lenders, and hence the proposed addition of Rs. 30,00,000/- as mentioned in show cause notice may not to be made. ”

11.4.3 The letter dated 5.12.14 referred above reads as under:-

“This is in response to notice u/s 143(2), 142(1) and copy of reasons for reopening of assessment u/s 148 supplied to us.

The Perusal of your letter dated 06/01/2014 where you intend to seek sanction for issue of notice u/s 148 of the Act, it is most respectfully submitted that you are requested to supply the copies of documents /statement which you intend to use against the assesses for finalizing assessment after issuance of notice u/s 148 of the Act. Further you are requested to summon the alleged company through their director by all mode of services for the alleged entries.

In the meantime you are requested to adjourn the case for providing the copies of entire matter as discussed above. ”

11.4.4 From a perusal of the contents of the letters it becomes clear that the letter dated 05.12.14 is primarily an adjournment application which also makes a request for supplying the copies of documents and statements etc.

11.4.5 Similarly, the letter dated 27.01.15 is mainly a repeat request for supply of the documents.

11.4.6 I have also noted that in the last Para of the letter dated 23.01.15 there is a request to not make the proposed addition of Rs. 30 lakhs. The ‘observations’ and ‘advices’ contained in Para 2 of letter dated 23.1.15 and vide Para 2 and 4 of letter dated 5.12.14 are not the focus of the letters and are at best routine rhetoric in nature. I have also noted that these letters were written after 11 months of issue of notice u/s 147 and merely 2 months before the completion of the reassessment proceedings.

11.4.7 The motive for including these submissions in a letter primarily requesting for supply of copies of documents could be to

divert the focus of the Assessing Officer away from the substantial issue. In fact the contention raised vide Para 2 and 4 of the letter dated 23.01.15 that the action of the A.O. in reopening the assessment is bad in law because the reasons for reopening have not been confronted with the assessee, is at best a wrong description of the circumstances. In fact, on 26.06.14, that is 5 months before the said letter, the copy of the reasons recorded was duly supplied by the Assessing Officer to the appellant. Clearly, for 5 months after seeing the reasons the appellant raised no objection to reopening of the assessment proceedings. In fact, in the assessment order as well as in the submissions of the appellant, I have not been able to find any 'objection' to the reassessment proceedings raised by the appellant at the assessment stage. 11.4.8 It is further noted that on the same date viz 23.01.15 the appellant tiled the copies of ITR, copies of bank accounts of lenders, copies of the balance sheet & profit and loss A/c etc. before the A.O. Clearly, the conduct of the Appellant in complying with the reassessment proceedings and asking for supply of photo copies etc. demonstrated Appellants acceptance of the reassessment proceedings.

11.4.9 Based on the above observations I find no legal infirmity in the reassessment proceedings and consequently, I have not an iota of doubt that both the issue of the notice as well as the Assessment Order are good in law.”

5. On the issue of merits, after considering the entire facts and material placed on record by the assessee as well as on behalf of the Assessing Officer, Ld. CIT(A) has drawn various inference based on the facts and material, which are as under:-

“(a) The details of the transactions of the Appellant with the three companies were retrieved/came to knowledge of the department in the course of search on a third party.

(b) The said third party admitted on oath that it earns its livelihood by supplying accommodation entries for which cash is collected from the potential beneficiaries, deposited in different bank accounts belonging to different Pvt. Ltd. Companies. These companies are registered by the entry operator. The operator also maintains the necessary statutory documentation in respect of these companies and has a de-facto control over the bank accounts of these companies.

(c) The appellant had a clearly discernible motive for indulging in a sham transactions by which its unaccounted money finds a way in its books of accounts and becomes legitimate without paying due taxes and only by paying just a fraction of the due taxes as commission to the entry operator.

(d) As discussed in Para 11.4.9 above, the re assessment proceedings suffer with no legal infirmity.

(e) The appellant furnished copies of PAN, certificates of registration, final audited accounts, copy of the bank account and confirmations from the creditors before the Assessing Officer. (f) Examination of bank account of these creditor companies revealed a pattern of instant credit and debits of only the relevant amounts/ Cash deposits of equivalent amounts just before the issue of the cheque by the creditor company.

(g) The balance sheet and profit and loss accounts of these companies reveal that effectively there is no business carried

out by the company and the companies are used only for the purpose of providing accommodation entries.

(h) Summons served to the creditor companies either returned unserved or were not complied with. The unserved summons raise a doubt about the very existence of the concerned company and the uncomplied summons shift the onus of proving the genuineness & credit worthiness of the transaction on to the assessee.

(i) The appellant refused to produce the creditors before the A.O. expressing its inability to do so thus in effect absolving itself from the onus cast upon it under Section 68.

(j) No collateral security/ guarantee was furnished for obtaining the above loan.

(k) The loan has neither been returned till date nor is any interest ever paid on it for last 7 years thereby implying that the motive of the creditor companies was not earning of interest on investment.

(l) The Assessing Officer did not provide an opportunity to the appellant to cross examine either Shri Surender Kumar Jain or Shri Virender Kumar Jain (both entry operators) or Shri Rajesh Aggarwal whose statement was recorded during the search proceedings or Shri Goyal Sahab who was the middlemen between entry provider and the appellant.

(m) The investigation wing only recorded that cash was deposited in the bank accounts mentioned above. Neither, the Assessing Officer nor the investigation wing has established that the cash deposited in those bank accounts emerged from the coffers of the appellant.

(n) For this year regular assessment u/s. 143(3) was not done before.

13.9 Except items (e), (1) and (m) of Para 13.8, all other facts lead to the inevitable outcome that the above transactions cannot escape the provisions of section 68.”

6. Thereafter, following the ratio and the decision of Hon'ble Jurisdictional High Court in the case of **CIT vs. MAF Academy (2014) 42 taxmann.com 377**, Ld. CIT(A) held that all the facts lead to inevitable conclusion that the transactions are not genuine and addition has rightly been made u/s.68, because all the documents lose credibility in the light of the fact that the entity which has given the loan was run by entry provider who himself admitted that he has provided the accommodation entry; secondly, exact amount of cash was found to be deposited in the bank accounts of these companies just before the advancing of the alleged loans to the assessee company and they have dummy directors, existing at paper just to provide accommodation entry and their creditworthiness itself was in doubt. Accordingly, he has confirmed the addition made by the Assessing Officer.

6. After hearing the Id. DR and on perusal of the impugned order, we find that here in this case based on specific information and material found during the course of investigation in the case of Shri S.K. Jain, the assessee was found to be beneficiary of accommodation entry and there was specific mention of cheque and details and the entity providing the entry along with date, which also

commensurate with the entries in the assessee's books of account. Such an information and material *prima facie* goes to show that the transaction entered by the assessee was not genuine and thus, constitute tangible material for forming reason to believe that income chargeable to tax escape assessment. The reasoning as incorporated by the Ld. CIT(A) is not only based on correct facts but also had correct appreciation of law and we do not find any reason to deviate from such a conclusion and absence of any rebuttal from the side of the assessee. Accordingly, the validity of reopening is upheld.

7. In so far as issue on merits is concerned, apart from fact that the details of the transaction of the assessee were unearthed during the investigation carried out in the case of Shri S.K. Jain who admitted that he was an entry provider but assessee was found to be beneficiary in the inquiry conducted in the case of Mr. S.K. Jain. Not only that, Assessing Officer has asked for further details from the assessee which could not be provided as noted by the Assessing Officer. Thereafter, the Assessing Officer has conducted his inquiry and issued summons and notices to the three entities. However, none of the parties responded on the notices sent came back unserved. When assessee was confronted with this fact and was asked to produce the Director/Principal Officer of the company who have given loan, the assessee could not comply with such a requisition by the Assessing Officer. Thus, genuineness of the

transaction and the creditworthiness could not be established. Another important fact as noted by the Ld. CIT(A) is that, before issuing the cheques in the form of loan to the assessee, exact amount of cash was found to be deposited in the bank account of these companies and these companies were managed and controlled by Shri S.K. Jain through dummy Directors which fact has emerged from the inquiry made by the Investigation Wing. In such a situation, the onus lies heavily upon the assessee to rebut and allay the doubts, which assessee has failed to do so. Therefore, the burden cast upon the assessee to prove the creditworthiness and genuineness of the transaction could not be proved. In absence of any contrary material, we do not find any reason to deviate from the finding recorded by the Ld. CIT(A) and same is confirmed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on February, 2020.

**[G.S. PANNU]
VICE PRESIDENT**

**[AMIT SHUKLA]
JUDICIAL MEMBER**

DATED: February, 2020

PKK: