

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

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1694/Del/2014 :Asstt. Year : 2004-05

M/s Homeway Marketing Pvt. Ltd., 39/2068, Naiwala, 315, Dakha Chember, Karol Bagh, New Delhi-110005	Vs	Income Tax Officer, Ward-12(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCH0130Q		

ITA No. 878/Del/2014 :Asstt. Year : 2004-05

M/s Hopewith Admark & Consultancy Services Pvt. Ltd., 39/2068, Naiwala, 315, Dakha Chember, Karol Bagh, New Delhi-110005	Vs	Income Tax Officer, Ward-12(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACH6960P		

**Assessee by : Sh. Deepak Ostwal, CA
Revenue by : Sh. S. N. Meena, Sr. DR**

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Date of Hearing: 04.03.2020	Date of Pronouncement: 21.05.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the order of the Id. CIT(A)-XI, New Delhi dated 29.11.2013 in ITA No. 878/Del/2014 and the order of the Id. CIT(A)-XVIII, New Delhi dated 24.12.2013 in ITA No. 1694/Del/2014.

2. Since, the issues involved in both the appeals are similar in nature except the quantum involved they are being adjudicated together.

3. At the outset, the Id. AR argued that since the addition made by the AO is not in accordance with the reasons of reopening the additions made by the Assessing Officer are liable to be quashed.

4. The Id. DR has vehemently argued that the additions made follows the reasons recorded for reopening of the case and owing to the Explanation III to Section 148 of the Income Tax Act, 1961 introduced w.e.f. 01.04.1989 by the Finance Act, 2009 empowers the Assessing Officer to make addition of any other escaped income for the assessment year which may have come to his notice during the assessment proceedings. He strongly relied on the orders of the authorities below.

5. Heard the arguments of both the parties and perused the material available on record.

6. The reasons recorded by the Assessing Officer are as under:

"The Directorate of Income Tax (Investigation), New Delhi has carried out investigation in the cases of certain group of persons who were providing accommodation entries. These enquiries were initiated to probe into some bank accounts which were used to issue cheques to entry seekers or beneficiaries against cash paid by them to the entry operators. Such a camouflaged transaction came to light during the course of Survey in the case of M/s. Gurcharan Jewellers whose proprietor Shri Ashok Kumar Chauhan had admitted to have taken cheques under the garb of gifts after giving cash to the entry operator. Probe was initiated into the accounts which were used to provide these entries. These investigations led to revealing of many more bank accounts which were being used by the entry operators for the purpose of giving accommodation entries.

2 Extensive enquiries were made, into numerous such bank accounts, the account holders, the persons operating these

accounts and the persons for whom such account holders were working. These enquiries revealed inter alia the following: -

2.1 Entries were being broadly taken for two purposes:

1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.

2. To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

2.2 The assessees who had unaccounted money (called as entry takers or beneficiaries) and wanted to introduce the same in the books of accounts without paying tax, approached another person (called as entry operator) and handed over the cash (plus commission) and had taken cheques/DDs/POs. The cash was being deposited by the entry operator in a bank account either in his own name or in the name of relatives/friends or other persons hired by him, for the purpose of opening bank account. In most of these bank accounts, the introducer was the main entry operator and the cash deposit slips and other instruments were filled by him. The other persons (in whose name the A/c is opened) only used to sign the blank cheque book and hand over the same to the main entry operator. The entry operator then used to issue cheques/DDs/Pos in the name of the beneficiary from the same account (in which the cash is deposited) or another account in which funds were transferred through clearing in two or more stages. The beneficiary in turn deposited these instruments in his bank accounts and the money came to his regular books of account in the form of gift, share application money, loan etc through banking channels.

2.3 The operators gave the account holders amounts ranging from Rs 1000 to 2000 per month. These account holders were masons, plumbers, electricians, peons, drivers etc, whose earnings are not sufficient for a living. They earned normally Rs 3 to 5 thousand per month in their normal work and by working for the entry operators earned extra income of Rs 2 to 4 thousand per month. Their signatures were taken on blank gift deeds, cheque books, share application money etc. In fact these persons signed all types of papers they were asked to sign. They were made directors of companies, partners of firms and proprietor of different concerns solely for operation of these accounts. Actually, many of them were not even aware of the tax implications etc. Their only concern

was with the few thousand rupees given to them by the entry operators.

3. Summing up, the report as a result of these extensive enquiries carried out by the D.I.T. (Inv.), New Delhi has assailed genuineness of transactions, whether shown by beneficiaries as inflow of Share Capital/ loan or receipt of Gifts or consideration for sale- purchase. It has also dealt a body blow to the creditworthiness of the persons/persons controlling the concerns who have given these credit entries/share capital/gifts/sale consideration as they have been seen to be men of no means.

4. In the instant case of the assessee, M/S Hopewin Admark & Consultancy Services Pvt. Ltd. the following credits have been shown in the bank account:

Bank of the Assessee	Branch of the Bank	Instrument No.	Amount	Date	Credit entry coming from the account of
CITI BANK	SANSAD MARG	609052	500000	15.07.2003	PARAM ENTERPRISES
CITI BANK	SANSAD MARG	609054	400000	19.07.2003	PARAM ENTERPRISES
CITI BANK	JEEVAN BHARTI BUILDING	884002	500000	09.08.2003	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	884015	200000	04.09.2003	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874986	250000	28.02.2004	- P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874994	250000	09.03.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874996	150000	09.03.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	857650	400000	23.03.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874961	200000	16.01.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874962	200000	16.01.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	874983	160000	26.02.2004	P.K. INVESTMENTS
CITI BANK	JEEVAN BHARTI BUILDING	879003	340000	27.01.2004	P.K. INVESTMENTS

4.1 Enquiries revealed that one Shri Vishal Aggarwal, S/o Shri Harish Aggarwal, R/o Wzd/137, Arya Samaj Road, Uttam Nagar, New Delhi was controlling a number of bank accounts in various names & was using various persons to operate these accounts. In this regard, statements on oath u/s 131 of the I. T. Act, 1961 of Shri Vishal Aggarwal was recorded on 05.03.2005 by the Addl. D.I.T. (Inv.), Unit-1, New Delhi Following is the gist of the statements containing admissions relevant to this case: -

(i) Statements were given on oath by Shri Vishal Aggarwal before Addl. D.I.T. (Inv.), Unit-I, New Delhi in which he has admitted to have indulged in giving entries. He has also admitted that he is controlling various persons who sign on his behest to provide the accommodation entry and the assessee company M/s Hopwin Admark & Consultancy Services Pvt. Ltd. is one such concern which is engaged in providing such accommodation entries to various beneficiaries. Statement of Smt. Manju Aggarwal was also recorded on oath admitting the same facts. In an answer to Question no. 12 Shri Vishal Aggarwal is admitted that he got a commission of Rs. 0.25 on cash transaction and 0.50 on transfer transaction.

4.2 In view of the findings of the investigation report and categorical admission by the entry provider it is clear that the entry provider has used the assessee company to provide the accommodation entries to the tune of Rs. 35,50,000/-. On perusal of the return filed by the assessee it has been observed that the assessee has received fresh share application money of Rs. 10.5 Lacs and made a fresh investment of Rs. 10 lacs and shown service charges received of Rs.6.3 Lacs and sales of Rs.9.83 Lacs and claimed expenditure of Rs.16.66 Lacs.. The assessee has also reduced its current liabilities by Rs.7.09 Lacs. The assessee has thus helps various beneficiaries in providing accommodation entries in relation to capital & expenses. Since all these transactions are sham transaction and has been done for providing accommodation entries on which the assessee has earned the commission but has not reflected the same in its books of account. The lenders in these cases have been proved to be men/parties of no creditworthiness. I therefore have reasons to believe that this amount of Rs. 95.88 Lacs represents income of the assessee chargeable to tax and the commission on this amount which has escaped assessment for A.Y. 04-05.

The necessary approval u/s 151(2) may kindly be accorded for issue u/s 148 of the income Tax Act, 1961 for A.Y. 04-05."

7. From the detailed examination of the reasons, we find that it consists of two parts.

Part A:

1. The assessment has been reopened based on the information received from the Investigation Wing, New Delhi.
2. The information pertains to entry operators who are involved in giving accommodation entries.
3. The AO held that the assessee has received credits into the bank account of the assessee.
4. The AO held that based on the statement recorded on oath u/s 131 of the Act of one person namely, Sh. Vishal Aggarwal that accommodation entries were provided by the assessee and the assessee is engaged in providing accommodation entries to various beneficiaries. In conclusion, the AO held that the assessee has been used to provide accommodation entries to the tune of Rs.35.50 lakhs. Thus, helping various beneficiaries in relation to capital and expenses.
5. The AO held that the assessee has earned the commission but not reflected the same in the books of account.

Part B:

While holding that the assessee has not accounted the commission received for providing entries and at the same time, the AO held that he has reasons to believe that an amount of Rs.95.88 lakhs represents the escaped income of the assessee. The amount of Rs.95.88 lakhs has been derived by the Assessing Officer which is as under:

- a. An amount of entries provided Rs.35.50 lakhs
- b. Fresh year application Rs.10.50 lakhs

c. Fresh investment	Rs.10 lakhs
d. Service charges	Rs.6.30 lakhs
e. Sales	Rs.9.83 lakhs
f. Expenditure	Rs.16.66 lakhs
g. Decrease in liabilities	Rs.7.09 lakhs

8. On culmination of proceedings, the Assessing Officer has made additions on account of amount routed through him for giving accommodation entries of Rs.35,50,000/- and Rs.10,50,000/- on account of the amounts received in cash as well as cheque on account of share capital. The additions made by the Assessing Officer are examined in the light of the reasons for reopening recorded by the Assessing Officer. On perusal of para 4.2 of the reasons, we find that the AO initially held that the assessee company has been used to provide accommodation entries to the tune of RS.35,50,000/- and the commission received has not been reflected in the books of account. Having said so, the Assessing Officer went ahead with taxing the entire amount in the hands of the assessee which was utilized for providing the entries. Similarly, the addition made by the AO on account of the share capital of Rs.10,50,000/- received from various individuals namely, Harish Aggarwal, Parmanand Bhardwaj, Suvan Agro Enterprises Pvt. Ltd. and Topchem India Pvt. Ltd.

9. The AO has calculated an amount of Rs.95.88 lakhs as representing the income of the assessee chargeable to tax and the commission on this amount has escaped assessment (last line of para 4.2 of reasons). This clearly proves that the mind of the Assessing Officer revolved only on the commission income. Even if, it is assumed that the AO has considered an amount of Rs.95.88 lakhs as income escaped, we find that this has been derived by the AO by adding up amount of the entry provided, amount of the share application received, amount of the fresh investment, service

charges received, sales, expenditure and reduction of liabilities. With great pain, we have to hold at this point that the Assessing Officer has taken the debits, credits income expenditure, the liabilities expenses altogether added up and considered it as an escapement of income. The initial assumption of the AO that the assessee has not accounted the commission income being a conduit of the entry operator has been enlarged to the assumption to escapement of income adding up of the figures of balance sheet and P&L a/c. Such action on the part of the Assessing Officer smacks of the basic application of mind while recording the reasons. Therefore a conclusion arises as to abject non-application of mind. It is apparent that the AO did not apply his own mind to the information and examine the basic material for information. The information has not been examined with reference to the facts on record with the assessing authority or with the return of income filed by the assessee. It is discernible that the AO has not applied his mind to the material received as well as to the material before him in the form of assessment records to come to a correct conclusion that the income had escaped assessment. From the reasons recorded, we find that the Assessing Officer had no clarity as to what he considers as income escaped assessment whether the commission on the entries provided or the total amount of entries. Further, while calculating the assessment proceedings, the Assessing Officer made addition of the entries which the Assessing Officer himself has accepted that these entries have been provided to other companies as accommodation entries. In that case, there is an inbuilt contradiction in the action of the Assessing Officer while concluding the assessment proceeding. The AO treats that the assessee has been utilized to provide entries to other companies wherein he treated the assessee as a conduit and also he treated the assessee as the owner of this amount. The AO mentions that the assessee is helping various beneficiaries in providing accommodation entries in relation to capital and expenses. On merits, the AO has not made any primary,

independent enquiry to arrive at a conclusion to tax the amount u/s 68 of the Act.

10. In nutshell, since the Part A of the reasons recorded are clear and lucid about the method and modus of the entries being forwarded by the assessee company and not accounting the commission received thereof, and owing to the fact that the assessee has refused the opportunity of refuting the evidences gathered by revenue that Sh. Vishal Aggarwal and others has used the company as a conduit to give accommodation entries, the addition made on account of commission income earned by the assessee on the amount of the entries provided is hereby confirmed. Since, the assessee is proven to be a conduit/pass through entity without any business of its own, no other addition in the hands of the assessee company is warranted.

11. Owing to the nature of the allegations and non-application of mind, we hold that Part B of the reasons recorded cannot be held to be valid cease to survive. Consequently, the additions made by the Assessing Officer are liable to be deleted.

12. In the result, the appeals of the assesseees are partly allowed.

Order Pronounced in the Open Court on 21/05/2020.

Sd/-

(Sushma Chowla)
Vice President

Dated: 21/05/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR