

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-1' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2323/DEL/2017  
[Assessment Year: 2007-08]

Nishit Fincap Pvt Ltd  
B-1/14 Rana Partap Bagh  
New Delhi

Vs.

The I.T.O  
Ward - 18(3)  
New Delhi

PAN: AACN 3687 M

[Appellant]

[Respondent]

Date of Hearing : 15.09.2020  
Date of Pronouncement : 16.09.2020

Assessee by : Shri Suresh Kumar Gupta, CA

Revenue by : Shri R.K. Gupta, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 6, New Delhi dated 15.02.2017 pertaining to assessment year 2007-08.

2. Vide Ground Nos 1 to 1.6, the assessee has challenged the validity of the reassessment proceedings by raising several issues and claiming that the notice issued u/s 148 of the income tax Act is bad in law.

3. Ground Nos. 2, 3 and 4 challenge the addition on merits of the case.

4. Representatives of both the sides were heard at length, case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

5. Facts on record show that, in this case, the original assessment was framed u/s 143(3) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short]. Subsequently, the Assessing Officer came to notice that the assessee company had received accommodation entries to the tune of Rs. 38 lakhs during the year under consideration. This was pursuant to the information received from the Investigation Wing and on the basis of the report of the Investigation Wing notice u/s 148 of the Act was issued and served

upon the assessee. The reasons for belief that income had escaped assessment read as under:

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**Reasons for the belief that income has escaped assessment in the case of M/s. Nishit Fincap Pvt. Ltd. (PAN AAACN3687M)**

PUC is a proposal for reopening the case u/s 147 of the IT Act for the A.Y. 2007-08 in the prescribed proforma.

A search and seizure action u/s 132/133A of the Income Tax Act, 1961, was conducted at the residential and business premises of Shri Surender Kumar Jain group of cases (entry operator). During the course of post search investigation and preparation of appraisal report it has been evidently established that Shri Surender Kumar Jain is known entry providers and is in the business of providing accommodation entries to various beneficiary companies/entities/persons through cheques through a number of paper & dummy companies in lieu of cash. These dummy companies are totally managed and controlled by Shri Surender Kumar Jain.


During the course of search action vast number of incriminating documents were found and seized. These documents includes date wise and month wise hand written cheque books and cash books maintained by Shri Surender Kumar Jain over a long period of time. In these cheque books and cash books details of cheque provided to the beneficiary companies/entities/persons companies/ entities/ persons were recorded date wise.

From the verification of the documents seized from the residence of Shri Surender Kumar Jain it clearly appears that the assessee company had obtained accommodation entries from various paper companies of Shri Surender Kumar Jain in lieu of cash during the financial year 2006-07 relevant to the assessment year 2007-08 for a total amount mentioned against their names. These bogus share capital and premium has clearly escaped taxation in these assessment years therefore these amounts are required to be taxed in the hands of these companies by initiating action under section 148 of the Income Tax Act, 1961.

Details of the company/ entity/ person and cheque/ pay orders issued in the name of this company/ entity/ person are reproduced below in a tabular form:

Bank Book Date	From	To	Bank	Cheque/ RTGS	Cheque Date	Amount	Through	An nx No	Page No.
25.07.06	Vogue Leasing & Finance Pvt. Ltd.	Nishit Fincap Pvt. Ltd.	UTI	046851	27.07.06	9,00,000	Satish Goel	A-59	25
25.07.06	Pelicon Finance & Lease Ltd.	Nishit Fincap Pvt. Ltd.	UTI	006136	27.07.06	9,00,000	Satish Goel	A-59	25
15.09.06	Hillridge Investments Ltd.	Nishit Fincap Pvt. Ltd.	UTI	046864	15.09.06	10,00,000	Satish Goel	A-61	14
28.12.06	Hillridge Investment Ltd..	Nishit Fincap Pvt. Ltd.	UTI	080483	29.12.06	10,00,000	Satish Goel	A-63	Back page
<b>Total</b>						<b>38,00,000/-</b>			

I have perused the information received from the Investigation Wing, New Delhi. The Investigation Wing of the Department has sent comprehensive details comprising inter alia the Beneficiary's Name, Value of entry Taken, Date on which Entry taken etc.

  
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In the aforesaid case return of income was filed on 31.10.2007 declaring income of Rs.42,330/- and the assessment was completed u/s 143(3) at total income of Rs.61,050/- vide order dated 21.12.2008. Subsequently, after receipt of information of accommodation entries taken by the beneficiaries, it is noticed that the assessee company M/s Nishit Finance Pvt. Ltd. received accommodation entries to the tune of Rs.38,00,000/- during the F.Y. 2006-07 relevant to assessment year 2007-08 from the entry operators as mention in the chart above.

Having perused and considered the information, I have reason to believe that income of the assessee company to the extent of Rs.38,00,000/- has escaped assessment for the A.Y. 2007-08 on account of failure on part of the assessee company to disclose fully and truly all material facts/ particulars of its income necessary for its assessment for the A.Y. 2007-08. Therefore, proceedings u/s 147 i.e. Clause (b) of explanation 2 of provisions of Section 147 of the I.T. Act, 1961 is proposed to be initiated for A.Y. 2007-08.

Since four years have elapsed from the end of the relevant assessment year i.e. A.Y. 2007-08, approval of the Commissioner of Income Tax Delhi-V, New Delhi is solicited u/s 15(1) of the I.T. Act, 1961.

6. A perusal of the aforementioned reasons show that the basis for reopening a completed assessment after four years relate to the information that the assessee has received share application money from three companies which were alleged to be paper companies/ dummy companies and were nothing but accommodation entry providers.

7. Notice u/s 148 of the Act is dated 26.03.2014. The three companies alleged to be entry providers are:

1. Vogue Leasing and Finance Pvt Ltd
2. Pelicon Finance & Lease Ltd
3. Hillridge Investments Ltd

8. Facts on record show that two of the aforementioned three companies, namely, Pelicon Finance & Lease Ltd and Hillridge Investments Ltd. were subjected to assessment u/s 153C r.w.s 153A of the Act and their assessment orders are dated 28.03.2013. This means that the alleged entry providers pertaining to some Jain group were assessed months before the issue of notice u/s 148 of the Act by the Assessing Officer in the present case. This means that there was no application of mind by the Assessing Officer before issuing the notice because he was very much aware of assessments of these two companies.

9. I have carefully perused the assessment orders which are placed in the paper book. The assessments of both these companies were framed on the returned income and no adverse inference whatsoever has been drawn in their case.

10. Observations of the AO at Para 5 are very relevant to show that the entire reopening is devoid of any application of mind. Para 5 reads as under:

"During the post search investigation, spot visit enquiries made by the Investigation Wing revealed that the companies from whom cheques in lieu of cash were received by the assessee were non est. Spot visit enquiries were also made by deputing the Inspector of this Ward in respect of the above companies as mentioned in the chart in para-1 which as stated above are admitted by Shri Surinder Kumar Jain as his paper/dummy companies and the spot visit enquiries so made have revealed that these companies are not in existence. Report of the Inspector is placed on record."

11. As mentioned elsewhere, the assessments of the aforementioned two companies were framed u/s 153C r.w.s 153A of the Act. Therefore, the observations by the Assessing Officer that these companies are non-est and only paper companies are without any basis, keeping in mind that the assessments of the two companies were completed months before the issue of notice u/s 148 of the Act.

12. Further, as mentioned elsewhere, reopening is after more than four years and therefore, first proviso to section 147 of the Act squarely applies and nowhere the Assessing Officer has mentioned that

there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

13. Let us now consider the original assessment proceedings.

14, Vide letter dated 25.09.2009, the Assessing Officer raised the following queries:

“1. copy of your return tiled for the A.Y. 2007-08. computation of your income, audited Profit & Loss Accounts, Balance sheet. Audit Report and fax Audit Report in Form *No.3CO* with all the Annnexure/schedule.

2. A brief history of the case along with description on the nature of business activities carried out by the assessee company during the financial year relevant to Asstt. Year. 2007-08 and the date of it's starting. In case of any change in the business activity from that of the immediately preceding year or apart from existing business any new business started during the year, please elaborate the same.

3. A comprehensive note on all sources of income. Details of premises occupied for business activities specifying whether these premises are on rent, on lease or self owned and their use i.e. office, factory, godown, show room, guest house, store, branch office etc. with their complete addresses and telephone numbers.

4. Name and complete addresses of all the Directors of the company with jurisdiction where they are being assessed to tax at present.
5. Name and addresses of shareholders with percentage of their shareholding.
6. Name and address of your entire sister concern with jurisdiction where they are being assessed to income tax.
7. Please furnish the detail of the share capital introduced/share application money received.
8. Details about all employees along with their present and permanent residential addresses. PAN and details of Ward/Circle where being assessed to tax with copy of acknowledgement of latest 1.1. Return filed.
9. Please inform whether the same employees are continuing as on date, if no, details regarding their change be furnished.
10. Scrip wise details of investments
11. Details of loans, deposits, advances taken or given & squared up accounts of loans/ advances during the accounting period alongwith complete addresses of the parties with source, credit worthiness, genuineness and necessary copy of confirmation having PAN & copy of Acknowledgement of latest I.T. Return filed.

12. Complete details of interest paid & received during the year along with copy of account in the Books of Account for the period from 01.04.2006 to 31.03.2007.

13. Complete details of new investments made during the year giving source of investment & mode of its payment.

14. Complete details of (i) Cash Receipts & (ii) Cash Payments (separate) exceeding Rs20,000/- as per Cash-Book for the period 01.04.2006 to 31.03.2007 in the following format: -

S.No.	Date	Name & address of the Party	Amount	Nature of Transaction
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15. Comparative trading results for the last three years, shortfall if any, reasons thereof.

16. Copies of Sales tax return filed, if applicable in your case.

17. Details of month-wise & party-wise sales and purchases made during the year with total purchases and sales made till February 2007 and purchases and sales made in the month of March-2007 specifying credit purchases credit sales giving names, addresses and confirmation from the parties.

18. Cash flow statement for the year ending 31.03.2007.

19. Please furnish the details of your bank accounts such as Account No., name and address of the branch. Copies of all bank statement with complete narration of debit and credit entries mentioned therein for the previous year ending 31.03.2007. the details of I-'D account, if any maintained may also arc furnished.

20. Bank reconciliation statement of the previous years ending 3 1.03.2007.

21. Details of all movable assests and immovable properties for the year ending 31.03.2006 and 31.03.2007. .

22. Statement of affairs or B/S in respect of the company and the directors as well for the previous year ending 3 1.03.2006 and 3 1.03.2007.

23. Nature, month-wise details and documentary evidence of all expenses exceeding Rs. 20.000/- debited in accounts and copies of ledger accounts.

24. Details of complete addresses of sundry debtors. Circle/Ward in which they arc- getting assessed and their PANs alongwith confirmation of amounts in cases exceeding Rs. 50. 000/-

25. Details of complete addresses of sundry creditors. Circle/Ward in which they arc- getting assessed and their PANs alongwith confirmations of amounts in cases exceeding Rs. 50,000/-.

26. Furnish comprehensive details of Opening and Closing stock in terms of quality, quantity and value alongwith supporting evidence.

28. Furnish copy of M.O.A. and copy of certificate of ROC showing date of incorporation of the company.

29. Copy of latest assessment order u/s 143(3) passed in your case in the earlier year."

15. Query No. 7 is in relation to share capital and share application money received. This means that specific query was raised in respect of share application money and vide reply dated 16.11.2009, the assessee furnished all details as required by the Assessing Officer.

16. Pursuant to the reply of the assessee and on perusal of the details, the Assessing Officer issued notice u/s 133(6) of the Act to the three share applicant companies. Not only these companies complied with the notices received u/s 133(6) of the Act from the Assessing Officer, but all of them filed confirmations, confirming the transactions along with bank statements and copies of Income Tax returns.

17. On the basis of these documents, which are part of the paper book, I have no hesitation to hold that the observation of the Assessing Officer that the share applicant companies are non-est is without any basis.

18. The original assessment was completed after due verification from share applicant companies and share applicant companies have been assessed to tax u/s 153C read with section 153A of the Act post search and post enquiries made by the Assessing Officer.

19. In my considered opinion, considering the totality of the facts of the case in hand, I find that reopening is nothing but change of opinion when every aspect was examined in the original assessment proceedings.

20. The Hon'ble Supreme Court in the case of Marico Limited SLP (CIVIL) Diary No.7367/2020 arising out of final judgement and order dated 21.08.2019 in WP No. 1917/2019 passed by the Hon'ble High Court of Judicature at Bombay has dismissed the SLP by holding as under:

"In the present matter, the assessment order was passed on 30.01.2018 as regards the Assessment Year 2014-15.

According to the record, certain queries were raised by the Assessing Officer on 25.09.2017 during the assessment proceedings which were responded to by the Assessee vide letters dated 10.10.2017 and 21.12.2017.

After considering said responses, the assessment order was passed on 30.01.2018. Subsequently, by notice dated 27.03.2019 issued under Section 148 of the Income-Tax Act, the matter was sought to be re-opened. While accepting the challenge to the issuance of notice, the High Court in para 12 of its judgment observed as under:

"12. Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 September 2017 during the assessment proceedings and the Petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017 justifying its stand. The non-rejection of the explanation in the Assessment Order would amount to the Assessing Officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set-aside."

21. Considering the facts in light of the aforesaid ruling of the Hon'ble High Court, notice u/s 148 of the Act is set aside and assessment order framed pursuant to such notice is, accordingly, quashed.

22. Since I have quashed the assessment, I do not find it necessary to dwell into the merits of the case.

23. In the result, the appeal filed by the assessee in ITA No. 2323/DEL/2017 is allowed.

**The order is pronounced in the open court on 16.09.2020.**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> September, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	