

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH
(VIRTUAL COURT)

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
आयकर अपील सं./ ITA No.1204/Chd/2018
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Century Fiscal Services Ltd. 14-A, Roshan Market, Vishkarma Chowk Miller Ganj, Ludhiana	बनाम	The ITO Ward-5(1), Ludhiana
स्थायी लेखा सं./PAN NO: AAACC7391R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Ashwani Kumar, CA

राजस्व की ओर से/ Revenue by: Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 21/10/2020

उद्घोषणा की तारीख/Date of Pronouncement: 28/10/2020

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The above appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ludhiana [(in short referred to as 'CIT(A)'] dated 23/08/2018, relating to assessment year 2009-10, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. Brief facts relating to the case are that the assessee company is stated to be a Sub Broker of Ludhiana Stock Exchange Securities Ltd. (LSE) and had filed its return of income for the impugned year declaring income of Rs. 1,99,740/- which was processed under section 143(1) of the Act. Thereafter, information was received from the office of the DIT (Inv.)-II, New Delhi with regard to accommodation entries received by the assessee amounting to Rs. 20,00,000/- on 16/02/2009 in the form of share capital including premium through cheque from Surendra Kumar Jain Group of New Delhi. The A.O. recorded reasons to believe for escapement of income in this case and reopened

the assessment under section 147 of the Act. Subsequently after making necessary enquiries the A.O. treated the entire amount of Rs. 20,00,000/- as undisclosed income of the assessee company from undisclosed sources and made addition of the same to the returned income of the assessee under section 68 of the Act. Apart from this, commission stated to be paid by the assessee company to the mediator (Rs. 40,000/-), & to the accommodation entry provider Rs. 60,000/-, was also added under section 69 of the Act. The assessment in this case was ultimately completed under section 143(3) at an income of Rs. 22,99,740/- after making the aforesaid additions.

3. The matter was carried in appeal before the Ld. CIT(A) where the assessee challenged the order of the A.O. raising both legal ground challenging the validity of the assessment framed and also grounds on the merits of the case. Ld. CIT(A) dismissed all the grounds raised by the assessee.

4. Aggrieved by the same the assessee is come up in appeal before us, raising the following grounds.

1. *That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-2, Ludhiana is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer in resorting to the provisions of Section 148 of the Income Tax Act, 1961.*

2. *That the Ld. CIT(A) was further not justified to arbitrarily uphold the addition of Rs. 20,00,000/-, made by the Ld. Assessing Officer u/s 68 of the Income Tax Act, 1961, received by the appellant company as share capital and share premium.*

3. *That he was further not justified to arbitrarily uphold the action of the Ld. Assessing Officer in making an addition of Rs. 60,000/- made by the Ld. Assessing Officer on account of alleged commission paid to broker by resort to provisions of Section 69C of the Income Tax Act, 1961.*

4. *That he was further not justified to arbitrarily uphold the action of the Ld. Assessing Officer in making an addition of Rs. 40,000/- made by the Ld. Assessing Officer on account of alleged commission paid to broker by resort to provisions of Section 69C of the Income Tax Act, 1961.*

5. We shall take up first the legal challenge raised by the assessee in Ground No.1, to the validity of the assessment framed in the present case. The Ld. Counsel for the Assessee contended that the initiation of proceedings under section 148 in the present case was illegal arbitrary and there was no material for forming belief that income of the assessee had escaped assessment, that the action was initiated on the basis of mere suspicion and vague information and there was no independent satisfaction of

the A.O. but rather was made on borrowed satisfaction. in this regard. Ld. Counsel for the Assessee drew our attention to the copy of reasons recorded for issue of notice under section 148 of the Act placed at Paper Book page no. 32 to 33, the contents of which are as under:

“ REASONS RECORDED FOR ISSUING OF NOTICE U/S 148 OF THE I.T. ACT, 1961

Information and documents have come into the possession of the Department that the assessee, M/s Centruy Fiscal Services Ltd. 14-A Roshan Market, Vishwakarma Chowk, Miller Ganj, Ludhiana (PAN-AAACC7391R) has taken an accommodation entry of Rs. 20,00,000/- from M/s Virgin Capital Services Pvt. Ltd., one of the paper company from various paper companies of Shri Surendra Kumar Jain Group through cheque in lieu of cash.

Further, the information is in the possession of the Department that Shri Surendra Kumar Jain and his brother Shri Virendra jain are engaged in the business of providing accommodation entries to various beneficiaries companies / entities through cheques through a number of paper and dummy companies in lieu of cash. These dummy companies are totally managed and controlled by Shri Surendra Kumar and his brother Shri Virendra Jain.

M/s Century Fiscal Services Ltd. has obtained accommodation entry from M/s Virgin Capital Services Pvt. Ltd. one of the paper company from various paper companies of Shri Surendra Kumar Jain Group through cheque in lieu of cash of an amount of Rs. 20,00,000/- by paying sum of Rs 20,00,000/- to the said company out of its undisclosed income during the F.Y. 2008-09 relevant to A.Y. 2009-10.

The assessee has filed its return of income for the A.Y. 2009-10 declaring income of Rs. 1,99,740/-, though it was having income of Rs. 20,00,000/- during that Assessment Year and thus, income to the tune of Rs. 20,00,000/- in respect of issue as mentioned above has escaped assessment for the A.Y. 2009-10.

Therefore, I have reasons to believe that income of Rs. 20,00,000/-applicable to tax for the assessment year 2009-10 has escaped assessment within the meaning of section 147 of the income Tax Act, 1961 by reason of the failure the part of the assessee to disclose fully and truly all material facts necessary the assessment for the Assessment Year 2009-10.”

Referring to the same, Ld. Counsel for the Assessee contended that the A.O. had merely formed belief on the basis of information provided by the DIT(Inv) and without applying her own mind to it and the satisfaction recorded therefore was not her own but was infact borrowed satisfaction and therefore the assessment framed in the present case needed to be quashed. Ld. Counsel for the Assessee in this regard referred to the following decisions:

- M/s Rajshikha Enterprises Pvt. Ltd. Vs. ITO in ITA No. 6113/Del/2014 for the A.Y. 2005-06 vide order dt. 23/02/2018
- M/s Indo Global Techno Trade Ltd. Vs. ITO in ITA No. 1616/Chd/2018 for the A.Y. 2010-11 vide order dt. 15/06/2020

6. Ld. DR on the other hand relied on the findings of the Ld. CIT(A) at para 5.2 of her order as under:

"5.2 I have considered the observations of the Assessing Officer as made by her in the assessment order while reopening the assessment in this case I have also considered written submissions filed by the assessee company through its learned AR vide letter 23.06.2016 on the issue under reference. I have further considered various judicial pronouncements relied upon by the learned AR of the assessee as well as other material placed by him on record. On careful consideration of the rival contentions, I am of the opinion that the Assessing Officer was having sufficient material/information in his/her possession to form a belief that the income of the assessee company to the extent of Rs. 20,00,000/- has escaped assessment. The information received by the Assessing Officer contains complete details of the modus operandi adopted by Surendra Kumar Jain group of new Delhi to provide accommodation entries to the needy persons including the assessee company. It has also been noticed that he Assessing officer has not only applied his mind independently but also recorded his/her satisfaction for escapement of income before reopening the assessment in this case. The judicial pronouncements relied upon by the learned AR of the assessee have distinguishable facts from the facts of the case of the assessee company and as such have no application in the case of the assessee company. Under such circumstances, the action of the Assessing Officer in reopening the assessment in this case cannot be said to be unjustified. Having said so, the action of the Assessing Officer in reopening the assessment in this case is, therefore, upheld. In the result, the grounds No. 1,2,3 and 4 of appeal taken by the assessee company are dismissed."

7. We have heard both the parties and have carefully gone through the order of the authorities below as well as the documents referred to placed before us. In the present ground the assessee has challenged the validity of the assessment framed under section 147 of the Act on the ground that the satisfaction of the A.O. of escapement of income, which is a necessary pre requisite for initiating the reassessment proceedings , was not as per law, being borrowed satisfaction and not the own satisfaction of the A.O.

There is no quarrel with the proposition of law that for the purpose of assuming jurisdiction to reopen the case u/s 147 of the Act, it is the A.O. who has to be satisfied and form belief of escapement of income. The AO ,no doubt acts on information coming in his possession, for the purpose of reopening a case, but before acting on the same he has to be satisfied that the information sufficiently leads to a belief of escapement of income . He has to apply his mind to the information to arrive at such satisfaction. The reliance placed by the Ld. Counsel for the Assessee on latest decision of the ITAT Delhi Bench in the case of M/s Rajshikha Enterprises Pvt. Ltd. (supra) ,is apt, wherein the aforesaid proposition of law was upheld relying on decisions of the Hon'ble Delhi High Court in the case of CIT Vs G & G Pharma India Ltd.(2016) 384 ITR 147 &

Pr.CIT Vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 which held that while report of the Investigation Wing might constitute material for the AO forming reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation.

In the present case on perusing the contents of the reasons recording the satisfaction of escapement of income by the A.O. as reproduced above, it is very much evident that the AO has merely relied on the information passed on to him by the Investigation department regarding accommodation entry taken by the assessee, without even applying his mind to it and verifying the same. The entire reasons, we find, talks about some information with the Department regarding the assessee having availed accommodation entries of Rs.20 lacs from M/s Virgin Capital Services Pvt.Ltd. a paper company of M/s Surinder Kumar Jain Group, which is engaged in providing such entries, through cheque in lieu of cash. There is nothing in the reasons revealing application of mind by the AO to the information in his possession, as to whether he had verified that any such amount was actually received during the year and if so in what mode or manner i.e as share capital or unsecured loan etc. The A.O. has formed his belief solely on this information without even verifying and cross checking the same with the facts on record available with him. The belief of escapement of income as recorded in the reasons, is clearly not that of the A.O. but, as rightly pointed out by the Ld. Counsel for the Assessee, it is a borrowed belief.

The Ld. CIT(A), we find, has dismissed assessee's contention and held that the A.O. had applied his mind independently while recording satisfaction without pointing out how, when the fact as demonstrated before us is to the contrary.

In view of the above, since the satisfaction regarding escapement of income as recorded in the reasons, was not that of the AO but was borrowed satisfaction, the jurisdiction therefore assumed to reopen the case u/s 147 of the Act was bad in law. The assessment order passed as a consequence by the AO is therefore not sustainable in law and is accordingly quashed.

8. Ground No. 1 of the appeal is therefore allowed.

9. Ground No. 2 to 4 are on the merits of the case. Since we have set aside the assessment order passed in the present case, the grounds raised on merits become merely academic in nature and are therefore not being dealt with by us.

10. Appeal of the Assessee is allowed in above terms.

Order pronounced on 28/10/2020.

Sd/-
संजय गर्ग

(SANJAY GARG)

न्यायिक सदस्य/**Judicial Member**

दिनांक /**Dated: 28/10/2020**

AG

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-
अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/**Accountant Member**