

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "A" : NEW DLEHI ]  
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
A N D  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA. No. 8884/Del/2019  
Assessment Year : 2011-12

Akik Marketing India Pvt. Ltd.  
N-39 (GF), Greater Kailash-I,  
New Delhi – 110 048.

**PAN : AAACA6579K**

(Appellant)

Vs. Income Tax Officer,  
Ward : 2 (1),  
New Delhi.

(Respondent)

Assessee by : Shri Shantanu Jain, C. A.;

Department by : Shri R. K. Gupta, Sr. D. R.;

Date of hearing : 05/10/2020.

Date of order : 06/11/2020.

**ORDER**

**PER SUCHITRA KAMBLE, JM :**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-22, New Delhi, dated 30.08.2019 for assessment year 2011-12.

2. The assessee has raised the following grounds of appeal :-

“ 1. Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.

2. Because the action for the assumption of jurisdiction of reassessment proceedings and the misapplication of the jurisdiction sanction being 'a fit case for issue of notice' is being challenged on facts and law.
3. Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non-application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification.
4. Because the action for initiation of re-assessment proceedings is unreasonable since the approval granted by Pr. CIT was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid.
5. Because the action is being challenged on facts and law for making addition u/s 68 amounting Rs.45,00,000/- on the basis of Hon'ble supreme court in the case of PCIT vs NRA Iron & Steel P Ltd. (2019) 103 taxmann.com 48 whereas per assessee the facts of said case law is distinguishable.
6. Because the action is being challenged since the addition of Rs.45,00,000/- has been made without having provided the cross examination of the person on whose statement or information the proceedings under section 147 were initiated which is in violation of the settled principle of law.
7. Because the action is being challenged since the addition of Rs.45,00,000/- has been made without making proper investigation from the other party whereby assessee has discharged the onus by providing relevant documents.
8. Because the action for addition u/s 68 amounting Rs.45,00,000/- is being challenged on facts and law while all parameters for the provision of law required by assessee fulfilled as revealed in findings from acquiescence by silence.
9. Because the action is being challenged that source of source is required to prove as per section 68 whereas amendment to section 68 is applicable from 1.4.2013 and assessee's case is related to AY 2011-12 where amendment is not

applicable.

10. Because the action is being challenged on facts and law for making addition on account of commission paid amounting Rs 1,12,500/- under section 69.

11. For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”

3. The assessee filed return of income u/s 139(1) of the Income Tax Act, 1961 on 29.09.2011 declaring an income of Rs. 8,60,660/-. After relying upon the report of Investigation Wing, proceedings were initiated u/s 147 of the Act after taking approval u/s 151 of the Act. Notice u/s 148 was issued on 31.03.2018. In response, assessee e-filed the return of income on 06.10.2018 and requested the Assessing Officer to provide reasons recorded. The Assessing Officer recorded the reasons that the assessee is in receipt of bogus share capital and share premium from M/s Focus Resources Ltd. amounting to Rs. 45,00,000/- which is controlled by Sh. Pradeep Kumar Jindal. The Assessing Officer passed the Assessment Order on 17.12.2018 thereby making two additions on account of undisclosed income u/s 68 of the Income Tax Act, 1961 amounting to Rs. 45,00,000/- and unexplained expenditure u/s 69 of the Act amounting to Rs. 1,12,500/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as regards to Ground No. 1 to 4 relating to initiation of the reassessment proceeding u/s 148 of the Act

is bad in law and approval granted by the Pr. CIT u/s 151 of the Act was mechanical approval. Hence the initiation of the proceedings u/s 147 is invalid. As per the requirement of the provisions of Section 147 of the Act is reason to believe by the Assessing Officer towards escapement of the Income. The reasons were recorded on 30.03.2018 reveals that the re-opening on the basis of the information of ADIT (Inv.)-Unit-2(1), New Delhi, which is not an independent satisfaction of the Assessing Officer. Hence, satisfaction mandated has to reveal in itself through the application of mind on the examination and appreciation of the material fact containing material particulars which lacks in the present case and therefore, prima facie it is just a borrowed satisfaction and not recording the independent reasons. The Ld. AR further submitted that the Assessing Officer has not applied his mind as the information received by the Assessing Officer nowhere in reasons recorded mentioning the name of the bank, cheque number through which assessee have received the amount from the parties. In reasons recorded, the Assessing Officer merely mentioned that the assessee has received Rs. 45,00,000/- as share capital but from whom the same has been received is not mentioned. Further in reasons recorded, it is mentioned that the Assessing Officer has the information that the assessee has received Rs. 65,00,000/- from Focus Industrial Resources Ltd. while addition to share capital & share premium shows that the assessee company has received the accommodation entry of at least Rs. 45,00,000/- from various entities as bogus share capital & share premium during the year, hence no case specific and transaction specific valid material is brought on record which may justify the instant reopening action u/s 148 of the Act. The Assessing Officer had acted only on the basis of suspicion and it could not be said that it was based on belief that the income

'chargeable' to tax had escaped income. The Assessing Officer had to act on the basis of 'reasons to believe' and not on 'reasons to suspect'. The Ld. AR further pointed out that the major weakness in reasons is no where the statement of searched persons were brought on records qua seized papers which vitiate the entire exercise. Moreover, only one sided version of investigation wing on seized material that too which is not found from assessee's possession is submitted that it cannot be made as valid basis to infer income escaping assessment u/s 148 of the Act. The Ld. AR relied upon the following decisions:

- i) G & G Pharma 384 ITR 147 (Del)
- ii) Meenakshi Overseas 395 ITR 677 (Del)
- iii) Sarthak Securities Co. (P) Ltd. vs. ITO (2010) 47 DTR 201 (Del)

The Ld. AR further submitted that the Assessing Officer has recorded reasons just for verification and as such the reasons recorded are reasons to suspect, which are not valid in the eyes of law as proceedings cannot be initiated on fishing and roving enquiries or for investigation. The Ld. AR relied upon the following decisions:

- i) Madhya Pradesh Industries Ltd. vs. ITO 57 ITR 637 (SC)
- ii) Jay Bharat Maruti Ltd. vs. CIT 324 ITR 289 (Del)
- iii) PCIT vs. Manzil Dinesh Kumar Shah (2019) 261 Taxman 1 (SC)
- iv) PCIT vs. Manzil Dinesh Kumar Shah (2018) 406 ITR 326 (Guj)

The Ld. AR further submitted that Section 151 of the Act clearly stipulates that the Pr. CIT who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion,

approval of Pr. CIT. The mere appending of the expression 'approval' says nothing. It is not as if the Pr. CIT has to record elaborate reasons for agreeing with nothing to clearly express in giving approval. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In assessee's case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. The Ld. AR relied upon the following decisions:

- i) Pr. CIT vs. M. B. Jewellers (P) Ltd. (ITA No. 615/2015 order dated 19.08.2015 Delhi High Court)
- ii) ITO vs. M. B. Jewellers (P) Ltd. (ITA No. 2499/Del/2011 order dated 14.11.2014 Del. Tri.)
- iii) CIT vs. S. Goyanka Lime & Chemical Ltd. (2016) 237 Taxman 278 (SC)
- iv) CIT vs. S. Goyanka Lime & Chemical Ltd. (2015) 231 Taxman 73 (MP)
- v) PCIT vs. N. C. Cables Ltd. (2017) 98 CCH 18 (Del HC)
- vi) Gorika Investment and Export Pvt. Ltd. (2018) 53 CCH 168 (Del. Tri.)

6. The Ld. DR submitted that the Assessing Officer has rightly reopened the assessment by recording a proper reasons and thereby giving satisfaction as to why the assessee's case should be reopened. The contentions of the Ld. AR was vehemently opposed by the Ld. DR.

The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reasons were recorded on 30.03.2018 clearly set out that the re-opening in assessee's case is on the basis of the information of ADIT (Inv.)-Unit-2(1), New Delhi. After going through the reasons there is mention that the assessee company has filed ITR for A.Y. 2011-12 but no scrutiny assessment u/s 143(3) was made. There is no whisper in the recorded reason that there was any omission or failure on the part of the assessee in disclosing fully and truly material facts in the return of income. The contentions of the Ld. AR that the information received by the Assessing Officer nowhere in reasons recorded mentioned the name of the bank, cheque number through which assessee have received the amount from the parties, appears to be correct in our opinion. In reasons recorded, the Assessing Officer has merely mentioned that the assessee received Rs. 45,00,000/- as share capital but from whom the same has been received is not mentioned in the said reasons. Further in reasons recorded, it is mentioned that the Assessing Officer has the information that the assessee received Rs. 65,00,000/- from Focus Industrial Resources Ltd. while addition to share capital & share premium shows that the assessee company has received the accommodation entry of at least Rs. 45,00,000/- from various entities as bogus share capital & share premium during the year. But the Assessing Officer has not made out any case from the transaction specific valid material which can justify the reopening action u/s 148 of the Act. Reassessment cannot be merely based on the basis of the information of ADIT (Inv.)-Unit-2(1), New Delhi. Such

reassessment shall not be valid as the Assessing Officer held no belief on his own at any point of time, that income of assessee has escaped assessment on account of non disclosure of the relevant income. As per the provisions of the reopening, the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion in the recorded reasons is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose the satisfaction for reopening/reassessment through reasons recorded by him. It is for him to put his opinion on record in toto. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The reasons recorded by the Assessing Officer cannot be supplemented by assessment order, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of assessment order. Therefore, the reasons of the Assessing Officer for reopening should be based on direct and circumstantial evidence. All these aspects are missing in the reasons recorded in the present assessee's case. Besides this there is a mechanical approval of the Pr. CIT as there is no satisfaction recorded at any point of time. The reliance of the Hon'ble Delhi High Court in case of M. B. Jewellers (P) Ltd. (supra) is apt in the present case. Thus, the re-assessment itself is bad in law and void ab initio. The appeal of the assessee is allowed on this legal issue which is contested by the assessee in Ground Nos. 1 to 4 in the present appeal. Since we have quashed the

assessment order itself, there is no need to decide the present appeal on merit.

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

Order pronounced in the open court on : **06/11/2020**

**Sd/-  
( G. S. PANNU )  
VICE – PRESIDENT**

**Sd/-  
( SUCHITRA KAMBLE )  
JUDICIAL MEMBER**

DATED : 06/11/2020.

\*MEHTA\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	06.11.2020
Date on which the typed draft is placed before the dictating Member	06.11.2020
Date on which the typed draft is placed before the Other Member	06.11.2020
Date on which the approved draft comes to the C. DC/DC	06.11.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	06.11.2020
Date on which the fair order comes back to the C. DC/DC	06.11.2020
Date on which the final order is uploaded on the website of ITAT	06.11.2020
Date on which the file goes to the Bench Clerk	06.11.2020
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	