

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6336/Del./2019
Assessment Year 2008-09

Neel Builders Pvt. Ltd. C/o Kapil Goel, Adv. F-26/124, Sector-7, Rohini, New Delhi. PAN No. AABCN9572C	vs.	Income Tax Officer, Ward 18(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri Ved Prakash Mishra, Sr. Dr

Date of Hearing :	23.11.2020
Date of Pronouncement :	02.12.2020

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-37, New Delhi dated 28.06.2019 for AY 2008-09, challenging the reopening of the assessment u/s 147/148 of the Income Tax Act, 1961 and addition of Rs. 25 lakhs and Rs. 45,000/- u/s 68 of the Act.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that assessee company filed its return of income on 08.07.2008 for assessment year under appeal declaring income at Rs. 5,340/- which was processed u/s 143(1) of the Act. During the year, company was engaged in business of building and construction. The AO has received information from Director of Income Tax (Investigation-II) dated 12.03.2013 mentioning therein that a search operation was conducted in the case of Shri S.K. Jain group of cases in which the assessee has also found to have received accommodation entry from M/s Nisha Holding Limited Rs. 9 lakhs, M/s Brite Indu Resources Ltd. Rs. 9 lakhs and M/s Finage Leasing & Finance India Ltd. Rs. 7 lakhs, totaling to Rs. 25 lakhs. The AO initiated the reassessment proceedings and after considering the explanation of the assessee made addition of Rs. 25 lakhs u/s 68 of the Act and further made addition of Rs. 45,000/- on account of unexplained investment. The Ld. CIT(A) dismissed the appeal of assessee.

4. Ld. Counsel for assessee referred to copy of the reasons recorded for reopening of the assessment which is filed at page 1 & 2 of the Paper Book and reads as under:

Annexure – “A”

Reasons for the belief that income has escaped assessment in the case of M/s Neel Builders Pvt. Ltd. AY 2008-09 (PAN AABCN9572C)

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 of 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 various incriminating documents were found and seized. These documents includes date wise and month wise had 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/person were recorded date wise.

From the examination 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 entities to Shri Surender Kumar Jain in lieu of cash during the FY 2007-08 relevant to the AY 2008-09 for the total amount mentioned against their names. These bogus share capital and premium has clearly escaped taxation in these assessment years therefore, these amounts are requires to be taxed in the hands of these companies by initiating action under section 148 of the Income Tax Act, 1961.

As per the information received from the Investigation Wing of the department, vide letter no. DIT(Inv.)-II/U/s148/2012-13/194 dated 12/03/2013 during FY 2007-08 M/s Neel Builders Pvt. Ltd. has received total accommodation entries of Rs. 25,00,000/- from the entities managed and controlled by Shri Surender Kumar Jain for providing accommodation entries to the beneficiaries. The details of entry are as under:

S.No.	Entry Date	Particular of entity through whom entry taken	Name of the Bank	Cheque No.	Cheque date	Amount
1.	13/07/2007	Nisha Holding Ltd.	Kotak	000147	14/07/2007	Rs. 9,00,000/-
2.	13/07/2007	Brite Indu Resources Ltd.	Kotak	000271	14/07/2007	Rs. 9,00,000/-
3.	13/07/2007	Finage Lease & Finance India Ltd.	Kotak	000002	14/07/2007	Rs. 7,00,000/-
					Total	Rs. 25,00,000/-

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 etc.

In the aforesaid case return of income was filed on 08/07/2008 declaring income of Rs. 5,340/-. Further, it is noticed that the assessee company M/s Neel Builders Pvt. Ltd. has received accommodation entries to the tune of Rs. 25,00,000/- during the FY 2007-08 relevant to AY 2008-09 from the entry operators as mention in the chart above.

After perusal and careful consideration about the information provided by the Investigation Wing of the department, I have reason to believe that Income of the assessee company to the extent of Rs. 25,00,000/- has escaped assessment for the AY 2008-09, therefore, proceedings u/s 147 i.e. clause (b) of explanation 2 of provisions of section 147 of the IT Act, 1961 is proposed to be initiated for the AY 2008-09. As per the record, no scrutiny u/s 143(3) has been done in the case for AY 2008-09.

Kind approval for issuing notice u/s 147 of the I.T. Act, 1961 is solicited.”

Sd/-
(Virendra Singh)
Income-tax Officer
Ward 18(1), New Delhi.

5. He has submitted that the same AO Sh. Virender Singh, ITO, Ward-18(1), New Delhi recorded the similar reasons for reopening of the assessment in the case of M/s Neelkanth Plywood Pvt. Ltd. for same AY 2008-09 in respect of M/s Finage Lease & Finance India Ltd. for receipt of Rs. 5,50,000/- and identical reasons have been recorded for reopening of the assessment and in that case ITAT ‘SMC’ Bench in ITA No. 6702/Del/2018 vide order dated 21.08.2019 considering the issue in detail quash the reopening of the assessment. Copy of the order is reproduced as under:

**“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘SMC’, NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.6702/Del/2018
Assessment Year: 2008-09

M/s. Neelkanth Plywood Pvt. Ltd. C/o Anil Jain DD & Co. Chartered Accountants, 611, Surya Kiran Building, 19 K. G. Marg, New Delhi-110001 PAN No.AAACN0805B	Vs	Income Tax Officer Ward – 18 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh.Anil Kumar Jain, CA
Respondent by	Shri S. L. Anuragi, Sr. DR
Date of hearing:	02/07/2019
Date of Pronouncement:	/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 31.08.2018 of the CIT(A)-37, New Delhi relating to A. Y. 2008-09.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 11.09.2008 declaring total income of Rs.1,77,185/-. The return was processed u/s. 143(1) on 20.07.2009. Subsequently the Assessing Officer received information from Investigation Wing of the department that a search operation was carried out in the case of Sh. Surender Kumar Jain group of cases, who are known as entry operators. During the course of search and post search enquiries it was established that the said group is involved in providing accommodation entries to various persons whose names were named in the report. The name of the assessee company also appears in the said list as one of the beneficiaries being amount of Rs.5,50,000/- received by the assessee as share capital money from Finage Lease & Finance P. Ltd. The Assessing Officer thereafter reopened the assessment u/s. 147 and notice u/s. 148 was issued to the assessee. In response to the same the assessee submitted that the original return filed on 11.09.2008 may be treated as return filed in response to notice u/s.148. The Assessing Officer issued notice u/s. 133 (6) to Oriental bank of Commerce for copy of account opening form and bank statement from 01.04.2007 to 31.03.2008. He also issued notice u/s. 133

(6) to M/s. Finage Lease & Finance P. Ltd. asking for documents regarding its transaction with the assessee. It was replied by the said company that it has given an amount of Rs.5,50,000/- through cheque No. 000111 dated 24.12.2007 drawn on Kotak Mahindra Bank. The Assessing Officer asked the assessee to produce the Director of above said company. He also asked the assessee to substantiate the identity and creditworthiness of the Investor Company and genuineness of the transaction. However, the assessee failed to produce the director of the investor company. Rejecting the various explanation given by the assessee and relying on various decisions the Assessing Officer made addition of Rs.5,50,000/- to the total income of the assessee u/s. 68 of the IT Act. On the ground that the assessee could not substantiate the ingredients of the said section.

3. Before CIT(A) the assessee apart from challenging the addition on merit challenged the validity of reassessment proceedings. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the validity of reassessment proceedings and also sustained the addition made by the Assessing Officer u/s. 68 of the IT Act.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

1. That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that the initiation of proceedings u/s 147/148 is illegal and bad in law and consequently the assessment framed being illegal requires to be quashed.
2. That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT(A) has erred in sustaining the addition of Rs5,50,000/-on account of Share Application money as cash credit u/s 68.
3. That on the facts and circumstances of the case and the provisions of the law, the Ld. AO has erred in initiation of penalty proceedings u/s 271(l)(c) of the Act.

4. *That the appellant craves leave to reserve to itself the right to add, alter amend, vary, modify and/or withdraw and grounds of appeal at or before the time of hearing.*

5. *The Ld. Counsel for the assessee at the outset submitted that the reopening of the assessment by the Assessing Officer is illegal and void ab initio. Referring to the reasons recorded by the Assessing Officer, copy of which is placed at pages 20 and 21 of the paper book he submitted that the reasons have been recorded in a mechanical manner and without independent application of mind by the Assessing Officer. He submitted that the Assessing Officer has simply mentioned that as per the information received from the Investigation Wing of the department vide letter dated 12.03.2013 that the assessee during the financial year 2007-08 has received total entries of Rs.5,50,000/- from the entities managed and controlled by the Sh. Surender Kumar Jain for providing accommodation entries to the beneficiaries. He submitted that in the reasons recorded there is no reference of any tangible material or statement alleging the involvement of the assessee. The nature of the entry whether it is loan or share capital or purchase has not been clearly spelt out in the reasons itself. Thus it is clear that the Assessing Officer has not applied his mind and reasons have been recorded on the basis of borrowed satisfaction. There is no live link or nexus between the information so received and formation of belief by the Assessing Officer for escapement of income. For the above proposition he relied on the following decisions :-*

1. *Sabh Infrastructure Ltd. Vs. ACIT of Hon'ble Delhi High Court*
2. *Meenakshi Overseas Vs. PCIT ITA No.692/2016*
3. *Signature Hotels (P) ltd. Vs. ITO of Hon'ble Delhi High Court reported in 338 ITR 51*
4. *CIT Vs. Insecticides India Ltd. of Hon'ble Delhi High Court reported in 357 ITR 330*
5. *CIT Vs. G&G Pharma India Ltd. of Hon'ble Delhi High Court ITA*

No.545/2015

6. So far as the merit of the case is concerned he submitted that to prove the identity and credit worthiness of the investor company and genuineness of the transaction the assessee company had filed the copy of confirmation, copy of share application form, bank statements, balancesheet, income tax return, auditor report, board resolutions, directors report and return of allotment of shares before the Assessing Officer. Further the company M/s. Finage Lease & Finance P. Ltd is having net worth of Rs.14.57 crores. He submitted that the investor company has complied with the notice issued u/s. 133 (6) by the Assessing Officer.

7. So far as the production of the director is concerned he submitted that assessee had requested the Assessing Officer to call them by issuing notice u/s. 131 which was not done by the Assessing Officer. He submitted that the assessee has discharged the onus cast on it by proving the various ingredients of section 68. Therefore, the addition made by the Assessing Officer and sustained by the CIT(A) is not proper. He also relied on the following decisions :-

1. *CIT Vs. Gangeshwari of Hon'ble Delhi High Court reported in 361 ITR 10*
2. *Goodview Trading Vs. PCIT of Hon'ble Delhi High Court reported in 377/2016*
3. *CIT Vs. Victor Electrodes 329 ITR 271*
4. *Nancy Sales Pvt. Ltd. Vs. ITO ITA No.4129/Del/2017*
5. *Moti Adhesives Pvt. Ltd. Vs. ITO ITA No.3133/Del/2018*

8. The Ld. DR on the other hand heavily relied on the order of the CIT(A). So far as the validity of reassessment proceedings are concerned the Ld. DR relied on the following decisions :-

1. *Yogendrakumar Gupta Vs ITO (51 taxmann.com 383) (SC)/r20141 227 Taxman 374 (SC)*
2. *Raymond Woollen Mills Ltd. v. ITO And Others 236 ITR*
3. *Yuvrai v. Union of India Bombay High Court r20091 315 ITR 84 (Bombay)/[2009] 225 CTR 283 (Bombay)*
4. *ACIT Vs Rajesh Jhaveri Stock Brokers (P.) Ltd [2007] 161 Taxman 316 (SC)/[2007] 291 ITR 500 (SC)/[2007]210 CTR 30 (SC)*
5. *Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- IT*
6. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court [2014] 43 taxmann.com 62 (Delhi)/[2014] 223 Taxman 181 (Delhi)(MAG)/[2014] 362 ITR 417 (Delhi)*
7. *Pranawa Leafin (P) Ltd. Vs. DCIT Bombay High court [2013] 33 taxmann.com 454 (Bomba) /[2013] 215 Taxman 109 (Bombay) (MAG.)*
8. *PCIT Vs. Paramount Communications (P.) Ltd. Delhi High Court [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi).*
9. *Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT*
10. *- Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court T20181 94 taxmann.com 393 (Gujarat)*
11. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court T20171 83 taxmann.com 82 (Gujarat)*
12. *Murlibhai Fatandas Sawlani Vs. ITO Gujarat High Court 2016-TIOL-370-HC-AHM-IT*
13. *Ankit Agrochem (P) Ltd. Vs. JCIT Rajasthan High Court [2018] 89 taxmann.com 45 (Rajasthan)*
14. *Rakesh Gupta Vs. CIT P & H High Court [2018] 93 taxman.com 271 (Punjab & Haryana)*

9. So far as the addition on merit is concerned the Ld. DR relied on the following decisions :-

1. *PCIT Vs. NRA Iron & Steel (P) Ltd. [2019] 103 taxmann.com 48 (SC)*
2. *PCIT Vs. NDR Promoters Pvt. Ltd. (2019-TIOL-172-HC-DEL-IT)*

10. I have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons for reopening of the case for the impugned assessment year, copy of which is placed at paper book page No. 20-21 shows that the reopening was made on the basis of the report of the investigation wing and there is no independent application of mind by the Assessing Officer for such reopening. The Hon'ble Delhi High Court

in a number of cases has held that the reopening on the basis of report of investigation wing without independent application of mind by the Assessing Officer is not valid. Accordingly the reassessment proceedings which were based on the report of the investigation wing and without independent application of mind by the Assessing Officer have been held to be illegal. Since the Assessing Officer in the instant case has reopened the assessment on the basis of report of the investigation wing and there appears to be no independent application of mind by the Assessing officer for reopening of the case, therefore, the reassessment proceeding initiated by the Assessing Officer are not proper. I, therefore, hold that the reassessment proceeding initiated by the Assessing Officer is illegal and accordingly the subsequent proceedings also become illegal and void. Since the assessee succeeds on this legal ground, therefore, the ground challenging the addition of Rs.5,50,000/- u/s. 68 of the IT Act on merit becomes academic in nature and, therefore, the same is not being adjudicated. The grounds raised by the assessee are accordingly allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.08.2019.”

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

5.1 He has, therefore, submitted that issue is covered in favour of the assessee by order of the Tribunal dated 21.08.2019. He has also referred to other decisions of the Tribunal to show that on identical facts reopening was held to

be illegal and bad in law. On the other hand, Ld. DR relied upon the orders of the authorities below.

6. I have considered the rival submissions and perused the material on record. It is well settled law that validity of the reassessment proceedings is to be judged with reference to the reasons recorded for reopening of the assessment which is reproduced above. Ld. Counsel for assessee in the case of M/s Neelkanth Plywood Pvt. Ltd. (supra) has produced on record the identical worded reasons recorded by the same AO Sh. Virender Singh, ITO, Ward-18(1), New Delhi for reopening of the assessment, copy of the same is produced on record. In the case of M/s Neelkanth Plywood Pvt. Ltd. (supra) the Tribunal considering the issue in detail vide order dated 21.08.2019 reproduced above has quashed the reopening of the assessment. Since the facts of the case of the assessee are identical with the facts of the case of M/s Neelkanth Plywood Pvt. Ltd. (supra). Therefore, I find issue is identical and is covered by the order of the Tribunal dated 21.08.2019. Following the reasons for decision in the case of M/s

Neelkanth Plywood Pvt. Ltd. (supra) I set aside and quash the reopening of the assessment u/s 147 of the Act. Resultantly both the additions stand deleted. In view of the above, the issue on merit is left with academic discussion only.

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

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated 02.12.2020

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.