

IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH: 'A', NEW DELHI  
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
 AND  
 SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
 (THROUGH VIDEO CONFERENCE)

ITA NO. 3504/DEL/2019

A.Y. : 2010-11

M/S B.R. ARORA & ASSOCIATES (P) LTD., C/o Raj Kumar & Associates, Chartered Accountants, L-7A, (LGF), SOUGHT EXTENSION, PART-II, NEW DELHI - 49 (PAN: AAACB4559K)	Vs.	ACIT, CIRCLE 4(1), NEW DELHI
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Rajkumar Gupta, CA & Sh. Sumit Goel, CA
Department by	Sh. Prakash Dube, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM:**

This appeal filed by the Assessee is directed against the impugned order dated 28.03.2019 passed by the Ld. CIT(A)-2, New Delhi in relation to assessment year 2010-11 on the following grounds:-

1. That under the facts and circumstances, proceedings u/s.14 71148 are without jurisdiction, without application of mind, unwarranted and mechanical and unsustainable.

2. That the Ld. A.O., since failed in adjudicating all objections against reopening proceedings, properly, as per law and in totality and as per the directions of Hon'ble Supreme Court in the case of G.K.N. Drive Shafts, hence consequential proceedings an impugned asstt. is illegal and without jurisdiction.

3. That under the facts and circumstances, the approval u/s.151 is fatally defective, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted.

4. That under the facts and circumstances, both the lower authorities erred in law and on merits in making and sustaining addition to the extent of Rs.1,10,00,000/- u/s.68 of the I.T. Act for the share capital and share premium recd. from following companies:-

Hazima Resorts Ltd.                      Rs. 60,00,000/-

Prasandi Leasing &

Finance Ltd.                                      Rs. 50,00,000/-

Rs.1,10,00,000/-

*4.1 That the findings for addition of Rs.1,10,00,000/- in the absence of providing the copies of all materials used against the assessee and by not providing cross-examination of persons whose statements have been relied upon, thus no proper and reasonable opportunity of hearing has been allowed and principles of natural justice is grossly violated which makes the impugned asstt. unsustainable in law.*

*5. That there is no legality and justification in law as well as on merits in making addition of Rs.2,75,000/- as unexplained expenditure u/s.69C for alleged commission expenses @2.5% of Rs.1,10,00,000/- on the said share capital / premium recd.*

2. The brief facts of the case are that the assessee filed its revised return of income declaring total income of Rs. 87,19,950/- on 11.10.2010. The case of the assessee company was assessed u/s. 143(3) of the I.T. Act, 1961 (in short "Act") at a total income of Rs.90,33,560/- on 20.11.2012. The case of the assessee was reopened and notice u/s. 148 of the Act

was issued to the assessee company on 31.3.2017 after receiving the reasons for initiating the proceedings u/s. 147 of the Act and obtaining approval from the Ld. CIT(A)-2, New Delhi. In response to the notice u/s. 148 of the Act assessee filed its reply dated 26.5.2017 wherein a copy of return of income was filed on 26.4.2017 in response to notice under section 148 had been submitted. A Notice u/s. 143(2) of the Act was issued on 7.9.2017. A notice u/s. 142(1) of the Act alongwith questionnaire was also issued on 7.9.2017. In response to the statutory notices, the AR of the assessee filed the details which was placed on record by the AO. After considering all the documentary evidences filed by the assessee as well as the written submission, the AO completed the assessment on 28.12.2017 u/s. 147 of the Act and added the unexplained credit u/s. 68 of the Act amounting to Rs. 2,47,50,000/- and commission of Rs. 6,18,750/- totaling to Rs. 3,44,02,310/-. Aggrieved with the Assessing Officer, assessee filed the appeal before the Ld. CIT(A), who vide its impugned order dated 28.3.2019 has partly allowed the appeal filed by the assessee. Now the assessee aggrieved against the impugned order and filed the present appeal.

3. At the time of hearing, Ld. Counsel for the assessee stated that proceedings u/s. 147/143(3) are without jurisdiction and without application of mind and unwarranted and in a mechanical manner and is not sustainable in the eyes of law. He further stated that AO has failed to adjudicate the objections against the reopening proceedings properly as well as per law, which is against the directions of the Hon'ble Supreme Court of India in the case of GKN Driveshafts 259 ITR 19 and hence, the consequent assessment proceedings is illegal and without jurisdiction. He further stated that approval u/s. 151 of the Act is totally defective, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted. Ld. Counsel for the assessee further stated that notice u/s. 148 of the Act was issued by the AO after limitation period. He stated that notice u/s. 148 of the Act was to be issued on or before 31.3.2017, however, the same was prepared on 31.3.2017 and dispatched on 03.4.2017 and the same has been delivered on 05.4.2017. It was stated that section 149(1) provides for issue of notice u/s. 148 of the Act within the prescribed time. The notice can be said to have been issued in time only if 03 conditions stands

satisfied i.e. it's stand prepared within time, it has been addressed correctly and it has been posted / give for delivery within time so that it become out of control and reach of the sender to take it back. In the case of the assessee, he stated that these 03 conditions are not fulfilled. In support of his contention, he draw our attention towards the paper book and stated that notice u/s. 148 of the Act is time barred and on this ground the assessment framed by the AO on the basis of this notice deserve to be declared null and void. In support of this contention, Ld. Counsel for the assessee relied upon the decision of the Hon'ble Gujarat High Court in the case of Kanubahi M. Patel (HUF) vs. Hiren Bhattr or His Successors to office and others dated 13.7.2010 (2011) 334 ITR 25 (Guj.). As regards the merits of the case Ld. Counsel for the assessee stated that the lower authorities wrongly upheld the addition in dispute to the extent of Rs. 1,10,00,000/- u/s. 68 of the Act for the share capital and share premium. He finally stated that the AO has made the addition of Rs. 2,47,50,000/- u/s. 68 of the Act alongwith the commission of Rs. 6,18,750/-, but the Ld. CIT(A) has deleted the addition of Rs. 1,37,50,000/- and balance amount of Rs. 1,10,00,000/- received by the applicant

has been upheld u/s. 68 of the Act. Ld. Counsel for the assessee further stated that Ld. CIT(A) after considering the documentary evidences filed by the assessee which was already filed by the assessee before the AO, deleted the addition of Rs. 1,37,50,000/- out of Rs. 2,47,50,000/- and upheld the addition of Rs. 1,10,00,000/- meaning thereby while recording the reasons in issuing the notice u/s. 148 of the Act, AO has not applied his mind, therefore, on this ground the addition in dispute deserve to be cancelled.

4. On the contrary, Ld. DR relied upon the order of the Ld. CIT(A) and stated that AO has issued notice u/s. 148 of the Act after recording the reasons and on the basis of the evidences which was brought to the notice of the assessee by the AO. The evidences filed by the assessee supporting some claim, hence, the addition has been rightly been deleted by the Ld. CIT(A). As regards to the balance amount of Rs. 1,10,00,000/- has not been substantiated the claim before the revenue authorities and the Ld. CIT(A) has rightly been upheld the addition. Therefore, a well reasoned order has been passed by the Ld. CIT(A) and the same may be upheld.

5. We have heard both the parties and perused the orders passed by the revenue authorities alongwith documentary evidences filed by the assessee. We find that initiation of assessment are on Wrong and non-existing facts, because it mentions that "M/s. Binary Semantics Ltd." is shown to have received following entries". Thereafter 07 entries have been given for which re-asstt. proceedings have been initiated. The initiation has been done for Rs. 2,47,50,000/- from 07 parties against correctly recived only Rs. 1,10,00,000/- from 03 parties. In the reasons, M/s. Binary Semantics Ltd. has been shown as beneficiary. Assessee has got no connection with this company. Hence, it is a wrong reason/wrong basis of initiation. Further, Chart of Co's from whom amount has been received has been given in reasons that first 04 parties (1,37,50,000/-) are wrongly mentioned. No amount has been received from them. This issue was raised even during asstt. and CIT(A) deleted Rs. 1,37,50,000/- as not being received, after confirming this fact from the Inv. wing. Hence, the initiation has been done on the basis of wrong facts. The initiation on wrong facts and wrong basis vitiates the whole re-asstt. proceedings. Our view is supported by the decision of

Hon'ble Delhi High Court in the case of CIT VS. Kamdhenu Steel & Alloys Ltd. (2012) 248 CTR (Del) 33 wherein it has been held that the name of the parties from whom bogus entries were alleged were mentioned repeatedly. The AO did not care to see the apparent mistake in the particulars where these entries were repeated twice each. The Court held that it is a case of initiating proceedings u/s. 147 without application of mind therefore un – sustainable. It has been held "Where the AO acted mechanically on the information supplied by the Directorate of I.T. (Inv.) about the alleged bogus / accommodation entries provided by certain individuals / companies, without application of his own mind, he was not justified in invoking jurisdiction u/s. 147."

5.1 We further find that in this case initiation of reopening proceedings is mechanical and Non-application of Mind and Borrowed satisfaction because the initiation is on the basis of report of Inv. wing only; No prime facie enquiry done by A.O. before initiating proceedings; Hence, it is a case of initiation on wrong facts and on borrowed satisfaction without application of mind which makes the proceedings un-sustainable. Our view

is fortified by the decision of the Hon'ble High Court of Delhi in the case of Sarthak Securities Co. (P) Ltd. 329 ITR 110 (Del) wherein it has been held that no independent application of mind by the AO by acting under information from Inv. Wing. – Notice u/s. 147 to be quashed.

5.2 As regards the limitation issue is concerned, we have perused the documentary evidences filed by the assessee especially the notice u/s. 148 of the Act prepared by the AO and sent to post office and delivered to the assessee as stated by the Ld. Counsel for the assessee. We are of the view that keeping in view of the judgment of the Hon'ble Hon'ble Gujarat High Court in the case of Kanubahi M. Patel (HUF) vs. Hiren Bhatt or His Successors to office and others dated 13.7.2010 (2011) 334 ITR 25 (Guj.) the assessment is barred by limitation and hence, null and void. The relevant para no. 16 of the aforesaid judgment is reproduced as under:-

*"16. Thus, the expression "to issue" in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall" be issued as used in section 149 would therefore have to be read in*

*the aforesaid context. In the present case, the impugned notices have been signed on March 31, 2010, whereas the same were sent to the speed post centre for booking only on April 7, 2010. Considering the definition of the word "issue", it is apparent that merely signing the notices on March 31, 2010, cannot be equated with issuance of notice as contemplated under section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the speed post centre only on April 7, 2010, the date of issue of the said notices would be April 7, 2010 and not March 31, 2010, as contended on behalf of the Revenue. In the circumstances, the impugned notices under section 148 in relation to the assessment year 2003-04, having been issued on April 7, 2010 which is clearly beyond the period of six years from the end of the relevant assessment year,*

*are clearly barred by limitation and as such, cannot be sustained.”*

5.3 Keeping in view of the facts and circumstances of the case and respectfully following the precedents as aforesaid, we set aside the orders of the authorities below and quash the reopening of the assessment. Since we have already quashed the assessment, the other grounds have become infructuous and dismissed as such.

6. In the result, the Assessee's Appeal is partly allowed.

***Sd/-***

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER  
"SRB"**

***Sd/-***

**(H.S. SIDHU)  
JUDICIAL MEMBER**

**Copy forwarded to:**

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

Asstt. Registrar, ITAT, New Delhi