

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3152/Del/2018 : Asstt. Year : 2009-10

M/s RBJ Infratech Pvt. Ltd., B-14/C, First Floor, freedom Fighters Enclave, Neb Sarai, New Delhi-110068 and Rajesh Jain & Associates, 49, Pushpanjali, Vikas Marg Extn. Delhi-110092	Vs	Income Tax Officer, Ward-20(3), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECR0664G		

Assessee by : Sh. Rajesh Jain, CA

Revenue by : Sh. Ramesh Singh, Sr. DR

Date of Hearing: 06.11.2020

Date of Pronouncement: 22.12.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-XXV, New Delhi dated 15.03.2018.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the Id. CIT (A) erred in upholding the Assessment Order assessing the income at Rs.50,00,920/- against returned income of Rs.920/-. The addition of Rs.50,00,000/- made by the Assessing Officer is illegal as the Assessing Officer and Id. CIT (A) did not consider judicially the evidences proceedings.

2. That the reassessment Order passed u/s 147/143(3) of the Act is illegal and void. The Learned CIT(A) erred in upholding the reassessment Order in spite of the fact that the learned Assessing Officer erred in issuing another notice u/s 148 of the Act, dated 31st March 2016, whereas the proceedings were pending in pursuance of notice u/s 148 dated 29.03.2016 issued by the Assessing Officer, as stated in the Assessment Order, page no.2. No reassessment order was passed in pursuance of notice issued u/s 148 of the Act, dated 31.03.2016, which was duly complied by the Appellant vide letter dated 28.04.2016.

Without prejudice to the above

3. The reassessment proceedings completed vide order dated 21.12.2016, are illegal, void as the Assessing Officer did not supply reasons to believe for initiating the reassessment proceedings.

4. Notice u/s 143(2) has not been issued to the appellant after furnishing return in response to notice u/s 148 of the Act.

5. The proceedings u/s 147 of the Act initiated by the learned A.O by issuance of notice u/s 148 without recording proper reasons in accordance with Law, is totally illegal and hence liable to be quashed.

6. Violation of natural justice, inadequate opportunity, no cross examination of witnesses of the revenue made entire assessment null and void.

7. Without prejudice to above, otherwise also the proceedings initiated u/s 147 of the Act are illegal as the reasons to initiate the proceedings under the law, were the seized documents u/s 132(1), from some S.K. Jain and his brother and documents were seized in which the alleged hand written documents of subscribing share capital etc. have been found and the same have been pasted in the assessment order, said to have been related/referable to the appellant, & therefore, the correct provision of the

Act in which proceedings should have been invoked, as per law, was section 153C of the Act which is specific & contains notwithstanding clause for other sections of the Act under the facts of the case.

8. Without Prejudice to above legal jurisdictional ground, otherwise, also the learned Assessing Officer erred in treating the share application money received to the tune of Rs.50,00,000/- from various corporate shareholders as escaped income without considering the evidences furnished by the appellant, as quasi judicial Officer."

3. The assessee has also raised additional grounds of appeal:

"1. The proceedings u/s- 147 of the Act initiated by the learned A.O. is illegal as the same has been initiated mechanically simply following communication from Investigation Wing, without independently applying his mind on the facts, and consequently, the Assessment Order is totally illegal and hence liable to be quashed.

2. That the assessment u/s 147 of the Act is illegal, unlawful, arbitrary and without jurisdiction on account of lack of application of mind and without being objectively satisfied u/s 151 of the Act by Principal Commissioner of Income Tax.

3. That the assessment u/s 147 of the Act is contrary to law laid down by the Hon'ble Supreme Court in GKN Driveshafts case, without following the procedure laid down by Hon'ble Supreme Court.

4. The above additional grounds raised purely legal issue, not involving any fresh investigation into facts, which are already on the record. The aforesaid legal grounds of appeal are being raised as the Appellant has been advised correct position of law now. Further, the omission to raise the said grounds of appeal is not willful. The Appellant rely on the decision of Hon. Supreme Court in the case of National Thermal Power Co. Ltd. 299 ITR 393 (S.C.)."

4. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. . this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there

may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.”

5. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

6. The main additional ground taken by the assessee is as under:

That the assessment u/s 147 of the Act is contrary to law laid down by the Hon'ble Supreme Court in GKN

Driveshafts case, without following the procedure laid down by Hon'ble Supreme Court.

7. Brief facts of the case are that the assessee filed return of income on 25.09.2009 declaring total income of Rs.920/-.

8. Based on the information received from Investigation Wing vide letter dated F.No. DIT(Inv.)-2/u/s 148/20.12-13/194 dated 12.03.2013 that the assessee has received share capital from the dummy companies floated by persons namely, Shri Surender Kumar Jain and Shri Virender Kumar Jain. The information was based on the diaries seized and marked as Annexure 31 & 32.

9. The notice u/s 147 was issued to the assessee on 29.03.2016 for which the assessee replied on 28.04.2016 that the return of income filed on 25.09.2009 may be treated to have been filed in response to the notice issued. The assessment has been completed on 21.12.2016 making an addition of Rs.50,00,000/- purportedly received the accommodation entry in the guise of share capital.

10. Before us, the Id. AR argued that the assessee has not been provided the copy of the reasons recorded and hence the assessment is nullity based on the ratio of Hon'ble Supreme Court in the case of GKN Driveshafts Pvt. Ltd. 259 ITR 18.

11. The Id. DR argued that the reasons have been duly supplied to the assessee.

12. This being a factual matter, we have obtained the assessment records and gone through the contents.

13. First, we have gone through the assessment order to examine whether the reasons recorded have been issued to the assessee or not, or was there any discussion on this issue or not. We did not find any discussion on this issue in the assessment order. We have examined the order of the Id. CIT (A) (page no. 27) wherein the assessee has taken the issue of non-supply of reasons recorded before initiating the reassessment proceedings. The Id. CIT (A) held that the matter was remanded to the AO for a report on the contentions of the appellant and the report of the AO has been supplied to the assessee also. Further the Id. CIT (A) held that the AO has duly carried out his functional and statutory duties and held that the reasons were supplied and due process of law has been followed.

14. We have gone through the remand report dated 24.01.2018 of ITO-20(3), New Delhi. It dealt with the issue of notice u/s 148, receipt of the reply filed by the assessee, speaking order disposing the assessee's objection and approval of the competent authority. Thus, on going through the remand report, it cannot be held that the reasons recorded have been duly supplied to the assessee during the assessment proceedings. Rather there was no discussion on supply of the reasons to the assessee.

15. For the sake of ready reference and clarity, the scanned version of the remand report of the AO is reproduced hereunder:

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Office of the
Income tax Officer, Ward-20(3), Room No 220,
C.R. Building, IP Estate, New Delhi - 110002

F.No. ITO/Ward 20(3)/Remand report/2017-18/101

Dated: 24.01.2018

To

The Commissioner of Income tax (Appeals)-25,
Room No.105, Aayakar Bhawan,
Distt. Centre, Laxmi Nagar,
Delhi - 110092.

Sir,

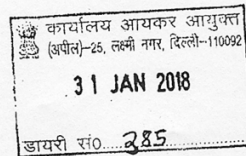
Sub: Application u/r 46A of IT Rule in case of M/s RBJ
Infratech (P) Ltd - appeal No.248/2017-18- AY 2009-10 - reg -

Kindly refer to your office letter No.885 dated 18.01.2018 on the above subject.
In this regard, the report is submitted as under :-

The DIT (Investigation) - II, New Delhi vide letter F.No. DIT (Inv)-II/U/s148/2012-13/194 dated 12.03.2013 had intimated that Sh. Surinder Kumar Jain had been providing accommodation entries through a large number of dummy companies floated by him or his associates. The investigation Wing has compiled a report & data of the beneficiaries of such entries. The name of the assessee company i.e. M/s RBJ Infratech (P) Ltd figures in the list of beneficiaries of Share Capital Premium /Loan. The information was based on search & seizure operation conducted in the case of Jain Brothers (Sh. Virendra Jain and Sh Surinder Kumar Jain) their group concerns on 14.09.2010. The material found and seized (Annexure A-1 to A-163) from the residence of Jain Brothers includes several diaries and registers and it contains incriminating information maintained in the form of daily cash books wherein detailed day to day receipt and payments in cash/RTGS and cheques from/to different persons/firm/companies have been recorded and the assessee was found to be amongst such beneficiaries. On the basis of this information, the then-AO issued notice u/s 148 of IT Act for AY 2009-10 after obtaining approval from Competent Authority.

Para-wise Comments on admission of additional grounds submitted below:

1. Notice u/s 148 of IT Act was issued for AY 2009-10 on 29.3.2016 to assessee company vide dispatch No.1069 and sent through speed post sticker



→ Copy to AR
→ put up on file
01/2/18

Certified True Copy

No.ED047735194IN. E-mail also sent on the same date to the e-mail address mentioned on the return.

2. The assessment proceedings framed u/s 147 / 143(3) of IT Act were very much legal as due procedures were followed.
3. Notice u/s 143(2) of IT Act was issued on 04.11.2016 vide dispatch No.648 dated 04.11.2016 after receipt of reply filed by the assessee in response to notice issued u/s 148 of IT Act. This fact also recorded in the Order-sheet vide entry dated 04.11.2017. This fact can be verified from the office copies placed on record.
4. Speaking Order, disposing assessee's objections, was passed vide No.ITO Ward 20(3)/105/2016-17 dated 29.11.2016 and sent to assessee along with notice u/s 142(1) of IT Act through despatch No.768 vide speed post sticker No. ED473059113IN. This fact can be verified from the office copies placed on record.
5. The then-AO issued notice u/s 148 for AY 2009-10 after obtaining approval from Competent Authorities as per law.

It may be pertinent to mention here that assessee/AR never pointed out the above mentioned issues before the AO during the course of assessment proceedings and also during the course of filing objections which it now raised in the form of additional evidences before the appellate authority, which may not be accepted.

In view of above facts, it is requested that the additional evidence filed by the assessee during the course of appellate proceedings should not be admitted and the same deserves to be rejected.

Yours faithfully,

(Signature)
(P.S. Narayanan)
Income tax Officer
Ward-20(3), New Delhi

Copy for favour of information to Addl.CIT, Range-20, New Delhi.

Income tax Officer
Ward-20(3), New Delhi

(Signature)
Certified True Copy

16. The assessee has requested for providing the reasons recorded for issue of notice u/s 148 of the Income Tax Act,

1961 for reassessment vide their letter dated 26.04.2016 filed before the AO on 28.04.2016. Further, the assessee has also sought the reasons recorded vide letter dated 23.11.2016. We also find that vide letter dated 04.11.2016, the AO has asked to furnish the explanation regarding the receipt of share premium but has not supplied the reasons asked hitherto. We have also gone through the letter dated 29.11.2016 wherein the objections of the assessee have been removed by the AO but the supply of reasons has not been mentioned there to. We have gone through the order sheets in assessment folder and could not find any noting pertaining to furnishing of reasons recorded to the assessee. We have also verified the records of the revenue and find that the letters filed by the assessee requesting for supply of reasons have been a part of the record. The revenue till the date of hearing could not furnish the evidence of supplying the reasons recorded to the assessee.

17. The issue of vitiation of reassessment proceedings on account of the failure of the AO to furnish reasons for reopening the assessment u/s 148 of the Act to the assessee has been dealt by various orders of the Co-ordinate Bench of the Tribunal namely, Sh. M.R. Seetharama (Ind.) Vs ACIT in ITA Nos. 926 & 927/Bang/2014 order dated 09.10.2015 and ITO Vs Rishi Godani in ITA No. 493/Agra/2015 order dated 16.04.2018.

18. Further, the Hon'ble jurisdictional High Court in the case of Pr. CIT Vs Jagat Talkies Distributors 398 ITR 0013 held that the assessment proceedings cannot be held to be valid in the absence of furnishing of reasons recorded by the AO to the assessee.

19. Finally, the Hon'ble Supreme Court in the case of M/s GKN Driveshafts Pvt. Ltd. 259 ITR 18 held that after filing of the return in response to the notice issued u/s 148, the assessee has every right to seek the reasons recorded for the assessment and Assessing Officer is bound to furnish the reasons within the reasonable time.

20. Ergo, in the instant case, since the fact of furnishing of the reasons recorded by the AO has not been established and keeping in view, the fact that the revenue could not provide any evidence to prove that the reasons recorded indeed have been supplied to the assessee, we hereby hold that the reassessment proceedings are vitiated.

21. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 22/12/2020.

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 22/12/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR