

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.- 9651 /Del/ 2019  
(Assessment Year: 2010-11)

Yogi properties Pvt. Ltd,  
c/o Rajkumar and  
associates, CA, L-7A,  
(LGF) South extension,  
New Delhi

Vs. ACIT,  
Circle-27 (2),  
Room No. 194B,  
Delhi

PAN No. AACCY2881L  
Appellant

Respondent

Assessee by Sh. Rajkumar, CA  
Sh. Sachin Jain, CA  
Revenue by Sh. Kanv Bali, Sr. DR

Date of hearing: 4/1/2021  
Pronouncement on 4/1/2021

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 18/10/2019 in appeal No. 44/18-19/1077 passed by the learned Commissioner of Income Tax (Appeals)-28, New Delhi ("Ld. CIT(A)") in the case of M/s Yogi properties Pvt. Ltd ("the assessee"), for the assessment year 2010-11, the assessee preferred this appeal.

2. Brief facts of the case as could be culled out from the

impugned orders are that the assessee is a Pvt. Ltd company and they have filed their return of income on 14.10.2010 declaring the income at Rs. Nil/-. The case was processed u/s 143(1) of the Act. Subsequently, information was received by AO from the Investigation Wing of the Department that the assessee is beneficiary of taking accommodation entries of Rs. 1,12,00,000/- in the garb of share capital/premium from entry providers namely Shri Pradeep Kumar Jindal Group in the names of following entities: -

s. No.	Name and address of the beneficiary ( As per ITO)	Amount	Date of entry	Entry provider by	PAN No. of beneficiary
1.	Yogi Properties Pvt. Ltd	1500000	17.06,2009	Jeneja Nagpal Construction Pvt. Ltd	AAACY2881L
2.	Yogi Properties Pvt. Ltd	1500000	17.06.2009	At All Times Securities Pvt. Ltd	AAACY2881L
3.	Yogi Properties Pvt. Ltd	2000000	16.06.2009	Mayank MedilabPvt. Ltd	AAACY2881L
4.	Yogi Properties Pvt. Ltd	1500000	18.06.2009	Jujeja Nagpal Construction Pvt. Ltd	AAACY2881L
5.	Yogi Properties Pvt. Ltd	1500000	18.06.2009	Jujeja Nagpal Construction Pvt. Ltd	AAACY2S81L
6.	Yogi Properties Pvt, Ltd	1800000	20.06.2009	Jujeja Nagpal Construction Pvt. Ltd	AAACY2881L
7.	Yogi Properties Pvt. Ltd	100000	01.07.2009	Mayank MedilabPvt. Ltd	AAACY2881L
8.	Yogi Properties Pvt. Ltd	1300000	09.02.2010	Euphoria Capital Pvt. Ltd	AAACY2881L
	<b>Total</b>	<b>11200000</b>			

3. On the basis of the above information, reasons were recorded and reassessment proceedings were initiated by him by issuing notice u/s 148 of the Act dated 29.03.2017 after obtaining necessary sanction

u/s 151 of IT Act from the competent authority. However, no return was filed in response to the said notice. Subsequently, AO issued notice u/s 142(1) dated 01.08.2017 and in response to that, the assessee asked for the original return filed to be treated as return filed in response to notice u/s 148 of the Act on 12,10.2017. During the reassessment proceedings, several objections were raised by assessee vide letter dated 08.11.2017 which were dealt with by AO by passing the speaking order dated 10.11.2017. During the raising of objections, assessee contended that the notice u/s 148 was not issued and dispatched before 31.03.2017. However, AO rejected the objection and provided the proof of service of said notice as per the annexures to the order disposing objections. Further, during the assessment proceedings, AO examined the genuineness of share application money received by him from various share applicants and found that despite of giving multiple opportunities, assessee failed to comply the notices and show cause letters and in the case of two persons namely, M/s. Mayank Medilab and Mr. Juneja Nagpal, whatever details were filed, do not establish the creditworthiness of share applicants. The statements of Shri Rakesh Bobal, director of company and other persons were also recorded which are reproduced in assessment order. After tallying the details given in the statements, AO concluded that following entries of share premium were received by assessee from entry operator.

<b>Sr. No.</b>	<b>Date</b>	<b>Amount (Rs.)</b>	<b>Name or entry provider</b>
1.	17.06.2009	1500000	Juneja Nagpal Construction Pvt. Ltd
2.	16.06.2009	2000000	Mayank MedilabPvt. Ltd
3.	18.06.2009	1500000	Juneja Nagpal Construction Pvt. Ltd
4.	20.06.2009	1800000	Juneja Nagpal Construction Pvt. Ltd

5.	01,07,2009	100000	Mayank MedilabPvt. Ltd
6.	09.02.2010	1300000	Euphoria Capital Pvt. Ltd (Being earlier known as At All Times Yours Securities Pvt. Ltd)
	<b>Total</b>	<b>82,00,000/-</b>	

4. It was further concluded by him, in the light of several decisions of different Court as discussed by him in the assessment order, the assessee failed to discharge its onus to satisfy all three conditions in terms of provisions of section 68 of the Act. He, therefore, treated the aforesaid amount of Rs. 82,00,000/- as unexplained cash credit u/s 68 of IT Act and added to the income of the assessee. Similarly, two amounts Rs. 15,00,000/- each (Total Rs. 30,00,000) received from At All Times Security Pvt. Ltd and Juneja Nagpal Constructions Pvt. Ltd respectively were also treated as unexplained under the said section and accordingly the additions were made. The unexplained commission charges @ 3% on the total additions of Rs. 1,12,000/- which amounted to Rs. 3,36,000/- was also added by AO to the income of the assessee. Finally, the total taxable income of assessee was determined to Rs. 1,15,36,000/- against the Nil income declared by assessee.

4. Assessee challenged the said order before the Ld. CIT(A) on several grounds stating that the proceedings under section 147/143(3) of the Act are without jurisdiction illegal and unsustainable as no notice under section 148 was issued on or before 31/3/2017 on which date the limitation for issuance of such notice stood expired; that there was no application of mind or independent enquiry by the learned Assessing Officer while framing the assessment under section 147/143(3) of the Act and it was in violation of the directions of the Hon'ble Supreme Court in the case of GKN driveshafts; that in the

absence of providing the copies of all the material used against the assessee and by not providing cross examination of the persons on whose statements the reliance was made, the assessment is unsustainable; and that there was an error in making the addition of Rs. 3,36,000/- as unexplained expenditure under section 69C of the Act.

5. Ld. CIT(A) considered the contentions raised by the assessee and returned down the allegations that there was no proper service of notice under section 148 of the Act well within the time stipulated under law or that there was no application of mind or independent enquiry by the learned Assessing Officer, but granted relief to the assessee to the extent of 30 Lacs holding that in respect of the 15 Lacs entry relating to all Times Security Pvt. Ltd, verification of bank statement revealed that no amount was received by the assessee from such entity on 17/6/2009 and at the same time such entry was also repeated. Ld. CIT(A), accordingly, granted partial relief to the assessee. Assessee is therefore, before us in this appeal taking all the plea is that were taken before the Ld. CIT(A) assailing the jurisdiction of the learned Assessing Officer for framing the assessment under section 147/143(3) of the Act and also on the question of limitation, apart from merits of the case.

6. Insofar as ground No. 1 relating to the limitation aspect is concerned notice under section 148 of the Act is dated 29/3/2017 and the limitation for its issuance under section 151 of the Act expires by 31/3/2017. According to the Revenue such notice was dispatched on

31/3/2017 itself before office hours and it was sent by speed post with the receipt No. ED481673181IN. Even according to the learned Assessing Officer vide letter dated 4/12/2017 that the notice was dispatched from the office on 31/3/2017 and was booked for speed post on 1/4/2017. Assessee, however, made enquiries with the postal department and came to know from the postal department by letter dated 5/12/2017 that ED481673181 was received in their office on 30/6/2017 and was delivered to the addressee on 3/7/2017. To counter this argument, Revenue relies upon their office dispatch register wherein the SPA number was mentioned AS ED48167318IN instead of ED481673181IN, falling short of one numerical. Further, from the track consignment and screenshot of the speed post web portal, the assessee demonstrated before us that the speed post envelope was received by the postal Department on 30/6/2017 and the same was delivered to the addressee on 3/7/2017.

7. Ld. DR submitted before us that while despatching the notice by speed post, the same was sent by way of email. On a comparison of the email of the assessee given in the return of income with the email to which the learned Assessing Officer sent the notice, we find that the email ID of the assessee is mightyltd@gmail.com whereas the learned Assessing Officer sent the notice to mightyltd@gmail.com, with the

letter “y” missing. Obviously email address is incorrect and could not have been delivered. Though the learned Assessing Officer claimed to have centred the notice through ITBA portal also, Ld. AR demonstrated before us with reference to the screen shot of the ITBA portal which clearly shows that it was activated for the 1<sup>st</sup> time only when the appeal before the Ld. CIT(A) was filed and never before.

8. Viewing all these things together, we are of the considered opinion that the notice was issued by way of speed post with the SPA number ED481673181IN not before 1/4/2017, even going by the version of the learned Assessing Officer for the time being. Ld. AR placed reliance on the decision of the Hon’ble Gujarat High Court in the case of Kanubhai M Patel vs. Hiren Bhatt 334 ITR 25 (Guj) and submitted that for the purpose of reckoning the limitation in respect of the reassessment notice, mere signing of notice is not sufficient, but the date of issue would be the date on which the notice was handed over for service to the proper officer. Inasmuch as there is no trustworthy evidence to show that the notice was in fact dispatched on 31/3/2017 itself, he pleaded that such notice could not be taken to have been issued well within the time and the proceedings are barred by limitation.

9. As referred to above, the notice sent by email is not to correct address of the assessee; that there is no evidence to clinch the issue that such notice was dispatched anytime on or before 31/3/2017 inasmuch as not only there is discrepancy in the dates of dispatch as pleaded by the postal Department in their letter as well as the learned Assessing Officer; and that even if we go by the Russian of the learned

Assessing Officer such notice was dispatched by speed post only on 1/4/2017 and not before. The speed post booking list maintained by the Department is of no use in this matter because there is discrepancy with respect to the SPA number and also the SPA numbers that followed this particular entry are not in the immediate proximity of this particular ED481673181IN and also that they are corrected SPA numbers with 9 numerals. Further the plea based on the sending of notice by way of ITBA portal is also demolished by the assessee by referring to the screen shot of ITBA portal which shows that it was activated for the 1<sup>st</sup> time only when the appeal was preferred before the Ld. CIT(A). Viewing from any angle there is no convincing material before us to believe that the notice was dispatched at any time earlier to 1/4/2017, let alone the letter dated 5/12/2017 issued by the postal Department to say that the notice was handed over to the postal Department to be sent by speed post only on 30/6/2017 is not to be believed. On this factual situation, while applying the law laid down by the Hon'ble Gujarat High Court in the case of Kanubhai M Patel (supra), we find that it is only 1/4/2017 that has to be taken as the date of dispatch because that is the date on which the notice is shown to have been handed over to the postal department for service. No material to rebut this conclusion is emanating from any independent source. For these reasons we hold that there is no notice that was issued in this matter well within this time stipulated under section 151 of the Act and the proceedings are barred by limitation. On this score the assessee is entitled to seek the crashing of proceedings under section 147 of the Act. We therefore, hold that the assessment order under section 147/143(3) of the Act cannot be sustained. We answer grounds No. 1

and 2 accordingly.

10. In view of the fact that the assessee got relief on grounds No. 1 and 2 itself, we deem that any discussion on other grounds would be academic and is not warranted.

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

Order pronounced in the open court immediately after the conclusion of the hearing in the Virtual Court on 4/1/2021

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

Dated: 4/1/2021

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI