

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI FRIDAY BENCH 'G' : NEW DELHI
(Through Video Conferencing)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 1864/Del/2019
Assessment Year : 2008-09

M/S SSG MERCANTILE
PVT. LTD.,
B-14/C, FF, FREEDOM
FIGHTER ENCLAVE,
NEB SARAI,
NEW DELHI
(PAN: AALCS0860N)
(Appellant)

Vs. ACIT, CIRCLE 24(1),
NEW DELHI

(Respondent)

Appellant by : Sh. Kapil Goel, Adv.
Respondent by : Mr. Apoorva Bhardwaj, Sr. DR.

ORDER

PER H.S. SIDHU, JM :

This appeal by the Assessee for the assessment year 2008-09 is directed against the order of Ld. CIT(A)-43, New Delhi dated 24.1.2019.

2. The facts narrated by the revenue authorities relating to the issues in dispute are that the assessee is a Company, was incorporated on 26.7.2007 under the Companies Act, 1956. The assessee's company has filed its return of income on 30.9.2008 for the assessment year in dispute declaring income of Rs. 13,25,820/-. The AO processed the return u/s. 143(1) of the I.T. Act, 1961 (hereinafter referred as "Act") on 01.07.2009. Subsequently, an information was received from the Director of Income Tax (Investigation)-II, Jhandewalan, New Delhi vide letter dated 12.3.2003 mentioning therein that a search operation was carried out in the case of Sh. Surendra Kumar Jain Group of cases

(hereinafter known as Entry Operator) and after enquiry and examination of documents seized during course of search, it has been noticed that the said group is involved in providing accommodation entries to the persons which were named in the Report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries. On the basis of this information, AO recorded the reasons in writing and issued notice u/s. 148 of the Act to the assessee on 26.3.2015, after obtaining the approval from the JCIT, Range-24, New Delhi. Thereafter, a notice u/s. 143(2) of the Act was issued to the assessee and in response to the same, the AR of the assessee appeared from to time and submitted the requisite details.

2.1 Assessee vide letter dated 03.8.2015 submitted that return of income filed u/s. 139 of the Act on 30.9.2008 may be treated as return of income filed in response to the notice u/s. 148 of the Act and also requested for supply of copy of reasons for reopening of assessment which was provided by the AO. Assessee has also raised objections against the said reopening of the assessment which was disposed of by the AO vide letter dated 29.01.2016.

2.2 As per information provided by the Investigation Wing, the assessee has obtained the accommodation entries amounting to Rs. 1,30,00,000/- from Sh. SK Jain Group, details of which the AO has reproduced in para no. 4 at page 2 & 3 of the assessment order and after considering the reply and other documentary evidences filed by the assessee, the AO finally was of the view that the companies used by the Jain Brothers received cash from the beneficiaries or different persons / firms / companies for the purpose of providing accommodation entries in lieu of cash received from the recipient clients and charging the commission for providing accommodation entries by issuing the cheques in lieu of cash. After examining the documentary evidences filed by the assessee and disposing of the objections of the assessee, the AO was of the view that that

assessee has taken accommodation entries amounting to Rs. 1.30 crores which was credited in the books of accounts of the assessee and the assessee failed to pass the test of genuineness within the meaning of section 68 of the Act and held that to be the income of the assessee u/s. 68 of the Act and added the same to the income of the assessee and Rs. 2,34,000/- representing commission paid @ 1.8% at Rs. 1.30 crores was treated as unexplained investment to procure these accommodation entries and completed the assessment u/s. 147/143(3) of the Act vide order dated 31.3.2016. Aggrieved by the assessment order, the assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 24.1.2019 dismissed the appeal of the assessee. Against the impugned order dated 24.1.2019 assessee has filed the present appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee draw our attention towards the paper books filed by the assessee in the shape of documentary evidences, written submissions and the case laws on the issues in dispute and submitted that the AO has not applied his mind before initiating the proceedings u/s. 147 of the Act. He further stated that the reasons to believe recorded by the AO are mechanically based on borrowed satisfaction of Investigation Wing, even does not disclose the nature of alleged accommodation entries, whether loan, share application, share capital etc. amounting to Rs. 1.30 crores is written without giving the specific details of the said amount i.e. bank, cheque no, and date etc. The entire reasons to believe recorded by the AO is reproduction of conclusions drawn by the Investigation Wing. Ld. Counsel for the assessee further stated that it is perquisite that the AO should first apply his mind on the material / statement etc. supplied by the Investigation Wing. Keeping in view of the facts and circumstances of the present case, the AO recorded the reasons merely on the basis of some letters of Investigation Wing issued in the year 2013

and there was no material etc. in the possession of the AO which he examined independently at the time of recording the reasons on 25.2.2015. He draw our attention towards the reasons recorded by the AO. He requested that in view of the various decisions rendered by the Hon'ble Supreme Court of India and the Hon'ble High Courts in which the Hon'ble Courts has held that reopening of assessment based on the opinion and information wherein the AO has not investigated / enquired the matter independently, then the Department is not entitled to reopen the assessment. In support of his contention he relied upon the following cases laws:-

- ACIT vs. Dhariya Construction Co. (2010) 328 ITR 515 (SC)
- Sarthak Securities Co. (P) Ltd. vs. ITO (2010) 329 ITR 110. (Delhi)
- Signature Hotels (P) Ltd. vs. ITO (2010) 338 ITR 51 (Delhi)
- PCIT vs. G & G Pharma India Ltd. (2016) 384 ITR 147 (Delhi).
- PCIT vs. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (Delhi).
- PCIT vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 and;
- Multiplex Trading and Industrial Co. Ltd. 378 ITR 351.

3.1 Ld. Counsel for the assessee secondly argued that Ld. CIT(A) has also failed to appreciate that the approval granted u/s. 151 of the I.T. Act for issuance of notice u/s. 148 of the Act by the JCIT, Range-24, New Delhi was a mechanical approval, hence, initiation of proceedings u/s. 147 of the Act on this ground is also invalid and to support this contention, he relied upon the decision of the Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC). He further argued that the revenue authorities has failed to appreciate that the non-disposal of the objection filed by the assessee against the initiation of the proceedings u/s. 147 of the Act objectively and judiciously is also illegal against the law and facts on the file and relied upon the decision of the Hon'ble

Supreme Court of India in the case of GKN Driveshaft (India) Ltd. 259 ITR 18. Ld. Counsel for the assessee has also argued that the AO has re-opened the assessment of the assessee and made the addition in dispute on the basis of some documents which were seized from the 3rd party without giving opportunity of cross examination to the assessee and without recording the statements of the parties and merely relying on the Report of the Investigation Wing, which is in violation of principle of natural justice. Finally, the Ld. Counsel for the assessee argued that Ld. CIT(A) has wrongly upheld the addition in dispute as explained cash credit u/s. 68 of the Act on the share capital subscribers by various corporate entities and the investments have been duly accepted in the assessment of share holders. Keeping in view of the arguments advanced by him, alongwith the documentary evidences filed by the assessee in the shape of paper book, Ld. Counsel for the assessee has requested that the assessment may be quashed by deleting the addition in dispute and appeal of the assessee may be accepted.

4. On the contrary, Ld. DR relied upon the orders authorities below and stated that the AO has made the addition in dispute on the basis of various documentary evidences especially the information given by the Investigation Wing. As regards the approval obtained u/s. 151 of the Act from the Competent Authority, by the Assessing Officer, the addition in dispute has been made on the basis of after making detailed enquiry and on the basis of documentary evidences. Hence, he requested that the addition in dispute may be upheld by dismissing the appeal of the assessee.

5. We have heard both the parties and perused the orders passed by the revenue authorities, the reasons recorded by the AO and the approval granted by the Ld. JCIT u/s. 151 of the Act. For the sake of convenience, we are reproducing the reasons recorded by the AO as under:-

Form for recording the reasons for initiating proceedings u/s 148 and for obtaining Approval of the Commissioner of Income Tax/Joint CIT.

1.	Name & Address of the Assessee	: M/s SSG Mercantile Pvt Ltd.
2.	PAN	: AALCS860N
3.	Status	: Company
4.	Circle/Ward	: DCIT, Circle-24(1), N. Delhi
5.	Assessment Year in respect of which it is proposed to issue notice u/s 148	: 2008-09
6.	The quantum of income which has escaped assessment.	: Rs. 1,30,00,000/-
7.	Whether the provisions of section 147 (a) or 147 (b) applicable or both the sections are applicable.	: Section - 147 Explanation 2(c)(i)
8.	Whether the assessment is proposed to be made for the first time. If the reply is in the affirmative please state (a) Whether any voluntary return had already been filed and (b) If so, the date of filing the said return.	As per records available with this circle (ITD & D&CR of relevant F.Y.), the case has not been completed under scrutiny. 143(3). NA ✓ NA ✓
9.	If the answer to item no. 8 is in the negative, please state. (a) The income originally assessed (b) Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	: NA
10.	Whether the provisions of Section 150 (1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of section 150 (2) would not stand in the way of initiating proceedings u/s 147	: No
11.	Reasons for the belief that income has escaped assessment.	: As per Annexure

(Shiv Kumar Rai)
DCIT, Circle 24(1),
New Delhi

12.	Whether the Addl.CIT/Commissioner/ Board is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 148.	: Yes, I am satisfied that this is a fit case for issue of notice u/s 148 & I.T. Act.
-----	---	---

Joint CIT, RANGE-24, NEW DELHI

Vivek Sr
10/3/2015

INCOME TAX DEPARTMENT.

Annexure 'A'

25/02/2015

Reasons for reopening the case of M/s SSG Mercantile Pvt Ltd , A.Y. 08-09, u/s 147/148 of the Income tax Act, 1961-PAN-AALCS0860N.

1. Information/documents along with relevant details have been received from the office of Director of Income Tax (Investigation), New Delhi vide their letter F.No. DIT (Inv.)-II/U/s 148/2012-13/196 dated 12.3.2013 and through Addl. CIT, Range-9, New Delhi (at present Range-24) vide their letter F.No. Addl.CIT/Range-9/2013-14/ dated 22.10.2013 that the above assessee, **M/s SSG Mercantile Pvt Ltd, PAN-AALCS0860N** has received and is a beneficiary of accommodation entries provided by certain entry operators. The Investigation Wing of the Department had carried out search and seizure operations against the various groups of entry operators which included Surendra Kumar Jain Group to various beneficiary companies along with hundreds of bogus companies of the group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assesseees who were rerouting their unaccounted cash through these accommodation entries. The assesseees would pay cash to the entry providers. This cash would then be deposited in the accounts of various bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many account which would be given the color of share application money or share capital or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigation Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.

2. In the case of the above assessee, the following accommodation entries have been taken -

Sr. No.	Beneficiary	PAN	Amount	Total
1	M/s SSG Mercantile Pvt Ltd.	AALCS0860N	1,30,00,000/-	1,30,00,000/

I have gone through the material furnished by Investigation Wing. There is prima facie material that income has escaped assessment.

In view of the above discussed factual matrix, additional information/documents received from the Investigation Wing of the Income Tax Department and perusal of the same, I am satisfied and I have reason to believe that income of Rs. 1,30,00,000/- chargeable to tax has escaped assessment for A.Y. 08-09, within the meaning of section 147 of the Income-tax Act, 1961.

(Shiv Kumar Ra)
DCIT, Circle-24(1), New Delh

5.1 After perusing the aforesaid reasons recorded for reopening of assessment and approval of issue of notice u/s.148 of the Act, we are of the view that the reasons to believe in the present case, are mechanical, without independent application of mind by the Investigation Wing of the Department without prima facie reaching to the conclusions himself by showing nexus with specific material / information examined by him. It is pre-requisite that AO should first apply his mind on the material/ statement(s) etc. supplied by the Investigation Wing, which has not been done in this case. The reasons are based on conclusions of the Investigation Wing, not that of AO. However, the reasons recorded merely on the basis of some letter of Investigation Wing issued in the year 2013, and there was no material etc. in the possession of the Assessing Officer which he examined independently at the time of recording reasons on 25.2.2015. We observe that application of mind can be seen from the reasons recorded only and no reference can be made to any other material even if that material is available on assessment records. We further find that the reasons to believe recorded by the AO are mechanically based on borrowed satisfaction of Investigation Wing even does not disclose the nature of alleged accommodation entries whether loan, share application, share capital etc. amounting to Rs. 1.30 crores is written without giving the specific details of the said amount i.e. bank, cheque no, and date etc. The entire reasons to believe recorded by the AO is reproduction of conclusions drawn by the Investigation Wing. It is settled law that reopening of assessment based on the opinion and information wherein the AO has not investigated / enquired the matter independently, then the Department was not entitled to reopen the assessment. It is noted that AO has not investigated the matter himself and has not made any enquiry to corroborate the Information of the Investigation Wing on which basis the case of the assessee has been reopened, meaning thereby the AO has not

applied his mind and only issued notice u/s. 148 of the Act. Thus, the AO has acted mechanically and without any independent application of mind. It is further noted that initiation of proceedings is based on non application of mind much less independent application of mind but is a case of borrowed satisfaction. Nothing is independently examined or considered by the AO which can demonstrate application of mind by him. To support our aforesaid view, we draw support from the following decisions:-

i) ACIT vs. Dhariya Construction Co. (2011) 198 taxman 202 (SC) wherein the Hon'ble Court has held that :

"Section 147 of the Income Tax Act, 1961 – Income escaping assessment – Non-disclosure of primary facts – Whether opinion of District Valuation Officer (DVO) per se is not an information for purposes of reopening of an assessment under section 147; Assessing Officer has to apply his mind to information, if any, collected and must form a belief thereon – Held, yes."

ii) Pr CIT v. RMG Plyvinyl (I) Ltd. (2017) 83 taxmann.com 348 (Hon'ble Delhi High Court has observed as under:-

11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

12. Recently, in its decision dated 26th May, 2017 in ITA NO.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz.,

information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of 78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."

iii) 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd.

"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the

link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.

5.2 Even otherwise, we find that Ld. Joint CIT, Range-24, New Delhi has granted the approval in a mechanical manner by mentioning only "Yes, I am satisfied that this is a fit case for issue of notice u/s. 148 of the I.T. Act." which is not valid for initiating the reassessment proceedings. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. This view is supported by the following decision:-

"Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).

"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be

dismissed – Held, Yes (in favour of the Assessee)."

6. Keeping in view of the facts and circumstances of the present case and respectfully following the case laws applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the assessment year in dispute is bad in law and deserves to be quashed, hence, the same is quashed and the addition in dispute is deleted. Since we have decided the legal issues in favour of the assessee and quashed the reassessment and also deleted the addition in dispute, hence there is no need to adjudicate the other grounds.

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

Above decision was announced on 14th January, 2021.

Sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

SRB.

Copy forwarded to: -

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

Assistant Registrar