

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.1773/M/2019  
Assessment Year: 2010-11**

ACIT, Circle -15(1)(2), Room No.483A, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. D.G. Infrastructure Pvt. Ltd., A-207 Punit Industrial Premises CHS, Plot No.D-11, Thane Belapur Road, Turbhe Navi Mumbai, Mumbai - 400 705 <b>PAN: AACCD0745L</b>
(Appellant)		(Respondent)

**ITA No.1754/M/2019  
Assessment Year: 2012-13**

ACIT -12(2)(1), Room No.142F/262, 1 <sup>st</sup> Floor, Aayakar Bhavan, Churchgate, Mumbai - 400020	Vs.	M/s. Disha Dynamic Buildwell Pvt. Ltd., D-6, Surjit Sangam CHSL, Mathuradas Road, Kandivali West, Mumbai - 400067 <b>PAN: AADCD9697E</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Manpreet Singh Duggal, D.R.

Date of Hearing : 09.11.2020

Date of Pronouncement : 14.12.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled appeals have been preferred by the Revenue against the orders dated 10.12.2018 & 27.02.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred

to as the CIT(A)] relevant to assessment years 2010-11 & 2012-13 respectively.

**ITA No.1773/M/2019 A.Y. 2010-11**

2. At the outset, we would like to state that neither the assessee nor his authorised representative attended the proceedings nor any letter seeking for adjournment was filed before the bench. Therefore, we are proceeding to dispose of these appeals on merit after hearing the Ld. D.R..

3. The Revenue has challenged the order of Commissioner (Appeals) wherein the Ld. CIT(A) has confirmed the addition on account of bogus purchases to the extent of 12.5% of the bogus purchases as against the addition of 25% made by the AO.

4. The facts in brief are that the assessee had made purchases which were stated to be bogus as per the intimation received from DGIT Investigation Wing and the case of the assessee was reopened under section 147 by issuing notice u/s 148 of the Act dated 31.03.2017. The assessee vide letter dated 11.04.2017 requested the AO to treat the return filed originally on 23.09.2010 as return in response to notice issued under section 148 of the Act. Thereafter, the information/details were called for from the assessee from time to time during the assessment proceedings and were filed before the AO, however, the AO was not satisfied with the information and explanation of the assessee and added a sum of 25% of the said bogus purchases by treating the same as non genuine thereby making an addition of Rs.10,48,758/- to the income of the assessee in

the assessment framed under section 143(3) read with section 147 of the Act vide order dated 16.10.2017.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by following the Hon'ble Gujarat High Court decision in the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) and directed the AO to apply GP rate of 12.5% to the income to assessee the bogus purchases.

6. After hearing the Ld. D.R. and perusing the material on record, we find that Ld. CIT(A) has passed a very reasoned order by following the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra). In this case undoubtedly the assessee was beneficiary of bogus purchase entries taken from Krishna Steel Industries to the tune of Rs.41,95,034/- which were found to be non genuine and thus, in order to assess the income thereon, the AO applied a rate of 25% on the alleged bogus purchases which was reduced to 12.5% by Ld. CIT(A). In our view, the order passed by Ld. CIT(A) is very reasoned one passed after following the Hon'ble Gujrat High Court decision as stated above. Accordingly, we are inclined to dismiss the appeal of the Revenue.

**ITA No.1754/M/2019 A.Y. 2012-13**

7. The Revenue has challenged the order of Ld. CIT(A) wherein the entire addition of bogus purchases of Rs.5,76,23,613/- has been deleted by Ld. CIT(A) as made by the AO against the unsecured loans of Rs.5,76,23,613/- as unexplained credits by

framing assessment under section 143(3) read with section 147 of the Act vide order dated 28.12.2017.

8. In this case, the case of the assessee was reopened after AO received information from DDIT(Inv.) Wing that assessee is beneficiary of accommodation entries of Rs.5 lakhs taken by the assessee from Rajat Diamonds whose proprietor is Shri Gautam Jain and the income has escaped assessment accordingly. The case of the assessee was reopened under section 147 read with section 148 by issuing notice dated 31.03.2017. In the assessment framed, the AO added the entire amount of unsecured loans raised from directors and other parties. However, the AO did not add Rs.5 lakhs borrowed from another i.e. from Rajat Diamond Exim Pvt. Ltd. for which the assessment was reopened by recording reasons under section 148(2) of the Act.

9. The Ld. CIT(A) deleted the addition by relying on the decision of Honble jurisdictional High Court in CIT V/s. Jet Airways (I) Ltd. 331 ITR 236 (Bom) by observing and holding as under:

6.4.1 I have considered the rival contentions. In the case of Jet Airways (supra), the Hon'ble Bombay High Court held that as per provisions of Section 147 as amended by Finance (No. 2) Act, 2009, if after issuing a notice under section 148, the AO accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him (AO) to independently assess some other income. In my view, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. (supra) is squarely applicable to the appellant's case. In the course of the appellate proceedings, letter dated 19.12.2018 was sent to the AO calling for his comments in this regard. The relevant portion of the letter is reproduced below:

"2. In the course of appellate proceedings, the appellant contended that the assessment was reopened on the ground that the appellant had made a bogus claim of loan Rs.5,00,000/- from Rajat Diamonds and therefore, income of Rs.5,00,000/- had escaped assessment. However, in the

assessment order the AO did not make any addition in respect of the loan of Rs.5,00,000/- claimed to have been taken from Rajat Diamonds. The AR of the appellant contended that in view of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (331 ITR 236), the addition made of Rs.5,76,23,613/- is not sustainable.

3. Prima facie it appears that the appellant's contention is correct. I request you to offer your comments in this regard, if any, by 07.01.2019."

6.4.2 In response, the AO by letter dated 17.01.2019 received in this office on 23.01.2019 has submitted as under:

"The assessment was reopened on the ground that the assessee had made a bogus claim of loan of Rs.5,00,000/- from Rajat Diamonds and therefore, income of Rs.5,00,000/- had escaped assessment. However, in assessment order AO has disallowed an amount of Rs,5,76,23,613/- as unexplained credit.

It was seen from the Balance Sheet that during the F.Y. 2011-12 the assessee has shown Unsecured Loans received from the Directors & shareholder at Rs.2,40,23,613/- and Inter Corporate Deposits at Rs.3,36,00,000/~ totaling to Rs.5,76,23,613/-. The assessee vide notice u/s,142(l) dated 18.12.2017 was asked to furnish details regarding unsecured loans. In response, the assessee did not file any details; no account confirmations of any type were furnished by the assessee. Moreover, there was information received from DG/T (Investigation), Mumbai that the assessee company has obtained bogus unsecured loan entries of Rs.5,00,000/-, In the absence of any details, confirmations, prima fade, it appears that the loans shown in the account are nothing but just the unaccounted income of the assessee company router as unsecured loan. However, the AO has investigated the matter in depth and found that amount of Rs,5,76,23,613/- shown as unsecured loan has not been substantiated during the course of assessment proceedings. Hence, the then AO has constraint to add the same to the total income of the assessee.

In view of the above facts, it is requested that case may be decided on merits and contention of the assessee may be rejected."

6.4.3 I find from the AO's letter that he has not been able to rebut the appellant's contention that the addition made by the AO of Rs. 5,76,23,613/- is not sustainable in view of the decision of the Hon'ble Bombay High Court cited above. Therefore, in view of the discussions above, particularly in para 6.4.1 above, I direct the AO to delete the addition of Rs. 5,76,23,613/-. In the result ground of appeal No. 5 is allowed."

10. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the AO has not made the

addition for which the assessment was reopened under section 147 read with section 148 of the Act. Therefore, the Ld. CIT(A) has rightly deleted the addition by following the decision CIT V/s. Jet Airways (I) Ltd. (Supra).The operative part is extracted below wherein it was held as under:

"Evidently therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess : (i) such income ; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words "such income" refer to the income chargeable to tax which has escaped assessment, and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of which he has formed a reason to believe that it has escaped assessment and in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. Further the Ld AR also referred to the decision of Honble Delhi High Court the case of Ranbaxy Laboratories Ltd v/s. CIT 336 ITR 136 (Del) it is held that

"under Explanation 3 if during the course of the proceedings the Assessing Officer comes to the conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which was not permissible. The Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than

the issues in respect of which proceedings were initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive."

5.4.12 In the light of the above facts and also placing reliance on the judicial precedents referred to, I am of the considered opinion that the reasons for initiation of reassessment proceedings u/s.147 have ceased to survive as no addition has been for these reasons and hold that the reopening the assessment u/s.147 of the Act is beyond the jurisdiction of the AO. Therefore, I quash the reassessment order passed u/s. 143(3) r.w.s. 147. Accordingly this ground is allowed."

Accordingly, the appeal of the Revenue is dismissed.

11. In the result, both the appeals of the Revenue are dismissed.

**Order pronounced in the open court on 14.12.2020.**

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 14.12.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.