

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC-1': NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1954/Del/2019
Assessment Year : 2009-10**

**Balbir Investment Pvt. Ltd.,
C/o-Kapil Goel, Adv.
F-26/124, Sector-7,
Rohini,
Delhi-110085
PAN-AAACB7397J**

**Vs. Income Tax Officer,
Ward-4(2),
New Delhi**

(Appellant)

(Respondent)

Appellant by : Sh. Kapil Goel, Advocate,
Respondent by : Ms. Shivani Bansal, Sr. DR

Date of hearing : 09.03.2021
Date of pronouncement : 24.03.2021

ORDER

PER R.K. PANDA, AM :

This appeal by the assessee is directed against the order dated 02.11.2018 of the learned CIT(A)-33, New Delhi, relating to Assessment Year 2009-10.

2. Facts of the case, in brief, are that the assessee is a company incorporated on 11.06.2008 under the Companies Act, 1956. It filed its return of income on 30.09.2009, declaring income of Rs.4,900/-. The return was processed under 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, on the basis of information received from the Investigation

Wing of the Department, the Assessing Officer reopened the assessment after recording the following reasons:-

“Information has been received from DDIT (Investigation)-Unit3(3). New Delhi vide letter F.No. DY.DIT (Inv)/Unit-3(3) 2014-15/484 dated 12.03.2015 intimating that in pursuance of certain information received from credible sources in the case of Sh. Salish Monga. It was revealed that Disha commercial Pvt. Ltd. is having Bank Account no. 03071 101 1004576 with Andhra Bank, Kami Bagh. Delhi. On examination, it is revealed that there is cash credit of Rs. 2.8 crore during Oct-Nov, 2011 followed by back to back transfer of these amounts to various individuals and some entities. It is also revealed that these accounts have cash deposits on regular basis and such funds are subsequently transferred to other entities. It was also observed that these entities have common directors/addresses indicating thereby that all these companies entities belong to same group. M/s Balbir Investments Pvt. Ltd. is one of such entity.

Further examination of bank statements also revealed that there are also fund transfers Iron) other entities. In following entities cash has been deposited which has been further transferred to M/s Balbir Investments Pvt. Ltd.

Entity and address as per pass book	PAN	Account Number	Name and Branch
M/s Harvin Exports Pvt. Ltd. 1304. Padma lower-I. Rajindera Place, New Delhi	AAACH1744F	603W03011000310	Vijaya Bank Naraina. Delhi
		582011016991	ING Vysya Bank Ltd.
M/s Shivam Leasing Pvt. Ltd. 1304, Padma Tower-1. Rajindera Place. New Delhi	AAACS39I2J	5820110112328	ING Vysya Bank Ltd.
M/s Disha Commercial Pvt. Ltd. 1304. Padma Tower-1. Kaiindera Place. New Delhi	AAACDI253B	030711011004576	Andhra Bank. Karol Bagh. Delhi

		1522002100030646	PNB. New Rajindera Place. New Delhi
Ms Madad Leason Pvt. Ltd. 1304. Padma Tower-1. Rajindera Place. New Delhi	AAAACM1884	15220021000.30707	PNB. New Rajindera Place. New Delhi
M/s Shraman Estates Pvt. Ltd. 1304. Padma Tower-1. Rajindera Place. New Delhi	AAACS3144 A	603900301000336	Vijaya Bank. Naraina. Delhi
		582011023751	ING Vysya Bank
Satish Monga and Associates. 1304. Padma Tower-1. Rajindera Place. New Delhi	AAFPM3087D	601020110000210	Bank of India. Vikaspuri, New Delhi
Nanak Commercial Pvt. Ltd. 1304, Padma Tower-1. Rajindera Place. New Delhi	AAACN2520K	582011017472	ING, Vysya Bank. West Patel Nagar. New Delhi

From the enquiries made on 111) database, it is found that M/s Balbir Investments IM. Ltd, is filing their ITR at miniscule negative below taxable income and their turnover is also not very significant

S.No.	Name of Company	F.Y. 2008-09		F.Y.2009-10		F.Y. 2010-11		F.Y. 2011-12	
		Turnover	PBT	Turnover	BT	Turnover	PBI	Turnover	PBI
1.	Balbir Investment Pvt. Ltd.	3534600	4899	35116400	22716	5865600	7275	45346492	-5407

From the investigation carried out by the Investigation wing, it has become clear that all these companies are noting but paper/briefcase companies without any business activity and that their accounts are being used to rotate the funds for accommodation entries of different types to various beneficiaries. It has also been observed that the shares of GJ Holdings Ltd. has been procured by Balbir Investments Pvt. Ltd. as per details given Below:-

S. No.	Name of the Company/Entity	Date	Number of shares	Nominal Value	Premium	Total including premium outstanding in R.s.)
1	Balbir Investments Pvt. Ftd.	28.03.2009	5400	10	90	5,40,000/-

Since four years has expired form the end of the relevant assessment year, and the case of the assessee has not been assessed earlier U/s 143(3)/ 147 of the IT Act, 1961.

In view of the above facts, I am satisfied that the Share Premium amount to the extent of Rs. 5,40,000/- is the amount of bogus accommodation entry entered into by the assessee which is liable to be assessed in the hands of the assessee and has escaped assessment in the assessment year 2009-10. Therefore, it is a fit case for initiating proceedings u/s 147 of the Act and issue of notice u/s 148 of the Act.”

3. Accordingly, a notice u/s 148 of the Act was issued to the assessee. The assessee objected to such reopening, which was disposed of by Assessing Officer by passing a speaking order. The Assessing Officer, thereafter, proceeded to complete the assessment. He noted that the assessee has received share capital of Rs.5,40,000/- from certain paper/briefcase company without any business activity and that their accounts are being used to rotate the funds for accommodation entries of different types to various beneficiaries. He, therefore, asked the assessee to prove the identity and creditworthiness of the share applicant and genuineness of the transaction within the meaning of section 68 of the Act. Since, the assessee failed to substantiate the identity and creditworthiness of the investor company and genuineness of the transaction to his satisfaction the Assessing Officer invoked the provisions of section 68 of the Act and made addition of Rs.5,40,000/-. Similarly, he noted that assessee must have

incurred certain expenditure for obtaining the accommodation entry which is normally 1.8%. Applying the same rate, the Assessing Officer made an addition of Rs.9,720/-. He, therefore, made an addition of the same. The Assessing Officer, accordingly assessed the total income of the assessee at Rs.5,54,460/-.

4. Before, the learned CIT(A), the assessee apart from challenging the addition on merit challenged the validity of reopening of the assessment. However, the learned CIT(A) was not satisfied with the arguments advanced by the assessee and dismissed the grounds of challenging the validity of reassessment proceedings and upheld the addition made by the Assessing Officer.

5. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal, by raising the following grounds:-

1. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld AO was in violation of mandatory jurisdictional conditions stipulated under the Act;

1.1. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assessee's seminal objection that reasons recorded in instant case are based on non existing facts and erroneous and incorrect grounds as firstly basis of reasons recorded being investment of Rs 540000 made by asses see in G.J. Holding Pvt Ltd by itself cant be ground to form reasons to believe that income has escaped assessment secondly where assessee in its reply to Ld AO/CIT-A has clarified that said investment is duly recorded in books of both companies and finally while making addition of Rs.5,40,000 in assessment order Ld AO has made a somersault and treated the same as share capital reed by

*assessee which is in clear oppugnation to reasons recorded and correct facts (as assessee clarified with perspicacity that no share capital is reed by assessee from M/s G.J. Holding Pvt Ltd) thus depicting there is complete non application of mind **at** all stages be it reasons recording, objection disposal and final order passing, ergo entire proceedings suffers from serious and incurable defects which requires orders passed may please be quashed and returned income may be restored.*

- 1.2. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that “rubber stamp” reasons in present case are based on borrowed satisfaction and are without independent application of mind and even no requisite and appropriate enquiry is made into valid return filed by assessee before formulating purported belief (like issue of enquiry notice to assessee) which so called belief suffers from lack of live nexus and is based on mere pretence only;*
- 1.3. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that approval of higher authority (although not confronted to assessee) is also without requisite application of mind and is given in mechanical manner as evident from above discussion;*
- 1.4. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s147/143(3) as none of the assessee submission is appreciated while adjudicating the appeal;*
2. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that stated addition for Rs.5,40,000 & Rs 9720 on a/c of alleged share capital reed by assessee from G .J.Holdings Pvt Ltd as accommodation entry which is factually incorrect and based on wrong assumption and presumption which is duly clarified at Ld AO and Ld cit-a stage that no such share capital is reed by assessee in period under consideration from GJ'.Holdings Pvt Ltd thus entire proceedings suffers from serious and incurable defects which requires orders passed may please be quashed and returned income may be restored.*
3. *That on the facts and in the circumstances of the case and*

in law, Id CIT-A erred in not restoring the returned income declared by assessee in its return of income.

6. The learned counsel for the assessee referring to the reasons recorded drew the attention of the Bench to page-2 of the same and submitted that as per reasons recorded shares of G.J. Holding Ltd. has been procured by Blabir Investments Pvt. Ltd. However, the Assessing Officer in the assessment order has made addition on the ground that the assessee has received share capital/premium of Rs.5,40,000/- from M/s G.J. Holdings Ltd. Thus, there is contradiction between the reasons recorded and the assessment made. Thus, there is complete non-application of mind by the Assessing Officer. Therefore, the reassessment should be quashed on this reason itself, since, the reasons are based on non-existing facts. He, accordingly, submitted that the reassessment proceedings initiated by the Assessing Officer should be quashed.

6.1. Referring to the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd., reported in 336 ITR 136 (Del.), he submitted that the Hon'ble Delhi High Court in the said decision has held that under Explanation-3, if during the course of reassessment proceedings the Assessing Officer comes to 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 AO 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 u/s 148 of the Act. Therefore, in the present circumstances, when the assessee instead of investing any money in G.J. Holdings Ltd. has received an amount of from G.J. Holding Ltd., the Assessing Officer could have issued fresh notice and he could not have proceeded on the basis of non-existent or wrong/erroneous facts for reopening of the assessment.

7. The learned DR, on the other hand, heavily relied on the orders of the Assessing Officer and the CIT(A). He submitted that the Assessing Officer on the basis of information obtained from the Investigation Wing has reopened the assessment. Since, the Investigation Wing is a part of the Department and credible information was obtained, therefore, the assessee cannot say that the reassessment proceedings are not in accordance with law. He, accordingly, submitted that the grounds raised by the assessee on this issue should be dismissed. Further, the assessee could not substantiate the identity and creditworthiness of the investor company and the genuineness of the transaction either before the Assessing Officer or the CIT(A) or even before the Tribunal. Therefore, under these circumstances, the addition made by the Assessing Officer and upheld by the CIT(A) should be confirmed and reassessment proceedings should also be held as valid.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. A perusal of the reasons recorded by the Assessing Officer shows that he has reopened the assessment by recording the reasons that

shares of G.J. Holdings has been procured by Blabir Investments Pvt. The relevant observations of the Assessing Officer in the reasons recorded by the Assessing Officer have already been reproduced in the earlier paragraphs which clearly show that the case of the assessee was reopened on the ground that it has invested in the shares G.J. Holding Ltd. to the extent of Rs.5,40,000/-. However, the assessment order shows that the Assessing Officer made an addition of Rs.5,40,000/- u/s 68 of the Act on the ground that the assessee has received bogus share capital/premium of Rs.5,40,000/- from G. J. Holding Ltd. Thus, there is contradiction in the reasons recorded and the assessment made. There is complete non-application of mind by the Assessing Officer while recording the reasons for reopening the assessment. The assessment was basically reopened on the basis of information obtained from the Investigation Wing and without due application of mind by the Assessing Officer and such reopening was on borrowed satisfaction. It has been held in various decisions of Hon'ble High Courts and the Co-ordinate Benches of the Tribunal that reopening of assessment on the basis of borrowed satisfaction and without independent application of mind by the Assessing Officer makes such reassessment a nullity. Since, the Assessing Officer in the instant case, has reopened the assessment on the basis of information obtained from the Investigation Wing that it has invested in the shares of G.J. Holdings Ltd., whereas, in the assessment order, the Assessing Officer has finally concluded that the assessee has received an amount of Rs.5,40,000/- from G.J. Holding Ltd. in shape of share capital and share premium, therefore, it clearly shows that there is complete non-application of mind by the Assessing Officer

while reopening the assessment, therefore, such reopening of the assessment which is based on irrelevant or non-existent facts makes the reassessment proceedings a nullity. We, therefore, quash the reassessment proceedings initiated by the Assessing Officer which has been upheld by the CIT(A). The grounds raised by the assessee are, accordingly allowed.

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

Order pronounced in the open court on 24.03.2021

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi/Dated- 24.03.2021

Shekhar

Copy forwarded to: -

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

By Order

Assistant Registrar,
ITAT, Delhi