

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.455/Mum/2018  
(Assessment Year :2008-09)**

DCIT, CC-5(1) R. No.1928, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021	Vs.	M/s. Auster Properties Ltd., 324, Master Mind-IV, Royal Palms, Aarey Milk Colony Goregaon East Mumbai -400 065
<b>PAN/GIR No.AAGCA5453Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**CO No.179/Mum/2018  
(Arising out of ITA No.455/Mum/2018  
(Assessment Year :2008-09)**

M/s. Auster Properties Ltd., 324, Master Mind-IV, Royal Palms, Aarey Milk Colony Goregaon East Mumbai -400 065	Vs.	DCIT, CC-5(1) R. No.1928, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021
<b>PAN/GIR No.AAGCA5453Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Brajendra Kumar
Assessee by	Shri Vijay Mehta
<b>Date of Hearing</b>	<b>20/04/2021</b>
<b>Date of Pronouncement</b>	<b>21/05/2021</b>

## **आदेश / ORDER**

### **PER M. BALAGANESH (A.M.):**

This appeal of revenue in ITA No.455/Mum/2018 and Cross Objection of assessee in CO No.179/Mum/2018 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/IT-28/DCCC-5(1)/2015-16 dated 17/11/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. Dy. Commissioner of Income Tax, Central Circle-5(1), Mumbai (hereinafter referred to as Id. AO).

2. The Revenue has raised the following ground:-

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has justified in deleting the protective additions in this case considering that the issue of substantive addition in the case of Shree Global Tradefin Ltd. has not reached finality.?”*

3. In the Cross Objections of the assessee, the assessee has raised several grounds challenging the validity of re-assessment proceedings.

4. We have heard the rival submissions and perused the materials available on record. We find that the grounds raised by the assessee in its cross objections are legal in nature and hence, they are first taken up for adjudication. We find that assessee has challenged the validity of re-assessment proceedings in its cross objections. We find that assessee company is engaged in the business of property development and had filed its return of income for the Asst Year 2008-09 declaring income of Rs. Nil. Subsequently, a search and seizure action u/s.132(1) of the Act was conducted by the Investigation Wing of the Income Tax department in Jogia Group on 04/03/2010. Pursuant to the search, in response to notice

u/s.153A of the Act, the assessee filed its return of income on 26/02/2011 declaring total income of Rs. Nil. The assessment was completed u/s.143(3) r.w.s. 153A of the Act on 26/12/2011 determining total income of Rs 1,00,00,000/-. Subsequently, this assessment was sought to be reopened by issuance of notice u/s. 148 of the Act on the basis of information received from Investigation wing. The notice u/s.148 of the Act was issued on 21/03/2014 which was served on the assessee on 28/03/2014. In response to the same, the assessee vide letter dated 02/04/2014 requested the Id. AO to treat the return filed u/s. 153A of the Act on 26/02/2011 as a return filed in response to notice u/s.148 of the Act.

4.1. From the aforesaid primary facts, it could be seen that reopening of assessment for the Asst Year 2008-09 has been admittedly made by the Id. AO after a period of four years from the end of the relevant assessment year. We find that in the re-assessment proceedings completed u/s.143(3) r.w.s. 147 of the Act on 31/03/2014, the Id. AO had made an addition of Rs.2,50,00,000/- on account of unexplained cash credit u/s.68 of the Act in respect of share application money received by the assessee company on the ground that the three necessary ingredients of Section 68 viz., identity of share subscriber, creditworthiness of the share subscriber and genuineness of the transactions were not proved by the assessee company. This addition also includes Rs 1,00,00,000/- already added by the Id. AO in the assessment framed u/s 153A of the Act. We find that the Id. AO also added a sum of Rs.7,50,000/- on account of commission @3% on the aforesaid addition of Rs 2,50,00,000/-. We find that the Id. CIT(A) by passing an elaborate order deleted the protective addition made in the case of the assessee in the sum of Rs.2,50,00,000/- but however, observed that the addition need to be made on substantive basis in the hands of Shree Global Tradefin Ltd., (SGTL). Correspondingly, the commission of Rs.7,50,000/- was also directed to be deleted by the Id. CIT(A) in assessee's hands.

4.2. We find that the reasons for reopening of the assessment were provided to the assessee by the Id. AO and assessee filed objections to the same vide letter dated 29/09/2014. The Id. AO vide letter dated 20/01/2015 and 03/02/2015 rejected the objections so raised by the assessee. The validity of re-assessment proceedings was also challenged by the assessee before the Id. CIT(A) apart from challenging the addition on merits.

4.3. As stated earlier, a search and seizure action u/s.132 of the Act was conducted in the business premises of Jogia group on 04/03/2010. In the course of search, it was found that M/s. Jogia Properties Ltd., was maintaining its books of accounts at No.29, Bhatia Nivas, 233/235, Samuel Street, Masjid Bunder, Mumbai – 400 009. This premises was also covered u/s.153A of the Act, wherein it was found that various companies were operating from this premises including the assessee company before us. The following are list of companies operating from this address:-

- Auster Properties Ltd.,
- Reva Properties Ltd.,
- Archive Realty Developers Ltd.,
- Vedisa Properties Ltd.,
- Martand Properties Ltd.,
- Karburi Properties Ltd.,
- Cikura Properties Ltd.,

4.4. All the above listed companies were found to have shown investment activities and had made an investment in equity shares of various companies. These investments were made out of the share capital of the respective companies which solely consist of share application money received from various other concerns. It was found that there was common Directors in these companies as tabulated below:-

S.No.	Name of Director	Name of Company
1.	Sh. Ajay Kumar	Jogia Properties Ltd.
2.	Sh. Ajay Kumar	Auster Properties Ltd
3.	Sh. Ajay Kumar	Reva Properties Ltd.
4.	Sh. Om Hari Halan	Archieve Realty Developers Ltd.,
5.	Sh. Om Hari Halan	Vedisa Properties Ltd.
6.	Sh. Narayan Hari Halan	Martand Properties Ltd.
7.	Sh. Narayan Hari Halan	Karburi Properties Ltd.
8.	Sh. Narayan Hari Halan	Cikura Properties Ltd.

4.5. It was also found that these Directors of the various companies were related and were brothers belonging to the same family. Moreover, during the course of search action carried out in the case of Shri Mukesh Choksi, a hawala operator, it was found that M/s. Jogia Properties Ltd., and other concerns have received bogus share application money from the concerns operated by Mr. Mukesh Choksi.

4.6. We find that the Id. CIT(A) dismissed the grounds raised by the assessee challenging the validity of re-assessment proceedings. We find that the Id. CIT(A) had granted relief to the assessee on merits of the addition.

5. Aggrieved by this order, the Revenue has filed an appeal before us challenging the action of the Id. CIT(A) deleting the addition on merits and assessee has filed cross objections before us challenging the action of the Id. CIT(A) deleting the validity of re-assessment proceedings.

6. Before us, Id. AR vehemently argued that the approval of the Id. Pr. Commissioner of Income Tax (PCIT) u/s.151 of the Act was sought in the instant case in a mechanical manner wherein, in the approval papers, the Id. PCIT had merely put only his initial and his satisfaction was not even

mentioned in the said document. In support of these, he placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Astra Exim Pvt. Ltd., in ITA No.277/Mum/2018 dated 31/08/2018.

7. We find that assessee vide letter dated 26/04/2019 had filed additional evidences containing 5 pages and also requested this Tribunal to admit those additional evidences for dealing with the legal issue of challenging initiation of re-assessment proceedings. These additional evidences are summarised as under:-

*1. Application made vide letter dated 25/06/2018 for inspection and copies of records for A.Y.2008-09.*

*2. Letter issued by the Assessing Officer dated 12/07/2018 in response to our application.*

*3. Letter of the Assessing Officer dated 13/3/2014 forwarding the proposal for reopening to the Commr. Of Income Tax, Central-III.*

*4. Letter of the Addl. Commr. Of Income Tax, Central Range-VIII dated 18/03/2014 forwarding the papers to the Commr. Of Income Tax, Central-III.*

*5. ITO Headquarters put up for the approval of the Commr. Of Income Tax a proposal dated 20/03/2014. The Commr. Of Income Tax, Central Circle-III has not granted any approval in the case of the appellant.*

8. These additional evidences were filed by the assessee before us for the first time and admittedly these documents were not available before the Id. CIT(A) while adjudicating the ground raised regarding challenging the validity of re-assessment proceedings. We feel that these additional evidences go to the root of the matter for deciding the legal issue of validity of re-assessment proceedings. Hence, we deem it fit and appropriate to admit these additional evidences and since these evidences were not placed before the Id. CIT(A), we deem it fit and appropriate, to remand these appeals to the file of the Id. CIT(A) to decide the issue challenging the validity of reopening of assessment by considering these evidences, in

accordance with law. We are conscious of the fact that the appeals are remanded back to the file of the Id. CIT(A) only for the limited purpose of adjudication of the legal issue of challenging the validity of re-assessment proceedings. But since, the validity of re-assessment proceedings and challenging the addition on merits are to be considered together for the purpose of better administration and convenience, we deem it fit to remand these appeals to the file of the Id. CIT(A) for denovo adjudication of the legal issue alone i.e. challenging the validity of re-assessment proceedings. After considering these additional evidences (5 pages) as tabulated above in accordance with law, we further direct that the Id. CIT(A) should not deviate from the earlier stand taken by him on merits of the case. These directions, in our considered opinion, would meet the ends of justice for both the parties before us. Accordingly, the grounds raised in cross objections and appeal of the Revenue are allowed for statistical purposes.

**8. In the result, appeal of the Revenue and Cross Objections of the assessee are allowed for statistical purposes subject to above mentioned directions.**

Order pronounced on 21/05/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

Mumbai; Dated 21/05/2021  
KARUNA, sr.ps

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**