

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8670/Del/2019
Assessment Year: 2011-12

Anirudh Kumar,
D-1, 2nd Floor,
Hauz Khas,
New Delhi.

Vs. ITO,
Ward-32(5),
New Delhi.

PAN: AAIPK1426A

(Appellant)

(Respondent)

Assessee by	:	Ms Lalita Krishnamurthy, CA & Ms Himani Jain, CA
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	03.08.2021
Date of Pronouncement	:	16.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 11th September, 2019 of the CIT(A)-11, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and has filed his return of income on 28th Sept., 2011 declaring loss of Rs.6,98,788/-. On the basis of information received from the Investigation Wing that the assessee

has accepted accommodation entry, the AO reopened the case of the assessee u/s 147 of the IT Act, 1961, after recording reasons.

3. Accordingly, notice u/s 148 of the Act was issued to the assessee on 29th March, 2017. In response to the same, the assessee submitted, vide letter dated 9th April, 2018 that the return already filed on 28th September, 2011 may be treated as return filed in response to notice u/s 148 of the IT Act. During the course of assessment proceedings, the AO confronted the assessee regarding the taxability of accommodation entry to the tune of Rs.19,64,235/-. Rejecting the various explanations given by the assessee, the AO made addition of Rs.19,64,235/- to the total income of the assessee u/s 68 of the IT Act being the bogus purchase made by him from M/s. Mayank Impex amounting to Rs.19,64,235/-, the details of which are as under:-

PAN of Bill Provider	Name of bill provider	A.Y.	Nature	Beneficiary PAN	Beneficiary Name	Total value of the Transaction	Real value of transaction	Beneficiary Address
AAQHS5732R	Mayank	2011-12	Sale	AAIPK1426A	Jewel of India	20,80,040	19,64,235	D-1, Hauz Khas, Delhi

4. Before CIT(A), the assessee, apart from challenging the addition of Rs.19,64,235/-, also challenged the validity of reassessment proceedings. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition made by the AO as well as the reassessment proceedings initiated by him.

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

01. That the assumption of jurisdiction by the Assessing Officer under section 147 of the Income Tax Act, 1961, is arbitrary, unjust and bad in law and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law.

2. That there was no valid material with the Assessing Officer as contemplated to assume the jurisdiction under section 147 of the Income Tax Act, 1961 and consequently the reassessment so framed mechanically and without application of mind on the basis of such invalid assumption of jurisdiction is bad in law and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law.

3. That the addition of Rs.19,64,235/- made under Section 68 of the Act on account of bogus purchases and sustained by Id. CIT(Appeals) is arbitrary, unjust, unwarranted on facts and in law and at any rate very excessive.

4. That as the purchase is supported by invoice of Mayank Impex containing its address, VAT, CST, PAN, Bill number, date and weight, rate, description of the diamonds sold to the assessee, place of sale and delivery of the diamonds sold to the assessee and the payment of such invoice has been made by the assessee by account payee cheque and reflected in the bank account of the assessee, the addition of Rs.19,64,235/- made under Section 68 of the Act on account of bogus purchases and sustained by Id. CIT(Appeals) is unjust, unwarranted and not tenable on facts and in law.

5. That as the diamonds purchased from Mayank Impex are being utilized / sold to customers against payment by customer and against sale invoice issued to them by assessee and such sale proceeds are offered to tax and is verifiable from the records of the assessee, disallowance of Rs.19,64,235/- made under Section 68 of the Act on account of bogus purchases by taking the sale proceeds at 100 percent would give a distorted picture of the profits of the assessee and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law.

6. That as Mayank Impex had not specified the name of the assessee and transaction with the assessee in their statement on oath, the addition of Rs.19,64,235/- made under Section 68 of the Act on account of bogus purchases in the hands of the assessee and sustained by Id. CIT(Appeals) is arbitrary, unjust and unwarranted on facts and in law.

7. That based on such general statement the AO without verifying the facts, without bringing any adverse material on record, without carrying out any further investigation to substantiate the allegation that the purchase is not genuine and without giving an opportunity to the assessee to confront Mayank Impex in relation to the transaction with the assessee, making of addition of Rs.19,64,235/- under Section 68 of the Act on account of bogus

purchases in the hands of the assessee and sustained by Id. CIT(Appeals) was unjustified and unwarranted on facts and in law.

8. That the addition of Rs.19,64,235/- made under Section 68 of the Act on account of bogus purchases in the hands of the assessee cannot be made merely because the purchases are not verifiable because as far as the assessee is concerned the purchase is duly supported by an invoice and payment by account payee cheque and those many diamonds are being utilized/sold to customers against payment by customer and against sale invoice issued to them by assessee.

9. The above grounds are independent and without prejudice to one another.

10. Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.ö

6. The Id. Counsel for the assessee submitted that the assessee had purchased diamonds from M/s Mayank Impex and had filed copy of purchase invoice dated 23rd October, 2010 and 11th March, 2011 mentioning the address, VAT TIN No. CST TIN No., PAN, Bill No. , invoice date and weight of diamonds, rate, description of diamonds sold to the assessee, etc. The payments were made to the supplier by account payee cheque and such payments are reflected in the bank statement of the assessee. She submitted that as far as the assessee is concerned, he has made a genuine business transaction and the diamonds became part of his stock-in-trade for being utilized in the normal course of his business. She submitted that the sales have not been disputed by the AO. She submitted that the AO, in the instant case, without bringing any other material or evidence on record, has simply reopened the assessment on the basis of information received from the Investigation Wing.

6.1 Referring to the decision of the coordinate Bench of the Tribunal in the case of Nihal Chand Rakyan vs ACIT, vide ITA No.4534/Del/2017, order dated 12th December, 2017, he submitted that under identical facts and circumstances, the Tribunal has held the reassessment proceedings to be invalid where such reopening was made on the basis of information received from the Addl.CIT, Central Range, Surat from the search and seizure operation carried out by the DCIT (Investigation) in the case of the very same Rajendra Jain Group, M/s Sanjay Chaudhary Group and M/s Dharmichand Jain Group.

6.2 She also relied on the following decisions wherein it has been held that reopening on the basis of information received from the Investigation Wing without independent application of mind by the Assessing Officer is invalid :-

- a. M/s Lavitra Technologies Pvt. Ltd. vs. ITO (ITA No.2912/Del/2013 order dated 14.07.2016).
- b. G & G Pharma India Limited vs. ITO (ITA No.3149/Del/2013 order dated 09.1.2015).
- c. Pr.CIT vs. G & G Pharma India Ltd. (ITA 545/2015 order dated 08.10.2015).
- d. DCIT vs. M/s Viney Auto Pvt. Ltd. (ITA No.291/Del/2010 order dated 14.03.2016).
- e. M/s MKM Finsec (P) Ltd. vs. ITO (ITA No.5203/Del/2013 order dated 08.08.2016).

7. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

8. I have heard the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the AO in the instant case made addition of Rs.19,64,235/- u/s 68 of the IT Act, 1961 being bogus purchase made by the assessee from M/s Mayank Impex in the order passed u/s 143(3)/147 of the IT Act, 1961. A perusal of the reasons recorded for reopening the assessment, copy of which is placed at page 261 of the Paper Book, shows that the following reasons were recorded for reopening of the assessment:-

Reasons for reopening the case u/s 147/148 of the I.T. Act, 1961 For A.Y. 2008-09. The Addl. Commissioner of Income Tax, Central Range, Surat vide letter no.SRT/Addl.CIT/CR/Rajendra Jain, Dharmichand Jain, Sanjay Choudhary Gr./2014-15/506 dated 13/03/2015 has informed that a search and seizure operation u/s 132 of the I.T. Act 1961 in the case of Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain Group was carried out on 03/10/2013 by the DGIT (Inv.), Mumbai Charge. During investigation it was found that Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain were some of the entry providers operating in Mumbai, indulging in providing accommodation entries in the nature of bogus sales and unsecured loans. During investigation it was also revealed that besides above lender group, some other entry providers were also engaged in providing accommodation entry. As per information provided, M/s N.N. Association, the assessee was one of the beneficiaries of such bogus accommodation entries. The complete details of the transactions between the entry provider and the assessee are as under:-

PAN of Bill Provider	Name of bill provider	A.Y.	Nature	Beneficiary PAN	Beneficiary Name	Total value of the Transaction	Real value of transaction	Beneficiary Address
AAQH55732R	Mayank	2011-12	Sale	AAIPK1426A	Jewel of India	20,80,040	19,64,235	D-1, Hauz Khas, Delhi

From above it is clear that this issue could not be examined for the assessment year under consideration. Therefore, I have reasons to believe that the income of the assessee to the extent of Rs.14,54,400/- for A.Y.

2008-09 has escaped assessment in terms of [Section 147](#) of the I.T. Act 1961.

Sd/-
(G. Sathish)
Assistant Commissioner of Income Tax
Circle 30(1),
New Delhi

9. I find identical issue had come up before the Tribunal in the case of Nihal Chand Rakyan and the Tribunal vide ITA No.4534/Del/2017 order dated 12.12.2017 has held the reassessment proceedings as not valid by observing as under :-

7. I have considered the rival arguments made by both the sides, perused the orders of the authorities below and the Paper Book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons recorded for reopening the assessment, copy of which is ITA No.4534/Del/2017 placed at page 15 of the Paper Book, shows that the following reasons were recorded for reopening of the assessment :-

Reasons for reopening the case u/s 147/148 of the I.T. Act, 1961 For A.Y. 2008-09. The Addl. Commissioner of Income Tax, Central Range, Surat vide letter no.SRT/Addl.CIT/CR/Rajendra Jain, Dharmichand Jain, Sanjay Choudhary Gr./2014-15/506 dated 13/03/2015 has informed that a search and seizure operation u/s 132 of the I.T. Act 1961 in the case of Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain Group was carried out on 03/10/2013 by the DGIT (Inv.), Mumbai Charge. During investigation it was found that Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain were some of the entry providers operating in Mumbai, indulging in providing accommodation entries in the nature of bogus sales and unsecured loans. During investigation it was also revealed that besides above lender group, some other entry providers were also engaged in providing accommodation entry. As per information provided, M/s N.N. Association, the assessee was one of the beneficiaries of such bogus accommodation entries. The complete details of the transactions between the entry provider and the assessee are as under:-

PAN of Bill Provider	Name of Bill Provider	A.Y.	Nature of Transaction	Beneficiary PAN	Beneficiary Name	Total value of the transaction Rs.	Real value of Transaction Rs. (if available)
AHOPJ3837B	AADI	2008-09	Sale	Under Process	N.N. Association	14,54,400	14,54,400

From above it is clear that this issue could not be examined for the assessment year under consideration. Therefore, I have reasons to believe that the income of the assessee to the extent of Rs.14,54,400/- for A.Y.

2008-09 has escaped assessment in terms of [Section 147](#) of the I.T. Act 1961.

Sd/-
(G. Sathish)
Assistant Commissioner of Income Tax
Circle 30(1),
New Delhi

8. I find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year and the Tribunal vide ITA No.1914/Del/2016 order dated 08.11.2016 held the reassessment proceedings as not valid by observing as under :-

"6. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is noticed from the reasons recorded for reopening the assessment placed on page No.12 of the assessee's paper book that the reopening was done only on the basis of the information received from the Additional Director of Income Tax (Investigation) Unit VI New Delhi vide letter dated 24.3.2014 who suggested that notice u/s 148 was required to be issued to bring to tax the undisclosed income in respect of accommodation entries taken by different persons/companies as per the list enclosed with the said letter.

7. On a similar issue, the Hon'ble Jurisdiction High Court in the case of Pr. Commissioner of Income Tax - 4 vs. G & G Pharma India Ltd. (supra) vide order dated 8.10.2015 held as under :-

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under [Section 143\(3\)](#) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order

to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity."

8. In the present case, the reopening was done only on the basis of information received from Investigation Wing. Therefore, in view of the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case, the reopening was not valid and the subsequent assessment framed was void ab initio. Accordingly, the same is set-aside.

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

9. Since the facts and circumstances of the case are identical to the facts of the case decided by the Tribunal in assessee's own case in the immediately preceding assessment year, therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case and in absence of any contrary material brought to my notice against the said decision, I hold that the reassessment proceedings initiated by the Assessing Officer is invalid. Therefore, subsequent assessment framed is void ab initio. In the result, the appeal filed by the assessee is allowed on the issue of validity of the reassessment proceedings. Since the assessee succeeds on this legal ground, I refrain myself from adjudicating the issue on merit.

9. Since the facts of the case are identical to the facts of the case decided by the Tribunal in the case of Nihal Chand Rakyan, therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal in the case cited supra and in absence of any contrary material brought to my notice against the said decision, I hold that the reassessment proceedings initiated by the Assessing Officer is invalid. Therefore, subsequent assessment framed is void ab initio. In the result,

the appeal filed by the assessee is allowed on the issue of validity of the reassessment proceedings. Since the assessee succeeds on this legal ground, I refrain myself from adjudicating the issue on merit.

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

The decision was pronounced in the open court on 16.09.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 16th September, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi