

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी"
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1126 /मुं/2019(नि.व.2009-10)
ITA NO. 1126/MUM/2019(A.Y.2009-10)

Manju Anoop Khanna,
A-36, Anand Nagar,
Sitaladevi Temple Road,
Mahim, Mumbai 400 016
PAN:AAKPK-3585-C

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

ITO-21(2)(2),
Room No.111, 1st Floor,
Piramal Chambers,
Parel, Mumbai 400 012.

: प्रत्यर्थी/ Respondent

आअसं. 1127 /मुं/2019(नि.व.2009-10)
ITA NO. 1127/MUM/2019(A.Y.2009-10)

Pooja Anoop Khanna,
A-36, Anand Nagar,
Sitaladevi Temple Road,
Mahim, Mumbai 400 016
PAN:AIIPK -2896-A

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

ITO-21(2)(5),
Room No.107, 1st Floor,
Piramal Chambers,
Parel, Mumbai 400 012.

: प्रत्यर्थी/ Respondent

Assessee by : Shri Nishit Gandhi
Revenue by : Shri Saurabh Rai
सुनवाई की तारीख/
Date of Hearing : 11 /06/2021
घोषणा की तारीख /
Date of Pronouncement : 06/09/2021

आदेश/ ORDER

These two appeals by two different assesseees is directed against the orders of Commissioner of Income Tax (Appeals)-33, Mumbai (in short 'the CIT(A)') for the assessment year 2009-10, in their respective cases. Both the impugned orders are of even dated i.e. 12/12/2018. Since, the grounds raised in both the appeals germinate from same set of facts, these appeals are taken up together for adjudication and are decided by this common order. For the sake of convenience the facts are narrated from the appeal in ITA No.1126/Mum/2019, A.Y. 2009-10.

ITA No.1126/Mum/2019,A.Y. 2009-10:

2. Shri Nishit Gandhi appearing on behalf of the assessee submitted that the assessment for assessment year 2009-10 in the case of assessee was reopened consequent to search and seizure action under section 132 of the Income Tax Act, 1961 (in short 'the Act'), in the case of Ahuja Group, Mumbai. The Ahuja Group allegedly maintained parallel set of books containing unaccounted transactions in the form cash/loans, etc. The name of the assessee appeared in the said books. As per the entry dated 24/11/2008 recorded in the parallel set of books maintained by the Ahuja Group the assessee had issued a cheque for Rs.30,00,000/- in lieu of cash received from Ahuja Group.

3. The Id. Counsel for the assessee made two fold submissions. The Id. Counsel for the assessee submitted that assessment has been reopened merely on suspicion. The Id.Counsel for the assessee pointed that the Assessing Officer in assessment order has reproduced extracts of statement of Mr. Jagdeesh B. Ahuja, Director of Ahuja Group. Nowhere in the statement

Mr. Jagdeesh B. Ahuja, has made reference of the name of assessee. The Id.Counsel for the assessee pointed that in Para 5.3 of the assessment order the Assessing Officer has recorded that on the basis of statement of Mr. Jagdeesh B. Ahuja, and unaccounted transactions/ accommodation entries cast shadow of suspicion on the transaction between the assessee and Mr. Jagdeesh B. Ahuja, and has termed the transactions shady. The Id.Counsel for the assessee asserted that addition in reassessment proceedings cannot be made merely on suspicion, conjectures and surmises. The Assessing Officer has not recorded his own satisfaction for reopening the assessment, the Assessing Officer has initiated reassessment proceedings merely on the basis of material found in search action on Ahuja Group.

On merits of the addition, the Id.Counsel for the assessee pointed that the assessee had field a reply before the Assessing Officer categorically stating that the assessee had taken hand loan from Mr. Jagdeesh B. Ahuja, totalling to Rs.30,00,000/- during financial year 2006-07. The said loan was repaid by the assessee to Mr. Jagdeesh B. Ahuja, vide cheque No.141180 for Rs.10,00,000/- and cheque No.989776 for Rs.20,00,000/- during financial year 2008-09. In support of his contention the assessee had furnished a copy of ledger showing Mr. Jagdeesh B. Ahuja, loan account for financial year 2006-07 and financial year 2008-09. The assessee had also furnished copy of the bank statement indicating that the aforesaid cheques were encashed and the amounts were debited from the bank account of the assessee. The authorities below without any valid reason rejected the contentions of the assessee.

The Id.Counsel for the assessee further contended that CIT(A) has erred in interpreting the words 'entry account' mentioned in parallel books of account maintained by Ahuja Group to mean as 'accommodation entries' .

Nowhere in the statement made by Mr. Jagdeesh B. Ahuja, and reproduced in assessment order it has been stated that entry account means accommodation entry. The CIT(A) has drawn conclusion on the nomenclature of 'entry account' merely on suspicion without there being any basis.

4. Per contra, Ms. Smita Verma representing the Department vehemently defended the impugned order and the assessment order. The Id. Departmental Representative submitted that in the statement made by Mr. Jagdeesh B. Ahuja, during search action the modus operandi of accommodation entries has been clearly admitted and explained. The Ahuja Group was maintain parallel set of books, this fact was admitted by Mr. Jagdeesh B. Ahuja, in his statement. In parallel set of books there was entry, where the name of the assessee is mentioned. On the basis of said entry reopening proceedings were initiated in the case of assessee. On merits the Id. Departmental Representative pointed that the assessee failed to substantiate receipt of loan from Ahuja Group during financial year 2006-07. Therefore, the Assessing Officer disbelieved the explanation furnished by the assessee.

5. Both sides heard, orders of authorities below examined. The assessee in ground No.2 of the appeal has assailed reopening of assessment. The contention of the assessee against reopening of assessment is that the assessment has been reopened merely on suspicion, surmises and conjectures. A perusal of the assessment order shows that assessment for assessment year 2009-10 has been reopened on the basis of the statement of Mr. Jagdeesh B. Ahuja, recorded under section 132(4) of the Act, wherein he has admitted that Ahuja Group was maintaining parallel books containing unaccounted

transactions in the form cash / loan account. In the said books there appeared one entry dated 24/11/2008, the same is reproduced as under:-

Date	Dr/Cr	Particulars	Narration	Debit	Credit
24.11.2008	Dr	Entry A/c	Cheque received back fvg JBA for 30L(20+10) from Anoop and Manju Khanna respectively.		3000000.00

After examining the entire transactions the Assessing Officer concluded as under:

“5.3 Further, the statement of Mr.Ahuja that these unaccounted transactions/ accommodation entries put the said transactions in the shadow of suspicion to be a shady transaction. Moreover the modus operand! of Ahuja group conforms to a standard nature of hawala dealings.”

A close examination of the assessment order reveals that the Assessing Officer merely on the basis of information received from the documents / statements recorded during the search operation on Ahuja Group has reopened the assessment in the case of assessee. The Assessing Officer has not given any conclusive finding that the assessee has indulged in providing accommodation entries to Ahuja Group. The findings of the Assessing Officer in para 5.3 of the assessment order reproduced above indicates that the Assessing Officer has made addition merely on suspicion and surmises. The Assessing Officer was himself not convinced to the core regarding assessee's involvement in providing accommodation entries. It is no more re-integra that provisions of section 147 cannot be invoked merely on suspicion. The Assessing Officer has to record his own satisfaction regarding escapement of income on account of non-disclosure or suppression of income by the assessee. In the present case I find that assessment has been reopened merely on suspicion. The reopening is held to be bad in law and contrary to the provisions of section 147 / 148 of the Act.

6. On merits of the addition, the case of the Revenue is that the assessee has provided accommodation entries to Ahuja Group. The assessee has allegedly issued cheque in lieu of cash received from Ahuja Group. Although the assessee had not admitted to the aforesaid transaction and has given a separate dimension to the transaction stating that it was a hand loan received by the assessee in financial year 2006-07 from Mr. Jagdeesh B. Ahuja, that was repaid through banking channel during the period relevant to the assessment under appeal. The Revenue has rejected the contention of the assessee on the ground that the assessee has failed to prove receipt of loan from Ahuja Group by filing cogent evidences. If the reason for making the addition by the Revenue is accepted even then the addition is not sustainable as it is the money of Ahuja Group that has been paid back by the assessee by way of cheque. Therefore, the addition cannot be made under any of the provisions of the Act. I find no reason to sustain the addition of Rs.30,00,000/-. The ground No.3 of the appeal is consequently allowed.

7. In the result the appeal of the assessee is allowed

ITA No.1127/Mum/2019,A.Y.2009-10:

8. Both sides are unanimous in stating that the nature of transaction, the reason and manner for invoking provisions section 147 / 148 of the Act are identical to the case in ITA No.1126/Mum/2019. The Id.Counsel for the assessee has pointed that even the ground of appeal are identical to the grounds raised in ITA No.1126/Mum/2019. The Id.Counsel for the assessee submitted that the submissions made for ITA No.1126/Mum/2019 (supra) would equally apply to the present appeal.

9. In the present appeal the transaction recorded in parallel set of books by Ahuja Group that has result in re-opening of assessment and addition in the hands of assessee is reproduced here in under:

Date	Dr/Cr	Particulars	Narration	Debit	Credit
25.11.2008	Dr	Entry A/c	Anup Khanna cheq recd back fvg JBA fir 11 L from Pooja Khanna.		1100000.00
26.11.2008	Dr	Entry A/c.	Anup Khann cheq recd back fvg JBA for 19 L from Pooja Khanna		1900000.00
			Total		3000000.00

Since, the grounds of appeal and the facts giving rise to the addition in the present appeal are identical to ITA No.1126/Mum/2019 (supra), the findings given in the aforesaid appeal would mutatis mutandis apply to the present appeal. Consequently, the appeal by the assessee is allowed for parity of reasons .

11. To sum up, ITA No.1126/Mum/2019 and ITA No.1127/Mum/2019 are allowed.

Order pronounced in the open Court on Monday, the 06th day of September, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 06/09/2021
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai