

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI C.N. PRASAD, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No.7424/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)
2. आयकरअपील सं./ I.T.A. No.7425/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>M/s Atlanta Limited</b> 301, Shree Ambashanti Chambers Opp. Hotel Leela, Andheri (East), Mumbai-400 059	<b>बनाम/ Vs.</b>	<b>DCIT Circle – 9(1)(2),</b> Aaykar Bhavan, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAACA-8865-E</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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3. आयकरअपील सं./ I.T.A. No.7630/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)
4. आयकरअपील सं./ I.T.A. No.7631/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)
5. आयकरअपील सं./ I.T.A. No.7632/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>DCIT Circle – 9(1)(2),</b> R. No. 210, 2 <sup>nd</sup> floor Aaykar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	<b>M/s Atlanta Limited</b> 301, Shree Ambashanti Chambers Opp. Hotel Leela, Andheri (East), Mumbai-400 059
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAACA-8865-E</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Vijay Mehta, Ld. AR
<b>Revenue by</b>	:	Shri Brajendra Kumar– Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	02/09/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	26/10/2021

## आदेश / ORDER

### Per Bench

1. The assessee is in further appeal for AYs 2010-11 & 2011-12 whereas the revenue is in further appeal for AYs 2011-12 to 2013-14. Facts as well as issues are inter-connected and therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience & brevity. First we take up assessee's appeal for AY 2010-11 which arises out of the order of learned Commissioner of Income-Tax (Appeals)-16, Mumbai [CIT(A)], dated 30/09/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Act on 29/12/2017. The grounds raised by the assessee read as under: -

#### **1. Reopening of Assessment u/s. 147**

- a) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the reopening beyond a period of four years from the end of the relevant assessment year of original assessment that was passed u/s. 143(3) u/s. 147 of the Act that was passed after verifying the loans. In the absence of failure on part of the appellant to disclose fully or truly all material facts necessary for its assessment, the reopening of assessment is bad in law and needs to be quashed.
- b) The learned CIT(A) erred in confirming the reopening of assessment u/s. 147 of the Act which was reopened merely on the basis of the information received from the Investigation Wing and without independent application of mind by the learned Assessing Officer.
- c) The learned CIT(A) erred in confirming the reopening of assessment u/s. 147 of the Act without appreciating that the learned Assessing Officer had disposed off the objections in general and without properly meeting the objections raised.

#### **2. Addition of Rs.50,00,000/- u/s. 68 on account of unexplained cash credit**

- a) Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 50,00,000/- being loan taken from M/s. Gateway Leasing Pvt. Ltd. ('GLPL') against pledge of promoters' shares u/s. 68 of the Act as unexplained cash credit merely on the basis of information received from the Investigation Wing and without due application of mind to the explanation and documentary evidences placed on record.
- b) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs.50,00,000/- being loan taken from GLPL u/s. 68 as unexplained cash credit without appreciating that sufficient time was not provided to produce the director of the lender company but the director appeared on 02.01.2018

(after completing the assessment) and submitted the required details which proved beyond doubt the identity and creditworthiness of the lender company as well as genuineness of the loan transactions.

2. The Ld. AR advanced arguments to assail the validity of reassessment proceedings whereas Ld. Sr. DR controverted the submissions made by Ld. AR. Having heard rival submissions and upon careful consideration of material facts, our adjudication to the appeal would be as under.

### **Assessment Proceedings**

3.1 The assessee being resident corporate assessee was assessed u/s 143(3) on 22/03/2013. However, pursuant to the receipt of certain information from DDIT (Inv.), Unit-5(2), Mumbai that a survey action was conducted u/s 133A on assessee on 21/03/2017, the case was reopened and notice u/s 148 was issued on 31/03/2017. The reasons for reopening were duly communicated to the assessee and the same has been extracted at para-4 of the assessment order. During survey action, it was found that during the year the assessee obtained unsecured loans of Rs.50 Lacs each from two parties viz. M/s Gateway Leasing Private Ltd. & M/s Spectrum Trimpex Pvt. These two entities, as per the findings of Kolkata investigation wing, were involved in penny stock manipulation and provided exit to beneficiaries of Long Term Capital Gains. These two entities were allegedly dummy paper entities with no real business and involved in sham transactions. Therefore, the case was reopened and it was alleged that the assessee failed to disclose fully and truly all material facts as to the genuineness of loan transactions.

3.2 The assessee raised objections to reopening of the assessment, however, the same were rejected and notices u/s 143(2) and 142(1)

were issued in due course requiring assessee to prove the genuineness of loan transactions. However, the assessee failed to reply to the show cause notices. A summon u/s 131 was issued to the principal officers of both these entities. However, the summons were not accepted which were confronted to the director o the assessee. The assessee failed to produce the directors of the two entities and accordingly, it was opined that the assessee failed to establish the identity and genuineness of both the entities. Since the assessee failed to discharge the primary onus of establishing the genuineness of loan transactions, the amount of Rs.100 Lacs was added to the income of the assessee as unexplained cash credit u/s 68 while framing assessment on 29/12/2017.

3.3 However, this order has subsequently been rectified u/s 154 on 12/02/2018 in view of the fact that during the course of assessment proceedings for AY 2011-12, Shri Anil Chokhani (director of both the entities) appeared before Ld. AO and his statement was recorded on oath u/s 131. Shri Anil Chokhani confirmed that the loan of Rs.50 Lacs was given by M/s Gateway Leasing Private Limited to assessee on 02/12/2009 and the same was repaid on 21/05/2010. However, it was noted by Ld. AO that another shell company namely M/s Anushree Tie-up Pvt. Ltd. was merged with this entity on 01/04/2009 and the loan was extended by Gateway Leasing Private Limited to the assessee subsequently on 02/12/2009. Therefore, this entity was also a shell company involved in the business of accommodation entries and these facts would strengthen the additions made u/s 68.

3.4 However, it transpired that the name of M/s Spectrum Trimpex Private Ltd did not appear in the shell company database of Kolkata investigation wing and no material was available which would show that

this entity was a bogus entity. Moreover, this entity had duly responded to the notices issued u/s 133(6) and therefore, the addition with respect to this entity was to be deleted. Accordingly, the assessment order was rectified leaving addition of Rs.50 Lacs with respect to M/s Gateway Leasing Private limited.

### **Appellate Proceedings**

4.1 The assessee assailed the validity of reassessment proceedings on various grounds. However, it was noted by Ld. CIT(A) that the information received by Ld. AO was tangible material on the basis of which an opinion of escapement of income was formed. The Ld. AO had definite reason to believe that income had escaped assessment and therefore, the reassessment proceedings were valid.

4.2 The additions on merits were confirmed with following observations: -

6.2.21 In the present case, the A.O. had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the Unsecured money was received from independent legal entities. The inquiry revealed that the Lenders were non-existent, and had no office at the address mentioned by the appellant. It is clear said because, none of the person at the registered address has accepted the summon.

ii. There was no explanation whatsoever offered as to why the Lender had lend such huge amount. It is the onus on the appellant company to prove the creditworthiness of the Lenders and genuine sources behind the loan taken.

iii. Furthermore, none of the so-called Lender established the source of funds from which, they lend money. Further, it is clear seen from the para no. 4 of the assessment order that both the companies were involved in LTCC scam as held in-depth Investigation undertaken by the Kolkata Investigation Directorate of the Income Tax Department. As per the Investigation report of the Kolkata Directorate, both the lenders had provided exit to the beneficiary of Long Term Capital Gain and booked Short term Capital Loss in their books and unaccounted cash was handle over to them in lies of cheques of equal amount from them ostensible for purchase of such shares at artificially inflated market price.

v. The mere submission of the confirmation or bank transaction copy of/from the Lender was not sufficient to discharge the onus under Section 68 of the Act.

6.2.22 In view of above facts and that no further evidences or arguments have been put forth by the appellant during the course of appellate proceedings. It is held that no interference is called for in the decision of assessing officer as the appellant has

failed to discharge the onus required under Section 68 of the Act and the Assessing Officer was justified in adding the amounts to the appellant's income of Rs.50,00,000/-. Therefore, addition u/s 68 of the Act is confirmed. The appeal of the assessee on this ground is dismissed.

Aggrieved as aforesaid, the assessee is in further appeal before us.

### **Our findings & Adjudication**

5. So far as the issue of validity of reassessment proceeding is concerned, we concur with the adjudication of Ld. CIT(A) in view of the fact that subsequent to completion of assessment u/s 143(3), the Ld. AO was clinched with specific information which indicated possible escapement of income in the hands of the assessee. The assessment u/s 143(3) was completed on 22/03/2013 whereas tangible information was received by Ld. AO vide letter dated 29/03/2017 wherein it transpired that the loans taken by the assessee during the year were from those entities which were involved in penny stock manipulation and provided exit to beneficiaries of Long Term Capital Gains. These two entities were allegedly dummy paper entities with no real business and involved in sham transactions. These facts, in our opinion, were quite sufficient to reopen the case of the assessee. The Ld. AR has argued that there was no independent application of mind by Ld. AO which is evident from the fact that the order was rectified u/s 154 and the addition of Rs.50 Lacs with respect to one of the entities was deleted since no material was found with respect to that entity. However, the rectification order has been passed based on the outcome of assessment proceedings of AY 2011-12 wherein the director of these two entities appeared before Ld. AO and recorded his statement on oath. Therefore, the arguments made by Ld. AR do not convince us. At the time of reopening, the only requirement is that Ld. AO should have specific tangible information which indicate possible escapement of income in the

hands of the assessee. Nothing more is required at this stage to reopen the case of the assessee. The information so received, in our considered opinion, was sufficient tangible material. Therefore, legal grounds raised by Ld. AR stand rejected.

6. So far as the merit of the additions are concerned, upon perusal of rectification order u/s 154, it could be gathered that the director of M/s Gateway Leasing Private Limited appeared before Ld. AO and his statement was recorded on oath u/s 131. In the recorded statement, the fact of advancing loan to the assessee as well as repayment was duly accepted. Upon perusal of paper-book as placed before us, it could be gathered that the assessee has duly filed ledger account of the party along with name, address, PAN of the lender, details of brokers who arranged loan, securities offered, term sheet / sanction letter, Board Resolution, Inter-corporate deposit receipt, pledge agreement and various other similar documents in support of the genuineness of the loan transaction. The loan was fully paid on 21/05/2010 along with interest. The transactions were confirmed by M/s Gateway Leasing Private Limited in response to notice u/s 133(6). Thus, the assessee had duly discharged the onus of proving the identity of the lender, their creditworthiness and the genuineness of the loan transaction. This being so, the impugned additions are not sustainable in law. By deleting the same, we allow ground no.2 of the appeal. The appeal stand partly allowed.

**Assessee's Appeal, ITA No.7425/Mum/2019, AY 2011-12**

7. The only ground urged in the appeal is interest disallowance of Rs.1.21 Lacs as paid by the assessee to M/s Gateway Leasing Private Limited. An assessment for the year was similarly framed u/s 143(3)

r.w.s. 147 on 12/02/2018. Since the loan taken by the assessee from M/s Gateway Leasing Private Limited was held to be bogus in AY 2010-11, the interest paid on this loan for Rs.1.21 Lacs was added back to the income of the assessee. The same, upon confirmation by Ld. CIT(A), is in further challenge before us.

Since we have deleted the quantum addition in AY 2010-11, the interest paid by the assessee would be an allowable deduction. We order so. The appeal stand partly allowed.

### **Revenue's Appeals for AYs 2011-12 to 2013-14**

8. The grievance of the revenue in all these years is common i.e. estimated additions on account of alleged bogus purchases made by assessee from Sales Tax Hawala dealers. During assessment proceedings of AY 2011-12, it transpired that the assessee made purchases of Rs.7.26 Lacs from two entities and was required to substantiate the purchases. Though the assessee filed certain documents, however, notices issued u/s 133(6) to these entities remained un-served. The assessee could not produce the parties for confirmation of purchases. Accordingly, these purchases were disallowed and added back to assessee's income. The Ld.CIT(A), inter-alia, relying upon the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P. Sheth (38 Taxmann.com 385)**, held that only profit element embedded in such transactions was to be considered as income of the assessee. The same was estimated @12.5%. Similar estimations were made for AYs 2012-13 & 2013-14. Aggrieved, the revenue is in further appeal before us.

9. Upon careful consideration of factual matrix, it could be gathered that the purchases were supported by primary purchase documents and

the payments to the suppliers was through banking channels. The whole of purchases have been disallowed while accepting the sales which could not be held to be justified. Therefore, the estimation made by Ld. CIT(A), for all the three years, is quite fair and reasonable. Finding no reason to deviate from the same, we dismiss the appeals for all the three years.

### **Conclusion**

10. The assessee's appeals stands partly allowed whereas the appeals of the revenue stand dismissed.

*Order pronounced on 26<sup>th</sup> October, 2021.*

**Sd/-**

**(C. N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 26/10/2021  
Sr.PS, Dhananjay

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**