

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT  
& SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 2565/MUM/2019  
Assessment Year : 2008 - 09

Rakesh Jain HUF, 505, Gupta Bhavan, Ahmedabad Street, Carnac Bunder, Mumbai 400 009.  PAN : AAJHR7328P (Appellant)	Vs.	ITO 17(3)(1), Mumbai  (Respondent)
--	-----	---

Appellant by: Shri Dharmesh Shah  
Respondent by: Ms Smita Verma

Date of Hearing : 25.08.2021	Date of Pronouncement : 04.10.2021
------------------------------	------------------------------------

**ORDER**

Per Rajesh Kumar, Accountant Member

This appeal by the assessee is directed against order of the CIT(A) -28, Mumbai, dated 11.03.2019, relating to assessment year 2011-12.

2. The assessee has raised the following Grounds of appeal:

"1. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the re-opening of the assessment u/s. 147 of the Act was invalid and bad in law.*

2. *The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of alleged unsecured loans of Rs 28,00,000/- in the hands the appellant.*

*3. The appellant craves leave to add to alter, amend and/or delete in all the foregoing grounds of appeal."*

3. In ground no.1 is on the assessee has challenged the re-opening of assessment u/s. 147 of the Act. The facts in brief are that the assessee filed its return of income on 30.12.2008, declaring a total income of Rs.3,41,485/-. Thereafter, the case of the assessee was re-opened u/s 147 of the Act by issuing notice u/s. 148 of the Act dated 27.03.2015 after the AO received information from the DGIT (inv.), Mumbai, that during the course of search u/s. 132 the Act on 01.10.2013, in the case of Praveen Jain and other parties, it was found that they were engaged in providing bogus loan/purchase entries to various business entities and individuals. The AO was further informed that assessee is also among the beneficiaries of such accommodation entries and, had taken loan from M/s. Atharva Business Pvt Ltd of Rs 13 lacs and from Mohit International for Rs 16 lacs. Accordingly, on the basis of this information, the case of the assessee was reopened. The AO, vide order dated 29.03.2016, framed the assessment u/s. 143(3) r.w.s. 147 of the Act, by adding a sum of Rs 28 lacs u/s. 68 by treating the loans as bogus entries. Aggrieved the assessee filed appeal before the CIT(A). The assessee has not challenged the issue of reopening before the CIT(A) and, therefore, the CIT(A) has not given any finding on this issue.

4. The learned AR vehemently submitted before us the ground was not taken before the Id CIT(A) and was raised in the memorandum of appeal for the first time . the Id AR submitted that this being a legal issue and can be taken up at any stage of litigation. The Id AR submitted that case of the assessee has been invalidly

reopened on the mere information received from the DGIT (Inv) Wing, that Shri Praveen Jain and related entities were engaged in providing accommodation entries/ bogus purchase entries to various parties and during the year the assessee has also received loan from two parties viz Rs 13 lacs from Mohit International and Rs 15 lacs from Atharva Business Pvt. Ltd. which were related to Shri Praveen Jain. The learned AR drew the attention of the Bench to the copies of reasons recorded for reopening of the assessment, filed at page 2 of the paper-book, and submitted that the AO has referred to the information received from the DGIT (Inv) wing, Mumbai and came to the conclusion that income has escaped assessment to the extent of money borrowed from these parties. The learned AR submitted that there is no reference to the nature of the transactions entered into by the assessee with these parties and The AO simply concluded that income has escaped assessment. In defence to the arguments, the learned AR relied on the decision of Hon'ble Delhi High Court in the case of Signature Hotels P. Ltd vs. ITO [2011]338 ITR 51(Del). The learned AR therefore prayed that in view of the ratio laid down by the Hon'ble Delhi High Court, in the above case, on similar issue, the reopening may be quashed.

5. The learned DR, on the other hand, submitted before the Bench that reopening was made on the basis of specific information received qua the loan transactions of the assessee with the concerns related to Praveen Jain, which were found to be engaged in providing bogus accommodation entries to various parties and was operating a net of shell companies. Therefore, she contended that the argument of the learned AR be dismissed.

6. Having heard both the parties and perused the material on record, we find that reopening has been done on the basis of information from DGIT Investigation Wing that assessee is beneficiary of hawala loan entries. This ground being legal in nature and assessee has well within its legal rights to raise the same before us. Hence we are inclined to adjudicate the same. Now we shall refer to the reasons recorded u/s 148(2) of the Act which are extracted below:

*"Reasons for the belief that income has escaped assessment.*

*In this case C.D was received from office of DGIT (inv.), Mumbai regarding the information on beneficiaries of accommodation entries in the case of Rajendra Jain, Shri Gautam Jain and others Surat Diamond Concerns" Group. On examining the CD it is found that Rakesh P Jain (HUF) has taken accommodation entries amounting to Rs 15,00,000/- from Atharv Business Private (Fastone Trad (I) P Ltd) & for Rs 8,00,000/- from Mohit International during the F.Y. 2007-08.*

*In view of the above, I have reason to believe that assessee's income to the above mentioned extent within the meaning of section 147 of the I.T.Act 1961, on account of failure on the part of the assessee to disclose fully or truly all materials facts necessary for the assessment for A.Y. 2008-09. Accordingly, the assessment is re-opened u/s. 147 of the Income Tax Act."*

On perusal of the reasons recorded, as stated above, we noted that in the first para the AO has noted that a CD was received from DGIT(Inv) Mumbai regarding beneficiaries of accommodation entries from Shri Praveen Jain and related parties. AO further noted that on examining the same it was found that the assessee has taken accommodation entries of Rs 15 lacs from Atharva Business Pvt Ltd and Rs 8 lacs from Mohit International during the year and thereafter the AO has straight away jumped to the conclusion that there is failure on the part of the assessee to

disclose fully and truly all material facts and accordingly, the assessee's case is reopened. Thus, we note that there is no satisfaction recorded by the AO on the information received from DGIT Investigation. The AO has not referred to the nature of transactions entered into by the assessee with these two lender companies and simply came to the conclusion that there is failure on the part of the assessee to disclose truly and fully all material facts for A.Y 2008-09 and thus reopened assessment u/s. 147 of the Act. We note that the AO has not even recorded a finding that the income has escaped assessment to the extent of the loan received from these parties. On this account we find merit in the contention of the learned AR that the AO has failed to apply his mind to the information received from the DGIT, Investigation Wing and examine the basis of material contained therein. The case of the assessee is squarely covered by the decision of Hon'ble Delhi High Court in the case of Signature Hotels P. Ltd. (supra), wherein it has been held as under:

*" Held, allowing the petition, that the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner has introduced money amounting to Rs.5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed."*

Respectfully following the decision of Hon'ble Delhi High Court, we quash the reopening of assessment by the AO.

7. Since we have allowed the appeal on the legal issue, other issues on merit is not being adjudicated.

8. In the result, appeal is allowed.

Order pronounced in the open court on 4<sup>th</sup> October, 2021

Sd/-  
(MAHAVIR SINGH)  
VICE-PRESIDENT

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Mumbai, Date : 4<sup>th</sup> October, 2021.

SA

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai

By Order

#True Copy#

(Sr. Private Secretary)  
Income Tax Appellate Tribunal,  
Mumbai