

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA.No.7303/Del./2017
Assessment Year 2012-2013

M/s. Priya Diamonds Pvt. Ltd., Delhi – 005 PAN AAGCP1547G C/o. Anil Jain DD & Co. 611, Surya Kiran Building, 19, KG Marg, New Delhi – 110 001	vs.	The ACIT, Central Circle – 25, Jhandewalan, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Anil Jain, C.A.
For Revenue :	Shri Parikshit Singh, Sr.D.R.

Date of Hearing :	14.12.2021
Date of Pronouncement :	27.01.2022

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the Order dated 04.09.2017 of the Ld. CIT(A)-29, New Delhi, relating to the A.Y. 2012-2013.

2. Facts of the case, in brief, are that the assessee is a Company engaged in the business of Manufacturing & Trading of Gold Jewellery. It filed its return of income on 20.09.2012 declaring income of Rs.3,74,279/- which was processed under section 143(1) of the IT Act, 1961. In this case, a survey operation under section 133A of the Act was carried out at the business premises of the assessee on 19.12.2013 by the Investigation Wing of the Unit-1(1). During the course of survey operation, it was found that an amount of Rs.1,00,00,000/- had been introduced in the garb of share capital/share premium in the assessee company in F.Y. 2011-12 relevant to A.Y. 2012-13. Most of the share applicant companies/concerns are found based in Kolkata. On being asked to justify the genuineness of such share capital/share premium during the course of survey proceedings, the assessee could not produce any supporting details/documents as envisaged in section 68 of the IT Act. Neither the main director, Sh, Karan Singh Soni, nor the accountant, Sh. Yogendra Chauhan has any knowledge of share application form, share issue certificate, share

allotment register, share holder registers or any other documentary evidence regarding induction of share capital /share premium in the assessee company. Even during the post survey proceedings no documentary evidence was filed by the assessee to establish genuinity of aforesaid share capital/share premium.

2.1. Accordingly, on the basis of information received from the Investigation Wing, the A.O. reopened the assessment as per the provisions of Section 147 of the I.T. Act, 1961 by recording the following reasons :

“Recording reasons for initiating proceedings u/s 148 r.w.s. 147 of the I. T. Act. 1961.

An Information was received from the Investigation Wing of the Income Tax Department, New Delhi that a survey u/s 133 A of the Act was carried out on 19.12.2013 at the premises of M/s Priya Diamonds private Limited.

2. *During the course of survey proceedings, it was found that an amount of Rs. 1,00,00,000/- had. been*

introduced in the garb of share capital/share premium in the assessee company in FY 2011-12 relevant to AY 2012-13. Most of the share applicant companies/concerns are found to be based in Kolkata. On being asked to justify genuineness of such share capital/share premium during the course of survey proceedings 1961, the assessee company could not produce any supporting details/documents as envisaged in section 68 of the IT Act. Neither the main director, Sh. Karan Singh Soni, nor the accountant, Sh. Yogendra Chauhan has any knowledge of share application form, share issue certificate, share allotment register, share holder registers or any other documentary evidence regarding issue of share capital/share premium in the assessee company. Even during the post survey proceedings, no documentary evidence was filed by the assessee to establish genuinity of aforesaid share application / share premium.

3. A Commission dated 27.12.2013 was sent to enquire the details of Kolkata based companies to the DDIT (Inv.) Unit-IV(l), Kolkata to enquire the genuineness of the transaction. The DDIT has recorded statement of Sh. Pramod

Kumar Sharma, one of the entry operators who have admitted that he has provided entries to Assessee Company. Further enquiry/investigation also revealed that most of the companies are not found located at their given address. Hence, an amount of Rs. 1,00,00,000/- is liable to be added to the total income of the assessee u/s 68 of the IT Act, 1961.

4. *In view of the above, as income chargeable to tax has escaped assessment y way of failure to disclose all the material facts truly and fully, I have reasons, to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.*

Date : 26.08.2015

*Sd/-Gautam Deb
DCIT, Central Circle-25,
New Delhi”*

2.2. In response to notice under section 148 of the I.T. Act, 1961, the assessee submitted that the original return of income filed under section 139(1) maybe treated as return filed in response to notice under section 148 of the I.T. Act, 1961. The assessee raised objections to the reasons recorded under section 148 of the I.T. Act, 1961 which were

disposed of by the A.O. by passing a detailed order on 06.09.2016 dismissing the objections raised by the assessee. During the course of assessment proceedings, the A.O. noted that to enquire and verify the genuineness of the transaction details of the Kolkata based companies, a Commission dated 27.09.2013 was sent to the DDIT who recorded statement of Shri Pramod Kumar Sharma, one of the entry operators, who has admitted that he has provided entries to the assessee company. Further enquiry/investigation also revealed that most of the companies are not found located at their given address. In view of the above and in absence of any documentary evidences to the satisfaction of the A.O. within the meaning of Section 68 of the I.T. Act, 1961, the A.O. made addition of Rs.1 crore to the total income of the assessee under section 68 of the I.T. Act, 1961.

2.3. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of re-assessment proceedings. However, the Ld. CIT(A) was also not satisfied with the arguments advanced by the

assessee and upheld the addition made by the A.O. as well as validity of re-assessment proceedings.

2.4. So far as validity of re-assessment proceedings are concerned, the Ld. CIT(A) upheld the same by observing as under :

“7. Ground nos.1, 2 and 3 relate to contention of the appellant against reopening the case under section 147 of the IT Act. The fact of the case is that a survey action was carried out in the business premises of the appellant simultaneously enquiries were also carried out by the investigation wing, Kolkata and it was gathered that the appellant had introduced a sum of Rs.1 crore in the garb of share application money in their books of accounts but the same was not found to be genuine. On investigation carried out, the appellant could not file any supporting document/detail in favour of the genuineness of the share application money shown to have been received by them. Therefore, after recording the reasons and following due procedure the

case was reopened under section 147 of the IT Act. The reasons recorded by the A.O was got approved from the sanctioning authority u/s 151 of the IT Act who after recording his satisfaction approved the case for reopening. Under these circumstances, the case laws relied upon by the appellant in the case of CIT vs. M/s Kelvinator of India Ltd. is not applicable as in the present case there is no change of opinion but the case was reopened after carrying out proper enquiries/investigations. The entry provider Sh. Pramod Kumar Sharma admitted the fact that the concerns controlled/managed by him were engaged only in giving accommodation entries and the appellant was also one of the beneficiary of the same. The appellant was asked to prove the genuineness of the share applicant/share application money by filing the relevant documents/details but they failed to do so. Therefore, the case was not reopened in mechanical manner but the same was reopened after proper application of mind. So far as the other case laws relied upon by the

appellant are concerned neither the present case was reopened based on mere information received from the investigation wing, nor the reasons recorded were vague. Before reopening the case proper exercise was carried out by the A.O. to investigate the matter and when he satisfied himself on proper application of his mind to the material then only he concluded that he had reason to believe that the income of the appellant had escaped assessment. In view of the above discussion, the ground raised by the appellant are dismissed.”

2.5. So far as addition on merit is concerned, the Ld. CIT(A) upheld the same by observing as under :

“8. Ground no.4 relates to the contention of appellant against addition of Rs.1 crore made by the AO. The fact of the case is that a survey action was carried out at the business premises of the appellant. It was found that the appellant had shown to have received share application money of Rs.1 crore, however, the same was not found to be genuine as the appellant could not file

any supporting document/detail to prove the transactions to be genuine. Further, Sh. Karan Singh Soni, Director had also admitted the fact that they received share application money from the Kolkata based companies which were not genuine. Further, on investigation carried out by the investigation wing of Kolkata, it was gathered that Sh. Pramod Kumar Sharma has admitted that he was engaged in giving accommodation entries through the concerns managed/controlled by him and the appellant was also one of the beneficiary in this regard. Since, it was established by the AO that the unaccounted income of the appellant was routed by them through the entry operators in their books of accounts in the garb of share application money which was proved to be non genuine as discussed in the earlier paras, under these circumstances, I do not find any infirmity in the AO's order.”

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

1. *“That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that initiation of reassessment proceeding and notice u/s 147 r.w.s. 148 is illegal, bad in law, without jurisdiction and time barred.*
2. *That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that impugned order passed u/s 147/143(3) of the IT Act, is illegal, bad in law, without jurisdiction and contrary to the facts.*
3. *That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that assessment order passed by the Ld AO is against the principles of natural justice and has been passed without reasonable opportunity of being heard.*

4. *That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT Appeal has erred in sustaining an addition of Rs.1,00,00,000/- on account of increase in Share Capital and Premium as Unexplained Credit u/s 68.*
5. *That the appellant craves leave to reserve to itself the right to add, alter amend, vary, modify and/or withdraw and ground(s) of appeal at or before the time of hearing.”*

4. Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in upholding the validity of re-assessment proceedings. He submitted that the A.O. in the instant case without independent application of mind of his own and in a mechanical manner and on borrowed satisfaction has reopened the assessment on the basis of the report of the Investigation Wing. Therefore, the same being not in accordance with law, the re-assessment proceedings should be quashed. For the above proposition, he relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs., Meenakshi Overseas Pvt. Ltd.,

ITA.No.692/2016 order dated 26.05.2017. He submitted that the facts of the instant case are identical to the facts of the case decided by the jurisdictional Delhi High Court in the above said case and, therefore, the re-assessment proceedings initiated by the A.O. and upheld by the Ld. CIT(A) should be quashed. He also relied on the following decisions for the above proposition.

1. CIT vs., Atul Jain reported in [2008] 299 ITR 383 (Del.).
2. Signature Hotels (P) Ltd., vs., ITO and Anr. 338 ITR 51 (Del.) .
3. Nancy Sales Pvt. Ltd., New Delhi vs., ITO, Ward-13(1), New Delhi vide ITA.No.4129/Del./2017 dated 19.01.2018 [SMC Bench].
4. SABH Infrastructure Ltd., vs., ACIT vide W.P. (C) No.1357/2016 order dated 25.09.2017 [Delhi-High Court].

4.1. Relying on various other decisions, he submitted that since the A.O. has reopened the assessment in a

mechanical manner without independent application of mind and on borrowed satisfaction, such reopening of the assessment is invalid.

4.2. Referring to the approval granted by the Addl. CIT, he submitted that he has simply granted his approval by observing as under :

“Sanction under section 151 accorded in view of the reasons recorded and information available on record.”

4.3. He submitted that this type of approval is not correct approval as per law as held by the Hon'ble Delhi High Court in the cases of Synfonia Tradelinks Pvt. Ltd., vs. Income Tax Officer, Ward-22(4) vide W.P.(C) 12544/2018 order dated 26.03.2021 and ESS Advertising (Mauritius) S.N.C. ET Compagnie vs., ACIT vide WP(C).10939/2018 and CM.No.42617/2018 etc., order dated 05.07.2021. Therefore, the approval granted by the Addl. CIT being not in accordance with law, such reopening of the assessment is also invalid.

4.4. So far as the merit of the case is concerned, he submitted that the assessee was not given any opportunity to cross-examine the person whose statement was the basis for making the addition by the A.O. Further, the A.O. without confronting the assessee and merely observing that assessee has not substantiated with documentary evidence made the addition and the Ld. CIT(A) also upheld the same which is not in accordance with law. Referring to the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs., Commissioner of Central Excise, Kolkata-II vice Civil Appeal No.4228 of 2006 order dated 02.09.2015 and various other decisions filed in the case law compilation, he submitted that without affording cross-examination, when addition is made on the basis of statement of third party, such addition being not in accordance with law, has to be quashed. He submitted that the entire transaction was through banking channel and since the addition was made without affording any opportunity to the assessee in any manner, such addition is not being in accordance with law should be deleted.

5. The Ld. D.R. on the other hand relied on the order of the A.O. and the Ld. CIT(A). He submitted that assessee in the instant case has failed to file any documentary evidences either during the course of survey or post-survey enquiries or during the course of assessment proceedings or during the appellate proceedings or even before the Tribunal regarding the identity and capacity of the share applicants and genuineness of the transaction. Therefore, such addition made by the A.O. under section 68 of the I.T. Act, 1961 and upheld by the Ld. CIT(A) being in accordance with law, such addition should be upheld and the grounds raised by the assessee on this issue should be dismissed.

5.1. So far as the validity of re-assessment proceedings are concerned, he submitted that the Ld. CIT(A) has given justifiable reasons as to how and why the re-assessment proceedings are correct under the facts and circumstances of the case. Even approval given by the Addl. CIT is also justified who after recording his satisfaction has given approval for reopening of the case. Therefore, the

reopening of the assessment is also in accordance with law and, therefore, the ground raised by the assessee on this issue should be dismissed.

6. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case reopened the assessment as per the provisions of Section 147 of the I.T. Act, 1961 after recording reasons which has already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that the A.O. has reopened the assessment on the basis of report of the Investigation Wing and in a mechanical manner without independent application of mind and on borrowed satisfaction and, therefore, such reopening of assessment being not in accordance with law should be quashed. It is also his submission that approving authority has not given approval in accordance with the provisions of law since there is no proper satisfaction recorded by the Addl. CIT

before granting approval. We do not find any force in the above arguments of the Learned Counsel for the Assessee. Admittedly, the survey operation under section 133A of the I.T. Act, 1961 was carried-out at the business premises of the assessee itself during which it was found that an amount of Rs.1 crore was introduced in the garb of share application/share premium in the assessee company in the F.Y. 2011-12. It was also found that most of the share applicant companies/concerns are Kolkata based companies and the assessee during the course of survey proceedings could not produce any supporting details/documents as provided in Section 68 of the I.T. Act, 1961. The Director of the assessee company namely Shri Karan Singh Soni and the Accountant Yogesh Chouhan had no knowledge of the share application forms, share issue certificate, share allotment register, share holder register or any other documentary evidences regarding the introduction of share capital/share premium in the assessee company. Since the assessee failed to provide any documentary evidences during the course of survey or post-survey

proceedings, the A.O. has reopened the assessment after recording reasons and the reasons are already reproduced in the preceding paragraph. Therefore, the various decisions relied on by the Learned Counsel for the Assessee in the instant case that the A.O. has recorded the satisfaction in a mechanical manner without application of independent mind and on borrowed satisfaction do not hold good. In all those cases the reopening had taken place on the basis of search and seizure operation or survey proceedings in the case of entry providers. But, here is a case where the survey had taken place in assessee's own premises and the Director as well as Accountant of the assessee company had failed to provide any evidence regarding introduction of share capital. Further the Addl. CIT while granting approval has also recorded his satisfaction. Under these circumstances, we do not find any infirmity in the order of the Ld. CIT(A) in upholding the validity of re-assessment proceedings. Accordingly, grounds raised by the assessee challenging the validity of re-assessment proceedings are dismissed.

6.1. So far as the merits of the case is concerned, we find from the order of the A.O. as well as Ld. CIT(A) that there is not a whisper regarding any opportunity to the assessee to substantiate the introduction of Rs.1 crore towards share capital as well as share premium. The so-called statement of Shri Pramod Kumar Sharma, the entry operator who admitted to have provided entries to the assessee company has not been provided to the assessee nor the assessee was given an opportunity to cross-examine the entry provider Shri Pramod Kumar Sharma. Principles of natural justice demands that the assessee should be given an opportunity to rebut the statement of third party which is the basis for addition and an opportunity to cross-examine the same person, if demanded. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of A.O. with a direction to grant one more opportunity to the assessee to substantiate the introduction of Rs.1 crore towards share capital/share premium and decide the issue as per fact and law. Needless to say the

A.O. shall give due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds challenging the addition on merit is accordingly allowed for statistical purposes.

7. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 27.01.2022.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated, 27th January, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.

Date of dictation on	20.01.2022
Date on which the typed draft order is placed before the dictation Member	21.01.2022
Date on which the approval draft comes to the Sr. PS	.01.2022
Date on which the fair order is placed before the Dictation member for pronouncement	.01.2022
Date on which the fair order comes back to the Sr. P.S.	.01.2022
Date on which the final order is uploaded on the website of ITAT	.01.2022
Date on which the file goes to the Bench Clerk	.01.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	