

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8908/Del/2019
Assessment Year: 2011-12

Ultra Portfolio Management Pvt. Ltd., H-2, Top Floor, Suneja Chamber, Alaknanda Commercial Complex, New Delhi.	Vs	DCIT, Circle-27(1), New Delhi.
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PAN: AAACU0117D

(Appellant)		(Respondent)
Assessee by	:	Shri S.C. Verma, CA
Revenue by	:	Shri Sanjiv Mahajan, Sr. DR
Date of Hearing	:	27.01.2022
Date of Pronouncement	:	10.02.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 20th September, 2019 of the CIT(A)-9, New Delhi, relating to assessment year 2011-12.

2. Facts of the case, in brief, are that the assessee is a private limited company and filed its return of income on 30th September, 2011 declaring a loss of Rs.3,06,078/-. The return was processed u/s 143(1) on 10.01.2018 at the returned income. Subsequently, on the basis of information received from the DCIT, Central Circle (2), Mumbai dated 5th February, 2016 wherein it was informed that Shri Shirish C. Shah, who happened to be the main person engaged in providing

bogus accommodation entries through the companies directly/indirectly controlled by him and the assessee company has received accommodation entry of Rs.25 lakhs from M/s Dhanus Technologies Ltd., the case of the assessee was reopened by recording reasons and, accordingly, notice u/s 148 of the Act was issued to the assessee.

3. During the course of assessment proceedings, the assessee appeared from time to time and filed the requisite details. To verify the facts, the AO issued notice u/s 133(6) to M/s Dhanus Technologies Ltd., which was returned back unserved. He, therefore, asked the assessee to explain as to why the accommodation entry of Rs.25 lakhs may not be treated as income from undisclosed sources and added u/s 68 of the IT Act. The assessee, vide submission dated 14th December, 2018, challenged the notice issued u/s 148 on the ground that the same was issued on the basis of information received from DCIT, Central Circle (2), Mumbai and the AO has not applied his mind. It was explained that the assessee company has filed its return of income truly and correctly and there is no escapement of income. However, since no response was received from the concerned person in response to notice u/s 133(6), the AO made addition of Rs.25 lakhs u/s 68 of the Act and determined the income of the assessee at Rs.21,93,922/-

4. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of reassessment proceedings. However, the CIT(A)

was also not satisfied with the arguments advanced by the assessee and upheld the validity of reassessment proceedings as well as addition on merit.

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

01. On the facts and circumstances of the case, the order passed by the Ld. AO and impugned order passed by the CIT (A) is bad both in the eye of law and on facts.

2. The proceedings u/s 147, in the facts and circumstances of the case, are not valid and, therefore, the assessment basing on such invalid proceedings deserved to be cancelled and CIT (Appeals) has erred in upholding the validity of the proceedings u/s 147.

3. The Notice issued u/s 148, subsequent order passed u/s 147/143(3), impugned order passed by the CIT (Appeals) all are bad in law, because of non-fulfillment of mandatory jurisdictional conditions specified under the Act.

4. On the facts and circumstances of the case Ld. AO has erred both on facts and in law in reopening the assessment u/s 148 without obtaining valid approval as provided u/s 151 of the Act and Honøble CIT (A) erred in facts and in law confirming the same.

5. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that upon the facts and circumstances of the case the reasons to believe are without application of mind, absence of cogent material, without conducting any independent enquires arriving at the prima facie conclusion that income of the assessee had escaped assessment and belief had been arrived at only on the basis of a letter received from DCIT CC-2(2), Mumbai and also assessment order had been framed on the basis of conclusion drawn by DCIT CC-2(2), Mumbai, hence, the Notice issued u/s 148 by the AO as well as the assessment order passed by AO are invalid, illegal both in the eye of law and on the facts.

6. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that there is no link between the receipt of information regarding receipt of fund on 25.06.2011 pertaining to AY 2012-13 and reason to believe that income has escaped for AY 2011-12, and, therefore, the Notice issued by the AO u/s 148 for AY 2011-12, approval accorded by senior authorities in this respect as well as the

assessment order passed by AO are invalid and bad in law. The Honøble CIT (A) also erred in confirming the same.

7. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by Ld. AO is bad both in the eyes of law and on facts as the same has been reopened by stating in the reasons that after analysing the above information received and documents on record

i. it is evident that the appellant company has taken accommodation entry of Rs.25,00,000/- which is not reflected in Books of Accounts and ITR of the said year.

ii. The Return of income, balance sheet & individual transaction statement as available on, ITBA portal was analysed in light of the information collected, however, the accommodation entry of Rs. 25,00,000/, which, the assessee company has taken from Dhanus Technologies, was found to be missing.

8. That Honøble CIT (A) erred in treating the issuance of Notice u/s 148 for AY 2011-12 on the basis of information regarding receipt of fund on 25.11.2011 as covered u/s 292 B of the Act without considering the fact that the Reasons has been recorded for AY 2011-12 containing details of actual receipt of fund on 25th June, 2011, the notice u/s 148 has been issued for AY 2011-12, the assessment order has been framed for AY 2011-12 and also the Honøble CIT has confirmed the addition made in AY 2011-12 without appreciating the fact that the information pertaining to receipt of fund on 25.06.2011 pertains to AY 2012-13 and therefore, the notice issued u/s 148 as well as the reassessment proceedings for AY 2011-12 is illegal and invalid.

9. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that the Ld. AO erred in making addition of Rs.25,00,000/- under sec. 68 relying on third party statement without giving the appellant the relevant details/documents and right to cross examine the third party.

10. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that the Ld. Assessing Officer has erred in making addition u/s 68 of the Income Tax Act, 1961 amounting to Rs.25,00,000/- as the addition is not based on evidence, opposed to evidences on records, based on the surmises and conjecture totally disregarding the facts of the case.

11. Your appellant craves leaves to add, alter, amend, forgot if any of the grounds of appeal at the time of hearing, if required.ö

6. The ld. Counsel for the assessee, at the outset, submitted that the information pertaining to receipt of the accommodation entry dated 25th June, 2011 pertains to assessment year 2012-13 whereas the addition has been made in the assessment year 2011-12. He submitted that although this fact was brought to the notice of the lower authorities, however, they neither considered the same nor applied their mind, therefore, the addition made by the AO and sustained by the CIT(A) should be deleted. So far as the validity of reassessment proceedings are concerned, he submitted that the same has been reopened on the basis of borrowed satisfaction and not on the basis of independent application of mind by the AO. He, however, submitted that he has no objection if the matter is restored to the file of the AO with a direction to verify the record and if the same does not pertain to this assessment year, then, to delete the addition.

7. The ld. DR, on the other hand, while strongly supporting the order of the AO and the CIT(A), submitted that he has no objection if the matter is restored to the file of the AO with a direction to verify the submissions as made by the assessee now before the Tribunal.

8. I have heard the rival arguments made by both the sides, 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, on the basis of information received from DCIT, Central Circle-2, Mumbai, that the assessee has received accommodation entry of Rs.25 lakhs from Dhanus

Technologies Ltd., reopened the assessment by recording the reasons. It is the submission of the Id. Counsel for the assessee that the reasons so recorded clearly state that the amount of Rs.25 lakhs received from Dhanus Technologies Ltd., is dated 25th June, 2011 and does not pertain to assessment year 2011-12, but, pertained to AY 2012-13 and, therefore, no addition could have been made for AY 2011-12. I find, although the assessee has stated the same before the CIT(A), however, the CIT(A) has brushed aside the argument of the assessee without verifying the record himself or calling for the remand report from the AO. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to verify the bank statement of the assessee and the information received. In case the amount pertains to assessment year 2012-13, then the AO could not have made the addition in AY 2011-12 and, accordingly, if it pertains to AY 2012-13, then, to delete the addition for AY 2011-12. Needless to say, the AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 10th February, 2022.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 10th February, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi