

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.168/Del/2021

[Assessment Year : 2016-17]

Nobel Advertisers Pvt.Ltd., RR-11, 2 nd Floor, Mianwali Nagar, Main Rohtak Road, Paschim Vihar, New Delhi-110087. PAN-AADCN2932Q	vs	DCIT, Circle-11(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri S.C.Verma, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	03.01.2022	
Date of Pronouncement	01.04.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-44, New Delhi dated 24.02.2020. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case and in law, the AO erred in issuing notice u/s 148 of the Income Tax Act. The notice u/s 148 issued in this case is illegal, void and without jurisdiction and accordingly the assessment order passed on the foundation of such notice is liable to be quashed and impugned order passed by the CIT (A) is bad both in the eye of law and on facts.*

2. *That without providing the complete details/documents to the appellant to enable the company to file objection as directed by the jurisdictional Hon'ble Delhi High Court in W.P.(C) 1357/2016 in case of Sabh Infrastructure Ltd. vs. ACIT on 25.09.2017, the assessment order passed by the Ld. AO u/s 147/143(3) is bad in law the CIT (A) has erred for not allowing this ground.*
3. *That the allegation of the AO that in view of above, it is clear that the source of credits (including cash deposit) were not verified any stage. Moreover, the assessee company has failed to substantiate the source of credits (including cash deposits) before the investigation proceedings made by ADIT (Inv.), Rohtak. is by itself insufficient to reopen assessments and thereby the assessment order passed by AO is invalid and bad in law. It is well settled that a mere conjecture or surmise is not sufficient. There have to be reasons to believe and not merely reasons to suspect that income had escaped assessment. AO should not have proceeded on fallacious assumption that bank deposits constituted undisclosed income and overlooked fact that source might be other than assessee's own income.*
4. *That upon the facts and circumstances of the case, Notice issued u/s 148 is illegal, invalid, bad in law as the Notice u/s 148 is not the replacement/substitute of Notice u/s 143(2). Also Notice u/s 148 has been issued on the basis of report of investigation wing, Rohtak which is also not based on any direct and circumstantial evidences or on adverse material / documents / statement of anyone. The reopening*

of assessment u/s 147 is very potent power not to be lightly exercised. It cannot be invoked casually or mechanically. Assessment cannot be reopened either to verify the source of credit entries in the books of accounts of the previous year in which the time of issue of notice u/s 143(2) had been lapsed or for making fishing or roaming enquiries.

- 5. That on the facts and circumstances of the case and in law the AO was not correct and justified in initiating reassessment proceedings as the AO has not applied his mind and not come to an independent conclusion that he has reasons to believe that income of the appellant company has escaped assessment which was a jurisdictional requirement for reopening of the assessment u/s 147/148 of the LT. Act.*
- 6. That the Ld. CIT (A), has erred in upholding the assumption of jurisdiction for re-assessment. The re-assessment proceedings in this case were only based on presumption / suspicion and were thus not validly initiated.*
- 7. On the facts and circumstances of the case and in law the AO was not correct and justified in initiating reassessment proceedings as there was no mention about existence of any tangible material in the reasons to believe formed by the A.O, hence, the reassessment proceedings were not validity initiated. Information received from the investigation wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO and the Ld. CIT(A) has not appreciated the contention of the assessee.*

8. *That on facts and circumstances of the case and in law, the notice u/s 148 of the AO is invalid as the alleged satisfaction recorded by the AO is the borrowed satisfaction and reproduction of conclusion drawn in the investigation report and not on the basis of further enquiry by the AO for the formation of the reasons to believe that income had escaped assessment in the appellant case.*
9. *That on the facts and circumstances of the case and in law the AO has erred in handed over the Assessment Order as well as the Demand Notice u/s 156 to the Postal authorities on 01.01.2019 to serve the same to the assessee company whereas Sec. 153 provides for the time limit for the completion of various assessments and reassessments up to 31st December, 2019 only. The order passed after the expiry of time-limits is time barred order and its validity is nullified and thus the order is considered to be void.*
10. *That no addition can be made in those cases where no addition has been made on the prime ground on which the case was reopened as held by Hon'ble Supreme Court in case of Pro CIT V. Lark Chemicals (P) Ltd. [2018] 99 taxmann.com 312(SC).*
11. *That on the facts and circumstances of the case and in law, the impugned addition made by AO is not sustainable as proper and reasonable opportunity was not provided to the assessee during the course of assessment proceedings.*
12. *On the facts and in the circumstances of the case and in law the CIT (A) was incorrect and unjustified to sustain the*

addition of Rs. 3,82,864/- out of Rs.4,18,414/- by disallowing the expenses as no proof of payment of expenses given to this office without appreciating the enormous evidences filed and placed on record. The aforesaid addition is wrong, not based on evidence, opposed to evidences on records, based on the surmises and conjecture totally disregarding the facts of the case.

13. The applicant craves leave to make addition or alteration, if any on the grounds of appeal at the time of hearing, if required.”

2. Ground Nos. 1 to 11 of the assessee's appeal are argumentative and against the validity and legality of the re-assessment proceedings and Ground No.12 is against the sustaining of addition of Rs.3,82,864/- out of Rs.4,18,414/-.

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the in this case, the return of income for Assessment Year 2016-17 was filed on 01.10.2016 at income of Rs.1,96,270/-. Thereafter, the case was re-opened by issuing notice u/s 148 of the Income tax Act, 1961 (“the Act”). In response to the notice, the assessee filed its return of income. Thereafter, the Assessing Officer (“AO”) proceeded to make disallowance of Rs.4,18,414/- and assessed the income at Rs.6,14,690/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal, thereby he sustained the addition at Rs.3,82,864/- and provided part relief to the assessee.

5. Now, the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee reiterated the submissions as made before the authorities below. He contended that as per reason recorded, the Assessing Officer observed that there were huge deposits in the bank account of the assessee. He submitted that against the reasons for re-opening, the assessee had filed detailed objections. However, ignoring the detailed objections, the Assessing Officer proceeded to make assessment u/s 147 of the Act. He further submitted that the AO did not provide documents to enable the assessee to file the effective objections for rebutting the information available with the AO.

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the objections of the assessee were duly considered and disposed off. He further submitted on spot, verification was carried out by the AO. He contended that upon verification, it was found that no business

activity was being carried out by the assessee. Therefore, the AO had rightly disallowed the expenses.

8. I have heard the contentions of Ld. authorized representatives of both the parties and material placed on record and gone through the orders of the authorities below. It is noticed that the basis of re-opening of the assessment was regarding the credit balance in assessee's bank account of Rs.70,16,549/-. As per the assessee, this amount was out of maturity of fixed deposit totaling to Rs.69,95,009/-. This explanation of the assessee was accepted by the AO in the assessment order. However, on further inquiry, the AO found that the assessee had incurred expense of Rs.4,18,198/- out of which Rs.2,88,304/- in cash on account of salary paid, however, no proof was furnished.

9. Admittedly, in this case, no addition was made on the issue qua the assessment was re-opened. The assessee has relied upon the judgement of Hon'ble Supreme Court rendered in the case of *Pr.CIT vs Lark Chemicals Pvt. Ltd. [2018] 99 taxmann.com 312 (SC)*. Hon'ble Supreme Court dismissed the SLP filed by the Revenue. Therefore, the decision of the Division Bench of the Tribunal rendered in the case of *Lark Chemicals Pvt. Ltd. vs CIT in ITA*

No.2636/M/2013 order dated 06.02.2015 attained the finality. The Hon'ble Division Bench of the Tribunal in para 10 of the order held as under:-

10. *“Even otherwise, in the case in hand, the issue upon which the reopening was done and the issue on which the addition was made were diagonally opposite to each other. The reopening was done on the suspicion of bogus billing allegedly arranged from Suryodaya Company i.e. the issue of bogus expenditure, which otherwise was proved to be wrong, however the addition has been made in respect of Share application money received i.e. in respect of unexplained cash credits. The Hon'ble jurisdictional High Court of Bombay in the case of “CIT vs. Jet Airways (I) ltd.” (2011) 239 CTR (Bom) 183, has categorically held that the AO may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice, however, if after issuing a notice under section 148, the AO accepted the contention of the assessee and holds that the income about which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. Similar view has been taken by the Hon'ble Rajasthan High Court in the case of “CIT vs. Shri Ram Singh”, (2008) 217 CTR (Raj.) 345. We agree with the submissions made by learned AR to the effect that when the reopening of the assessment itself was not valid and even the reasons for which reopening was made have been proved to be wrong, then in that*

event, any decision/addition made on the basis of said reassessment is unsustainable and becomes void. Reliance can also be placed in this respect on another authority of Hon'ble Madras High Court styled as "Ace Investments Ltd. and Another Vs. Settlement Commission and Others", 264 ITR 571."

9.1. Therefore, respectfully following the above binding precedent, the Assessing Officer is hereby directed to delete this addition. Thus, grounds raised by the assessee are allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 01st April, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI