

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'E' : NEW DELHI)****BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER****AND****SH. ANUBHAV SHARMA, JUDICIAL MEMBER**ITA No. 571& 572/Del/2021
(Assessment Year : 2011-12, 2012-13)

Assistant Commissioner of Income Tax, Central Circle – 30, New Delhi	Vs.	M/s. M. K. Wood India Pvt. Ltd. , 74/20, Amar Colony, Main Rohtak Road, Nangloi, New Delhi
(APPELLANT)		(RESPONDENT)

C.O. No. 33 & 34 /Del./2021
(Arising out of ITA No. 571& 572/Del/2021)
(Assessment Year : 2011-12, 2012-13)

Dy. Commissioner of Income Tax, Central Circle – 30, New Delhi	Vs.	M/s. M. K. Wood India Pvt. Ltd. , 74/20, Amar Colony, Main Rohtak Road, Nangloi, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Pulkit Saini, Advocate
Respondent by	Ms. Rinku Singh, Sr. DR

Date of hearing:	04.05.2022
Date of Pronouncement:	27.05.2022

ORDER**PER ANUBHAV SHARMA, JM:**

The Revenue has preferred these appeals against the orders dated 19.02.2021 of the Commissioner of Income Tax (Appeal)- 30, New Delhi in appeal no. 312/18-19/4213 for the assessment year 2011-12 and appeal no. 10438/ 2019-20 for the assessment year 2012-13. The ITA No. 571/Del/2021, A.Y. 2011-12 arises out of assessment order dated 27.12.2018 & the ITA No. 572/Del/2021, A.Y. 2012-13 arises out of order dated 24.12.2019 passed u/s 147 read with section 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle-30, New Delhi. The Cross-objections to same have been filed by the Assessee. However, as the issues involved are common the same are taken up together for the convenience and avoid cost of repetition.

2. The facts in brief are the assessee was incorporated in 1998 under the provisions of the Companies Act, 1956 and is engaged in the business of trading and selling of timber, plywood, etc. The assessee had filed its return of income u/s 139 of the Income Tax Act, 1961 (“the Act”) at the total income of Rs. 1,72,92,735/- for the A.Y. 2011-12 and Rs. 2,32,50,410/- for the A.Y. 2012-13. The scrutiny assessment in the case of both the AYs was completed first under section 143(3) of the Act and, thereafter, a reassessment u/s 153A of the Act, consequent to a search on the assessee, at the returned income. It is pertinent to point out that in the detailed assessments done twice for the relevant AYs neither any incriminating material was found nor any concealment of facts/ income was alleged.

However, pursuant to another round of reassessment of income u/s 147 for both the AYs, initiated consequent to a search made on a third person, vide assessment order dt. 27.12.2018 for AY 2011-12 and order dt. 24.12.2019 for AY 2012-13, the income of the assessee has been assessed at :

<i>Assessment Years</i>	<i>Assessed Income</i>	<i>Addition made on account of sums received through bogus sales and erroneously held as unexplained cash credits u/s 68 of the Act.</i>	<i>Addition made representing alleged income from commission on sale of bogus entries and brought to tax u/s 69C of the Act.</i>
<i>2011-12</i>	<i>4,66,41,890</i>	<i>2,90,58,579</i>	<i>2,90,585</i>
<i>2012-13</i>	<i>4,56,64,235</i>	<i>2,21,94,431</i>	<i>2,21,944</i>

3. In appeal the Ld. CIT(A) had deleted addition of Rs. 2,21,944/- made on account of commission and also deleted addition of Rs. 2,21,94,431/- added u/s 68 of the Act on the basis that as the same has been included in the amount of sales credited to the P & L Account adding it in terms of Section 68 will tantamount to double addition. However, the ground of appeal of assessee challenging exercise of very jurisdiction by the Assessing Officer u/s 143 of the Act were dismissed.

4. The grounds raised in appeal and Cross objections are common except the amounts involved. The following are grounds raised in appeal for AY 2011-12:-

1. The Ld. CIT(A) has erred in law & on the facts in deleting the addition of Rs. 2,90,58,579/- and Rs. 2,90,585/- made by the AO u/s 68 and u/s 69C of the IT Act.
2. The Ld. CIT(A) has erred in law & on the facts in deleting the additions of Rs. 2,90,58,579/- without ascertaining the facts that the sale was genuine wherein the addition of the AO u/s 68 was based on concrete evidences.
3. The Ld. CIT (A) has erred in laws or facts by not disallowing the corresponding purchase of Rs. 2,81,68,152/- against the bogus sale of Rs. 2,90,58,579/-
4. That the order of Ld. CIT(A) is erroneous and is not tenable on facts and in law.
5. That the grounds of appeal were without prejudice to each other.
6. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

4.1 The following are grounds raised in Cross Objections for AY 2011-12:-

- “1. That on the facts of the case and under the law, the learned CIT(A) has erred in not holding that the assumption of jurisdiction u/s 147 was illegal.
2. That on the facts of the case and under the law, the learned CIT(A) has erred in not holding that the proceedings initiated u/s 147 are liable to be quashed, because the proceedings u/s 147 were initiated, in a mechanical manner.
At the time of initiating proceedings, the learned AO had not even bothered to look into the assessment folder, which also contained the assessment order dt.27.02.2014 passed u/s 143(3) as well as the assessment order dt.22.11.2016

passed u/s 153A.

3. That on the facts of the case and under the law, the learned CIT(A) has erred in not holding that the proceedings initiated u/s 147 are liable to be quashed, because the payments were not received by the assessee towards share capital/premium or unsecured loan/advance or any other form of capital account.

4. That on the facts of the case and under the law, the learned CIT(A) has erred in not holding that the assessment proceedings as well as the assessment order passed u/s 143(3) / 147 are liable to be quashed, because an order disposing off the objections was not served upon the assessee.

Note :

The assessee craves leave to amend/ modify aforementioned grounds of appeal and/ or to raise additional grounds of appeal, at any time prior to / during the course of appellate proceedings.

5. Heard and perused record. The grounds of cross objection no. 1, 2 and 4 raised by the assessee touch the question of jurisdiction exercise by the Ld. AO. Therefore, arguments on ground no. 1, 2 and 4 of the cross objections were heard before proceeding to hear arguments on merits.

6. In regard to these grounds on behalf of the assessee Ld. Counsel initiated arguments submitting that the Ld. AO could have proceeded in the matter u/s 153A or 153C and could not have proceeded with assessment or proceedings u/s 147 however, the argument was repelled on behalf of revenue submitting that this argument is beyond the grounds no. 1 and 2 and the objection raised by the revenue was sustained.

7. Further, it was submitted on behalf of the assessee that the assessment order is violative of principle of natural justice and in breach of statutory safeguards. It was submitted that to initiate reassessment u/s 147 of the Act for the relevant assessment year which was falling beyond the period of years the Ld. AO was required to record a satisfaction of reasons to believe that income pertaining to the relevant assessment year has escaped. It was submitted that in present case there was no tangible material before the Ld. AO as a basis for recording reasons to believe that any income has escaped income and merely relying the information / communication received from capital DDIT (Investigation), AO proceeded for

reassessment and passing the order. It was submitted that the income of relevant assessment year was subjected to scrutiny assessment u/s 143(3) and a search assessment u/s 153A of the Act which were available with the Ld. AO but instead of examining these on borrowed satisfaction the reassessment was done. In this context, the ld. Counsel for the assessee relied judgment of Hon'ble Supreme Court of India *in CIT vs. Daulat Ram Rawatmull : 87 ITR 349* to contend that any finding based on conjectures, surmises and suspicions cannot be sustained. He relied judgment of Hon'ble Delhi High Court *Avtee Ltd. v. DCIT [2017] 395 ITR 434 (Delhi)* to contend that the reasons to believe recorded by the Ld. AO should make it clear as to what tangible material was considered by the Ld. AO. Judgment of Hon'ble Delhi High Court in *Pr. Commissioner of Income Tax vs. Meenakshi Overseas (P.) Ltd. [2017] 395 ITR 677* was relied to submit that in a similar case where information from DIT(Investigation) was relied for reassessment Hon'ble High Court had not considered it sufficient for reopening assessment. Ld. Counsel also submitted that the case law relied by the Ld. CIT(A) to dismiss these grounds of appeal with regard to invoking jurisdiction were distinguishable on facts. Apart from that it was submitted that no opportunity of cross examination of the evidence collected behind the back of the assessee was given. In this context, judgment of Hon'ble Supreme Court of India in *Andaman Timber Industries vs. Comm. Of Central Excise 62 taxmann.com* was relied.

8. These arguments of the assessee were countered on behalf of the revenue by submissions that only reasons to believe are to be recorded and which need not be on higher scales of satisfaction. It was submitted that no inquiry is actually required before initiation of notice u/s 147. Ld. DR submitted that primarily there should be some reasons which have been mentioned in the present case. It was also submitted that the information received was subsequent to assessment u/s 147(3) and 153A of the Act so that could not have been basis to discredit satisfaction as recorded.

9. In regard to these grounds it can be observed that at page no. 8 to 14 of the paper book, copy of reasons recorded along with approval of Pr. CIT as forwarded to the assessee have been placed on record. A perusal of the reasons recorded it can be observed that on the basis of information received from Dy. Director of Income Tax (Investigation)-III, Gurugram with regard to search action in the case of M/s Spaze Group on the basis of statements of Sh. Kishori Sharan Goel it was found that the present assessee was one of the beneficiaries of accommodation entries and based upon that the Id. AO recorded the reasons to believe to issue notice u/s 148 of the Act.

10. Thus, very apparently on the basis of statement of one person the satisfaction note was prepared calling for reply from the assessee. Hon'ble Delhi High Court in the judgment of *Pr. Commissioner of Income Tax vs. Meenakshi Overseas (P.) Ltd.* while dealing with the case of appeal by the revenue arising out of quashing of the assessment proceedings u/s 147/148 of the Act by the ITAT, on the basis that the AO had proceeded to send a notice u/s 147/148 of the Act “solely on the basis of information received from the capital DIT(I)” had observed ;

“23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.”

11. In the case in hand based upon the statement of Kishori Saran Goel, recorded u/s 131 of the Act during the course of search of proceedings upon M/s. Spaze

Group on 17.02.2016 the ld. AO made a conclusion that assessee had received accommodation entries. However, there is not a word in this reasons that what were the nature of accommodation entries because it is not a case of unexplained cash credits but a bogus sale. How the return filed reflected a possible escape of income. The reasons as recorded by the Ld. AO has no discussion of the material which was taken in account by the investigation wing. It was considered to be sacrosanct. The statement of Kishori Saran Goel is not part of the reasons to believe nor supplied and confronted to assessee, while issuing notice u/s 148 of the Act. There is force in contention of counsel of assessee that as scrutiny assessment u/s 153A in regard to assessee was conducted that all the more required to disclose the tangible material in regard to transaction requiring reassessment. There should have been an independent application of mind by the Ld. AO to the information out of the statement forming basis of allegations of accommodation entries. Merely reproducing the conclusions of investigation report in his own words is indeed borrowed satisfaction as contended by counsel for the assessee. Consequently, the Bench is inclined to decide these grounds of cross objection in favour of the assessee.

12. The Ld. CIT had fallen in error in disallowing ground no. 1 to 4 with regard to challenge of proceedings initiated by Ld. Assessing Officer u/s 147 of the Act by observing that mere non mentioning of all the material in the reasons to believe does not lead to a conclusion that such material was not available with the Ld. AO. The bench is of considered view that assessee cannot be kept in dark of the matter relied and discussed on assumption that such matter was otherwise available. Ld. CIT(A) went on to observe that *“it is the allegation made by the appellant, and hence, burden is upon the appellant to substantiate the same, however, accept for making the claim, nothing has been brought on record to substantiate such submissions.”* These findings reflect the Ld. CIT(A) has failed to appreciate the mandate of law which cast burden upon the Assessing officer to ensure that reasons recorded must

indicate a conclusive opinion formed by the Ld. AO on its own and not to draw benefit from the weakness of possible defence of assessee. The principles of natural justice require that the fate of objections raised are communicated to the assessee.

13. As a sequel to the above discussion the Bench is inclined to decide the grounds no. 1, 2 and 4 of Cross Objections, filed by the assessee, in its favour. Accordingly, the Cross Objections are allowed and as the same were with regard to the very defect in assumption of jurisdiction by the Ld AO, the impugned re-assessment order is set aside and so is the appeal of Revenue dismissed.

Order pronounced in open court on this 27th day of May, 2022.

Sd/-

**(Dr. B.R.R.KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 27th.05.2022

Binita, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
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