

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.6682/Del/2019
[Assessment Year : 2011-12]**

Rajlaxmi Portfolio Pvt.Ltd., 4033, Naya Bazar, Near Pilli Kothi, Delhi-110006. PAN-AADCR8106Q	vs	ITO, Ward-21(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Ashok Khandelwal, CA	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	26.05.2022	
Date of Pronouncement	13.07.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-7, New Delhi dated 23.07.2019. The assessee has raised following grounds of appeal:-

1. *"Action of the CIT(A) in confirming the action of A.O. for Reopening of assessment u/s 148 of the 1. T. Act 1961 is unjust, illegal, arbitrary, against the facts and circumstances of the case.*
2. *That Assessment order is barred by time and as such illegal having been issued after prescribed period of limitation.*
3. *Action of the CIT(A) in confirming the action of A.O. in making an Addition u/s 68 of I. T. Act 1961 of Rs. 26.81,299/- (once disclosed as income in the Profit and Loss account and again making the addition- i.e. double addition) being amount received from NMCE is unjust, illegal, arbitrary, against the facts and circumstances of the case.*
4. *Action of the CIT(A) in confirming the action of A.O. in making an Addition u/s 69C of 1. T. Act 1961 of Rs. 53,626/- being commission on speculative profit is unjust, illegal, arbitrary, against the facts and circumstances of the case.*

5. *Action of the CIT(A) in confirming the action of A.O. in making an Addition u/s 68 of T. Act 1961 of Rs. 20,00,000/- being share capital raised is unjust, illegal, arbitrary, against the facts and circumstances of the case.*
6. *Action of the CIT(A) in confirming the action of A.O. in making an Addition u/s 69 of I. T. Act 1961 of Rs. 40,000/- being commission on share capital raised is unjust, illegal, arbitrary, against the facts and circumstances of the case.*
7. *Action of the CIT(A) in confirming the action of A. O. in Charging of Interest u/s 234B of I. T. Act 1961 of Rs. 14,27,178/- on assessed income as against on the returned income is unjust, illegal, arbitrary and against the facts and circumstances of the case.”*

FACTS OF THE CASE

2. Facts giving rise to the present appeal are that in this case, the assessee company was incorporated on 28.12.2007. The assessee company filed return of income for the year under appeal on 11.08.2011 declaring income of Rs.2,22,130/-. Subsequently, the case was re-opened after obtaining the necessary approval from the competent authority. The reason for re-opening the assessment stated that information was received regarding obtaining bogus profit from entry providers. In response thereto, the assessee filed its objections. The Assessing Officer (“AO”) did not accept the objections of the assessee and proceeded to make assessment u/s 147/143(3) of the Income tax Act, 1961 (“the Act”). Thereby, the AO reassessed the total income at Rs.49,97,060/- after making addition of Rs.26,81,299/- u/s 68 of the Act on account of unexplained cash credit, addition of Rs.53,626/- u/s 69C of the Act on account of unexplained expenditure being 2% of Rs.26,81,299/-, addition of Rs.20,00,000/- u/s 68 of the Act on account of share capital and addition of Rs.40,000/- u/s 69 of the Act on account of commission for taking accommodation entry.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, dismissed the appeal.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

5. Ground Nos. 1 & 2 of the assessee's appeal are against the legality of re-opening the assessment order.

6. At the outset, Ld. Counsel for the assessee submitted that the re-opening of the assessment is *ex-facie*, illegal and unjustified. He contended that a bare perusal of the impugned order would demonstrate that re-opening of the assessment is bad in law. He contended that the facts and transactions as recorded in the reasons do not pertain to the assessee. He further submitted that there is complete non-application of mind by the AO and there are series of discrepancies and errors into the reasons so recorded. He submitted that it appears that the facts related to any other party has been interpolated as the reasons of the assessee. He drew my attention to the reasons recorded by the AO wherein the AO has recorded that he had reasoned to believe that income exceeding Rs.1,00,000/- escaped assessment in the case of Rajlaxmi Commodities Pvt. Ltd., for the AY 2011-12 within the meaning of section 147/148 of the Act. He submitted that this goes to demonstrate that there was complete non-application of mind. The facts of a different entity had been considered. This itself has vitiated the entire proceedings and therefore, the impugned assessment order deserves to be quashed on this ground alone. He further pointed out that the AO in para 2 of the assessment order, stated that the assessee company, Rajlaxmi Commodities Pvt. Ltd. had taken bogus

profit by way of penny stock as per information available. This observation of the AO is completely wrong and contrary to the records. The assessee has not taken any bogus profit as alleged by the AO. Moreover, the assessee had not transacted in penny stock as alleged by the AO. These facts go to demonstrate that the reasons were recorded in mechanical manner and approval by the Competent Authority was given without verifying the correctness of facts. It proves that the approval was granted without perusing the records. Hence, such negligent and casual approach do not conform to the law.

7. On the contrary, Ld. Sr. DR, Shri Om Prakash representing the Revenue, opposed these submissions and stated that merely there are some typographical errors in mentioning the assessee's company name as M/s. Rajlaxmi Commodities Pvt. Ltd., would not *ipso facto* vitiate the entire proceedings. The reasons recorded are required to be read in entirety. The facts recorded in the reasons related to the assessee company and that goes to show that there existed reasons to believe that in the case of the assessee income chargeable to tax has escaped assessment. Therefore, he submitted that the proceedings are validly upheld by the Ld.CIT(A) and the ground of appeal deserves to be rejected.

8. In rejoinder, Ld. Counsel for the assessee submitted that it is not the case merely a typographical error even the AO has not rectified the error if it was so. It is the case of bare non-application of mind and the facts of a different entity have been recorded and considered. Furthermore, even the assessment itself is bad in law on account of the fact that assessment is made on contradictory basis. In support of this, the Ld. Counsel for the assessee relied upon various case laws. He submitted that entire addition is made on the basis of hearsay

without specifying the evidence available with the Assessing Authority. Ld. Counsel for the assessee relied on following various case laws:-

- [i] *“Rajender Kumar Sehgal vs ITO, Ward-56(1), New Delhi W.P.(C) 11255/2017 dated 19.11.2018 [Delhi High Court];*
- [ii] *Juliet Industries Limited vs ITO 6(3)(3), Mumbai, ITA No.5452/Mum/2016 dated 04.04.2018 [Mumbai Bench of ITAT];*
- [iii] *Yum Restaurants Asia Pte. Ltd. Vs DDIT, W.P.(C) No.614/2014 dated 31.08.2017 [Delhi High Court];*
- [iv] *Akshar Builders and Developers vs ACIT 28(1), Mumbai, Writ Petition No.14490 of 2018 dated 17.01.2019 [Bombay High Court]; and*
- [v] *Kolahai Infotech Pvt.Ltd. vs ITO W.P.(C) No.10958/2017 dated 23.10.2018 [Delhi High Court].”*

9. I have heard the contentions of the Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The Revenue could not rebut the contention that the AO erroneously recorded the name of third party in the reason for the re-opening of the assessment u/s 147 of the Act. Undisputedly, the AO in assessment order has admitted this fact and justified by stating it to be a typographical error. For the sake of clarity, para 6.5 of the assessment order is reproduced as under:-

6.5. “The assessee company while making the first contention has repeated the same thing which been already clarified by way of order disposing assessee’s objection on 05.11.2018. It is sated by the assessee company that in para 2.2 of the reasons recorded “I have reason to believe cat income of exceeding Rs. 1 lakhs has escaped assessment in case of M/s. Rajlaxmi Commodities Pvt. Ltd for the A.Y. 2011-12 within the meaning of Section 147/148 of the Income Tax Act, 1961. It is submitted that assessee in not Raj Laxmi Commodities Pvt. Ltd. But Rajlaxmi Porfolio

Private Limited whose income you have not alleged to escape assessment. The assessee company have submitted that SUCCEEDING ASSESSING OFFICER CANNOT IMPROVE UPON THE REASONS WHICH WERE ORIGINALLY COMMUNICATED TO THE ASSESSEE. This contention of the assessee has already been responded while disposing off objection that it was only a typing mistake only at one place in the reasons recorded elsewhere the name of the company has been mentioned correctly. It does not amount to improvement in the reasons recorded and no such attempt has been made by this office. However, it seems that the assessee by way of reiterating the same thing try to divert the attention of the A.O from the issue in question.”

10. Furthermore, the assessee in his reply to the show cause has stated that the assessee had duly disclosed in the Profit & Loss Account and brokerage charges. It was further stated that the assessee had no connection whatsoever with Kartika Investments and Victory Tie-up Pvt.Ltd., neither payment was received nor was any payment made to them. The transactions were carried out online where it was not possible to know each other. Looking to the findings of the AO, who has not rebutted the explanation by placing any credible material in support of his allegation that the assessee company has obtained bogus profit through accommodation entry. In the absence of specific finding supported by evidence mere reasoning on the basis of suspicion would not support the allegation. The AO has not brought any evidence to prove the correctness of allegation that the assessee procured profit in the present case. In light of the binding precedents on this issue by the Hon'ble Jurisdictional High Court in the case of *Sarthak Securities Co.Pvt.Ltd. vs ITO (2010) 329 ITR 110*, the re-opening of the assessment cannot be sustained in the present case. Since the re-opening of assessment is based upon purely on guess work hence, cannot be sustained. I therefore, hold that the reasons recorded by the AO do not conform to law as

there is a gross non-application of mind. Hence, the impugned order is hereby quashed. Thus, Ground Nos. 1 & 2 raised by the assessee are allowed.

11. Ground Nos.3 to 6 are on merit of additions and Ground No.7 is against charging of interest.

12. Since the assessment has been quashed on the basis that the reason recorded for re-opening by the AO was found to be based on incorrect facts, therefore, the issues related to merit of additions do not need separate adjudication. Therefore, Ground Nos. 3 to 7 have become of academic interest only.

13. In the result, the appeal of the assessee is partly allowed in the terms indicated herein above.

Order pronounced in the open Court on 13th July, 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