

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

BEFORE

**SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1167/Del/2019
Assessment Year: 2010-11

Anirudh Kumar, D-1, 2 nd Floor, Hauz Khas, New Delhi 110 016 PAN AAIPK1426A	Vs.	Income Tax Officer Ward 32(5) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Ms. Lalitha Krishnamurthy, CA
Department by :	Shri Rajinder Jha, Sr. DR
Date of Hearing	26.04.2022
Date of pronouncement	21.07.2022

ORDER

PER ASTHA CHANDRA

The appeal by the assessee arises out of the order dated 06.11.2018 of the Ld. Commissioner of Income Tax (Appeals)- 11, New Delhi (**"CIT(A)"**) pertaining to the assessment year (**"AY"**) 2010-11.

2. The assessee is an individual. He is proprietor of M/s. Jewel of India. He filed his return for AY 2010-11 on 30.09.2010 declaring loss of Rs. 5,55,164/-. On the basis of information received from the Investigation Wing that the assessee has accepted accommodation entry, the Ld. Assessing Officer (**"AO"**) re-opened the case of the assessee under section 147 of the Income Tax Act, 1961 (**the "Act"**) after recording reasons.

3. Accordingly, notice under section 148 of the Act was issued to the assessee on 29.03.2017. In response thereto, the assessee submitted vide letter dated 15.04.2017 that the return already filed on 30.09.2010 may be treated as return filed in response to notice under section 148 of the Act. During the course of re-assessment proceedings, the Ld. AO confronted the assessee regarding the taxability of accommodation entry to the tune of Rs. 33,09,470/-. Rejecting the explanation given by the assessee, the Ld. AO completed the assessment on 30.12.2017 on total income of Rs. 66,43,520/- including therein addition of Rs. 33,09,470/- under section 68 of the Act being the bogus purchase made by him from M/s. Mayank Impex and Rs. 33,34,050/- being difference between closing balance of capital account as on March 31, 2009 and opening balance of capital account as on April 1, 2009 .

4. The assessee filed appeal before the Ld. CIT(A) challenging the aforesaid additions as also the validity of reassessment proceedings. The Ld. CIT(A) was not satisfied with the arguments advanced by the assessee before him. He, therefore, confirmed the impugned additions made by the Ld. AO as well as the reassessment proceedings initiated by him.

5. Aggrieved, the assessee is in appeal before the Tribunal. He has raised the following grounds of appeal:-

- “1. That the assumption of jurisdiction by the Assessing Officer under section 147 of the Income Tax Act, 1961, is arbitrary, unjust and bad in law and consequently order of Ld. CIT(Appeals) as sustained is not tenable on facts and in law.
2. That there was no valid material with the Assessing Officer as contemplated to assume the jurisdiction under section 147 of the Income Tax Act, 1961 and consequently the reassessment so framed mechanically and without application of mind on the basis of such invalid assumption of jurisdiction is bad in law and consequently order of Ld. CIT(Appeals) as sustained is not tenable on facts and in law.”
3. That the addition of Rs. 33,09,470/- made under Section 68 of the Act on account of bogus purchases and sustained by Ld. CIT(Appeals) is arbitrary, unjust and unwarranted on facts and in law.

4. *That as the purchase is supported by invoice of Mayank Impex containing its address, VAT, CST, PAN, Bill number, date and weight, rate, description of the diamonds sold to the assessee, place of sale and delivery of the diamonds sold to the assessee and the payment of such invoice has been made by the assessee by account payee cheque and reflected in the bank account of the assessee, the addition of Rs. 33,09,470/- made under Section 68 of the Act on account of bogus purchases and sustained by Ld. CIT (Appeals) is unjust, unwarranted and not tenable on facts and in law.”*
5. *That as the diamonds were purchased from Mayank Impex was intended for being utilized /sold to customers against sale bills of the assessee and payment by such customers and on sale such sale proceeds, are offered to tax and is verifiable from the records of the assessee, disallowance of Rs.33,09,470/- made under Section 68 of the Act on account of bogus purchases by taking the sale proceeds at 100 percent would give a distorted picture of the profits of the assessee and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law*
6. *That as Mayank Impex had not specified the name of the assessee and transaction with the assessee in their statement on oath, the addition of Rs.33,09,470/- made under Section 68 of the Act on account of bogus purchases in the hands of the assessee and sustained by Id. CIT(Appeals) is arbitrary, unjust and unwarranted on facts and in law.*
7. *That based on such general statement the AO without verifying the facts, without bringing any adverse material on record, without carrying out any further investigation to substantiate the allegation that the purchase is not genuine and without giving an opportunity to the assessee to confront Mayank Impex in relation to the transaction with the assessee, making of addition of Rs.33,09,470/- under Section 68 of the Act on account of bogus purchases in the hands of the assessee and sustained lay Id. CIT(Appeals) was unjustified and unwarranted on facts and in law.*
8. *That the addition of Rs.33,09,470/- made under Section 68 of the Act on account of bogus purchases in the hands of the assessee cannot be made merely because the purchases are not verifiable because as far as the assessee is concerned the purchase is duly supported by an invoice and payment by account payee cheque and such diamonds are utilized/sold to customers against payment by customer and against sale invoice and accordingly addition sustained by Id. CIT(Appeals) was unjustified and unwarranted on facts and in law.*

9. *That the addition of Rs.33,34,050/- on account of alleged difference between closing balance of capital account as on 31st March, 2009 of Rs.2,78,75,493.36/- and opening balance of capital account as on 01st April, 2009 of Rs.2,45,41,443.26/- as unexplained cash credit and sustained by Id. CIT(Appeals) is unjust, unwarranted and not tenable on facts and law.*
10. *The above grounds are independent and without prejudice to one another.*
11. *Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.”*

6. The Ld. AR submitted that the assessee has purchased diamonds from Mayank Impex and had filed copy of purchase invoice dated 16.10.2009 mentioning the address VAT TIN No., CST TIN No., PAN, Bill No., Telephone No., Invoice date and weight of diamonds, rate, description of diamonds sold to the assessee. Payment was made to the supplier by account payee cheque and is duly reflected in the bank account of the assessee. According to the Ld. AR as far as the assessee is concerned, he had made a genuine business transaction and the diamonds became part of his stock-in-trade for being utilised in the normal course of his business. The Ld. AR submitted that the sales have not been disputed by the Ld. AO. The Ld. AO has reopened the assessment on the basis of information received from the Investigation Wing.

6.1 Regarding the difference of Rs. 33,34,050/- between closing balance of capital account as on 31.03.2009 and opening balance as on 01.04.2009 the Ld. AR submitted that the difference arose because the return for AY 2009-10 was revised by the same amount. Reason for revising the return was explained to the Ld. AO in assessment proceedings by way of filing reconciliation sheets (copy at pages 69-70 of Paper Book) which was accepted by the Ld. AO. The Ld. AR drew our attention to the assessment order for AY 2009-10 (copy at page 71-73 of Paper Book) wherein the Ld. AO accepted the reason for revising the return by stating that the quantity and rate was wrongly applied while computing the value of closing stock of

shares. The Ld. AR submitted that when the revised return is accepted by the Ld. AO the opening balance of capital account would come down by the same amount. Thus, the difference referred to by the Ld. AO stands reconcile.

6.2 The Ld. AR submitted that under identical facts and circumstances the Tribunal in the assessee's own case for AY 2011-12 held the assessment proceedings to be invalid where such reopening was made on the basis of information received from Investigation Wing. Copy of the order of the Tribunal dated 16.09.2021 in ITA No. 8670/Del/2019 was placed on record.

6.3 The Ld. AR relied on the following decisions in support of the proposition that reopening on the basis of information received from the Investigation Wing without independent application of mind is invalid:-

- i) Sfil Stock Broking Ltd. 325 ITR 285 (Del)
- ii) Sarthak Securities Co. (P) Ltd. (2009) 329 ITR 110
- iii) Signature Hotels (P) Ltd. (2011) 338 ITR 51 (Del)
- iv) RMG Polyvinyl (I) Ltd. (2017) 83 taxmann. Com 348 (Del)
- v) Meenakshi Overseas Pvt. Ltd. (2017) (5) TMT 1428 (Del)
- vi) G&G Pharma India Ltd. ITA 545/2015 (Del)

6.4 The Ld. DR placed reliance on the order of the Ld. CIT(A). He submitted that the information received by the Ld. AO from Investigation Wing is the just and valid reason recorded for assuming jurisdiction to reopen the case of the assessee under section 147/148 of the Act. He however conceded that the facts of the case in the relevant AY are exactly similar to the facts in AY 2011-12 in ITA No. 8670/Del/2019 (supra).

7. We have careful thought to the rival submissions of the parties, peruse the orders of the Ld. AO/CIT(A) and the material available on records. We have gone through the reasons recorded for reopening the assessment which consists of five pages (copy is at pages 29-33 of the Paper Book). It is obvious from the reasons recorded by the Ld. AO for reopening the assessment under section 147 of the Act that notice under section 148

has been issued to the assessee only on the basis of the information received from Investigation Wing. Under identical facts and circumstances of the case, the Tribunal has consistently held that the reassessment proceedings are not valid. In the assessee's own case for AY 2010-11 the Tribunal vide order dated 16.09.2021 in ITA No. 8670/Del/2019 held that the assessment proceedings are not valid by observing in para 9 as under :-

"9. I find identical issue had come up before the Tribunal in the case of Nihal Chand Rakyan and the Tribunal vide ITA No. 4534/Del/2017 order dated 12.12.2017 has held the reassessment proceedings as not valid by observing as under :-

"7. I have considered the rival arguments made by both the sides, perused the orders of the authorities below and the Paper Book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons recorded for reopening the assessment, copy of which is ITA No.4534/Del/2017 placed at page 15 of the Paper Book, shows that the following reasons were recorded for reopening of the assessment :-

Reasons for reopening the case u/s 147/148 of the I.T. Act, 1961 For A.Y. 2008-09. The Addl. Commissioner of Income Tax, Central Range, Surat vide letter no.SRT/Addl.CIT/CR/Rajendra Jain, Dharmichand Jain, Sanjay Choudhary Gr./2014-15/506 dated 13/03/2015 has informed that a search and seizure operation u/s 132 of the I.T. Act 1961 in the case of Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain Group was carried out on 03/10/2013 by the DGIT (Inv.), Mumbai Charge. During investigation it was found that Sh. Rajendra Jain, Sh. Sanjay Choudhary and Sh. Dharmichand Jain were some of the entry providers operating in Mumbai, indulging in providing accommodation entries in the nature of bogus sales and unsecured loans. During investigation it was also revealed that besides above lender group, some other entry providers were also engaged in providing accommodation entry. As per information provided, M/s N.N. Association, the assessee was one of the beneficiaries of such bogus accommodation entries. The complete details of the transactions between the entry provider and the assessee are as under:-

PAN of Bill Provider	Name of Bill Provider	A.Y.	Nature of Transaction	Beneficiary PAN	Beneficiary Name	Total value of the transaction Rs.	Real value of Transaction Rs. (if available)
AHOPJ3837B	AADI	2008-09	Sale	Under Process	N.N. Association	14,54,400	14,54,400

From above it is clear that this issue could not be examined for the assessment year under consideration. Therefore, I have reasons to believe that the income of the assessee to the extent of Rs.14,54,400/- for A.Y.2008-09 has escaped assessment in terms of [Section 147](#) of the I.T. Act1961.

Sd/-

(G. Sathish)

Assistant Commissioner of Income Tax
Circle 30(1),
New Delhi

8. I find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year and the Tribunal vide ITA No.1914/Del/2016 order dated 08.11.2016 held the reassessment proceedings as not valid by observing as under :-

"6. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is noticed from the reasons recorded for reopening the assessment placed on page No.12 of the assessee's paper book that the reopening was done only on the basis of the information received from the Additional Director of Income Tax (Investigation) Unit VI New Delhi vide letter dated 24.3.2014 who suggested that notice u/s 148 was required to be issued to bring to tax the undisclosed income in respect of accommodation entries taken by different persons/companies as per the list enclosed with the said letter.

7. On a similar issue, the Hon'ble Jurisdiction High Court in the case of Pr. Commissioner of Income Tax - 4 vs. G & G Pharma India Ltd. (supra) vide order dated 8.10.2015 held as under :-

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not

have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity."

8. In the present case, the reopening was done only on the basis of information received from Investigation Wing. Therefore, in view of the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case, the reopening was not valid and the subsequent assessment framed was void ab initio. Accordingly, the same is set-aside.

9. In the result, the appeal of the assessee is allowed."

9. Since the facts and circumstances of the case are identical to the facts of the case decided by the Tribunal in assessee's own case in the immediately preceding assessment year, therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case and in absence of any contrary material brought to my notice against the said decision, I hold that the reassessment proceedings initiated by the Assessing Officer is invalid. Therefore, subsequent

assessment framed is void abinitio. In the result, the appeal filed by the assessee is allowed on the issue of validity of the reassessment proceedings. Since the assessee succeeds on this legal ground, I refrain myself from adjudicating the issue on merit."

8. Since the facts of the case are identical to the facts of the case decided by the Tribunal in the case of Nihal Chand Rakyan as also in the assessee's own case for the immediately succeeding AY 2011-12, respectfully following the decisions (supra) and the decisions (supra) cited by the Ld. AR of the assessee before us we hold that the reassessment proceedings initiated by the Ld. AO is invalid. Therefore, assessment framed consequent thereto is ab-initio-void. In the result, appeal filed by the assessee is allowed on the issue of validity of the reassessment proceedings. Since the assessee succeeds on this legal ground, we refrain from adjudicating the issues on merit.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 21st July, 2022.

sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 21/07/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the	

Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	