

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.373/Mum/2022
(Assessment Year :2007-08)**

Shri Basant Dharmichand Jain F-316, Bussa Apartment S.V. Road, Nearby Khira Department, Santacruz (W) Mumbai – 400 054	Vs.	Dy. CIT Central Circle – 1(3), Mumbai 905, 9 th Floor, Pratishta Bhavan, Old CGO Building Annex, M.K.Road Mumbai – 400 020
PAN/GIR No.AAVPJ2045F		
(Appellant)	..	(Respondent)

Assessee by	Shri Himanshu Gandhi
Revenue by	Shri Rajiv Singh
Date of Hearing	25/07/2022
Date of Pronouncement	25/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.373/Mum/2022 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal No.CIT(A)-47, Mumbai/10448/2015-16 dated 12/01/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 by the Id. Dy. Commissioner of Income Tax, Central Circle – 1(3), Mumbai (hereinafter referred to as Id. AO).

2. The assessee prima facie has challenged the validity of re-assessment in the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of import, export and trading of cut, polished and rough diamonds. The return of income for the A.Y.2007-08 was originally filed on 12/01/2007 declaring total income of Rs.1,44,034/-. There was a survey u/s.133A of the Act was conducted in the premises of the assessee on 09/07/2008. In the assessment framed pursuant to the survey proceedings, the assessee was treated as an accommodation entry provider by the Assessing officer and commission income on certain transactions were added in the hands of the assessee. This assessment was framed u/s.143(3) of the Act on 24/12/2009. This assessment was accepted by the assessee by not preferring any further appeal. Admittedly, this completed assessment was neither subject matter of reopening u/s.147 of the Act nor revision proceedings u/s.263 of the Act were initiated by the Id. PCIT. Hence, the finding given in the said assessment order treating assessee to be an accommodation entry provider, had attained finality. Later, pursuant to the search conducted u/s.132 of the Act in the case of Bhanwarlal Jain and Rajendra Jain group, wherein it revealed that assessee had made certain purchases from those parties. The Id. AO observed that assessee had made purchases from certain concerns belonging to Bhanwarlal Jain amounting to Rs.2,36,80,000/- which were treated as bogus and which was sought to be disallowed in the hands of the assessee for which assessment of the assessee was reopened for A.Y.2007-08. Even in the reasons recorded for reopening the assessment for A.Y.2007-08, the Id. AO had sought to disallow these purchases made from concerns belonging to Bhanwarlal Jain in the sum of Rs.2,36,80,000/-. The

assessee filed reply before the Id. AO stating that in the assessment completed u/s.143(3) of the Act dated 24/12/2009, he was treated as an accommodation entry provider and only commission entry could be subjected to tax which has already been taxed in the original assessment itself. The Id. AO duly accepted to this contention of the assessee and dropped the proposed disallowance of bogus purchases to be made in the hands of the assessee in the re-assessment. However, the Id. AO observed that assessee had taken certain unsecured loans which were also treated as bogus and commission income @2.4% was sought to be added thereon in the re-assessment proceedings.

3.1. From the above, it is very evident that the reasons for which assessment of the assessee was reopened was only to make the disallowance on account of bogus purchases. Admittedly, no disallowance was made in the re-assessment proceedings on account of bogus purchases. Hence, the very basis of reopening fails. The reason to believe in the mind of the Id. AO fails. Accordingly, the re-assessment proceedings deserve to be quashed. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Jet Airways (I) Ltd., reported in 331 ITR 236. Similar view was expressed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Lark Chemicals (P) Ltd., reported in 99 taxmann.com 311 (Bom). The Special Leave Petition (SLP) preferred by the Revenue against this judgement of the Hon'ble Bombay High Court was dismissed by the Hon'ble Supreme Court in the case of PCIT vs. Lark Chemicals (P) Ltd., reported in 99 taxmann.com 312 vide order dated 05/10/2018.

3.2. The reasons recorded by the Id. AO for reopening the assessment are reproduced hereunder for the sake of convenience:-

“A letter bearing no. DGIT(Inv)/Information/Diamond/2013-14 dtd. 14.03.2014, alongwith enclosures, is received from the Director General of Income Tax (Investigation), Mumbai, through the Commissioner of Income Tax -II, Surat and the Addl. Commissioner of Income Tax, Range-6, Surat. The said letter contained details of accommodation entries of bogus purchases, sales, unsecured loan, share capital, etc., given by Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai, leading entry providers.

2. The facts of the case is that, a search and seizure action was carried out by the Investigation wing, Mumbai In the Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai on 03.10.2013, which resulted in collection of evidences and other findings, which conclusively proved that the said Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai had, through benami concerns, run and operated by them in the names of their employees, provided accommodation entries to various parties in respect of bogus unsecured loans, bogus purchases and bogus sales. Various evidences found and seized from the premises as well as the statements recorded u/s. 132(4) of respective key persons proved the above facts.

3. This group has Indulged in giving such accommodation entries. They have admitted the entire nature of bogus transactions in their respective statement recorded u/s. 132(4) of the Income Tax Act, 1961. It was also stated by the dummy partners/ Directors/ proprietors of the entities of this group that they are closely known and associated with the above group persons and that they were made partners/ Directors/ proprietors of the entities of this group at the direction of Shri. Rajendra Jain /Shri Sanjay Jain / Shri Dharmichand Jain & his family but the entities were managed and controlled by the latter. It was further admitted by the dummy partners/ Directors/ proprietors of the entities of this group that they were merely employees of the above groups & their family and that they were looking after miscellaneous office work like depositing cheques in banks, handing over parcels to clients, making data entry, etc. On being asked about various aspects of the business of this group, the dummy partners/ Directors/ proprietors of the entities of this group, they expressed their ignorance and stated that they are engaged in the business of bill shopping through all the concerns and they do not maintain any physical stock of diamonds and that they are paid lump sum salary in cash. During the course of search, blank cheque books signed by the dummy partners/ Directors/ proprietors of the entities of this group

were also found, which were seized. Similarly, books of account in the name of the dummy partners/ Directors/ proprietors of the entities of this group were also found, which were also seized.

4. According to the regular books of accounts and the returns of income filed by different entities of the group, the business of these entities are disclosed to be trading of rough and finished diamonds and manufacturing of diamond jewellery. However, no stock of diamond was found from any of the premises searched or surveyed. The statements of all the persons recorded during the course of search revealed that this group was engaged in giving accommodation entries and this fact has also been admitted by the employees, the dummy partners/ dummy Directors/ dummy proprietors of the entities of this group as also by Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai.

5. The Investigations made by the investigation wing revealed that actual Importers of rough diamonds Import part of their diamond requirement through benami entities operated by Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai & family, which ensures benefit of suppression of turnover, profits and capital requirement of the former. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignments from Customs, through CHA, the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of the actual importer. These benami entities of Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai thereafter issue bogus purchase/sale bills.

6. From the details and evidences made available through the above referred letter dtd. 13.03.2014 of the Director General of Income Tax (Investigation), Mumbai, it is seen that the following entities of Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group of Mumbai have given accommodation entries of bogus sales as under, during F.Y. 2006-07 to the assessee, Shri Basant D. Jain, Prop. Of M/s. Basant Dia Jewels of 403, Ghanshyam Building, Hathfalla, Mahidharpura, Surat;

<i>Name of the entry provider.</i>	<i>Sales Amount.</i>
<i>Moulimam</i>	<i>Rs. 1,65,30,000/</i>
<i>Vitrag</i>	<i>Rs. 71,50,000/</i>
	<i>=====</i>
<i>Total...</i>	<i>Rs. 2,36,80,000/</i>

7. On verification of the office records, it is seen that the assessee has filed his return of Income for the year under consideration on 12.10.2007, disclosing a total income of Rs.1,44,034/-. The assessment was completed u/s. 143(3) of the Act. Since the evidential and materials facts found during the course of search and survey in the case In Shri. Shri. Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain group prove giving of accommodation of sales entries of Rs. 2,36,80,000/-, it is prima facie apparent that the assessee has utilized such bogus sales to suppress his profits for the year to that extent. There is no other prudent use of bogus sales bills.

8. From the above facts, it is clear that accommodation entries of Rs. 2,36,80,000/- is used by the assessee in his books of account and his return of income to suppress his taxable income. As such, I have a reason to believe that an income of Rs.2,36,80,000/- as stated above, has escaped assessment in the hands of the assessee for the year under consideration. I am satisfied that the case of the assessee is a fit case for action u/s. 147 of the Act.

9. Since the original assessment has been completed u/s. 143(3) of the Act and since four years have elapsed from the end of the assessment year, sanction u/s. 151(1) of the Act has to be obtained from the Commissioner of Income Tax-II, Surat.

3.3. Since the reopening is made beyond four years from the end of the relevant assessment year, the proviso to Section 147 of the Act would come into operation. From the perusal of the aforesaid reasons, it is evident that the Id. AO had not applied the proviso to Section 147 of the Act by indicating in the reasons as to whether there was any failure on the part of the assessee to make full and true disclosure of facts that are material for the purpose of assessment. Hence, the reopening proceedings deserve to be quashed on this count also. Reliance in this

regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Hindustan Lever Ltd., vs. R B Wadkar reported in 268 ITR 332. The operative portion of the judgement is as under:-

“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”

3.4. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the re-assessment proceedings are hereby quashed. Since the re-assessment proceedings are quashed on legal ground, the other grounds raised by the assessee on merits need not be adjudicated as they would be academic in nature and they are left open.

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

Order pronounced in open Court on 25/07/2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai