

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)
ITA No. 1367/MUM/2021 (A.Y 2010-11)

Deputy Commissioner of Income Tax, CC-7(1), Mumbai	M/s Growmore Investments & Developers Pvt. Ltd (Erstwhile known as M/s Jubilant Fintex Pvt. Ltd.) Room No. 676B, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020 PAN : AABCG6370P
APPELLANT	RESPONDENT

Cross Appeal No. 19/MUM/2022 (A.Y 2010-11)

M/s Growmore Investments & Developers Pvt. Ltd. PAN : AABCG6370P	Deputy Commissioner of Income Tax, CC-7(1), Mumbai
APPELLANT	RESPONDENT
Assessee represented by	Shri Pradip Kapasi
Department represented by	Shri Hoshang B Irani (DR)

Date of hearing	25/05/2022
Date of pronouncement	11/08/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue as against the order of the Ld.CIT(A) under section 250 of the I.T. Act pertaining to assessment year 2010-11.

2. The solitary issue involved in this appeal is whether Ld. CIT(A) has erred in declaring the assessment order passed under section 147 read with section 143(3) of the Act as invalid without appreciating the fact that the AO has reopened the case after having received a fresh piece of information and after having recorded the firm reasons to belief for re-opening which is duly

approved by the competent authority for issuance of notice under section 148 of the IT Act.

3. The brief facts are that the assessee is a private limited company engaged in the business of pursuing activities of investment in shares of companies and units of mutual funds and immovable properties. The assessee filed its return of income on 27/09/2010 declaring total income at Rs.12,39,470/- and assessee's case was selected for scrutiny and order under section 143 (3) of the IT Act was passed on 19/12/2012 determining total income at Rs. 14, 63, 690/-. Subsequently the assessee's case was reopened under section 147 of the IT Act and notice under section 148 was issued on 31/03/2017 for which the assessee filed a return of income in response to the said notice. An addition of Rs.6,12,55,000/- was made under section 68 of the Act and Rs. 61,25,500/- under section 69C on account of commission of 10% on the impugned addition, subsequent to the re-assessment. Aggrieved, the assessee appealed before the Ld CIT (A) who deleted the addition made by the AO, on the ground that the Assessing Officer has not recorded reasons, which tantamount to failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment as per First Proviso to section 147(1) of the Act and also that the assessment has been reopened after the expiry of 4 years which was invalid and bad in law, as the Assessing Officer has not lawfully exercised jurisdiction. The Revenue is in appeal before us.

4. The Ld.DR during the appellate proceedings stated that the Assessing Officer has rightly exercised his jurisdiction upon receiving information from the Investigation Directorate, Kolkatta that the assessee had taken accommodation entry through Shri Pranab Kumar Modi. The Ld.DR further

stated that the Assessing Officer had received new information whereby it was seen that the income of the assessee company has escaped assessment. The Ld.DR stated that the addition made by the AO has to be sustained.

5. The Ld.AR, on the other hand, contended that the assessee was not in the list of beneficiaries in the information received from the Investigation Directorate, Kolkatta for accommodation entry through Shri Pranab Kumar Modi and that the reasons for reopening did not contain the details as to what was failure on the part of the assessee in disclosing the assessee's income. The Ld.AR further contended that assessment order under section 143(3) read with section 147 was beyond the expiry of 4 years without any new material of evidence. The Ld.AR also stated that notice under section 143(2) was not served upon the assessee and the same has been recorded in the remand report also. The Ld.AR submitted that the Ld.CIT(A) has rightly quashed the impugned order of re-assessment to be invalid and bad in law. The Ld.AR relied on the decision of Hon'ble jurisdictional Bombay High Court in the case of Hindustan Lever Ltd vs R.B. Wadhkar, ACIT & Ors (2004) 137 Taxman 479 (Bom) and the Hon'ble Calcutta High Court decision in the case of Amiya Sales & Industries vs ACIT (2005) 274 ITR 25 (Cal).

6. We have heard both the learned representatives, perused the materials on record and considered the decisions cited by both the parties. From the facts of the case, it is seen that the assessee's bank account had credit entries, which according to the assessee, was sale considerations received in respect of shares sold during the impugned year for which the assessee stated that it had not incurred any gain or profit from the transactions resulting in no escapement of income. The assessee has also stated that it had not received

any share premium during the said year and that most of the shares were purchased during assessment year 2007-08 which was verified in the course of the assessment proceedings under section 143(3) for the specified year which was also re-assessed during reopening under section 147 and subsequently order was passed. The sale of share was subsequent to that which was again verified in the original assessment passed under section 143(3). The Assessing Officer, on the other hand, failed to accept the assessee's contention that the amount of Rs.6,12,55,000/- was genuine transaction on the ground that the creditworthiness of the parties were not proved. The Assessing Officer proceeded to make addition for the said amount under section 68 of the act and further under section 69C as commission @10% amounting to Rs.61,25,500/- for accommodation entries taken by the assessee. During the appellate proceedings, before the Ld.CIT(A), the assessee has raised the ground that notice under section 148 was not served upon the assessee and that the re-assessment was merely on the basis of change of opinion on the same facts, that the assessee had made full and true disclosure of material facts in the return of income, that the Assessing Officer has not quantified the amount of income that has escaped assessment and that the reopening was on mere suspicion on surmises and conjectures. The Ld.CIT(A) held that in the reasons recorded for reopening the assessment, the Assessing Officer had failed to substantiate the fact that there was any failure on the part of the assessee to fully and truly disclose all material facts necessary for the purpose of assessment. Though necessary approval was obtained to reopen the assessee's case beyond the period of 4 years, the Assessing Officer has

eventually failed to specify whether there was any failure on the part of the assessee in disclosing the income.

7. We have considered the various decisions cited by the Ld.CIT(A) and assessee on this issue. We place reliance on the decision of the jurisdictional High Court in the case of Hindustan Lever Ltd vs R.B. Wadhkar, ACIT & Ors (supra) wherein it has been reiterated that when an assessment has been made under section 143(3), no action could be taken under section 147 after the expiry of 4 years under the relevant assessment years, unless any income chargeable to tax has escaped assessment for such assessment year by reasons of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year.

8. We have also considered the decision of jurisdictional Bombay High Court in the case of ICICI Bank Ltd vs K.J. Rao, Dy.CIT & Anr (2004) 268 ITR 203 (Bom) which has also reiterated the principles that an assessment which is completed cannot be reopened beyond a period of 4 years from the end of the relevant assessment year unless the Assessing Officer proves that there is escapement of income by the assessee by not disclosing fully and truly all material facts. The relevant extract of the judgement is as below:-

This court in the case of IPCA Laboratories Ltd. (supra) and in the case of Bhor Industries (supra) has held that notice for reopening of the assessment cannot be issued after a period of four years unless the escapement of income is on account of failure on the part of the assessee to disclose fully and truly all material facts. It has been further held that the Explanation to section 147 of the Income Tax Act has to be read with section 148 of the Income Tax Act in its entirety. In the light of the aforesaid decisions, in the present case, there being no failure on the part of the assessee to disclose fully and truly all material facts, the impugned notices issued beyond the period of four years from the end of the relevant assessment years are liable to be held to have been issued in contravention of the provisions of the Income Tax Act." (emphasis added)

9. In the present case in hand, we are convinced that the assessee has sold equity shares amounting to Rs.5,77,55,000/- to various companies wherein it

was stated that no profit or gain was made in the said transaction and that the assessee has furnished all necessary details pertaining to the names, addresses, PAN of the companies to whom the shares were sold during the course of original assessment proceedings. It is also not denied that the said transaction was duly accounted in the books of the assessee and the sale consideration for the same was through banking channel. It is pertinent to point out that the purchase of shares was also proved to be genuine and has been verified during the assessment proceedings in the year of acquisition itself as held by the Ld.CIT(A). We do not find an iota of doubt in the transaction of the assessee company in the purchase and sale of the shares. We are also of the view that the reopening of assessment for the impugned year by the Assessing Officer finds no merit. The reasons recorded for such reopening does not substantiate the Assessing Officer's stand that the assessee's income has escaped assessment. The First Proviso to section 147 mandates that the assessment cannot be reopened beyond a period of 4 years unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee. By construing the said provision and following the judicial precedents of various courts, we are of the opinion that the impugned order of re-assessment passed by the Assessing Officer is invalid and bad in law thereby, confirming the order of Ld.CIT(A).

10. In the result, appeal filed by the Revenue is dismissed.

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11. During the appellate proceedings, the Ld.AR of the assessee stated that if the appeal of the Revenue is dismissed, the assessee will not press the Cross

Objection. Accordingly, in view of our decision on the Revenue's appeal, the Cross Objection filed by the assessee is dismissed.

12. As a result, both, the appeal of the Revenue and the cross objection filed by the assessee, are dismissed.

Order pronounced in the open Court on 11th day of August, 2022.

(PRASHANT MAHARSHI) ACCOUNTANT MEMBER	(KAVITHA RAJAGOPAL) JUDICIAL MEMBER
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Mumbai, Dated: 11/08/2022

Pavanan

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai