

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

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

ITA No. 1568/Del/2016
(Assessment Year : 2005-06)

Green Valley Plywood Ltd. C/o. Kapil Goel Adv. A-1/25, Sec-15, Rohini Delhi-110 085 PAN No. AAACG 0323 P (APPELLANT)	Vs.	DCIT Circle – 12(1) New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Anuj Garg, Sr. D.R.

Date of hearing:	18.08.2022
Date of Pronouncement:	31.08.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-15, Delhi relating to Assessment Year 2005-06.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company who filed its return of income for A.Y. 2005-06 on 03.10.2005 showing income of Rs.9,24,060/- as per

normal provisions of the Act and Rs.1,20,10,923/- as Book Profit u/s 115JB of the Act. The return of income was initially processed u/s 143(1) of the Act. Thereafter, proceedings u/s 147 of the Act were initiated on the basis of information received from the Investigation Wing of the Department that the assessee was a beneficiary of taking accommodation entry in the garb of share application money. Accordingly, notice u/s 148 of the Act was issued on 27.03.2012 and was served upon the assessee. AO thereafter has framed assessment order u/s 147 r.w.s 144 of the Act order dated 28.03.2013 and determined total taxable income at Rs.9,84,41,709/- and the Book Profit u/s 115JB of the Act at Rs.1,20,72,923/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 02.12.2015 in Appeal No.325/14-15 (159/13-14) granted partial relief to the assessee. Aggrieved by the order of CIT(A), Assessee is now in appeal and has raised the following grounds:

1. *“That on the facts and in the circumstances of the case and in law, learned CIT(A) erred in upholding reopening action u/s 148 being made in violation to mandatory jurisdictional conditions stipulated u/s 147 to section 153 of the Income Tax Act, 1961 (Act).*
2. *That on similar facts, the reopening action in assessee's own case for A.Y. 2004 - 2005 (ITA 3688/Del/2013 order dated 30.09.2015 C bench New Delhi) has been upheld to be in incorrect which has not at all been appreciated by learned first appellate authority (FAA).*

3. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in giving perverse findings at para 5.2 upholding reopening action assuming that reasons recorded and information reed, from investigation wing alleged accommodation entries of Rs. 404,00,000 whereas fact of the matter as admitted by Ld AO in impugned order is that said amount is Rs. 15,00,000 only.*
4. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not appreciating that Ld AO without any tangible material acting in impromptu manner expanded the scope of extant reopening from Rs.15,00,000 to all unconnected issues by giving untenable reasons at para 10 of his impugned order.*

Total Non application of mind at various stages: Vitiating Proceedings

5. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not appreciating that Ld AO acted without any application of mind as not only he expanded the proceedings from Rs. 15,00,000 to Rs. 404,00,000 & other additions but also he also grossly failed to appreciate that in Rs. 404,00,000, amount of Rs. 289,50,000 (Rs. 215,00,000 A.Y. 2003-04 & A.Y. 2004-05 Rs. 74,50,000) pertained to earlier years which case (A.Y. 2004-05 supra) has already went upto Hon'ble ITAT and hitherto decided in assessee's favor.*

Merits of the case : Unexplained Share Capital (Reasons recorded Rs.15,00,000 & final addition made Rs. 404,00,000)

6. *That on the facts and in the circumstances of the case and in law, learned CIT-A acting in obfuscated manner first confirmed the addition u/s 68 to amount of Rs. 404,00,000 on account of alleged unexplained share application/ share capital and then giving at para 6.8 totally unjustified and unwarranted findings that amount of earlier years of Rs.215,00,000 (A.Y. 2003-04) & Rs.74,50,000 (A.Y. 2004-05) is directed u/s 150(1) to be added in those years.*

7. *That on the facts and in the circumstances of the case and in law, learned CIT-A gave perverse findings by sustaining wrong addition of Rs. 404,00,000 which amount do not exclusively pertains to extant period and rather substantial amount pertains to earlier years (Rs. 289,50,000) at para 6.7/page 23 of his order and where reasons recorded limitedly pertained to Rs.15,00,000 and there has been no basis to expand the proceedings from Rs.15,00,000 to other transactions and issues not forming part of reasons recorded.*
8. *That on the facts and in the circumstances of the case and in law, learned CIT-A directions u/s 150(1) at para 6.9/7 may please be expunged being totally unlawful and made against the mandate of the law, which do not permit him to go beyond the period involved and especially when those* proceedings of earlier years (A.Y. 2003-04 & A.Y. 2004-05), have already become time barred u/s 149 when extant proceedings were initiated by Ld. AO u/s 148, on 27.03.2012.*
9. *That on the facts and in the circumstances of the case and in law, learned CIT-A manifestly erred in sustaining the colossal addition u/s 68 by wrongly observing that assessee did not discharge its onus and confirming the colossal additions on sole & mere basis of un-confronted investigation wing report which is not examined and analysed at any stage for its nexus with present case (if any).*
10. *That on the facts and in the circumstances of the case and in law, learned CIT-A manifestly erred in sustaining the colossal addition u/s 68 by ignoring the explanations and evidences submitted by assessee in support of its contention.*

Other additions & issues absolutely unconnected to reasons recorded

11. *That on the facts and in the circumstances of the case and in law, learned CIT-A manifestly erred in sustaining the part addition of alleged unexplained cash deposits in bank, which are proven to be cash sales, on extraneous and irrelevant reasoning at para 13.5 of impugned order.*

That the appellant craves leave to add, to, amend, modify, rescind, supplement or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.”

5. The case file reveals that the appeal was filed by the assessee in 2016 and was listed for hearing for the first time on 19.12.2018. Since there was no appearance on behalf of the assessee therefore the matter was adjourned. The case file further reveals that the appeal was fixed for hearing on various dates 05.02.2019, 23.04.2019, 27.06.2019, 21.08.2019, 31.10.2019, 07.01.2020, 17.03.2020, 18.05.2020, 25.06.2020, 25.08.2020, 21.10.2020, 24.12.2020, 09.02.2021, 14.04.2021, 09.06.2021, 23.08.2021, 20.10.2021, 23.12.2021, 02.03.2022, 18.05.2022, 16.08.2022 and 18.08.2022 and on all the occasions there was neither any appearance on behalf of the assessee before the Tribunal nor any application was filed seeking adjournment despite notices being issued through RPAD. The case file also reveals that the notice for hearing on earlier occasion was issued through RPAD but the same was returned undelivered by postal authorities with the remarks that no such company exist at the address. Assessee has also not filed any document informing the change of address. Preferring an appeal does not mean merely formally filing an appeal but also taking all the steps to effectively pursue the appeal. Further when an appeal is filed by the assessee before the Tribunal, it is expected that assessee shall put forth documentary evidences to support his claim. The fact that the assessee has not appeared before the Tribunal despite

various opportunities granted to the assessee shows the negligent approach of the assessee and that he is not serious in pursuing the appeal filed by him. In the absence of any co-operation from the side of the assessee in helping to decide the appeal, we don't find any reason to keep the matter pending before us. Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

6. Before us, Learned DR took us to the order of AO and CIT(A) and supported the order of lower authorities.

7. We have heard the Learned DR and perused the material available on record. We find that CIT(A) at para 4.2 after considering the remand report, the assessee's submissions to the remand report has held that the ground taken by the assessee about the re-assessment being made without disposing of the objections raised by assessee was misplaced as the AO in assessment order has clearly mentioned that the copy of reasons recorded for reopening the case was supplied to the assessee and objections filed by it was disposed of by rejecting the same. CIT(A) vide para 5.2 has also given a finding that the information was received by AO from the Investigation Wing of the Department that the assessee was a beneficiary of taking accommodation entries of Rs.4,04,00,000/- in the garb of share application money from entry providers and thus on the basis of specific information received by AO from Investigation Unit AO had

formed belief of escapement of income and thus reopening the re-assessment proceedings was justified. He accordingly upheld the validity of the re-assessment proceedings. As far as, the addition on the merit of Section 68 is concerned, we find that CIT(A) after considering the various case laws cited in the order and after relying on those case laws and facts of the case has upheld the addition made by AO. Before us, assessee has not placed any material on record to point out any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the Grounds of assessee are dismissed.**

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 31.08.2022

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI