

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1920/Mum/2022 (A.Y. 2013-14)

Mrs. Shakuntala J. Daga B-2, 1 st Floor, Bhalchandra CHS Ltd., Manpada Road Dombivli West Maharashtra- 421 201. PAN : ADFPD1927M (Appellant)	Vs.	ITO, National Faceless Assessment Centre Mumbai. (Respondent)
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Assessee by	Shri Jayant Bhatt
Department by	Ms. Indira Adaki
Date of Hearing	03.10.2022
Date of Pronouncement	04.10.2022

ORDER

The assessee has filed this appeal challenging the order dated 15.6.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2013-14. The assessee, inter alia, has challenged the validity of reopening of assessment under section 147 of the I.T. Act.

2. The learned AR submitted that the assessee had filed the return of income for the year under consideration on 9.12.2014 declaring income of Rs.10,39,050/-. Subsequently the Assessing Officer reopened the assessment of the year under consideration by issuing notice under section 148 of the Act on 26.3.2018. The learned AR submitted that the Assessing Officer has reopened the assessment on the basis of information given by the DDIT that the assessee was one of the beneficiaries, who have derived bogus long term capital gain in the scrip M/s. Sampada Chemicals Ltd. during the financial year 2010-11. The learned AR submitted that the information received by the Assessing Officer was pertaining to A.Y. 2011-12 and not to the year under consideration, viz., AY 2013-14. However, the AO has reopened the assessment of AY 2013-14, on the basis of the said information relating to AY

2011-12. Hence, there was no material relating to AY 2013-14 available with the AO, which could lead the Assessing Officer to arrive at the belief that the income of A.Y. 2013-14 has escaped assessment. Accordingly, the learned AR submitted that there was no live nexus between the information received and the belief formed by the Assessing Officer. Accordingly he submitted that the reopening of assessment is bad in law.

3. The learned DR submitted that the assessee has challenged the validity of reopening of assessment before the learned CIT(A). but the same has been rejected by the learned CIT(A) on the ground that the foundation for reopening the assessment is based on the information received from the Investigation Wing and hence reopening is valid.

4. I have heard the rival contentions and perused the record. With regard to the reasons for reopening, I notice that the Assessing Officer has observed as under in the assessment order :

“The assessee has filed return of income on 09/12/2014 showing income at Rs. 10,39,050/-. In this case, information, received from the DDIT(Inv), Unit 7(4), Mumbai vide letter no. DDIT(Inv)/Unit-7(4)/Information/2017-18 dated 04.05.2017 communicated this office that Smt. Shakuntala J. Daga was one of the beneficiaries had derived bogus long term capital gain entries in the scrip of M/s Sampada Chemicals Ltd during the financial year 2010-11. M/s Sampada Chemicals Ltd was a bogus entity managed, controlled and operated by Shir Vipul Vidur Bhatt for providing bogus long term capital gain accommodation entries to the various entities for commission. The DDIT(lav) Unit 7(4) Mumbai also communicated that on perusal of the return of income filed by the assessee for the A.Y. 2013-14 & 2014-15, it was seen that the assessee had derived long term capital gain (LTCG) exemption under section 10(38) of the Income Tax Act, 1961”.

5. A careful Perusal of the above said observation made by the Assessing Officer would show that the information received by the Assessing Officer about availing of bogus long term capital gains pertained to A.Y. 2011-12. I notice that the Assessing Officer has reopened the assessment of A.Y. 2013-14 on the basis of information relating to AY 2011-12. Admittedly the Assessing Officer has not referred to any material relating to the AY 2013-14 for arriving

at the belief that there was escapement of income in the hands of the assessee in A.Y. 2013-14.

6. It is well settled principle of law that the material relied upon by the Assessing Officer should have a live or proximate link with escapement of income. It was so held by Hon'ble Delhi High Court in the case of Amsa India Pvt. Ltd. Vs. CIT (WTC 5143/2005) and also in the case of Moser Bare India Ltd. Vs. DCIT (WPC 7677/2011 dated 6.1.2012). In the fact and circumstances of the case, I find that there was material in the hands of the Assessing Officer relating to assessment year under consideration for arriving at the belief that the Capital gains declared by the assessee in the return of income filed for A.Y. 2013-14 is bogus in nature. Further, there is no live link between the material in the hands of the assessee and the belief entertained by him. Accordingly, I am of the view that the Assessing Officer has entertained such a belief only on the suspicion and surmises and not on the basis of any material. Accordingly I hold that the reopening of assessment is bad in law. Accordingly I quash the impugned orders passed by the tax authorities on the legal issue.

7. Since, I have quashed the orders on the basis of legal issue, there is no necessity to adjudicate issues urged on merits.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 04.10.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/10/2022

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai