

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI KAVITHA RAJGOPAL, JM

**ITA No. 5850/MUM/2014**

(Assessment Year 2005-06)

Jas Trading P. Ltd  
6D/603, Prem Nagar, S.V.  
RD, Borivali (W)  
**(Appellant)**

Vs.

ITO 9(2)(1)  
Aaykar Bhavan, M.K.RD  
Mumbai- 400 020  
**(Respondent)**

**ITA No. 3603/MUM/2013**

(Assessment Year 2006-07)

Jas Trading P. Ltd  
6D/603, Prem Nagar, S.V.  
RD, Borivali (W)  
**(Appellant)**

Vs.

ITO 9(2)(1)  
Aaykar Bhavan, M.K.RD  
Mumbai- 400 020  
**(Respondent)**

**PAN No. AAACJ9837H**

**Assessee by** : Shri. Rahul Hakani.  
**Revenue by** : Shri. Achal Sharma (CIT DR),  
Ms. Vranda U. Matkari

**Date of hearing:** 25.07.2022.

**Date of pronouncement:**  
21.10.2022.

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

**AY 2005-06**

01. There are two appeals filed by the assessee for two assessment years i.e., AY 2005-06 and 2006-07. Both are on the common issues, both were argued together by the parties and therefore disposed of by this common order.



02. For AY 2005-06, appeal is filed by Jas Trading Company in ITA No. 5850/M/2014 for assessment year 2005-06 against the order of the CIT(A)-20, Mumbai dated 11/06/2014 raising following grounds of appeal.

**ITA No. 5850/MUM/2014**

(Assessment Year 2005-06)

- "1. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the notice issued u/s. 148 and assessment framed in pursuance to the notice was invalid and void ab initio as:*
- a. No income had escaped assessment.*
  - b. The Assessing Officer had not provided the appellant with copy of reasons recorded in writing as per the provisions of s. 148(2)*
  - c. The Assessing Officer had not passed any order for removing the objections raised by the appellant."*
2. *The learned Commissioner of Income Tax (Appeals) erred in remitting the matter to the file of the Assessing Officer to re-verify the facts and calculate the correct short term capital gains.*

3. *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of ₹ 7,79,31,997/-, being the amount of reduction in creditors, as income undisclosed sources.*
4. *The learned Commissioner of Income Tax erred in holding that the appellant has given accommodation entries to various parties and that it had earned commission @1% on such accommodation entries."*

03. Brief facts of the case shows that assessee is a private limited company. It filed its return of income for assessment year 2005-06 on 10/10/2005 declaring a loss of ₹ 1,22,845/-. The return was not picked up for scrutiny and therefore was final. Subsequently, the reassessment proceedings were initiated because a survey under section 133A was conducted by investigation wing in case of Mr. Vinayak Kokate Who is the proprietor of three different firms. It was found that he was issuing bogus purchase bill to various concerns including the assessee. Therefore, based on this the assessment was completed under section 143 (3) r.w.s. 147 on 23/12/2008 accepting returned loss since there was no trading activity found to be carried out by the assessee for this assessment year.
04. Subsequently, a search was conducted on M/s SKS Ispat Group on 10/11/2006 it was noticed that assessee indulged in bogus transaction for purchase



and sale of steel without any delivery of material. Assessment proceedings were once again re-opened for impugned assessment Year. Accordingly, notice under section 148 was issued on 30/03/2012 which was responded to by the assessee by reiterating the original return. The reasons were supplied to the assessee vide letter dated 07/08/2012 which was requested by assessee by letter dated 02/08/2012. Statutory notices was served and specific show cause notices were issued, assessee responded to the same. However, there was a reduction in liabilities in opening and closing balance of creditors amounting to ₹ 7,79,31,997/- which was considered by the Assessing Officer as payment made from undisclosed sources. Over and above, an amount of ₹ 2,67,64,412/- was also found through general entry and cash payments were also found and therefore provisions of Section 40A (3A) of the Act was invoked and alternatively additional disallowance of ₹ 7,11,53,823/- was made. 1% of undisclosed commission for giving accommodation loan entries amounting to ₹ 4,47,650/- was also made and disallowance of Short Term Capital Gain of ₹ 2,13,00,000/- was made to the total income of the assessee based on statement of Directors of the company. Accordingly, the assessment order under section 143[3] read with section 147 of the Act was passed on 15/03/2013 determining total income of ₹ 9,95,56,802/-.

05. The assessee challenged Assessment order before the learned CIT(A) who dismissed the appeal of the assessee on all counts and therefore assessee is in appeal before us.
06. Similarly for AY 2006-07 Assessment order was passed u/s 143[3] rws 147 of the Act on 23/12/2011 wherein the original return of income filed by the assessee on 25/9/2006 declaring loss of ₹ 11,352/- was assessed at ₹ 129,169,520/-. In this case the reasons recorded by the learned assessing officer reproduced at page number 2 of the assessment order. Based on this the addition of ₹ 128,965,875 was added on account of deposits made in the bank account which the assessee failed to explain. Assessee has also invested in 3 different companies of the share capital of ₹ 215 lakhs/- the learned assessing officer included the commission of ₹ 215,000/-.
07. This assessment order was challenged before the learned CIT – A wherein the appeal of the assessee was dismissed.
08. However at the time of hearing, Assessee filed revised grounds of appeal where the challenge is made to reopening of assessment in both the cases.
09. After hearing the parties, we find that challenge is on the jurisdictional issue , goes to the route of the matter , therefore parties can raise it at anytime

during the pendency of appeal and hence assessee was allowed to raise these revised grounds.

010. For assessment year 2006 - 07, The learned authorized representative has filed a paper book containing 211 pages. The only argument of the learned Assessing Officer is that the learned Assessing Officer has re-opened the assessment without providing actual reasons recorded and therefore the assessment order passed by the learned Assessing Officer deserves to be quashed. He submitted that identical issued arose in the case of the assessee for assessment year 2004-05 [ ITA No 7/Mum/2013 dated 6-7-2018] wherein the appeal of the assessee was allowed on this ground. To substantiate is the case he referred to Paper Book page No. 65 wherein the Assessing Officer has given a reason vide letter dated 07/08/2012. He submitted that the same reasons are reproduced by the learned Assessing Officer in the paragraph No. 3 of the assessment order. Therefore, he stated that for assessment year 2006-07 the reasons provided by the Assessing Officer were different then the reasons recorded by the assessing officer. He further submitted that the decision of the coordinate bench clearly covers the issue in favor of the assessee.
011. On the identical issue for the A.Y 2005-06 he submitted that when the case of the assessee was reopened the assessee raised an objection which



were not disposed of by speaking order either separately or in the assessment order itself. He therefore, submitted that it makes the assessment order passed by the learned Assessing Officer as invalid. For this proposition he relied on the decision of the Hon'ble Bombay High Court in Asian Paints Limited V DCIT [296 ITR 90].

012. The learned Departmental Representative vehemently submitted that the reasons were conveyed to the assessee and therefore, now, there is no violation of the natural justice. Therefore, merely on the basis of the same, assessment cannot be quashed. He relied on the decision of the Hon'ble Bombay High Court in 119 taxman.com 172 dated 13/12/2018 as well as the decision of the Hon'ble Allahabad High Court in 207 CTR 491.
013. In response to this the learned Authorized representative reiterated the same argument.
014. We have carefully considered the rival contentions and pursued the order of the lower authorities. We first come to the appeal for A.Y. 2005-06 wherein the assessee has challenged that it has filed objection against the reopening of the assessment which have not been disposed of by the learned Assessing Officer either in the assessment order or passing separate order. We find that in Paragraph No. 3.4 at Page No. 3 of the assessment order the learned Assessing Officer has reproduced letter dated 12/11/2012 of



the assessee it clearly shows that assessee has raised objections against reopening of the assessment as per letter dated 07/08/2012. We do not find that such objections raised by the assessee are disposed of by the learned Assessing Officer either in the assessment order passed on 15/03/2013 or by any other separate order. Hon'ble Bombay High Court in KSS Petron Pvt Ltd. vs. ACIT in ITA No. 224 of 2014 dated 3<sup>rd</sup> Oct 2016 has clearly held that the Assessing Officer is not justified in finalizing the assessment without having first disposed of the objections of the assessee. This is according to the clear mandate of the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. versus ITO 259 ITR 19. The Hon'ble High Court also held that there is no reason to restore the issue to the Assessing Officer to pass a fresh order the same would give a license to the Assessing Officer to passed assessment order on reopened assessment without jurisdiction and in non-compliance of judicial precedence if those are restored for following the due procedure. The learned departmental representative could not show us any order where the objections to the reasons recorded is disposed of. Accordingly, respectfully following the decision of the Hon'ble High Court , the order of the learned Assessing Officer passed under section 143 [3] r w s 147 of the Act is not sustainable in law and is quashed. Accordingly, Ground No. 1 (c) of the appeal is allowed.



015. In view of our above decision, all over grounds becomes academic in nature and therefore, recording are not disposed of.
016. In the result of the appeal for A.Y. 2005-06 is allowed.
017. Now, we come to the appeal of the assessee for A.Y. 2006-07. The only grievance of the assessee is that reasons recorded by the learned Assessing Officer are different than mentioned in the assessment order. We find out reasons recorded by the learned Assessing Officer is reproduced in assessment order at page no. 2 are as under:

*"Received letter dated 25.03.2011 from DCIT, Central Circle- 45, Mumbai stating that Shri. Shailesh Shah, director of Jas Trading Pvt. Ltd. has admitted in his statement on oath recorded by the ACIT Central Circle-45, Mumbai on 13.10.2008 that no actual transactions of either sale/purchase of share application money were entered into by his company M/s. Jas Trading Pvt. Ltd and they have given the entries in respect of share application/unsecured loans. During the previous year relevant to A.Y. 2006-07, the assessee sales and share investments in various companies are reflected at NIL.*

*In view of the additional information received from the DCIT, Central Circle- 45, Mumbai as above I have reason to believe that income amounting to ₹*

*1,90,000/- being 1 % commission earned by the assessee on accommodation loan entries of ₹ 1,90,00,000/- of the assessee.”*

018. The assessee has produced the copies of the reasons recorded in the A.Y. 2006-07 which is at Page No. 10 of the paper book. Same is as under:

*“In this case, the paper return of income for A.Y. 2006-07 was filed on 25.09.2006 declaring income at ₹ -11,984/-. The assessee also e-filed its return of income for A.Y. 2006-07 on 27.11.2006 declaring income at ₹ -11,984/-. A letter dated 02.03.2011 was received on 24.03.2011 from the DCIT, Central Circle-45, Mumbai intimating that during the assessment proceedings for A.Y. 2006-07 in the case of M/s. Niketan Mercantile Pvt. Ltd. PAN: AACCN0893K, & Turakhi Ferromet Pvt. Ltd. PAN: AA ACT1424C, M/s. Jas Trading Pvt. Ltd. has advanced suspicious loan/share application money, premium to M/s. Niketan Mercantile Pvt. Ltd as under:*

<i>Sr. No.</i>	<i>Amount</i>	<i>Date</i>	<i>Remarks</i>
<i>1</i>	<i>75,00,000</i>	<i>11.07.2005</i>	<i>Share Application Money</i>
<i>2</i>	<i>15,00,000/-</i>	<i>28.07.2005</i>	<i>Share Application Money</i>
<i>3</i>	<i>50,00,000/-</i>	<i>05.07.2005</i>	<i>Share Application Money</i>
<i>4</i>	<i>25,00,000/-</i>	<i>19.07.2005</i>	<i>Share Applicati</i>



			on Money
5	25,00,000/ -	03.08.20 05	Share Applicati on Money
Tot al	1,90,00,00 0/-		

Accordingly, the DCIT, Central Circle-45, Mumbai was requested to forward any information available with him in respect of the suspicious loans/share application money, premium advanced by M/s. Jas Trading Pvt. Ltd. to M/s. Niketan Mercantile Pvt. Ltd. at the earliest to enable this office to take necessary action.

The DCIT, CC-45 vide letter dated 25.03.2011 informed this office that Shri. Shailesh Shah, director, M/s. Jas Trading Pvt. Ltd. has admitted in his statement on oath recorded on 13.11.2008 that no actual transactions of either sale/purchase of share application money were entered into by his company, M/s. Jas Trading Pvt Ltd. and they have only given the entries in respect of share application/unsecured loans.

During the previous year relevant to A.Y. 2006-07, the assessee sales and share investments in various companies are reflected at Nil. In view of the additional information received from the DCIT, CC-55, Mumbai, as above, I have the reason to believe that income amounting to ₹ 1,90,000/- being 1% commission earned by the assessee on accommodation loan entries of ₹



*1,90,00,000/- of the assessee for A.Y. 2006-07 has escaped assessment. It is, therefore, proposed to issue notice u/s. 148 of the I.T. Act, 1961 in the case of the above assessee for A.Y. 2006-07, if approved.”*

*Accordingly, proposal seeking permission of the Addl. CIT-9(2), Mumbai to initiate reassessment proceedings u/s. 147 of the I.T. Act, 1961 is being put up.”*

019. Apparently it seems that the copies of the reasons recorded by the Assessing Officer are different than the reasons which are mentioned in the assessment order the assessee. We find that the identical issue arose in case of the assessee for A.Y. 2004-05 where coordinate bench quashed the assessment order in ITA No 7/MUM/2013 dated 6-7-2018. In such a situation, the re-opening of the assessment cannot be upheld. Reliance placed by the learned Departmental representative on the decision of the Hon'ble Bombay High Court in 101 taxman.com 173 is misplaced for the reason that in that particular decision though two sets of reasons were provided the gist of reasons recorded on both the sets are similar. Same is not the facts before us as in the present case in the original reasons recorded there is a definite information along with dates were mentioned.. In the reasons recorded there is specific mentioned of M/s. Nikentan Mercantile Pvt Ltd. and same is not mentioned in the reasons in the order. Further the reasons recorded in order refer to



various companies where as in the original reasons recorded there is only one company refereed i.e. Mr. Nikentan Mercantile Pvt Ltd. In view of this, we do not agree with the learned Departmental Representative that the gist of reasons provided in both the sets are similar.

020. In the result we do not have any other option but to quash the reassessment proceedings. Accordingly, we quash the assessment order passed by the learned Assessing Officer for A.Y. 2006-07. Accordingly, all other grounds are not required to be disposed of.
021. In the result, appeal for A.Y. 2006-07 filed by the assessee is allowed.
022. In the result appeal of the A.Y. 2005-06 & 2006-07 are allowed

Order pronounced in the open court on 21.10.2022.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.10.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai



<b>Sr. No.</b>	<b>Particulars</b>	<b>Date</b>	<b>Initials</b>	<b>Person concerned</b>
1	Draft dictated			Sr.PS
2	Draft placed before author			Sr.PS
3	Draft proposed & placed before the second Member			AM
4	Draft discussed/approved by Second Member			AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS
6	Kept for pronouncement on			Sr.PS
7	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			
10	Dictation Sheet is attached herewith			