

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6670/Mum./2016
(Assessment Year : 2006-07)

Dy. Commissioner of Income Tax
Circle-3(3)(1), Mumbai

..... Appellant

v/s

Satya Securities Ltd.
1009, Maker Chamber-V
10th Floor, Nariman Point
Mumbai 400 021 PAN – AAEC9414M

.....Respondent

Assessee by : Shri A.K. Tibrewal a/w
Shri Saurabh Gupta
Revenue by : Shri P.R. Mane a/w
Smt. Kanupriya Damor

Date of Hearing – 10/08/2022

Date of Order – 31/10/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 25/08/2016 passed under section 250 of the Income Tax Act, 1961 (*the Act*) by learned Commissioner of Income Tax (Appeals)-8, Mumbai [*learned CIT(A)*], for assessment year 2006-07.

2. In this appeal, the Revenue has raised following grounds:

- "1. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.13,64,200/- made u/s.68 of the 1.T.Act, 1961 on account of unsecured loans obtained.*
- 2. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.9,08,799/- on account of Devaluation of Share Price. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the addition of Rs.1,50,692/- on account of disallowance of Salary and Travelling Expenses.*
- 3. Whether on the facts and circumstances and in law, the Ld.CIT(A) has erred in not appreciating the fact that the amount of disallowance u/s.14A of the I.T.Act, 1961 has to be computed as per Rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.*
- 4. Whether on the facts and circumstances and in law, the Ld.CIT(A) has erred in deleting the disallowance of 37,46,945/- made u/s.36(1)(iii) of the I.T.Act, 1961 without appreciating the fact that the assessee had diverted interest bearing loans obtained to various entities interest free for non-business purpose. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*
- 5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. During the course of hearing, at the outset, learned Authorised Representative (*learned AR*) wish to press petition under Rule 27 of ITAT Rules, 1963, filed by the assessee on 18/11/2021, raising following ground: –

"That the learned Commissioner of Income Tax (Appeals) erred, on facts and in law in dismissing the legal ground taken before him regarding the validity of the reassessment proceedings initiated by the Ld. A.O. by issue of Notice u/s 148 of the Income Tax Act, 1961 when basic ingredients required for reopening the assessment is missing. The Appellant prays that reopening of the assessment may be held as illegal and bad in law."

4. The aforesaid petition filed under Rule 27 of ITAT Rules, 1963 was taken on record and the present appeal was heard on the aforesaid jurisdictional ground challenging the reassessment proceedings under section 147 of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of trading in shares, goods and merchandise. For the year under consideration, assessee filed its return of income on 27/11/2006 declaring loss of Rs. 1,11,63,837. The return of income filed by the assessee was processed under section 143(1) of the Act and returned income was accepted.

6. Subsequently, vide notice dated 29/03/2012 issued under section 148 of the Act, reassessment proceedings were initiated in the case of the assessee on the basis of information received from SP, CBI – Anti Corruption Bureau, Mumbai that assessee is one of the group companies, who are engaged in providing accommodation entries to various person, and its directors are operating 20 dummy concerns which have entered into bogus transactions with several concerns and provided accommodation entries. In response to the aforesaid notice, representation was made on behalf of the assessee and details as sought were filed. The Assessing Officer ('AO') vide order dated 30/03/2013 passed under section 143(3) r/w section 147 of the Act computed the total income of the assessee at Rs. 62,53,750 after making various disallowances.

7. In appeal, before the learned CIT(A) assessee raised grounds challenging the invocation of jurisdiction under section 147 of the Act as well as various additions made by the AO. The learned CIT(A), after consideration of remand report filed by the AO and assessee's reply thereto, vide impugned order dated 25/08/2016 dismissed the appeal filed by the assessee on the issue of

initiation of reassessment proceedings following its findings rendered in assessee's own case for assessment year 2005-06. The learned CIT(A), however, granted partial relief to the assessee on merits. Being aggrieved, Revenue is in appeal before us challenging the relief so granted by the learned CIT(A) on merits. Further, the assessee by way of petition under Rule 27 of ITAT Rules, 1963, while supporting the impugned order has raised ground pertaining to reassessment proceedings, which was dismissed by the learned CIT(A).

8. During the course of hearing, learned AR, inter-alia, submitted that there is no compliance of section 149(1)(b) of the Act in the reasons recorded by the AO. On the other hand, learned Departmental Representative (*learned DR*) submitted that no scrutiny assessment was made in the present case and the assessment proceedings were initiated on the basis of information received from CBI. Learned DR further submitted that not mentioning of income escaping assessment in the reasons would not vitiate the reassessment proceedings.

9. We have considered the rival submissions and perused the material available on record. In the present case, return of income filed by the assessee was only processed under section 143(1) of the Act and returned income was accepted. The said return was not selected for scrutiny and thus, no order was passed under section 143(3) of the Act. However, after expiry of 4 years from the end of the relevant assessment year, notice under section 148 of the Act was issued to the assessee on 29/03/2012. While initiating the reassessment

proceedings, the Assessing Officer recorded following reasons for reopening the assessment:

".....

The ROI for A.Y.2006-07 was filed on 27-11-2006. In this case, an order u/s. 143(1) of the Act 1961 was passed on 07-12 2007 accepting the return of income.

The ADIT(In.), Unit VII-I & II, Mumbai vide letter dated 28.12.2011 has intimated that the assessee company, is one of the group Companies formed by Shri Arun & Harsh Dalmia and is engaged in providing accommodation entries to various persons. The report of the ADICT (Inv.) is based on the report of ACB, CBI, Mumbai where in it is reported that the CBI, ACB, Mumbai has conducted investigation in the affairs of Shri Harsh Dalmia and Shri Arun Lal Saini, who are directors of M/s. Satya Securities P. Ltd. It is reported that they operate 20 dummy concerns which have entered into bogus transactions with several concerns and provided accommodation entries. The relevant part of the scrutiny report along with the covering letter of S.P., CBI and ACB, Mumbai is as under:

SP's Report:

Shri Dalmia's floated 20 companies has never paid taxes to the Government since all his concerns were shown to run in losses in almost all the years. The above said act on the part of Shri Arun Dalmia and Shri Harsh Dalmia constitute evasion of income tax.

CBI and ACB, Mumbai's Report

The CBI has reported that searches at the residence and office premises of Shri M. S. Bali and Dalmia's CBI Prima facie could find substantial material which indicates that 20 firms of Shri Arun Dalmia are engaged in money laundering and income tax evasion. Scrutiny of documents revealed that Shri Arun Kumar Dalmia and his younger son Shri Harsh Dalmia are directors of M/s. Watermark Financial Consultants Ltd., having office at 1010, Maker Chamber No. V, Nariman Point, Mumbai 400 021. They are running the above mentioned companies from the same address and at most of the companies, their employees are directors. They are falsely submitting the business of purchase and sales of software in most of the companies though none of the companies are having any infrastructure or manpower of the same.

(Insider Trading with listed company in a stock market)

Shri Arun Dalmia and Shri Harsh Dalmia through their concern namely M/s. Basant Marketing P. Ltd. and M/s. Satya Securities Ltd. has acquired holding of 5.55% in Granules India Ltd. Without following norms of Securities and Exchange Board of India Act, 1992. They in connivance with promoter and brokers namely Mr. Mahendra Kumar Khirodwala and Mr. C. Krishna Prasad MD

of M/s. GIL acquired huge quantity of shares in the name himself and his family members. SEBI has levied penalty of Rs. 10 lakh on 27.03.2009.

The assessee company is one of the beneficiaries which have received bogus accommodation entries. Investigation carried out by the CBI-ACB has established prima facie that unsecured loans appearing in the books of the assessee company are not genuine loans, but were only bogus entries whose source is not genuine.

Therefore, I have reason to believe that the income chargeable to tax has escaped assessment. Notice u/s. 148 of the I. T. Act, 1961 issued, after obtaining approval of the CIT-3, Mumbai."

10. It is, inter-alia, the plea of the assessee that since assessment has been reopened after expiry of 4 years from the end of the relevant assessment year, any notice under section 148 of the Act can be issued only if income chargeable to tax, which has escaped assessment amounts to or is likely to amount to Rs. 1 lakh or more, for that year. However, in the aforesaid reasons recorded by the AO there is no mention of any amount of the income, which AO believes to have escaped assessment. In this regard, it is relevant to note the provisions of section 149(1)(b) of the Act, as it stood prior to its substitution by Finance Act 2021, which reads as under

"Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a)

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year."

11. Thus, as per the aforesaid provisions, where 4 years, but not more than 6 years, have elapsed, no notice under section 148 can be issued unless the income chargeable to tax which has escaped assessment is Rs. 1 lakh or more.

We find that while dealing with the issue whether failure on the part of the AO to mention the amount of income which has escaped assessment will result in nullifying the notice issued under 148 of the Act, the Hon'ble Karnataka High Court in *Novo Nordisk India (P) Ltd vs DCIT*, [2018] 95 Taxmann.com 225 (Karn.) observed as under:

"It is mandatory for the Assessing Officer in his reasons recorded, to state that the escaped assessment amounts to, or is likely to be Rs.1,00,000/- or more, to bring it within the ambit of Section 149(1)(b) of the Act. It is based on the reasons assigned by the Assessing Officer, the Commissioner/Sanctioning Authority on application of mind can take a decision whether it is a fit case for issuance of notice under Section 148. The material aspect for invoking the extended period of limitation under Section 149 (1)(b) not being forthcoming, further proceedings in pursuance to the said notice cannot be sustained. The notice issued being not in conformity with the provisions of the Act, it being the base or the foundation, edifice built upon it, has to fall."

12. Similar view was also expressed by Hon'ble Allahabad High Court in *Mahesh Kumar Gupta v. CIT* [2014] 363 ITR 300 (All.).

13. At this stage, it is also relevant to note following observation of Hon'ble Jurisdictional High Court in *Hindustan Lever Ltd vs R.B.Wadkar*: [2004] 268 ITR 332 (Bom.):

*"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.”
(emphasis supplied)

14. Since, it is duty of the AO to record the reasons clearly and unambiguously and no inference can be drawn there from, thus, respectfully following the aforesaid decisions, we are of the considered view that the impugned reassessment proceedings are not in conformity with the provisions of section 149(1)(b) of the Act.

15. As the requirement of provisions of section 149(1)(b) of the Act are not fulfilled in the present case, therefore, the reassessment proceedings under section 147 of the Act are set aside being bad in law. Accordingly, the impugned order passed by the learned CIT(A) upholding reassessment proceedings, which resulted in passing of order under section 143(3) r/w section 147 of the Act is set aside. As a result, ground raised by the assessee vide petition under Rule 27 of ITAT Rules, 1963 is allowed.

16. In view of the above, the grounds raised by the Revenue on merits are rendered academic in nature and therefore, are dismissed.

17. In the result, appeal by the Revenue is dismissed.

18. To sum up, appeal by the Revenue is dismissed, while petition under Rule 27 of ITAT Rules, 1963, as filed by the assessee, is allowed.

Order pronounced in the open Court on 31/10/2022

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 31/10/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai