

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “H”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.6261/M/2017  
Assessment Year: 2008-09**

M/s. SSS Sai Shipping Services Pvt. Ltd., A-304, Classique Centre, Plot Number-26, Mahal Industrial Estate, Andheri (West), Mumbai – 400 093 <b>PAN: AALCS4908D</b>	Vs.	Dy. Commissioner of Income Tax-1(3)(1), Aayakar Bhavan, Annex, Maharshi Karve Marg, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Tejinder Pal Singh Anand, D.R.

Date of Hearing : 03 . 10 . 2022  
Date of Pronouncement : 30 . 11 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. SSS Sai Shipping Services Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 03.08.2017 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2008-09 on the grounds inter-alia that :-

*“1) The Ld. CIT (A) erred in law and on facts in not appreciating the fact that the notice was issued u/s 148 without recording the satisfaction of the Additional Commissioner of Income tax as required under section 151 of the Income tax Act.*

**2) The Ld. CIT (A) erred in law and on facts in not appreciating that: -**

**(i) Notice has been issued at the instance of the Investigation Wing and without independent application of mind.**

**(ii) The reassessment is bad in law as it is totally based on the statement recorded during survey under duress which is clear by the fact that statement was stretched for two days and survey team stayed at the premises overnight without any authority of law.”**

2. Briefly stated facts necessary for adjudication of the issue at hand are : assessee is a Custom House Agent (CHA) providing services like pick up, warehousing, consultation, import/export clearance and transportation. During the course of survey proceedings assessee's company head office at Opera House and other branches at Andheri, Bandra and Nariman Point Mumbai were covered. During the survey proceedings a black colour Transcend Pen Drive (Annexure A-2) was impounded from the custody of one Shri Kanhaiya Agarwal, which fact was confronted to Shri Haresh Dhakan, director of the company who has replied in his sworn statement under section 131 of the Income Tax Act, 1961 (for short 'the Act') to question No.31 that the pen drive which bears the cash receipt and cash outflow belongs to Shri Haresh Dhakan himself. The assessee has filed reconciliation of this unaccounted cash in his reply to question No.37 to 40 and has claimed that whatever amount of un-reconciled cash which is available as per the tally data has been executed on behalf of Shri Haresh Dhakan, the director of the company. Shri Haresh Dhakan has unconditionally offered the amount declared as their unaccounted income of the financial year relevant to the year under consideration but has not filed the return of income nor paid taxes in response to the notice issued under section 148 of the Act. So

the Assessing Officer (AO) has proceeded to make addition of Rs.5,62,08,798/- to the total income of the assessee under section 68 of the Act and thereby framed the assessment under section 144 read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. Present appeal was filed way back on 16.10.2017. The assessee appeared and sought adjournment on the one pretext or the other but ultimately he abstained from appearing in the court and as such the Bench has decided to dispose of this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. We have perused the impugned order passed by the Ld. CIT(A) who has given the part relief to the assessee by deleting the addition made in the hands of the assessee but decided the legal issue as to the reopening of assessment against the assessee against which assessee is in appeal before the Tribunal. Operative part of the impugned order passed by the Ld. CIT(A) is extracted for ready perusal as under:

***“8. Ground Nos. 'C' and 'D' relates to the addition made of Rs.5,62,08,798/-under section 68 of the Act. Assessments were completed in the name of Shri Haresh Dhakan for the Assessment***

*Years 2007-08 to 2014-15 and in the name of the company M/s SSS Sai Shipping Services Private Limited for the Assessment Years 2008-09 to 2014-15 except Assessment Year-2013-14. For AY 2008-09 Assessment was competed u/s 143(3) r.w.s 147 of the IT Act, 1961 vide order dated 30.03.2016 in the hands of Shri Haresh Dhakan making an addition of Rs.5,62,08,798/-. Assessment was competed u/s 144 r.w.s 147 of the IT Act, 1961 vide order dated 23.03.2015 in the hands of M/s SSS Sai Shipping Services Private Limited making an addition of Rs. 5,62,08,798/-. The addition Rs.5,62,08,798/-was made in the hands of Shri Haresh Dhakan as well as in the hands of M/s SSS Sai Shipping Services Private Limited. Perusals of these two Assessment Orders do not indicate in whose hands substantive or protective addition were made. However, the appellant assessee submitted it substantive addition could be made only in the hands of Shri Haresh Dhakan and not in the hands of M/s SSS Sai Shipping Services Private Limited as the company did not commence any business in the Financial Year 2007-08 relevant to Assessment Year 2008-09. Accordingly, protective addition in the hands of the company is not required to be made. The substantive addition in the hands of Shri Haresh Dhakan for the AY-2008-09 has to be made after perusal of the details/documents furnished by him.*

*8.1 I have carefully considered the rival submission and all the facts/details available on record and the legal proposition. In the case of the Appellant Company in Assessment Year 2009-10, in Para 9 of the said order, it is observed that for AY 2007-08 to 2008-09, the substantive addition was made in the hands of Late Shri Haresh Dhakan since the company did not commence any business during the AY-2008-09 and subsequently for AYs 2009-10 to 2014-15, it can be made in the hands of the company M/s SSS Sai Shipping Services Private Limited.*

*8.2 Following the above mentioned findings given in the Assessment Year 2009-10, it is held that for the Assessment Year under consideration, no addition can be made in the hands of the Appellant Company. Whatever addition, after perusal of the details furnished by Shri Haresh Dhakan, if any, is required to be made, it has to be made in the hands of Late Shri Haresh Dhakan for the impugned Assessment Year. Hence, Ground Nos. 'C' and 'D' allowed."*

7. Aforesaid findings returned by the Ld. CIT(A) have not been challenged by the Revenue before the Tribunal.

8. Assessee by filing present appeal has merely challenged the reopening of assessment initiated by the AO under section 147 of the Act on the basis of pen drive data and statement of Shri Haresh

Dhakan and Shri Kanhaiya Agarwal recorded during the survey proceedings. The Ld. CIT(A) has decided the issue of reopening against the assessee by returning following findings:

*“7. Ground No. 'B' and Additional Ground No. 'E' relate to reopening of the case u/s 147 of the IT Act, 1961. Appellant e-filed its original return on 13.10.2010 which was processed u/s 143(1) of the IT Act. Later on survey proceedings u/s 133A of the IT Act was carried out on the appellant assessee and covered its other premises including that of Head Office at Opera House and other Branches at Andheri, Bandra and Nariman Point Mumbai. During the course of survey operation a Black Color Transcend Pen Drive (Annexure A - 2 impounded dated 17.10.2013) was found from the custody of Mr. Kanhaiya Agarwal (Director Accounts) at Andheri premises. This fact when confronted with Mr. Haresh Dhakan (the director of the company) has replied in his statement sworn in u/s 131 to Question No. 31 that the pen drive which bears the cash receipt and cash outflow belongs to Mr. Haresh Dhakan. The cash transactions were also pertained to the appellant assessee and therefore, Assessing Officer took cognizance to give effect to these transactions and invoked section 148 of the IT Act after recording the reasons for the same. The copy of the reasons was duly supplied the assessee. The case was reopened and assessment was completed u/s 144 r.w.s. 147 of the IT Act, 1961 at an income of Rs. 5,62,08,798/- as an addition u/s 68 of the I T Act, 1961. The appellant assessee did not appear during the course of assessment proceedings because of his ill health as suffering from ailments of kidney failure and liver cirrhosis and later on expired on 26<sup>th</sup> January, 2017.*

*7.1 This is the additional ground raised by the appellant which has been admitted and same were also forwarded to the Assessing Officer for his consideration vide letter dated 31.01.2017. The appellant submitted that the notice is issued u/s 148 without recording the satisfaction of the Additional Commissioner of Income tax as required u/s 151 of the IT Act. The Assessing Officer issued notice u/s 148 of the Act after taking necessary approval from Additional Commissioner of Income tax. The appellant contended that in the form for reopening the assessment for initiating proceedings u/s 147 and for obtaining approval of the Addl. Commissioner of Income tax, the Addl. CIT has not mentioned anything and merely signed below the point no. 12. The point no. 12 is that "Whether the Addl. CIT is satisfied on the reasons recorded by the assessing officer, that it is a fit case for the issue of a notice under section 148?" Appellant contended that it is not clear whether the Addl. CIT was satisfied or not as nothing has been mentioned by him. If there is no satisfaction, the notice issued u/s 148 is not a valid notice and the proceedings u/s 147 are null and void. The appellant further submitted that the notice has been issued only at the instance of the information received from*

*investigation wing and without application of mind by the assessing officer. The reassessment is bad in law as it is totally based on the statement recorded during survey under duress which is clear by the fact that statement was stretched for two days and survey team stayed at the premises overnight without any authority of law.*

*7.2 I have carefully considered rival submission and facts of the case and do not agree with the appellant. The notice was issued after taking approval from the Addl. CIT on 25/03/2014. Though in reply to point no. 12 of the "Form for reopening of assessment and for obtaining approval of Addl. CIT", nothing is mentioned but the signature of Addl. CIT after which the notice was issued itself support the fact that the Addl. CIT was satisfied for the reasons recorded by the Assessing Officer and granted his approval for issuance of notice u/s 148.*

*7.3 The claim of the appellant is that since at the time of issuance of notice u/s 148, no details / documents / statements were available to the Assessing Officer, the notice was issued u/s 148 only at the instance of some information from investigation wing without the Assessing Officer had any reason to believe for escapement of income. In respect of this said ground of appeal, the appellant submitted vide letter dated 19.01.2017 which has been considered while passing this order.*

*7.4 A survey on the appellant took place on 17.10.2013 and the notice was issued to the appellant u/s 148 on 24.03.2014. The undisputed fact is that the appellant e-filed its return on 26.07.2010 and survey was conducted later on 17.10.2013. During the course of survey, incriminating documents and a pen drive was found and impounded which forms the basis for reopening and sufficient material to complete the assessment. Statement of Mr. Haresh Dhakan was recorded in the capacity of the director of the company who has admitted that the transaction recorded in the pen drive pertain to him and his company which were partly recorded in the books of account and remaining transactions outside the books of account were recorded in fictitious names which he owned and made a disclosure of Rs.52,60,571/-. The Assessing Officer had sufficient material in his possession to take cognizance of the escaped income which came on surface during the course of survey proceedings and is duty bound to invoke the relevant provision u/s 147/148 of the IT Act. Assessee on the basis of material found during the survey on which detailed statement was recorded and allowing the assessee to examine the same, has worked out the income not offered for tax for various years which has been offered as undisclosed income. The argument of the appellant assessee that the Assessing Officer issued the notice u/s 148 issued on 26.03.2014 on the basis of relevant material gathered by the Investigation Wing and hence no independent application of mind is baseless and not acceptable. The Assessing Officer had sufficient reason and information in his possession to take cognizance in the*

*case and to invoke provision of section 148 of the IT Act which he did correctly. In view of the same, I did not find any force in the argument of the appellant in this regard.*

*7.5 The Assessing Officer correctly relied on the decision of Apex Court in the case of Rajesh Jhaveri Stock Brokers (P) Ltd 291ITR 500 (SC) that "the word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that income had escaped assessment. The expression cannot under any circumstances be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion." In the case at present, there was a survey action and in the statement recorded, Mr. Dhakan, the director of the appellant company admitted undisclosed income of his and group concerns. Thus, the Assessing Officer has a reason to believe for reopening of assessment which is sufficient in itself for reopening of assessment. In view of these facts, I did not find any reason to interfere in the finding of the Assessing Officer and therefore, Ground No. 'B' and Additional Ground No. 'E' are dismissed."*

9. We have perused the order passed by the Ld. CIT(A) which has been passed by thrashing the facts by taking into account the material given on record particularly pen drive data and statement of Shri Kanhaiya Agarwal and Shri Haresh Dhakan recorded on oath under section 131 of the Act. The Ld. CIT(A) has decided the issue against the assessee by appreciating the facts and law applicable thereto. The assessee has not come up before the Tribunal to point out the illegality and perversity in the impugned findings returned by the Ld. CIT(A). Hence, we find no ground to interfere into the findings returned by the Ld. CIT(A). Resultantly, the appeal filed by the assessee is hereby dismissed.

**Order pronounced in the open court on 30.11.2022.**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**  
Mumbai, Dated: 30.11.2022.

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.