

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

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.50/Mum/2022
(निर्धारण वर्ष / Assessment Years: 2007-08)

Pride Paradise and Development Pvt. Ltd. 601, Orbit Plaza, New Prabhadevi Road, Prabhadevi, Mumbai-400025.	बनाम/ Vs.	ITO, Ward-7(3)(1) Room No. 126J, 1 st Floor, Aayakar Bhavan, Marine Lines, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCP3042N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Bhupendra Shah
Revenue by:	Shri Mahender Ahuja

सुनवाई की तारीख / Date of Hearing: 22/11/2022
घोषणा की तारीख /Date of Pronouncement: 29/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 17.11.2021 for the assessment year 2007-08.

2. At the outset, the Ld. AR of the assessee has challenged the action of the Ld. CIT(A) confirming the action of the AO by which the AO has made an addition of Rs.6,00,000/-.
3. Brief facts are that the assessee had filed its return of income for AY. 2007-08 on 31.10.2007 declaring total income of Rs.4,820/-. Thereafter, the return of income was scrutinized u/s 143(3) of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 09.12.2009 accepting the return of income. Later on, the AO received an information from DGIT (Inv.), Mumbai pursuant to a search carried



ITA No.50/Mum/2022

A.Y. 2007-08

Pride Paradise and Development Pvt. Ltd.

out in the case of Shri Praveen Kumar Jain Group on 01.10.2013. On the basis of statement of Shri Praveen Kumar Jain that his Group of concerns were engaged in providing accommodation entry; and based on that investigation wing prepared an Investigation Report, from which it revealed that the assessee is a beneficiary of obtaining accommodation entries to the tune of Rs.6,00,000/- in the nature of “Share Capital and Share Premium” during AY. 2007-08 from M/s. Alka Diamond Industries Ltd which was a group concern of Shri Praveen Kumar Jain Group. The AO issued notice u/s 148 of the Act on 24.03.2014 to the assessee, conveying his intention to re-open the assessment and directed the assessee to file the return of income. The assessee filed the return of income vide letter dated 05.04.2014 (refer page no. 17 of the PB) wherein the assessee had objected to the reopening pointing out that the assessee has undergone scrutiny for this year (AY. 2007-08) and pursuant to that original assessment order u/s 143(3) of the Act has been passed; and four (4) years have already elapsed/expired, therefore, first proviso to section 147 of the Act comes into play, and therefore, the AO ought not to have reopened the assessment without spelling out in the reasons recorded (by the AO) before reopening that assessment that assessee failed to disclose true and full disclosure in the original assessment proceedings. And pursuant to the assessee’s request, the AO issued letter dated 15.09.2014 and gave a copy of the reasons recorded which is found placed at page no. 18 to 19 of the PB. After receiving the reasons recorded by the AO for reopening the assessment, the assessee objected to the reopening u/s 147 of the Act which is dated 04.10.2014



ITA No.50/Mum/2022

A.Y. 2007-08

Pride Paradise and Development Pvt. Ltd.

(refer page no. 20 of the PB). However, it was brought to my notice that the AO has not replied/rejected the objection raised by the assessee against the reopening of assessment [after receipt of reasons recorded]. Thus, according to the Ld. AR, without disposing of the objection raised by the assessee, the AO has passed the re-assessment order dated 23.03.2015 u/s 143(3) read with Section 147 of the Act which is against the binding order of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. DCIT (2003) 259 ITR 19 (SC) as well as against the Hon'ble Jurisdictional High Court in the case of Asian Paint Ltd. Vs. DCIT 296 ITR 90 wherein the Hon'ble Bombay High Court has held that the AO had to dispose of the objection raised by the assessee as well as allow the assessee four (4) weeks time before passing the re-assessment order (So that assessee can challenge the action of the AO rejecting the objection by preferring writ petition before the Hon'ble High Court). According to Ld. AR, leave alone the four (4) weeks time before passing the re-assessment order, the AO has not disposed off the objection raised by the assessee vide letter dated 04.10.2014 against proposed re-opening as held by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra) (the assessee vide letter dated 04.10.2014 objected to the *reasons recorded* by the AO furnished to the assessee on 15.09.2014). Therefore, the action of the AO to have framed the re-assessment dated 23.03.2015 is bad in law for not following the binding order/direction of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra). Per contra, the Ld. DR pointed out that the AO had already disposed of the objection raised by the



ITA No.50/Mum/2022

A.Y. 2007-08

Pride Paradise and Development Pvt. Ltd.

assessee vide letter dated 05.04.2014 (refer page no. 17 of the PB). And therefore according to the Ld. DR objection raised by the assessee has been disposed off and the AO cannot dispose of each and every objection of the assessee, which is raised every now and then; And that is not what the Hon'ble Supreme Court has directed the AO to do in the case of GKN Driveshafts (India) Ltd. (supra) as well as by the Hon'ble Jurisdictional High Court in the case of Asian Paint Ltd. (supra).

4. Having heard both parties, I am not inclined to accept such a contention of the Ld. DR for the simple reason that when the AO issued notice u/s 148 of the Act dated 24.03.2014 (without annexing a copy of the reasons recorded), the assessee had only pointed out to the AO vide letter dated 05.04.2014 (refer page 17 of the PB) against the proposed reopening by only stating that the assessee's original assessment has already under gone scrutiny u/s 143(3) of the Act vide assessment order dated 09.12.2009 (refer page no. 14 to 15 of the PB). And pointed out to AO in that letter that the AO ought not to have re-opened assessment without satisfying the additional condition precedent as prescribed under the 1st Proviso to Section 147 of the Act. This letter of assessee dated 05.04.2014 though titled as *objection* cannot be treated as objection to re-opening as such because a perusal of the said letter's content itself reveals that assessee had only objected to the issue of notice u/s 148 of the Act. The objection to the jurisdiction of AO can be resorted to after perusal of *reasons recorded* by AO before re-opening or issuance of notice u/s 148 of the Act. It is admitted fact that the reasons recorded for re-open was furnished to



ITA No.50/Mum/2022

A.Y. 2007-08

Pride Paradise and Development Pvt. Ltd.

assessee only on 15.09.2014 (refer page no. 18-19 of the PB). Pursuant to that assessee filed objection dated 04.10.2014 (refer page 20 of the PB), which can only be treated as the valid objection raised to the assessee against the jurisdiction of AO to have re-opened the assessment. And it is not the case of the Ld. DR that the *reasons recorded* for reopening was supplied by the AO while issuing notice u/s 148 of the Act dated 24.03.2014. It is also noted that the assessee was given *reasons recorded* only on 15.09.2014 by the AO and the assessee had objected to the same by letter dated 04.10.2014 (which is placed at page no. 20 of the PB). Therefore, it is not the case of the Ld. DR, that the AO has disposed of the objection raised by assessee after receiving the reasons recorded. Thus, it is noted that the AO has framed the assessment on 23.03.2015 without disposing of the objections raised by the assessee dated 04.10.2014, which faults goes against binding decision of the Hon'ble Bombay High Court in the case of Asian Paint Ltd. (supra) and the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra). Therefore, the re-assessment order dated 23.03.2014 of the AO is bad in law and so it is cancelled.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 29/12/2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/12/2022.
Vijay Pal Singh, (Sr. PS)



ITA No.50/Mum/2022

A.Y. 2007-08

Pride Paradise and Development Pvt. Ltd.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**