

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6652/Del/2019
(Assessment Year : 2010-11)

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| Airads Limited 4624/ 18, Ansari Road, Darya Ganj, New Delhi-110002 PAN : AAACA5793R | Vs. | DCIT, Circle-2(1), New Delhi |
| (APPELLANT) | | (RESPONDENT) |

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| Assessee by | Sh. Vipin Jain, CA |
| Revenue by | Shri Kanv Bali, Sr. DR |

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| Date of hearing: | 05.01.2023 |
| Date of Pronouncement: | 16.01.2023 |

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 15.07.2019 in Appeal No. 215/17-18 assessment year 2010-11 passed by Commissioner of Income Tax (appeals)-1, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 19/06/2014 u/s 148 of

the Income Tax Act, 1961 passed by the DCIT, Circle 2(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts of the case are original assessment was completed u/s 143(3) of the Income Tax Act, 1961 vide order dated 13.03.2013 at total income of Rs. 26,90,450/- against the declared income of Rs. 23,18,390/-. In this case, further information was received from assessing officer ward-19(3), New Delhi that M/s. Stans networking Pvt. Ltd. has done sales transactions during the A.Y. 2010-11 for Rs. 23,71,061/- with the assessee. Subsequently, the assessment was reopened under section 148 and was reassessed by making further addition of Rs. 23,71,061/- on account of bogus purchases. Assessment was completed at income of Rs. 50,61,510/- vide order dated 29.12.2017. The Ld. CIT(A) sustained the addition.

3. Assessee has come in appeal raising following grounds :-

“1. That proceedings u/s 147 carried out in March 2017 are bad in law and are liable to be quashed, being initiated on change on opinion to review matters already examined in proceedings u/s 143(3) in March, 2013, and before carrying out proceedings u/s 148 in March, 2014.

2. There being no failure on the part of the assessee company in making a true and complete disclosure of all material facts, and no fresh tangible material coming in possession with the Ld. AO, proceedings initiated and carried out u/s 147 in March, 2017, are without jurisdiction and are barred by limitation.

3. That approval u/s 151 having been obtained on facts mis stated and not verified render the proceedings u/s 147/148 bad in law, liable to be quashed.

4. That Rs. 23,71,061/- added to income is on surmise and conjecture, without bringing any credible

material on record to establish that vinyl sheets purchased by the assessee company from “Stans Networking Pvt. Ltd.” are bogus accommodation bills. Addition made to income is bad in law, liable to be deleted.

5. That the appellant prays that it be permitted to amend, alter, delete, modify, substitute all or any of the grounds of appeal above, and or add any fresh ground of appeal, before or during the appeal proceedings.”

4. Heard and perused the record. At the outset, it is pertinent to observe that Ld. AR has restricted argument to issue no. 1, 2 and 4 and did not press ground no. 3.

5. It was submitted on behalf of the assessee by Ld. AR that the orders of the Ld. Tax Authorities below are devoid of any legality and merit. It was submitted that the assessment of assessee u/s 143(3) was completed on 13.03.2013 wherein all the aspects of return of income were explained. Referring to page no. 36 to 37 of the paper book it was submitted that Ld. AO had issued a questionnaire dated 27.09.2012 whereby vide query no. 14 assessee company was specifically directed to explain purchase / direct expenses of Rs. 20,00,000/- and above during the relevant financial year and assessee had given all the details of purchase of vinyl sheets from disputed firm Stans Networking Pvt. Ltd. and the same is available at page no. 30 to 36 of the paper book. It was submitted that once the issue was thoroughly examined it could not have been reopened.

5.1 Ld. AR submitted that in fact the assessee had suffered a reopening earlier on 20.03.2014 to re-assess share capital raised during the year. It was submitted that the reasons to believe recorded for the purpose of Section 147/148 on 20.03.2014 would show that there is no questioning of the

purchases made from Stans Networking Pvt. Ltd. while in fact on 04.04.2013 the Ld. AO had already received a letter dated 01.04.2013 available on page no. 84 of the paper book from ITO, Ward-9(2) New Delhi, giving information about the suspicious purchases from Stans Networking Pvt. Ltd. It was submitted that in spite of that the earlier reassessment was completed on 19.06.2014 without taking into consideration any issue of purchases from Stans Networking Pvt. Ltd.

5.2 It is further submitted by Ld AR, that when the reasons to believe for the purpose of present reassessment were recorded it was wrongly mentioned that afresh information was received from ITO, Ward- 9(2), New Delhi. It was submitted that Ld. AO of assessee had received this intimation letter on 01.04.2013 and in the reasons to believe it is wrongly mentioned that information was received in March, 2017. It was submitted that there is no allegation in the reopening of any sort that on the part of assessee there was failure in making a true and complete disclosure and the satisfaction recorded is not sustainable.

5.3 In support of aforesaid contentions the Ld. AR relied following case laws :

- i. *Calcutta Discount Co. Ltd. V. ITO 41 ITR 191 (SC)*
- ii. *PCIT V. Superior Films Pvt. Ltd. (Delhi HC)*
- iii. *Pr. Commissioner of Income-Tax Vs. Light Carts P. Ltd. 404 ITR 574 (Allahabad HC)*
- iv. *In Commissioner of Income Tax vs. M/s. Jet Speed Audio Pvt. Ltd. (Bombay HC)*
- v. *CIT vs. Usha International Ltd. [TS-29-HC- 2012(Del.) dated 21.08.2012 (Delhi HC)*
- vi. *Indian and Eastern Newspaper Society Vs. Commissioner of Income Tax, New Delhi, (119 ITR 996) (Hon'ble Supreme Court)*

6. On the other hand, Ld. DR submitted that there is no error in the findings of Ld. Tax Authorities below. He relied Hon'ble Supreme Court judgement in Ess Ess Kay Engineering Co. P Ltd Vs CIT 2001 247 ITR 818 SC to contend that it is not case of mere change of opinion and there was fresh material available to reopen the assessment.

7. Now, appreciating the matter on record it can be observed that Ld. DR was not able to controvert all the factual aspects argued by Ld. AR. There is no dispute to the fact that while calling for information u/s 142(1) of the Act, vide letter dated 27.09.2012 available at page no. 36 of the paper book the Ld. AO had called for following information :

“14. Please furnish the details of purchases / direct expenses (of Rs. 68.10 crores) & job work (of Rs. 3.24 crores) as appearing in the books of account for F.Y. 2009-10 in the following manner for those parties from whom purchases/direct expenses made during the F.Y. is Rs. 20 lakhs or more.

| <i>Name & Address of the party from whom purchases/materials/services have been made/ procured or obtained</i> | <i>Opening Balance as on 01.04.2009</i> | <i>Purchaes during the year</i> | <i>Payments made during the year</i> | <i>Closing balance as on 31/03/.2010</i> |
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8. The reference to this notice u/s 142(1) of the Act stands mentioned in para no. 2 of the assessment order dated 13.03.2013 passed u/s 143(3) of the Act and available at page no. 77 of the paper book wherein it is categorically mentioned by the Ld. AO that :

“In response to the notice, Smt. Vipin Jain, C.A. & A.R. of the assessee company attended the proceedings from time to time and explained the case and furnished the details, as required. The details have been verified and placed on record.”

Thus, issue of purchases were duly examined and the sales and purchase were admitted to be without any dispute while concluding the assessment u/s 143 of the Act on 13.03.2013.

9. It is further not disputed that when the assessment of M/s. Stans Networking Pvt. Ltd. was completed on 26.03.2013 u/s 143(3) as available on page no. 79 of the paper book the Ld. AO of that assessee ITO, Ward-9(2), New Delhi had made addition on protective basis for the alleged and suspicious sales in favour of various parties including the present assessee. At the same time, intimation was forwarded to respective Assessing Officers and consequent to that vide letter dated 01.04.2013, available on page no. 84 of paper book the present AO had received information on 04.04.2013.

9.1 As the case of assessee was reopened for examining the issue of share premium and share application money notice u/s 148 dated 20.03.2014 was issued available at page no. 85 of the paper book along with reasons for reopening available at page no. 86 to 88 of paper book. The reassessment was completed u/s 148 of the Act vide order dated 19.06.2014 available at page no. 92. Thus, while passing this reassessment order dated 19.06.2014, the Ld. AO of the assessee was having in hand the information dated 01.04.2013 in the form of intimation received from ITO, Ward-9(2), New Delhi about suspicious purchases from M/s. Stans Networking Pvt. Ltd. But the Ld. AO of assessee restricted the reopening and reassessment to the issue of share capital and share premium only and without any indulgence to the information in hand the available about purchases from Stans Networking Pvt. Ltd. Thus, when the first reassessment order was passed on 19.06.2014, as Ld. AO was aware of the fact of scrutiny of the issue of purchases and the

assessment concluded u/s 143(3), so quite likely for that reason, there was no action on the intimation letter dated 01.04.2013.

11. However, the Ld. AO quite arbitrarily seems to have resurrected the issue by recording reasons available at page no. 107 and 108 of the paper book wherein without referring to letter dated 01.04.2013 from ITO, Ward-9(2), New Delhi. Ld. AO merely reproduced the intimation by referring to the intimation as ***“now, information is received from ITO, Ward-19(3), New Delhi”***. This astuteness of Ld. AO in not mentioning the date of the intimation makes the reopening reasons tainted with arbitrariness and the satisfaction recorded cannot be considered to be based on any new information.

12. It can be further appreciated that Ld. CIT(A) while passing the impugned order sought a remand report with regard to ledger accounts, copy of invoices, copy of bank statements and the physical evidences in the form of photographs of the goods purchased from Stans Networking Pvt. Ltd. and Ld. AO vide letter dated 30.03.2019 forwarded report to Ld. CIT(A) that in remand proceedings after taking into consideration the evidences, the purchases from Stans Networking Pvt. Ltd. were found to be in order. Still, Ld. CIT(A) preferred to rely the intimation received from ITO, Ward- 9(2), New Delhi to give finding that as that assessing officer has held M/s. Stans Networking Pvt. Ltd. to be accommodation entry provider the reopening was valid. The Bench is of considered opinion that the findings of Ld. ITO, Ward-9(2), New Delhi were not so sacrament so as to brush aside the inquiry and remand proceeding report dated 30.03.2019 submitted by the Ld. AO of the assessee. Rather, as a matter of fact, assessment order in case of M/s. Stans Networking Pvt. Ltd. passed by ITO, Ward-9(2), New Delhi was

subject matter of appeal before Ld. CIT(A)-28 in appeal no. 379 and the copy of order dated 08.10.2018 available at page no. 145 to 156 of the paper book go to show that the substantive additions were reduced and the protective additions, which included addition in regard to sales made to present assessee Airads was deleted. Thus, when the present impugned order was passed on 15.07.2019 the appellate order in the case of M/s. Stans Networking Pvt. Ltd. was already there and that may have been possible reason for the ld. AO of the assessee to have submitted in the remand report dated 30.03.2019 that the purchases from M/s. Stans Networking Pvt. Ltd. are found to be an order. Ld. CIT(A) whimsically ignored the same. Thus, findings of Ld. CIT(A) sustaining the addition on merits is not sustainable. As a consequence of above the bench is of considered opinion the grounds pressed being ground no. 1,2 and 4 deserve to be allowed. **The appeal of assessee is allowed.** Impugned reassessment and appellate order are set aside.

Order pronounced in the open court on 16th January, 2023.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date: 16.01.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**