

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.636/Mum/2021
(Assessment Year :2012-13)**

| | | |
|--|-----|---|
| M/s. Pantime Finance Company Pvt. Ltd. 304A, 3 rd Floor Wing Amazon Park Link Road Devki Nagar Borivali (West)-400 103 | Vs. | ITO, Ward 13(1)(1) Mumbai Aayakar Bhavan Maharshi Karve Road Mumbai – 400 020 |
| PAN/GIR No.AAACP9097M | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|---------------------|
| Assessee by | Shri. Rushabh Mehta |
| Revenue by | Shri K.C.Selvamani |
| Date of Hearing | 15/02/2023 |
| Date of Pronouncement | 21/02/2023 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.636/Mum/2021 for A.Y.2012-13 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-5, Mumbai u/s.263 of the Act dated 30/03/2021 for the A.Y.2012-13.

2. The only issue to be decided in this appeal is asked whether the learned PCIT was justified in invoking revisional jurisdiction under section 263 of the Act on facts as well as on law.

3. We have heard the rival submissions and perused the materials available on record. The moot question to be decided in this appeal is as to whether the learned PCIT had validly assumed revision jurisdiction under section 263 of the Act both on law and also on merits. In this case, the assessment was originally completed under section 143(3) of the Act by the learned AO on 28.02.2015. Later the assessment was sought to be reopened under section 147 of the Act by the learned AO vide issuance of notice under section 148 of the Act on 28.03.2018. The reasons recorded by the learned AO for reopening the assessment under section 147 of the Act are as under: –

REASONS FOR REOPENING OF ASSESSMENT U/S 147 OF THE IT ACT 1961

In connection to the above following information have been received from ADIT Unit 6.Kolkata vide latter dated 05/03/2018(copy enclosed):

- This office was in receipt of an information that the company M/s Anunay Sales Pvt Ltd (Account no 020606700000361 of Dhanlaxmi Bank Ltd) was engaged in routing of funds during the FY 2011-12 as observed on perusal of the statement of its bank account. The fund so received by the company had been immediately transferred to other concerns bank accounts. From the said bank account it is further gathered that the account was mainly utilized for routing of funds and finally for providing entries to beneficiaries by crediting its account with the routed funds.

On this count a trail has been prepared and on the basis of the same the following beneficiary has been detected,

| <i>S No</i> | <i>Name of the entity from whom fund has been transferred</i> | <i>PAN</i> | <i>F.Y.</i> | <i>Name of the entity who received fund/PAN</i> | <i>Amount (Rs.)</i> |
|-------------|---|-------------------|----------------|--|---------------------|
| | <i>Anunay Sales Pvt Ltd</i> | <i>AAICA4706G</i> | <i>2011-12</i> | <i>M/s. Pantime Finance Pvt Ltd (PAN-AAACP9097 M)-</i> | <i>15,00,000</i> |

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|-------------|---|-------------------|----------------|--|---------------------|
| | <i>Anunay Sales Pvt Ltd</i> | <i>AAICA4706G</i> | <i>2011-12</i> | <i>M/s. Pantime Finance Pvt Ltd (PAN-AAACP9097 M)-</i> | <i>15,00,000</i> |

Further from the ITD Application, it is gathered that M/s Pantime Finance Pvt Ltd is a regular IT Return filer. From the above table it is clear that the concern m/s. Pantime Finance Pvt Ltd was received funds to the tune of Rs 15,00,000/- by way of routing materialized by Anunay sales Pvt. Ltd during the FY 2011-12 which requires further investigation analysis and verification by its respective jurisdictional assessing officer at his end."

However the assessee has not disclosed the above receipt of Rs 15,00,000/-in its Return of Income for the relevant Assessment Year i.e AY 2011-12 Therefore, I have reason to believe that income to the tune of Rs 15,00,000/-chargeable to tax has escaped assessment within the ambit and meaning of Sec 147 of the IT Act 1961 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the relevant assessment year. Therefore, it is requested that approval for reopening of this case u/s 147 of the IT Act for AY 2011-12 may be accorded to bring the above transactions into taxation

3.1. From the perusal of the aforesaid reasons, it is clear that reopening was sought to be made by the learned AO to further investigate / analyse / verify the veracity of receipt of funds of Rs 15 lakhs from Anunay sales private limited during the year under consideration. This goes to prove that the learned AO indeed had only 'reason to suspect' and not 'reason to believe'. During the course of reassessment proceedings, the assessee was asked vide notice u/s 142(1) of the Act dated 11.10.2018 regarding the receipt of funds of Rs 55 lakhs and Rs 15 lakhs mentioned in the reasons recorded. The assessee furnished the details that the following amounts on account of sale of shares :-

03.02.2012 Rs 15,00,000/- from Anunay Sales Pvt Ltd (subject matter of
Reasons recorded)

04.02.2012 Rs 30,00,000/- from Tejaswini Vincom Pvt Ltd

08.02.2012 Rs 25,00,000/- from Tejaswini Vincom Pvt Ltd

3.2. The assessee also furnished the entire bank statements for the period 01.04.2011 to 31.03.2012 together with the nature and source of aforesaid receipts with supporting evidences before the Id. AO in response to notice issued by the Id. AO in the re-assessment proceedings. The assessee also furnished the sale bill raised by the assessee for sale of shares on Tejaswini Vincom Pvt Ltd and Anunay Sales Pvt Ltd. The replies filed by the assessee and documents enclosed thereon are reflected in pages 50 to 54 of the paper book filed before us.

3.3. The Id. AO examined the aforesaid receipts and even mentioned in the reassessment order that assessee had bought 9500 shares of Aditi & Finance Pvt Ltd under distinctive Nos. 1287021 to 1296521 @ Rs 1000 per share as per allotment advice dated 05.04.2010. Out of these shares, the assessee has sold 5500 shares @ Rs 1000 per share for Rs 55,00,000/- to Tejaswini Vincom Pvt Ltd at cost and 1500 shares @ Rs 1000 per share to Anunay Sales Pvt Ltd at cost. In effect, the entire

9500 shares were sold by the assessee at cost. The Id. AO in the re-assessment proceedings had further held that the transactions relating to purchase and sales have been made through regular banking channels and the shares were also disclosed in the balance sheet. Accordingly, the Id. AO did not make any addition in the entire re-assessment and accepted the return filed in response to notice u/s 148 of the Act in the reassessment completed u/s 143(3) read with section 147 of the Act on 20.11.2018.

3.4. Since the re-assessment order framed in the hands of the assessee was in favour of the assessee on merits, there is no question of challenging the same by the assessee. In other words, the fact that there was only reason to suspect and not reason to believe for the Id. AO while recording reasons, got further ratified by his own re-assessment order accepting the plea of the assessee thereby leading to a situation that the Id. AO could not have had valid reason to believe that income of the assessee had escaped assessment. The subsequent framing of reassessment by the Id. AO in favour of the assessee also goes to prove that the Id. AO while recording the reasons had sought to reopen the assessment only for the limited purpose of making verification on the information received and that he did not have any reason to believe that income of the assessee had escaped assessment. Hence the assumption of jurisdiction u/s 147 of the Act by the Id. AO itself becomes subject to challenge. But this was not done by the assessee as there was ultimately no grievance for the assessee pursuant to re-assessment proceedings.

3.5. This re-assessment order framed on 20.11.2018 was sought to be revised by the Id. PCIT by invoking revision jurisdiction u/s 263 of the Act.

The show cause notice dated 19.03.2021 issued by the Id. PCIT is as under:-

Notice for the Hearing

M/s/Mr/Ms

Subject Notice for Hearing in respect of Revision proceedings is 263 of the THE INCOME TAX ACT, 1961 Asst Year 2012-13.

In this regard a hearing in the matter is fixed on 23/03/2021 at 12:30 PM. You are requested to attend in person or through an authorised representative to submit your representation if any alongwith supporting documents/ information in support of the issues involved (as mentioned below) if you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office on or before the said due date then your personal attendance is not required You also have the option to file your submission from the e-filing portal using the link incometaxindiaefiling.gov.in

Sub Show Cause Notice u/s 263 of the income-tax Act 1961 in your case AY 2012-13-reg

2. In this case. The return of income for AY 2012-13 for loss of Rs 5742766/- was filed on 4/3/2013 and income u/s 115 JA of Rs 17,88,656 and the same was revised for total loss of Rs 1907954 on 23/4/2018 The assessment was completed on 20.11.2018 by passing an order u/s 143 (3) rws 147 of the Act accepting the returned income of the assessee.

3. On perusal of the records it is observed that it is soon that the assessee has bought 9500 shares of Aditi & Finance Pvt Ltd Rs.1000 per share Out of these shares the assessee sold 5500 shares @Rs 1000/- for Rs.55 lakh to Vincom Pvt Ltd at cost and 1500 shares Rs 1000/ for Rs 15 lakh is further seen that all the transactions relating to purchase and sales have been made through banking channel and also the shares were disclosed in the balance sheet and that there was no loss or gain from the transaction No additions has been made in this case with respect to penny stock sales as the AO has mentioned in the assessment order that sales have been made through banking channel and also the shares were disclosed in the balance sheet. However, the Standard Operating Procedures (SOP/ Guidelines) issued by the department for dealing with Penny stock cases has not been complied in this case

4. Therefore, it is clear that the assessment order passed u/s 143 (3) rws 147 of the Act dated 20.11.2018 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of Sec 263 of the Act. Hence it is proposed to revise the aforesaid order Us 263 of the Act

5. In this connection you are hereby given an opportunity of being heard and your case is fixed for nearing on 23.03.2020 at 12:30PM. On that day you may attend before the undersigned either in person or through your authorized representative. In case of non-compliance on the stipulated date and time it will be presumed that

you have no objection to the proposed revision of the assessment order passed by the Assessing Officer u/s 143 (3) rws 147 of the IT Act dated 20.11.2018 as discussed above

3.6. We find that the issue stated by the Id. PCIT in show cause notice u/s 263 of the Act was already duly examined by the Id. AO in the re-assessment proceedings itself and assessee had also duly filed all the evidences in support of its contentions thereon. It has been accepted by the Id. AO as genuine transactions. Hence it cannot be a case of 'lack of enquiry'. In any case, a plausible view has been taken by the Id. AO in the reassessment proceedings itself. Hence the same cannot be the subject matter of revision proceedings u/s 263 of the Act by the Id. PCIT. Hence the revision order passed by the Id. PCIT u/s 263 of the Act fails on this count itself.

3.6.1. Moreover, the provisions of Explanation 2 to section 263 of the Act were not invoked by the Id. PCIT in the show cause notice and hence the same cannot be directly applied in the revision order u/s 263 of the Act. Reliance in this regard is placed on the decision of *Hon'ble Gujarat High Court in the case of PCIT vs Shreeji Prints (P) Ltd reported in 130 taxmann.com 293 (Guj)* wherein it was held as under:-

5 The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.

3.6.2. It is pertinent to note that the Special Leave Petition (SLP) against this decision preferred by the revenue before the *Hon'ble Supreme Court has been dismissed which is reported in 130 taxmann.com 294 (SC)*.

3.7. The Id. PCIT in his revision order u/s 263 of the Act also made some observations in para 2.1. page 2 of his order on certain other issues which were not subject matter of either show cause notice u/s 263 of the Act or any opportunity of being heard being given to the assessee in that regard to respond in the revision proceedings u/s 263 of the Act. However, in the final concluding paragraph, the Id. PCIT did not direct the Id. AO to look into these issues. The Id. PCIT ignoring all the contentions of the assessee concludes that the Id. AO had not followed the procedures laid down with the Standard Operating Procedures (SOP) Guidelines issued by the CBDT for dealing with penny stock case, as during the year , the assessee has traded in penny scrip, M/s Aditi & Finance Pvt Ltd. Accordingly, the Id. PCIT concluded that non-application of SOP guidelines of CBDT makes the order of the Id. AO erroneous and prejudicial to the interests of the revenue warranting revision u/s 263 of the Act. Hence the Id. PCIT passed an order setting aside the re-assessment order dated 20.11.2018 for denovo adjudication of the issue of sale of shares of Aditi & Finance Pvt Ltd.

4. We find that in the appeal preferred against the section 263 order , the assessee has even challenged the validity of re-assessment u/s 147 of the Act by the Id. AO. As stated earlier, since the re-assessment proceedings resulted in no grievance to the assessee, the assessee did not have any occasion to challenge the assumption of jurisdiction u/s 147 of the Act. But since the said re-assessment order framed by the Id. AO has been treated as erroneous and prejudicial to the interests of the revenue by the Id. PCIT, warranting set aside of reassessment proceedings to the Id. AO, the assessee had thought it fit to raise the legal ground in the present appellate proceedings before us. We find lot of force in this argument of the Id. AR. The law is very well settled that the legal issue which goes to the root of the matter could be raised at any

time during the appellate proceedings. Hence we proceed to address this issue now.

4.1. We have already held that the reasons recorded by the Id. AO for reopening merely gives him 'reason to suspect' and not 'reason to believe'. Firstly the Id. AO says that the receipt of Rs 15 lacs on sale of shares from Anunay Sales Pvt Ltd was not disclosed by the assessee. This has been proved to be factually incorrect as the Id. AO himself had accepted the fact that the entire purchase and sale transactions of Aditi & Finance Pvt Ltd had been duly disclosed by the assessee in the balance sheet. Hence it could be safely concluded that the entire reasons for reopening were recorded by incorrect assumption of fact.

4.1.1. Moreover, the law is very well settled that an assessment could not be reopened for the purpose of making fishing and roving enquiries. In this regard, we find that the Id. AR had rightly placed reliance on the decision of *Hon'ble Jurisdictional High Court in the case of PCIT vs Shodiman Investments (P) Ltd reported in 422 ITR 337 (Bom)* . The relevant operative portion of the said decision is reproduced as under:-

12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

4.1.2. Similarly the *Hon'ble Gujarat High Court in the case of PCIT vs Manzil Dineshkumar Shah reported in 95 taxmann.com 46 (Guj)* had held that a notice u/s 148 of the Act cannot be issued by the Id. AO to verify validity of information received. The SLP preferred by the revenue against this judgement before the *Hon'ble Supreme Court has been dismissed which is reported in 101 taxmann.com 259 (SC)*. Hence the reopening suffers from this legal infirmity.

4.2. We find that for the purpose of reopening, the Id.AO had duly obtained the approval u/s 151 of the Act from the Id. PCIT. The proforma for seeking approval is enclosed in page 166 of the paper book filed before us. In the said proforma, in response to question numbers 7 & 8, the Id. AO had given incorrect replies, which has been approved by the Id. PCIT while granting approval u/s 151 of the Act. For the sake of convenience, the relevant question numbers 7 & 8 are reproduced hereunder:-

7. Whether the provisions of section 147(b) applicable - Answer given by AO is Yes

8. Whether assessment is proposed to be made for first time, if the reply is the affirmative, please state : - Answer given by AO is Yes

a) Whether any voluntary return had already been filed and ; - Answer given by AO is Yes

b) If so, the date of filing the said return – Answer given by AO is 04.03.2013

4.2.1. In this regard, it is pertinent to note that the provisions of section 147(b) of the Act had already been omitted and was not in the statute for the year under consideration. For this, the Id. AO had in response to Question No. 7 of the proforma had stated that the said provisions are applicable. This is the first mistake committed by the Id. AO which has not been pointed out by the Id. PCIT while granting approval u/s 151 of the Act.

4.2.2. It is a fact that the assessment has already been framed in this case u/s 143(3) of the Act on 28.02.2015. But the Id. AO in response to Question No. 8 of the proforma says that the assessment is framed for the first time pursuant to reassessment. This is factually incorrect. This mistake committed by the Id. AO was not pointed out by the Id. PCIT while granting approval u/s 151 of the Act.

4.2.3. When the aforesaid mistakes committed by the Id. AO were not even pointed out by the Id. PCIT and the Id. PCIT grants approval for the same u/s 151 of the Act for reopening the assessment, the said approval could only be construed as a mechanical approval given by the Id. PCIT without due application of mind. Reliance in this regard has been rightly placed by the Id. AR on the decision of *Delhi Tribunal in the case of Omkam Developers Ltd vs ITO in ITA Nos. 6862 & 7507/Del/2018 for A.Y. 2009-10 dated 11.05.2021* , wherein it was held as under:-

10. We have heard rival submission of the parties on the issue in dispute raised in the cross appeals. As far as ground No. 1 of the appeal of the assessee is concerned, the assessee has challenged the validity of the reassessment proceeding on the ground that approval for issue of the notice under section

148 of the Act was granted by the Learned Pr. CIT in a mechanical manner and without application of mind and, therefore, reassessment proceeding must be quashed. For adjudicating this issue, the reasons recorded by the Assessing Officer and relevant proforma of approval granted by the Pr. CIT are reproduced as under:

“Reason for the belief that income has escaped assessment in the case of M/s, Omkam Developers Pvt. Ltd. A.Y. 2009-10 (Pan:AAACQ5036B)

| | |
|---|---|
| <i>Name & Address of the Assessee</i> | <i>M/s Omkam Developers Ltd, 702, Aruachal Building, 19, Barakhamba, Road, Connaught Place, New Delhi</i> |
| <i>Assessment Year</i> | <i>2009-10</i> |
| <i>Financial Year</i> | <i>2008-09</i> |
| <i>PAN</i> | <i>AAACO05036B</i> |

PUC is a proposal for reopening the case u/s 147 of the Act for the A.Y 2009-10 in the prescribed Proforma.

The information received from ADIT (Inv), Unit-3(4), Kolkata vide his letter dated ADIT/U-3(4)/FIU-IND/MJS/15-16/411 dated 22.06.2015. wherein it is mentioned that; in the suspicion transaction report of 1000010583 in the name of Manohar Jaykishan Shah was received and it was reported in the I said FIU-IND-STR No. 1000010583 that there were 311 linked entities amongst whom fund transfers were made and in few accounts there were deposits also.

In pursuance to the said report. Bank Statements of various entities have been obtained and on investigation, it has been noticed that Omkam Developers Pvt. Ltd (Pan AAACO5036B) was one of the beneficiaries during the F.Y 2008-09 relevant A.Y.2009-10 and the amount brought through I accommodation entries by the above mentioned company is Rs. 193.00 Lakhs.

Copy of the Status Report in the case of Manohar Jaykishan Shah in connection with FIU-IND-STR No.1000010583 is reproduced below:-

A. Background:

• One Suspicious Transaction Report was received in the month November, 2009 from FIU-IND. In the said report, 31 related accounts were reported out of which 12 accounts were found to be associated, with business of Metal Trading wherein Mr. Manohar Jaykishan Shah is a Proprietor/Signatory. There are other 19 outstation Branch Accounts which are linked/connected to main 12 accounts and having non-related business/not in the same line of business accounts. During the financial year 2008-09, high value cheques totaling around Rs. 2030 crore are deposited at outstation branches in these accounts. Subsequent to which on realisation of high value credit amount, debit internal transfer transaction of large value and in round figures has been transacted within connected group/linked accounts. The cumulative turnover in 31 accounts discussed was reported to be 673 crores.

B. VERIFICATION OF FACTS AND INVESTIGATIONS DONE:

To verify in the STR, the Bank Accounts of all 31 accounts mentioned in the STR were requisitioned from the Bank and scrutinized. The 31 Bank accounts were opened at different branches of the Development Credit Bank. The following facts emerged from the scrutiny of Bank Accounts:

I. There were 7 Bank Accounts belonging to 6 entities in which cash of Rs. 15.26 crore was deposited in the F.Y.-2008-09: The cash deposited were swiftly transferred to other entities through Cheques/RTGS. These 6 entities are proprietorships. The detail is given as per Annexure-C. The funds from other entities through Cheques/RTGS were also received in these accounts. The details of another 21 proprietorships given in the STR is as per Annexure-C1.

II. The funds from the entities mentioned in Annexure-C and C1 were transferred to a number of entities which are mostly entities already identified as the companies controlled by the entry operators, few of them have been listed in Annexure-1.

III. The funds were rotated among the entities detailed in Annexure-C, C1 and Annexure-1

IV. There were 6 Bank Accounts Belonging to 6

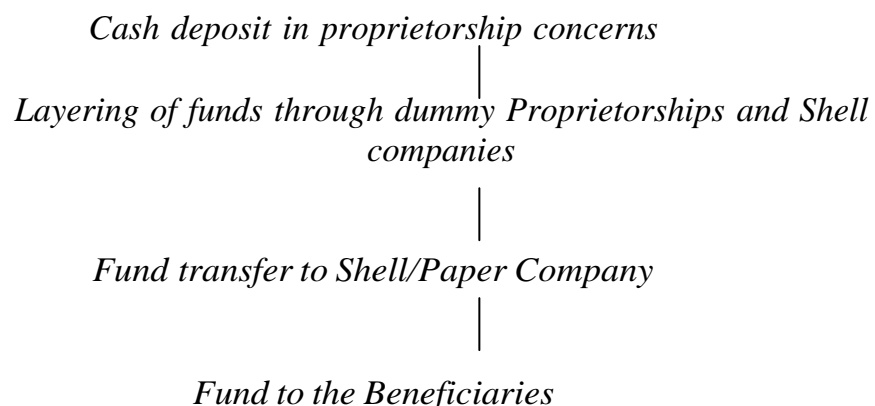
Companies in which funds were received from mostly entities discussed in Annexure-C, C1 and Annexure-1 and the same was swiftly transferred to the other entities (Mostly Companies). The details of 6 such companies are given in Annexure -5

V. The fund was transferred to the entities which are the real beneficiary of the funds from the companies mentioned in Annexure-S. The details of such, companies are given in Annexure –B.

Modus operandi of providing accommodation entry

The summons u/s 131 were issued to the individuals and entities mentioned in the STR. The field verification from the inspector was also done. In most of the cases either the summons could not be served or there was no compliance. The facts of immediate source of the beneficiaries being shell companies have already been established and recorded u/s 131 of the Income Tax Act-1961 during the investigation in other cases. The fact is also corroborated by the non-compliance to the summons as well as non-existence of real business of most of the entities mentioned in Annexure-C, C1 and l and S.

Flow Chart of Cash Flow



Conclusion

(i) In retrospect it can be rightly conceded that, the beneficiary companies have introduced n cash in primary accounts discussed in Annexure-C and s symbolized by various companies (created for the purpose re-1, Annexure-S) operated by entry operators by entry operators, the unaccounted funds have been entered In the regular books of accounts of the beneficiary companies.

(ii) *in view of the above, the total amount which has been transferred to the beneficiaries or the recipient companies from the bank accounts of paper companies during F.Y. 2008-09 is details in Annexure-8.*

The A.O. of the all beneficiary (Annexure-B) companies is being appraised of] regarding accommodation entry accepted by the companies in F.Y. 2008-09. Further, A.O. of V concerns listed in Annexure-C, C-1 and S is also being intimated regarding, cash deposit and credit made in different bank controlled by them for taking necessary action.

It appears that assessee M/s Omkam Developers Ltd. has received 'I bogus share capital/premium to the tune of Rs.1.93 Crores. The Income Tax | Returns of the assessee were also examined and noticed that the share premium; of assessee was increased to Rs.81,28,52,000/- in the relevant year from Rs. 17,69,50,000/-in the preceding year.

As discussed in earlier paras, the assessee has obtained such entries through above mentioned modus-operandi, it is actually assessee's own money (cash) which was rotated through such channel. This cash was out of his unaccounted income.

I have reasons to believe that an amount of Rs.1.93 crores has escaped from the Assessment for the A.Y. 2009-10 which was chargeable to tax. I am also satisfied that on account of failure on the part of the assessee to I disclose truly and fully all the material facts necessary for assessment for the j above assessment year, the income chargeable to tax to the tune of Rs.193.00 Lakh as escaped assessment with the meaning of Section 147 of the IT Act 1961

I have perused the information received from the Investigation Wing, Kolkata The Investigation Wing of the Department has sent comprehensive detail comprising inter alia the beneficiary's name, value of entry taken etc.

In the aforesaid case as per record from ITD, return of income was filed on declaring Rs.2,389/- income, it is noticed that the assessee company M/s Omkam Developers Ltd, received accommodation entries to the tune of Rs.1.93, crores during the F.Y. 2008-09 relevant to assessment year 2009-10 from the entry operators as mentioned in the chart above and same was not offered for taxation.

Having perused and considered the information, I have reason to believe that income of the assessment company to the extent of Rs.193 Lakh has escaped assessment for the A.Y. 2009-10. Therefore, proceedings u/s 147 i.e. clause (b) of Explanation 2 of the provisions of section 147 of the I.T. Act, 1961 is proposed to be initiated for the A.Y. 2009-10.

As per ITD record, Return of Income has filed on 30.03.2010 at an income of Rs.2,389/- for the A.Y. 2009-10.

Since four years has been expired from the end of the relevant assessment year in this case for the said assessment year, it is therefore I requested that the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Pr.CIT, Delhi-7, New Delhi in terms of proviso, to Section 151 of the Income Tax and approval for issue of notice u/s 147 may kindly be accorded."

6/7/16

M/s Omkam Developers Ltd.
A.Y. 2009-10

FORM OF RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147 OF THE I.T. ACT AND FOR OBTAINING THE APPROVAL OF ADDL.CIT./CIT

| | | |
|-----|---|---|
| 1. | Name & address of the assessee | M/s OMKAM DEVELOPERS LTD., 702, ARUNACHAL BUILDING, 19, BARAKHAMBA ROAD, CONNAUGHT PLACE, NEW DELHI-110001 |
| 2. | Permanent Account No. | AAAC05036B |
| 3. | Status | LTD. COMPANY |
| 4. | Circle/Ward | WARD 19(1), NEW DELHI. |
| 5. | Assessment year in respect of which is it proposal to issue notice u/s 148. | 2009-10 |
| 6. | Quantum of income which has escaped assessment | Rs. 193.00 LAKH |
| 7. | Whether the provision of Section 147(a) or 147(b) applicable or both the sections are applicable | 147(b) of the Act. |
| 8. | Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, Please state: | Yes |
| | (a) Whether any voluntary has already been filed, and | Yes |
| | (b) If so. The date of filing the said return. | 30.03.2010 |
| 9. | If the answer to item No.8 in the negative, Please state: | NA |
| | (a) The income originally assessed | NA |
| | (b) Whether it is case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation. | Under Assessment |
| 10. | Whether the provisions of sec. 150(1) are applicable. If the reply is in affirmative, the relevant facts may also be brought out so that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147. | No |
| 11. | Reasons for the belief that income has escaped assessment. | As per order sheet dated D. Pantime Income Tax Officer Ward-19(1), New Delhi |
| 12. | Whether the Addl. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148. | Addl. CIT, Range-19, New Delhi |
| 13. | Whether the Pr. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148. | Pr. CIT, Delhi-7, New Delhi 6/7/16 |

10.1 On perusal of the proforma for the approval granted by

*the PCIT, it is evident that in the relevant column No.13 for satisfaction of the Pr.CIT, he has only mentioned "yes". No other information is available on record or provided by the Ld. DR, which could establish application of mind by the CIT, while granting sanction/approval for issue of notice u/s 148 of the Act. No other evidence was produced as to substantiate that matter was ever discussed between the Assessing Officer or Addl. CIT and the Learned Pr.CIT for arriving at satisfaction of Learned Pr.CIT on the reasons recorded by the Assessing Officer. Even no evidences whether Ld PCIT examined the material relied upon by the Ld AO for reopening, was produced before us. In similar circumstances, Hon'ble Delhi High Court in the case of **NC Cable Ltd (supra)** held that section 151 of the Act clearly stipulates that Learned CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The Hon'ble High Court further observed that the mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up but at the same time, satisfaction has to be recorded of the given case, which can be reflected in the briefest possible manner. The Hon'ble High Court further observed that in that case the exercise appeared to have been the ritualistic and formal rather than meaningful, which is the rationale for safeguard of an approval by a high-ranking officer. Thus, in the instant case, mere mentioning of "yes" for approval, without any other evidence of application of the mind, amounts to mechanical approval by the Learned Pr.CIT.*

*10.2. Further in Column No. 7 of the proforma, the section for invoking reassessment has been recorded as 147(b) of the Act. During the relevant period, section 147(b) was no longer in existence. This shows that the Ld. AO has filed the Proforma in mechanically manner and Ld.CIT has also approved the same mechanically. In the case of **Madhu Apartment Private Limited vs. ITO, ITA.Nos.3869 & 3870/Del./2018***

wherein the Tribunal, Delhi Bench, vide order dated 01/02/2021 held as under:

*"7. After considering the rival submissions, we are of the view that the issue is covered by the Order of ITAT, Delhi G-Bench, Delhi in the case of **VRC Township Pvt. Ltd., Delhi (supra)** in which reopening of the assessment in identical circumstances was held to be bad in law and sanction accorded by the*

*Sanctioning Authority was also found invalid, therefore, reopening of the assessment was quashed. In the present case, the Learned Counsel for the Assessee has pointed-out that assessee has raised this issue before the Ld. CIT(A), but, he has rejected the submissions of the assessee holding that **Section 147(b)** as mentioned in the reason and Format is a typographical human error which is curable under section 292B of the I.T. Act, 1961. This issue is also considered in the Order of VRC Township Pvt. Ltd., (supra) following the decision of Hon'ble Bombay High Court in the case of Kalpana Shantilal Haria vs. ACIT [2017] 100 CCH 165 (Bom.). Following the same reasons for decision, we set aside the Orders of the authorities below and quash the reopening of the assessment in both the assessment years under appeals. All additions stand deleted. Accordingly, appeals of the Assessee are allowed."*

10.3. In the instant case before us, also the Learned DR has argued that the mistake of noting section under section 147(b) of the Act for reassessment proceeding is a clerical mistake, however, the Tribunal in the above decision has rejected the said contention and quashed reassessment proceeding on the ground of non-application of mind while granting approval for reopening of the assessment under section 151 of the Act.

10.4. Respectfully, following the decision of the Hon'ble Delhi High Court in the case of NC Cable Ltd (supra) and decision of the Tribunal in the case of Madhu Apartment Pvt. Ltd (supra), we quash the reassessment proceeding in the case of the assessee.

4.2.4. From the above order, it could be seen that the tribunal had considered the decision of Hon'ble Delhi High Court in the case of NC Cables Ltd and decision of Hon'ble Bombay High Court. Hence the reopening made by the Id. AO suffers from this legal infirmity.

5. Hence it could be safely concluded that the base order seeking to be revised i.e the re-assessment order dated 20.11.2018 itself is bad in law and is liable to be quashed due to various legal infirmities stated supra, then any subsequent proceedings on the said illegal base order also

would get automatically quashed. Hence the revision order u/s 263 of the Act deserves to be quashed on this count also.

6. Even on merits of revision order passed by the Id. PCIT only says that M/s Aditi & Finance Pvt Ltd is a penny stock and that SOP guidelines issued by CBDT had not been followed by the Id. AO while framing the reassessment. In this regard, it is pertinent to note that penny stock SOP guidelines have been issued by CBDT only in respect of listed scrips. In the instant case, Aditi & Finance Pvt Ltd scrip is not listed in any stock exchange. We hold that the SOP guidelines issued by CBDT cannot be made applicable for unlisted scrips. Hence the Id. PCIT had assumed revision jurisdiction on incorrect assumption of fact and incorrect application of CBDT guidelines. Hence the revision order passed u/s 263 of the Act is to be quashed on this count also.

7. In view of the aforesaid observations, we hold that the revision order passed by the Id. PCIT u/s 263 of the Act deserves to be quashed both on law and also on merits. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 21/02/2023 by way of proper mentioning in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai; Dated 21/02/2023
KARUNA, sr.ps

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai