

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकरअपीलसं/ I.T.A. No.1635/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2010-11)

Wescon Finance & Leasing Pvt. Ltd. C/o D. C. Bothra & Co. LLP (CA) (formerly known as D. C. Bothra & Co.) 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp. Bank of India, Nana Chowk, Mumbai-400007.	बनाम/ Vs.	DCIT, Central Circle-1(4) Room No. 902, 9 th Floor, Old CGO Building, Annexe, M. K. Road, Mumbai-400020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACW0534A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Rajkumar singh	
Revenue by:	Shri Satyapal Kumar (Sr. AR)	

सुनवाईकीतारीख / Date of Hearing: 19/12/2022
घोषणाकीतारीख /Date of Pronouncement: 28/02/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld.CIT(A)-47, Mumbai dated 05.05.2012 for AY 2010-11.

2. In Ground No. 1 of the appeal, the assessee has challenged the validity of the impugned reassessment order dated 31-12-2017 passed by the AO u/s 147 of the Income Tax Act, 1961 (hereinafter "the Act"). Since this legal issue raised by the assessee goes to the very root of jurisdiction, we are inclined to examine the same first.



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

3. Briefly stated the facts of the case are that, the assessee company has filed its return of income for AY. 2010-11 on 28.09.2010 declaring income at Rs. NIL. The return was duly processed u/s 143(1) of the Act. Later, the AO noted that, he was in receipt of information from the DDIT (Inv.), Unit-6(4), Mumbai that pursuant to the survey conducted u/s 133A of the Act on M/s. Sikkim Ferro Alloys Ltd and its group concerns, it was revealed that various companies controlled by Shri Kamlesh Kanungo were not doing any business (including the assessee) and they only routed the funds from one group company to another group company/companies. According to the AO, the assessee had borrowed funds from various companies to make corresponding investment worth Rs.8,49,99,600/- in M/s. Sikkim Ferro Alloys Ltd by paying huge premium. The AO noted that the assessee was unable to explain the source of funds for making this investment before the Investigating Officer and therefore he formed reasons to believe that income of Rs.8,49,99,600/- chargeable to tax had escaped assessment. The AO accordingly issued notice u/s 148 of the Act dated 31-03-2017. In the course of re-assessment proceedings, the assessee had furnished details of the share application monies of Rs.8,49,99,600/- paid to M/s Sikkim Ferro Alloys Ltd along with the particulars of the source of funds raised to make such payment [Page 5 of Paper book]. The assessee inter alia furnished the board resolution for making the investment [Page 6 of paper book], copy of Form No. 2 filed by Sikkim Ferro Alloys Ltd in respect of shares allotted to the assessee [Pages 9-18 of paper book], relevant bank statement evidencing



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

payment of share application monies along with ledger before the AO [Pages 19 to 21 of paper book]. It is noted that, the assessee had also furnished the relevant details in support of the borrowings raised for making this investment viz., loan confirmation, ITR, financial statements and relevant bank statement of loan creditors before the AO [Page 22 to 30 of paper book]. The Ld. AR brought to our notice that, the AO did not draw any adverse inference in relation to the source of funds raised for making the investments viz., which formed the basis for reopening of the assessment. It is however noted that, at 4.1 of the assessment order the AO disputed the correctness of the valuation report obtained by the assessee from a Chartered Accountant in support of the share premium of Rs.340/- paid over face value of Rs.10/- to M/s Sikkim Ferro Alloys Ltd. Thereafter, at Para 4.3 of the order, the AO concluded that the assessee had failed to explain justification for making investment at such high premium and on this score, he added Rs.8,49,99,600/- as unexplained income of the assessee. Aggrieved by the action of AO, the assessee preferred an appeal before the Ld. CIT(A) wherein it assailed the validity of reopening of assessment. It is noted that the Ld. CIT(A) rejected the same by observing that, at the time of reopening of assessment, the AO is only forming a broad opinion about the escapement of income, on the basis of material available with him and that determination of the taxable income in hands of the assessee, is a later event, which is to be determined on the basis of details furnished by the assessee. Aggrieved, the assessee is now in appeal before us.



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

4. Assailing the action of the lower authorities, the Ld. AR first invited our attention to the reasons recorded by the AO for reopening the assessment, which read as follows:

"Reasons for Reopening in the case of M/s. Wescon Finance & Leasing Pvt.

Ltd. PAN: AAACW0534A AY. 2010-11

In this case the assessee had filed the return of Income for A.Y. 2010-11] on 28.09.2010, declaring total income of Rs. Nil. and same was processed u/s 143(1) of the IT Act on 23.05.2011. The Survey u/s. 133A of the I. T. Act, 1961 was conducted by the DDIT (inv.) Unit 6(4), Mumbai on 16.09.2016 in M/s. Sikkim Ferro Alloys Ltd. and its group concerns. During the course of Survey and post Survey investigations it has come to notice that various companies including M/s. Wescon Finance & Leasing Pvt. Ltd. (PAN No. AAACW0534A) are mere paper companies of the said group. They are not doing any business and are being used by Mr. Kamlesh Kanungo to route funds from one group company to other group companies. M/s. Wescon Finance Leasing Pvt. Ltd. having PAN No. AAACW00S534A is assessed to tax in this charge i.e. ITO Ward -13(3)(2), Mumbai. During the investigation by the Investigation Wing, Mumbai, it has come to there notice that M/s. Wescon Finance Leasing Pvt. Ltd. has received some loans and made following investment in M/s. Sikkim Ferro Alloys Ltd. by paying huge premium with details asunder:

Date of allotment	No of shares allotted	Face Value	Premium per share	Total Amount (Rs.)
30.01.2010	57,142	10	340	1,99,99,70 0
22.03.2010	185,714	10	340	6,49,99,90 0
			Total	8,49,99,60 0/-



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

For investing the above amount M/s. Wescon Finance Leasing Pvt Ltd. has in turn borrowed funds from various companies. Source of the funds for the above investment could not be explained by the assessee company before the investigating officer.

In view of the above facts, I have reason to believe that the income of at least Rs.8,49,99,600/-, chargeable to tax has escaped assessment for A.Y.2010 -11 by reason of the: failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year and it is fit case for issuing notice u/s.148 of the Income Tax Act, 1961.

5. With reference the above recorded reasons, the Ld. AR submitted that the AO's satisfaction that income had escaped assessment, was based solely on the information received by the AO from Investigation Wing. Based solely on information received from the Investigation Wing, the AO formed his belief that M/s Sikkim Ferro Alloys Ltd along with its group entities (including assessee) were only routing funds from & into the group companies. According to Investigation Wing, the assessee had borrowed funds to make investment of Rs.8,49,99,600/- in M/s Sikkim Ferro Alloys Ltd and that the source of funds of this investment could not be explained by the assessee. The AO therefore entertained a specific belief that source of funds for making the investment of Rs.8,49,99,600/- represented income of the assessee which had escaped assessment for the AY 2010-11. The Ld. AR therefore submitted that the



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

assessment was reopened on the specific ground which was separate and distinct from the justification of the valuation of investment made in M/s Sikkim Ferro Alloys Ltd. He pointed out that even though in the recorded reasons the AO had set out the details of the share premium paid by the assessee but he did not record his belief that the share premium paid was excessive or unjustified and therefore the investments itself represented assessee's income escaping assessment. Taking us through the impugned order, the Ld. AR showed us that after reasons were recorded on 31-03-2017, upon making enquiries regarding the source of funds, the AO ultimately abandoned the principal reason on which the assessment was reopened. Instead the AO made a new line of enquiry regarding the justification of share premium paid in relation to investments and the ultimate addition of Rs.8,49,99,600/- was made in relation to the value of investments for non-justification of share premium. The Ld. AR therefore submitted that the reason for which the assessment was reopened was completely divorced from the findings ultimately recorded by the AO.

6. He further invited our attention to the fact that the investments were recorded in the books of accounts of the assessee and therefore the provisions of Section 69 of the Act were not applicable, as it applied only where investments are not found recorded in the books of accounts. On the issue of non-justification of share premium, the Ld AR pointed out that, the provisions of Section 56(2)(viib) and the corresponding Rule 11UA relied upon by the AO, came into the Act only



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

from the Finance Act, 2012 and were made prospectively applicable from AY 2013-14 and onwards. Further, even under the aforesaid provision, addition, if any, was to be made in the hands of the recipient i.e. the issuer company and not the shareholder. He thus submitted that even the basis for making the impugned addition on a completely different fact was untenable. He thus urged that when the foundational issue which formed the basis for initiation of reassessment, was not pursued by the AO nor any addition was made on that account, then the AO could not have legally proceeded with the income-tax assessment and made 'other additions' for which no reasons were recorded.

7. Per contra, the Ld. DR supported the order of the lower authorities. According to him, the AO had indeed made a mention of the huge premium paid by the assessee in the reasons recorded for reopening the assessment and therefore it cannot be said that the impugned addition was divorced of the reasons so recorded by the AO. He submitted that the assessee had failed to justify the payment of share premium to M/s Sikkim Ferro Alloys Ltd and therefore the addition was rightly made with reference to the recorded reasons.

8. We have heard both the parties. Before, we adjudicate the legal issue regarding jurisdiction of the AO to have re-opened the assessment u/s 147 of the Act, let us look at the settled position of law regarding re-opening of assessment u/s 147 of the Act. The concept of assessment is governed by the time-barring



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

rule; and an assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed only when there is information or evidence regarding undisclosed income or AO had information in his possession showing escapement of income as stipulated u/s 147 of the Act. As per Section 147 of the Act, if the AO had to re-open the assessment, then AO has to record the reason to reopen the assessment, wherein he should record the "*reason to believe, escapement of income*". It is settled principle of law that *reason to believe* postulates a foundation based on an information and belief based on reason. After a foundation based on information is there, still, there must be some reason which should warrant the holding of a belief that income chargeable to tax has escaped assessment. In other words, before the AO issues notice u/s 148 of the Act, he must have recorded the "*reason to believe, escapement of income*". It is no doubt true that this Tribunal cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the AO on the point as to whether action should be initiated for re-opening the assessment. At the same time, we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant or remote and far-fetched, which would warrant the formation of belief relating to escapement of income. It is well settled in law that reasons as recorded by AO for re-opening the assessment, are to be examined on a *stand-alone* basis. Neither anything can be added to the reasons so recorded, nor can anything be deleted from the reason so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (2004) 268 ITR 332 (Bom) has *inter alia* observed that



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

".....it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons". Their Lordship added "*The reasons recorded should be self-explanatory and should not keep the assessee guessing for reason. Reason provide link between conclusion and the evidence...*". So, while examining the jurisdiction of AO to have re-opened the assessment, we have to only consider the *reasons recorded* by the AO on a standalone basis and adjudicate as to whether AO has satisfied in the reasons recorded, the condition precedent (i.e., *reason to believe escapement of income*) to validly reopen the assessment.

9. Further, it has to be borne in mind that if the AO having reopened the assessment of an year on the basis of a particular issue and during the re-assessment finds that there is no escapement of income on that issue and does not draw any adverse view against assessee for which he has reopened the assessment (which is given in the reasons recorded) then the AO has to necessarily drop the assessment proceedings; and in case if the AO during the re-assessment proceedings stumbles across any facts which shows escapement of income in respect of another issue (which was not forming part of reasons recorded) then he has to re-initiate the re-opening exercise by again recording reasons for re-opening and thereafter has to issue notice u/s 148 of the Act to the assessee. This principle



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

of law has been laid by the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bom) wherein the Hon'ble Bombay High Court has held that if after issuing notice under section 148 of the Act, the AO accepts the contention of assessee and holds that income, for which he had initially formed a *reason to believe* that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; and if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in the event of a challenge by assessee.

10. Keeping the aforesaid principles of law, let us examine the reasons recorded by the AO to re-open the assessment for AY. 2010-11 which has already been reproduced earlier. From the reason recorded, it is discernable that the AO has reopened the assessment taking note of the fact that, the assessee company is controlled by Shri Kamlesh Kanungo and has routed its fund from one group company to other group company; and in that process, the assessee company has received loans and has made investment of Rs.8,49,99,600/- in M/s. Sikkim Ferro Alloys Ltd for allotment of shares of face value of Rs.10/- at a premium of Rs.340/-. And the re-opening of the assessment for AY. 2010-11 has been resorted in the case of the assessee company for the specific purpose and finding of the source of the funds for the investment made in M/s. Sikkim Ferro Alloys Ltd. (supra). In the specific words of the AO, "*For investing the above amount M/s.*



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

Wescon Finance Leasing Pvt. Ltd. has in turn borrowed funds from various companies. Source of the funds for the above investment could not be explained by the assessee company before the investigating officer." Accordingly, the AO concluded that he has reasons to believe that the income of at least Rs.8,49,99,600/- chargeable to tax has escaped assessment for AY. 2010-11. After the AO furnished a copy of the reasons recorded for re-opening the assessment for AY 2010-11, the assessee company, brought to the notice of the AO that assessee had enough funds which have been received from the following entities to the tune of Rs.8.5 crores;- (i) M/s. Megh Leasing and Investments Ltd. Rs.2 crores (ii) M/s. Trisons Agencies Rs. 3.5 cr. and (iii) M/s. Wescon Builders Pvt. Ltd. Rs. 3 cr. And these were unsecured loans received from them between 28.08.2009 to 22.03.2010. In order to substantiate the identity, creditworthiness and genuineness of the lenders, the assessee had filed the documents viz., (i) loan confirmation letter, (ii) copy of acknowledgement of ITR filed, (iii) financial statements and (iv) relevant bank statement of loan creditors of AY. 2010-11 (FY. 2009-10) highlighting the relevant transactions out of which borrowed fund it was shown that share application money has been paid by the assessee company at Rs.350/- per share to M/s. Sikkim Ferro Alloys Ltd. The assessee also filed the copy of Valuation Report dated 01.12.2009 of valuer, M/s. N. H. Vyas & Co. obtained by M/s. Sikkim Ferro Alloys Ltd for the valuation of its shares at Rs. 358 per share in support of the share premium paid by the assessee company and also the copy of share certificate issued by the M/s. Sikkim Ferro Alloys Ltd in respect of shares



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

allotted to the assessee company out of the share application money paid in the above assessment year.

11. The assessee also brought to the notice of the AO that the assessee is a group company of which Shri Kamlesh Kanungo is a director in all these companies. Taking into consideration, the aforesaid facts and especially the fact that the assessee was able to discharge the burden of proving the source of share-subscription in M/s. Sikkim Ferro Alloys, to his satisfaction, it is noted that the AO did not draw any adverse inference against assessee on the issue on which he re-opened the assessment i.e. AO accepted the source of the funds for investment in M/s. Sikkim Ferro Alloys Ltd; but he changed tact while framing the re-assessment order and concluded that the assessee company failed to explain the justification for making investment at such high premium in M/s. Sikkim Ferro Alloys Ltd and thus failed to explain the investment of Rs.8,49,99,600/-.

12. The Ld. AR has rightly pointed out that the AO could not have made any addition u/s 69 of the Act which brings into the net of taxation only the unexplained investment which are not recorded in the books of accounts. From the material placed before the lower authorities, it is clearly discernible that the investment of Rs.8,49,99,600/- was clearly reflected in the books of accounts maintained by the assessee. Therefore, the provisions of Section 69 of the Act was of no relevance in the given facts of the present case.



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

13. In the context of justification of share premium, we note in that the assessee had furnished the valuation report of the shares which valued the shares at Rs.358/- per share as on 01.12.2009 which was rejected by the AO citing that the report was obtained prior to making the payment towards investments viz., 30.01.2010 to 22.03.2010. We find that this reasoning of the AO to be specious. The Ld. AR invited our attention to the financial statements of M/s. Sikkim Ferro Alloys Ltd. for AY. 2007-08 to AY. 2009-10 and that of AY. 2010-11 and thereafter up-to AY. 2013-14, whose summary details are given below: -

In case of Wescon Finance & Leasing Pvt Ltd for A.Y. 2010-11							
ITA No. 1635/MUM/2022							
Financial Statement of Sikkim Ferro Alloys Pvt. Ltd.							
Sr. no	A.Y	Sales Turn Over	Profit as per P&L A/c.	Income as per ITR	Paid up Capital	Share Premium	Reserve & Surplus
1	2007-08	79,93,21,014	12,79,99,112	1,28,46,720	50,00,000	5,76,00,000	6,96,54,173
2	2008-09	1,25,70,25,564	1,38,31,147	1,42,15,530	51,21,400	6,05,13,600	8,14,73,920
3	2009-10	1,37,25,71,871	1,45,12,975	1,43,22,497	69,39,580	10,86,95,420	13,91,02,391
4	2010-11	2,07,45,99,411	2,22,98,755	2,22,20,663	1,32,25,270	32,24,08,880	36,74,92,580
5	2011-12	4,33,08,94,813	4,88,41,857	4,01,67,314	1,32,25,270	32,24,08,880	39,90,65,252
6	2012-13	6,78,59,75,179	7,55,64,264	7,67,44,860	1,56,00,270	41,50,33,880	54,00,05,389
7	2013-14	18,15,25,17,861	14,13,96,605	14,13,34,030	1,80,00,270	53,26,33,880	74,80,42,566

14. In light of the above financial results of M/s Sikkim Ferro Alloys Ltd, both past & future performance, the Ld. AR claimed that the investment in shares at a premium of Rs.340/- was justified. Nonetheless, the Ld. AR rightly pointed out that, the provision of Section 56(2)(viib) and Rule 11UA were not applicable in the



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

relevant AY 2010-11 as it was introduced by the Legislature only from Finance Act, 2012 w.e.f. 01-04-2013 and the jurisdictional Bombay High Court in the case of Gagandeep Infrastructure Pvt. Ltd. (ITA. No. 1613 of 2014) has held that the share premium can be brought to tax only from AY. 2013-14 onwards. Hence, the action of the AO was not tenable in the relevant AY 2010-11.

15. We thus find merit in the submissions of the Ld. AR that, the AO had reopened the assessment only to look into the source of funds for making the investment made by the assessee in M/s. Sikkim Ferro Alloys Ltd of Rs.8,49,99,600/-, to which the assessee had produced all relevant evidences in the reassessment proceedings to show the *nature and source* of Rs.8.5 crores was unsecured loan from three (3) entities (supra), which in turn was used for investment of Rs.8.49 crores in M/s. Sikkim Ferro Alloys Ltd; and the assessee discharged the burden to prove the *nature and source of credit* by proving the identity, creditworthiness and genuineness of the three (3) lender companies (supra). Being satisfied with the explanation (supported by documents), the AO could not draw any adverse inference u/s 68 of the Act in relation to the source of funds for making the assessment and therefore abandoned the original reason for which the assessment was reopened (already noted earlier). Instead he proceeded to make addition on the premise that the assessee failed to explain the justification for making investment at such a higher premium in M/s. Sikkim Ferro Alloys Ltd. and the order is also conspicuously silent as to which provision of law permitted the



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

AO to make addition on such a ground, particularly when the provision/Rule as discussed above were not applicable in the relevant AY 2010-11.

16. Having taken note of the above facts, we find ourselves in agreement with the Ld. AR that, the AO having initiated the proceedings u/s 147 for a specific reason, the said reason was completely abandoned and thereafter the AO's enquiry proceeded entirely on different track and the addition in the assessment order was made in respect of an issue which was totally divorced from the issue for which the AO had recorded his reasons to believe that income had escaped assessment. As noted supra, the AO in this case had re-opened the assessment for AY. 2010-11 for examining the source of investment of Rs.8,49,99,600/- in M/s. Sikkim Ferro Alloys Ltd. However, once assessee proved the source of investment, the AO has dropped the same; and has proceeded to make addition on the ground that assessee failed to justify the high premium of shares of M/s. Sikkim Ferro Alloys Ltd, which AO cannot legally do, as the original reasons recorded by AO for re-opening was to examine the source of investment of Rs.8.5 crores, which was proved by assessee; and clearly the AO did not draw any adverse view against the source. So, the AO could not have proceeded further on any other issue/aspect, because the jurisdiction to re-open was on the basis of reasons recorded by him, and when the reason for re-opening has been explained to AO's satisfaction, then he cannot legally make any other addition based on any other issues which doesn't feature in the reasons recorded for re-opening as held by the Hon'ble Bombay High



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

Court in the case of Jet Airways (I) Ltd. (supra). In this context, we note that this Tribunal in the case of Indian Redcross Society Vs. ITO (ITA. No. 1732/Ahd/2019 for AY. 2010-11 order dated 31.05.2022 had an occasion to deal with such an action of AO which was assailed by that assessee wherein the assessment was reopened on an issue regarding deposit of a sum of Rs.89,60,505/- in its saving bank account, however during the assessment proceedings it was noted that in the saving bank account of assessee had deposited only Rs.29,20,936/-. So, the AO dropped the issue for which he re-opened the assessment, and denied the benefit of exemption u/s 10(23C)(iiia) of the Act and added the same of Rs.23,41,940/- which action of AO was challenged before the Ahmedabad Tribunal, wherein Tribunal has held as under: -

"6. We have heard the rival contentions and perused the material on record. Before going into merits of the case, we would like to first deal with the challenge by Ld. Counsel for the assessee on the initiation of reassessment proceeding being bad in law and hence void ab-initio. The Courts on various occasions have held that when on the ground on which reopening of assessment was based, no addition was made by Assessing Officer, then Assessing Officer could not make additions on some other grounds which did not form part of reasons recorded by him. The Hon'ble Supreme Court in the case of Pr. CIT v Lark Chemicals (P.) Ltd [2018] 99 taxmann.com 312 (SC) held that where High Court having noticed that order passed consequent to reassessment, had not confirmed addition attributable to reasonable belief of Assessing Officer while issuing reopening notice, and set aside the said reassessment order, SLP filed against decision of High



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

Court was to be dismissed. In the case of CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat), the Hon'ble Gujarat High Court held that when on ground on which reopening of assessment was based, no addition was made by Assessing Officer, he could not make additions on some other grounds which did not form part of reasons recorded by him. In the case of CIT v. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay), the Bombay High Court held that if after issuing notice under section 148, Ld. Assessing Officer accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee. In the recent case of Aishwarya Rai Bachchan v. Pr. CIT [2022] 135 taxmann.com 335 (Mumbai - Trib.), ITAT held that where AO recorded reasons on basis of which reassessment was initiated, but did not make any addition in reassessment proceedings, in such case primary reason to believe that income had escaped assessment would fail and reassessment could not be treated as a valid order. Again in ACIT v. Everest Education Society [2021] 126 taxmann.com 78 (Pune - Trib.), ITAT held that where reasons recorded and notice issued under section 147/148 was with respect to underutilization of income of assessee trust for which there had been no addition made, but Assessing Officer made addition on account of 'anonymous donation' under section 115BBC, Assessing Officer having acted beyond his jurisdiction, and therefore Commissioner (Appeals) had rightly directed Assessing Officer to delete addition so made.



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

6.1 Now, coming to specific facts of the instant case, we note that the reassessment proceedings were reopened by the Ld. Assessing Officer on the following basis:

"On examination of details available with this office, it is established that the assessee during the FY 2009-10 relevant to AY 2010-11 has made cash deposit of Rs. 89, 60,505/- in saving bank a/c maintained by them in Bank of India. However, on verification in ITD it is seen no return of income for AY 2010-11 is filed by the assessee. Hence, I have a reason to believe that an amount of Rs. 89,60,505/- has escaped assessment for the AY 2010-11 and this is a fit-case for reopening u/s 147 of the Act by Issuing notice u/s 148 of the Act. " 3. It is requested that objections to the above, if any, may be filed in this office within 60 days of this letter."

6.2 However, in the assessment order, we note that the Ld. Assessing Officer has not made any additions and nor even discussed the issue on the basis of which the reassessment proceedings were initiated. The assessee had pointed out that the Ld. Assessing Officer had committed a factual inaccuracy by stating that a sum of Rs. 89,60,505/- was deposited in the bank account, whereas total cash deposits in the bank account held by the assessee were to the tune of Rs. 29,85,834/-only and this fact has not been controverted either by the Ld. Assessing Officer or the Ld. CIT(A). In fact, we note that Ld. CIT(A) in the appeal proceedings disposed of the challenge on this issue with the remarks "As per Ld. Assessing Officer, cash deposit was Rs.89,60,505/-whereas as per the appellant it has deposited Rs.



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

29,85,834/-only. Assessing Officer has accepted Appellant's version. Hence, dispute on this aspect ends here". Hence, as noted above, no addition was made by Ld. Assessing Officer in respect of cash deposits made in the bank account of the assessee, which was the basis on which reassessment was initiated for the captioned year. Now, therefore once the Revenue has accepted the assessee's contentions in respect of the cash deposits, and has not made any addition on the basis of which reassessment was re-opened, and have proceeded to make additions on entirely different set of issues not forming part of notice issued u/s 148 of the Act, the issue for consideration is whether additions made during reassessment proceedings can be sustained. In our considered view, in the light of Hon'ble Supreme Court's decision in the case of Pr. CIT v Lark Chemicals (P.) Ltd [2018] 99 taxmann.com 312 (SC) and jurisdictional High Court in the case of CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat), Ld. Assessing Officer is precluded from making the afore-said additions made in reassessment proceedings. In our view, once having accepted the assessee's version regarding cash deposit of Rs. 89,60,505/-, wherein Ld. Assessing Officer did not make any addition on that count in reassessment proceedings (in fact, this aspect of cash deposit of Rs. 89,60,505/- does not even find mention in the entire reassessment order), the additions made by Ld. Assessing Officer on other grounds not finding part of reasons for reopening assessment, are liable to be set-aside. Having held that additions made during reassessment proceedings deserve to be set aside on grounds of jurisdiction, we are not going into the individual grounds with respect to merits of the case.



ITA NO.1635/MUM/2022
AY 2010-11
Wescon Finance & Leasing Pvt. Ltd.

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

17. It is noted that similar view has been expressed in the cases of Pr. CIT Vs. Lark Chemicals (P.) Ltd. (2018) 99 taxmann.com 312 (SC), Aishwarya Rai Bachchan Vs. Pr. CIT (2022) 135 taxmann.com 335 (Mumbai-Trib.) and ACIT Vs. Everest Education Society (2021) 126 taxmann.com 78 (Pune-Trib.). In the light of the aforesaid decisions (supra) and for the reasons discussed above, the assessee succeeds on the legal issue it has raised. And therefore, the re-assessment order dated 31.12.2017 is held to be non-est in the eyes of law and quashed. Ground No. 1 therefore stands allowed.

18. Since the assessee has succeeded on the legal issue, the ground raised challenging the merits of the addition have become academic and therefore do not warrant any adjudication.

19. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 28/02/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/02/2023.
Vijay Pal Singh, (Sr. PS)



ITA NO.1635/MUM/2022

AY 2010-11

Wescon Finance & Leasing Pvt. Ltd.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त / CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार / (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai