

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2169/Mum/2022 (A.Y. 2012-13)

Babulal Pukhraj Sanghvi
C/o D.C. Bothra & Co. LLP (CA)
(Formerly known as D.C. Bothra & Co.),
297, Tardeo Road, Wille Mansion,
1st Floor, Opp. Bank of India,
Nana Chowk, Mumbai-400007
PAN: AACPS6204Q

..... Appellant

Vs.

ACIT, Circle-19(1),
Room No. 203, 2nd Floor,
Matru Mandir, Tardeo Road,
Mumbai-400007.

..... Respondent

Appellant by	:	Sh. Rajkumar Singh
Respondent by	:	Sh. Kiran Unavekar
Date of hearing	:	17/10/2022
Date of pronouncement	:	13/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals)-30, Mumbai [for short 'CIT(A)'] dated 11.07.2022 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2012-13. The Assessee has raised the following grounds of appeal:

“1. That on facts and circumstances of the case notice issued under section 148 dated 28.03.2019 in the case after 4 years from the end of assessment year, to reopen the earlier concluded assessment under section 143(3) and consequent assessment order passed under section 143 (3) r.w.s. 147 on 16.12.2019 is legally unsustainable hence may be quashed on the following grounds:

- (i) That impugned Notice u/s 148 issued to re-examine an issue which was accepted in original assessment proceeding u/s.143(3) after requisite verification with due application of mind as per settled judicial position amounts to nothing but initiation of reassessment proceeding only change of opinion not permitted under tax law provisions.*
- (ii) That impugned Notice u/s. 148 issued relying solely on the information received without doing any own independent verification or investigation as per settled judicial position amounts to resorting of reassessment proceeding on borrowed satisfaction not permitted under the provisions of tax law.*
- (iii) That the alleged addition made under section 68 at Rs. 10,00,000/- only on the basis of information received without bringing any contrary cogent material on record that too in violation of principal of natural justice without providing the documents and information relied upon and used adverse to assessee and also without giving any opportunity to assessee appellant of cross examination of the alleged hawala entry provider is contrary to settled position of law rendering the impugned assessment order in nullity and without jurisdiction.*

2. That even on merit of the case addition made under section 68 of the I.T. Act, 1961 at Rs. 10,00,000/- in respect of unsecured loan taken from Marine Gems Private Limited alleged to be hawala entry provider concern of Shri Gautam Jain Group on the basis of only information received from DGIT (Inv.), Mumbai disregarding the supporting documentary evidences such as duly executed loan confirmation letter, copy of acknowledgement of ITR filed, relevant bank statements and duly sworn affidavit of loan creditor filed on assessment record and also without doing any own independent investigation or verification or bringing any adverse material on record being wrong on facts and bad in law therefore impugned addition may be deleted.

3. That all the appeal grounds raised are independent ground and without prejudice to each other. ”

3. Brief facts of the case are that assessee is a proprietor of M/s Nandishwar Steels. Assessee filed his return of income on 29-09-2012 declaring

income of Rs 14, 74,203/-. Assessee's case was selected for scrutiny and assessed to tax u/s 143(3) vide order dated 24-03-2015. Assessee is engaged in trading of ferrous and nonferrous metals.

4. A search and survey operation was conducted in the case of one Shri Gautam Jain and others on 03-10-2013 by the DGIT (Investigation Mumbai). During search operations department found that assessee had taken a loan from M/s Marine James Pvt Ltd amounting to Rs 10, 00,000/-(a company belongs to Gautam Jain Group). In the assessment order passed u/s 143(3) r.w.s. 147 in the case of assessee we found that AO brought on record the complete modus operandi of Gautam Jain Group along with certain circumstantial evidences also. Based on information received from the office of DGIT (Investigation Mumbai) a notice u/s 147 dated 28-03-2019 was issued to the assessee. In response to the notice assessee filed return of income u/s 148 on 15-04-2019 declaring total income at Rs 14,74,203/.

5. Assessee objected the reopening of the case and that was duly disposed of by the AO vide order dated 12-12-2019.

6. We have gone through the notice issued u/s 148, notice issued u/s 142(1) and 143(2) (in consequence to notice issued u/s 148), notice originally issued u/s 142(1) and 143(2), order passed u/s 143(3) (original assessment order dated 28-03-2015), order u/s 143(3) r.w.s 147 dated 16-12-2019 and order of Ld.CIT(A) u/s 250 dated 11-07-2022.

7. We have gone through the original notice u/s 143(2), wherein this issue of getting unsecured loan from M/s Marine James Pvt Ltd is categorically asked for vide para 14 page 84 of the paper-book. In response to this we have gone through the relevant information filed by the assessee in the form of ITR, bank statement and copy of account confirmation. The amount of loan taken by the

assessee is duly reflected in his balance-sheet as well as tax audit report. Assessee also paid interest on the loan taken from M/s Marine James Pvt Ltd after deducting TDS on the same.

8. Considering the above facts and documents referred upon by us, we can reasonably conclude that assessee never hides any information and all the relevant information were already on record through balance-sheet and tax audit report. The same were duly enquired by the then AO during the original assessment proceeding and assessee was able to complete that enquiry up to the satisfaction of the AO at that time. Moreover, search in the case of Gautam Jain Group took place on 03-10-2013 i.e. much before assessment order originally passed on 24-03-2015 by the then AO. Department could have share this information in 2013 itself so that much further enquiry could have been done on this matter.

9. It is further observed that department itself accepted interest income disclosed by M/s Marine James Pvt Ltd in their assessment u/s 143(3) r.w.s.153(c). In our opinion the contention of the assessee has force that the proceeding u/s 148 has been carried out without application of mind and with borrowed satisfaction. This fact is further strengthen with the fact that no independent enquiry has been carried out by the AO during the assessment proceeding and the amount of loan what we observe from the order has been added back u/s 69C. it is ample to understand that AO proceeded with borrowed satisfaction and without application of mind on the other hand assessee had already disclosed the relevant transaction in his books of accounts and tax audit report, which was further enquired and accepted in the original assessment order by the then AO. The interest paid by the assessee to the lender party were also disclosed by lender and duly accepted and assessed

in their hand by revenue. So where the question of accommodation entry is stands.

10. In view of the above we set aside the orders of the authorities below and declare the assessment order passed u/s 143(3) r.w.s 147 as beyond jurisdiction and bad in law. As we have declared the order itself without jurisdiction, ground relating to merits of the case became infructuous.

11. **In the result, appeal filed by the assessee is allowed.**

Order pronounced in the open court on 13th day of January, 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER
Mumbai, दिनांक / Dated: 13/01/2023
SK, Sr.PS

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai