

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: E: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.1946/Del/2020
Assessment Year: 2011-12

Milky Way Consultants LLP, 591-598/1, First Floor, Opposite Seema Chai, Jheel, Khuranja Colony, East Delhi, Delhi 110051 PAN ABAFM 2733 K	vs.	ITO, Ward 37(1), Delhi
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Adv. & Ms. Mansi Jain, Adv.
For Revenue :	Shri Sumit Kumar Verma, Sr. DR

Date of Hearing :	17.05.2023
Date of Pronouncement :	16.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A) New Delhi dated 28.02.2020 for AY 2011-12.

2. The Id. counsel of assessee, pressing into service ground no. 1 to 4 of assessee the Id. counsel submitted that against the of the reasons recorded by the Assessing Officer copy available at pages 15 & 16, the assessee filed objections on 12.11.2018 and requested the Assessing Officer to adjudicate the objections by passing a well reason orders. The Id. counsel submitted that at the time of recording reasons for reopening of assessment the Assessing Officer picked up amount of six entities amounting to Rs. 1,70,00,000/- whereas in fact, the assessee received unsecured loans Rs. 85 lakh from three entities i.e. M/s Royal Mirage Financial Consultants P. Ltd., M/s. Mithila Investment & Finance P. Ltd. & M/s. Softpro Technologies P. Ltd. only and other three entities noted by the Assessing Officer in the reasons were the erstwhile name of said three companies which were not in existence at the time of taking unsecured loans by the assessee during assessment year 2011-12.

3. The Id. counsel submitted that even at the time of recordings of reasons the Assessing Officer was not aware about the actual nature of transaction and hence, there is no such mentioning in the reasons. The Assessing Officer has made double additions by taking names of erstwhile and non-existing entities and without making any inquiry about the actual nature of transaction therefore it is a clear case of non-application mind by the Assessing Officer therefore she submitted that in view of judgment of Hon'ble jurisdictional High Court of Delhi in the case of PCIT vs. SNG Developers Ltd. 404 ITR 312 (Del.) that the reopening of assessment has to be held as bad in law.

4. Replying to the above, the Id. Senior DR strongly supported the orders of the authorities below and submitted that at the time of recording reasons the Assessing Officer is not required to make a details inquiry on the entire material gathered by the investigation team hence non application of mind cannot be alleged to tag the reassessment order as invalid and bad in law.

5. On careful consideration of above submissions, first of all, since the assessee is alleging non application of mind by the Assessing Officer at the time of recording reasons for reopening of assessment therefore, we find it appropriate to reproduced the reason recorded by the Assessing Officer which is as follows:-

Name & Address of the Assessee	Milkyway Consultants (LLP), Formerly Known As Milkyway Consultants Pvt. Ltd. Plot No. 1, Pocket No. 15-A, Rohini, Sector-24, Delhi-110085
PAN	ABAFM2733K
Status	Firm
Assessment Year	2011-12
Details of the Assessing Officer having jurisdiction over the assessee	ITO Ward 37(1)

15

Reason for reopening of the assessment in case of Milkyway Consultants (LLP) for A.Y. 2011-12 u/s 147 of the Income Tax Act, 1961.

- The assessee is a LLP and filed his income tax return for the AY 2011-12.
- A letter received from DDIT (Inv.)-1, Noida on the official mail of the undersigned AO. The main contents of the letter are reproduced and summarised hereunder:
"A search and seizure action was carried out on 13.04.2017 in the case of Mr. Himanshu Verma (Entry Operator). He is maintaining approx. 300 shell companies/concerns for providing accommodation entries in lieu of commission. The extensive Enquiry Report in the case of bogus companies operated and managed by Mr. Himanshu Verma (Entry Operator) has been enclosed with this mail. Mr. Himanshu Verma has admitted on oath that he has been maintaining the bogus companies and provides bogus bills/invoice of loans/capital etc. to the beneficiaries in lieu of commission and after receiving the amount received from the beneficiary in some of his bogus companies, he ultimately transfers the amount to its beneficiary. The facts and enquiries made in the case are discussed extensively in the Investigation Report attached herewith.
During the post search investigation, bank book of every bogus company/concern was extracted from the books of accounts found in tabular format in the Hard disks seized during the course of search. The bank books of all these bogus companies/concerns were merged in a single excel sheet with a view to track the total amount of bogus entry provided to a particular beneficiary for FY 2010-11. The excel sheet has been attached herewith in soft copy and marked as "Merged Bank Books for FY 2010-11" containing the name of the beneficiaries, amount, name of entry provider company, PAN and jurisdiction of the beneficiaries. This merged excel sheet has transactions of all the beneficiaries of bogus companies for FY 2010-11.
Therefore, the Assessing Officer is suggested to select the cases of his jurisdiction from the sheet name "Jurisdiction of beneficiaries" and extract the ledger of the same from sheet named "FY 10-11 Ledger" in "Merged Bank Books for FY 2010-11" and take remedial action in the case of beneficiary of your jurisdiction after reopening the case u/s 147 of the Income Tax Act, 1961 for AY 2011-12 on urgent basis as the case is going to be time barred on 31.03.2018."

3. From the information received data of the assessee has been derived pertaining to FY 2010-11 which is reproduced hereunder:

Date	Particulars	Name of the company	Veh Type	Debit	Credit	Name of Entry Provider Company whose bank book is appended on the column A to B.
28-09-2010	By	MILKY WAY CONSULTANT LTD.	Payment		5000000.00	Saunak Technologies Pvt. Ltd.
28-09-2010	By	MILKY WAY CONSULTANT LTD.	Payment		5000000.00	Soffpro Technologies Pvt. Ltd.
05-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	1000000.00		Saunak Technologies Pvt. Ltd.
05-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	1000000.00		Soffpro Technologies Pvt. Ltd.
07-03-2011	By	Milky Way Consultants Pvt. Ltd.	Payment		1000000.00	Breanne Star Techsoft Pvt. Ltd.
07-03-2011	By	Milky Way Consultants Pvt. Ltd.	Payment		2500000.00	Mithilanchal Investment & Finance Pvt. Ltd. Ltd.
07-03-2011	By	Milky Way Consultants Pvt. Ltd.	Payment		1000000.00	Royal Merage Financial Consultants Pvt. Ltd.
07-03-2011	By	Milky Way Consultants Pvt. Ltd.	Payment		2500000.00	Shruant Realty Pvt. Ltd.
08-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	2000000.00		Saunak Technologies Pvt. Ltd.
08-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	1500000.00		Saunak Technologies Pvt. Ltd.

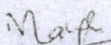
Certified True Copy

08-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	2000000.00	Soffpro Technologies Pvt. Ltd.
08-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	1500000.00	Soffpro Technologies Pvt. Ltd.
22-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	500000.00	Saunak Technologies Pvt. Ltd.
22-03-2011	To	MILKY WAY CONSULTANT LTD.	Receipt	500000.00	Soffpro Technologies Pvt. Ltd.

4. In view of the findings stated in Para no 2 & 3 above, the undersigned has reason to believe that the assessee's income for A.Y 2011-12 has escaped assessment within the meaning of Section 147 of the I.T. Act, 1961, because the assessee has filed return of income for the year consideration and no assessment u/s 143(3) of the Income Tax Act, 1961 has been made now it becomes compulsory to initiate proceedings u/s 147 to verify and examine the facts mentioned above in para no. 1 to 3. It is pertinent to mention here that in this case the assessee has filed the return. The information available with the undersigned, which has already been discussed in para no. 1 to 3 above have also indicates that the assessee has concealed income which is to be assessed under the I.T. Act 1961.

5. In view of the above, the provisions of clause (b) of Explanation 2 to Section 147 are applicable facts of this case and the assessment year under consideration is deemed to be case where income chargeable to tax has escaped assessment.

Hence, necessary sanction to initiate proceedings u/s 147 and issuance of notice u/s 148 be accorded.


(Manju Ahuja)
Income Tax Officer
Ward-37(1), New Delhi

6. From the copy of the objection and request of assessee vide dated 12.11.2018 for dropping the proceedings we note that the assessee at the very first instance inform the Assessing Officer about the actual facts of the case. From the reasons recorded it is clear that at the time of recording reasons the Assessing Officer in para 2 recorded the letter received from the DDIT (Inv.) -1, Noida, in para 3 he reproduced a table showing debit and credit payment to the assessee by six entities and in para 4 he jumped to a conclusion that he has reason to believe that the assessee's income for AY 2011-12 has escaped assessment without assigning any character or mode of alleged transactions. The Id. Senior DR has not disputed a factual position a merged from pages 62 to 67 of assessee paper book that M/s. Saunak Technologies P. Ltd. is the new name of M/s. Soffpro Technologies Pvt. Ltd. which was changed with effect from 03.01.2015. M/s. Bronz Star Techsoft Pvt. Ltd. is the new name of M/s. Royal Mirage Financial Consultants Pvt. Ltd. with effect from 24.03.2015. similarly, M/s. Shulini Realty Pvt. Ltd. is the new name of M/s Mithilanchal Investment & Finance Pvt. Ltd. with effect from 09.04.2015.

7. The Assessing Officer has not made any inquiry about the character or nature of transaction and proceeded to initiate reassessment proceedings to issue notice u/s. 148

of the Act for AY 2011-12 by considering the non existing entities during said period which were came into existence during FY 2014-15 pertaining to assessment year 2015-16, incorrectly considering the transaction twice, which clearly establish non application of mind by the Assessing Officer at the time of recording reasons. Therefore we are inclined to hold that the Assessing Officer has not given details or has not examined the character of nature of alleged transaction and even the existence of alleged entities during relevant AY 2011-12 was not examined by the Assessing Officer this shows non application of mind by the Assessing Officer. In the case of PCIT vs. SNG Developers Ltd. (supra) the Hon'ble High Court concurring the view taken by the Tribunal held that the jurisdictional mandatory requirement for reopening of assessment u/s. 147 and issuance of notice u/s 148 of the Act has to be held as not satisfied in a case where there was clear non application of mind by the Assessing Officer while recording the reasons to believe that income has escaped assessment. Respectfully following the same we hold that in the present case the reasons recorded by the Assessing Officer for reopening of assessment u/s. 147 of the Act do not meet the requirement of law and hence the same has to held as unsustainable being bad in law. Accordingly ground no. 1 to 4 of assessee are allowed and initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act and all consequent orders and proceedings are quashed.

8. Since by the earlier part of this order we have quashed reassessment order therefore other grounds of assessee on merits are not being adjudicated as neither the Id. representatives of both the sides have made any submissions thereon and nor we find it proper to adjudicate the same in absence of any submissions and thus the same are not adjudicated and left open.

9. In the result, the appeal of the assessee is partly allowed on legal grounds.

Order pronounced in the open court on 16.06.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 16th June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi