

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.1943/Del/2020
Assessment Year: 2011-12

Magpie Marketing LLP, 73, Basement, National Park, Lajpat Nagar IV, New Delhi 110024 PAN ABAFM 4178 N	vs.	ITO, Ward 38(2), 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 24.02.2020 for AY 2011-12.

2. The grounds of appeal raised by the assessee are as follows:-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.

2. On the fact and circumstances of the case, Id. CIT(A) has erred both on facts and in law in passing the order without giving assessee a fair and adequate opportunity of being heard.

3. On the facts and circumstances of the case, the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.

4. (i) On the fact and circumstances of the case, the order passed by the A.O. is bad in the eye of law and on facts, as the same is made on the basis of reasons recorded without there being any independent application of mind.

(ii) That the reassessment order passed by the A.. is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and against the facts on record.

3. 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 13 & 14, the assessee filed objections on 23.11.2018 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 five entities totaling to Rs. 1,16,02,500/-. The Id. counsel submitted that at the time of recording reasons the Assessing Officer was not aware of the nature of transactions as he has not mentioned in the reasons as to on what count the assessee had received these amounts. The Id. counsel submitted that in fact the assessee has received share application money from three entities i.e. Accent, Rhythm and City life, while it has received money on account of sale of shares from Star Delta and Transmission. Vehemently relying on the various judgements including judgment of Hon'ble Jurisdictional High Court of Delhi in the cases of PCIT vs. Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.) and PCIT vs. RMG Polyvinyl (India) Ltd. 396 ITR 5 (Del), the learned AR submitted that the initiation of proceedings u/s. 147 of the Act, notice u/s. 148 of that and all assessment proceedings and orders may kindly be quashed only on two count.

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 from the copy of the reasons recorded by the Assessing Officer available at pages 13 & 14 of assessee paper book first of all we note that in first three paras the Assessing Officer noted the facts and details regarding search and seizure operation on Shri Himanshu Verma group and thereafter tallied the same with return of income filed by the assessee for AY 2011-12. Thereafter in subsequent para he mentioned the provision of explanation 2(b) to section 147 of the Act and directly held that it is a case where it shall be deemed to be the case where income chargeable to tax has escaped assessment and in the subsequent para he directly jumped to a conclusion that he has reason to believe that undisclosed income has escaped assessment. We are unable to see any exercise on the part of the Assessing Officer to examine and ascertain the character or nature of transaction alleged by the investigation wing. In the case of PCIT vs. Meenakshi Overseas (supra) and PCIT vs. RMG Polyvinyl India Ltd.n(supra) the Hon'ble Jurisdictional High Court held that the reason to believe contain not the reason only but

the conclusion of the Assessing Officer and where there is no independent application mind by the Assessing Officer to the tangible material which forms the basis of the reason to believe that income has escaped assessment, the conclusions of the Assessing Officer are at best a reproduction of conclusion in the investigation report which indeed a "borrowed satisfaction". Their Lordship also held that when the reason fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment then it has to be held that the initiation of reassessment proceedings u/s. 147 of the Act and issuance of notice u/s. 147 of the Act does not satisfy mandatory requirement of the law and thus, the initiation of reassessment proceedings, issuance of notice u/s. 148 of the Act, and all consequent proceedings and orders including reassessment order deserve to be quashed being bad in law and we hold so. Accordingly, legal grounds no. 1 to 4 of assessee are allowed.

6. 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 ld. 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.

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

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