

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.4739/Del/2019

निर्धारणवर्ष/Assessment Year: 2008-09

Namah Shivaya Trading Pvt. Ltd., 206, Hans Bhawan, 1 BSZ Marg, New Delhi.	<u>बनाम</u> Vs.	ITO Ward 17(3) New Delhi.
PAN No. AABCN7434Q		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Suresh K. Gupta, CA
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	19.09.2023
उद्घोषणाकीतारीख/Pronouncement on	29.09.2023

आदेश /ORDER

This appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-37, New Delhi dated 30.03.2019 for AY 2008-09.

2. First of all, the Ld. Assessee's Representative (AR), submitted that the assessee is challenging validity of initiation of reassessment proceedings by the Assessing Officer (AO) in ground no.5 which reads as under: -

"5. The Ld.CIT(A) has erred on facts and in law in upholding the impugned order of the Ld. Assessing Officer where initiation u/s 148 & consequent

proceedings are contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record.”

3. The Ld. AR reiterated the written submissions of assessee and submitted that the AO did not assume valid jurisdiction to initiate reassessment proceedings u/s 147 of the I.T. Act, 1961 (for short ‘the Act’) and to issue notice u/s 148 of the Act on following counts:

- i. The AO initiated reassessment proceedings based on incorrect facts and without application of mind while recording reasons;*
- ii. No independent enquiry was made by the AO on the facts of the information and alleged adverse material regarding such companies characterized as bogus entry;*
- iii. The Assessing Officer completed assessment proceedings and frame reassessment order u/s 143(3)/147 of the Act by issuing notice u/s 143(2) of the Act before supply of reasons thereby debarring appellant to file objection to the assumption of jurisdiction for initiation of reassessment proceedings.*

4. The Ld. AR raising above legal contentions submitted that since the AO did not assume valid jurisdiction to initiate the reassessment proceedings and to issue notice u/s 148 of the Act, therefore, initiation of reassessment proceedings and all constant

proceedings an order including impugned reassessment order may kindly be quashed.

5. Replying to the above, the Ld. Sr. DR strongly supported the orders of the authorities below and submitted that the AO did assume valid jurisdiction for initiation of reassessment proceedings and issuance of notice u/s 148 of the Act and, therefore, legal contentions of assessee may kindly be dismissed.

6. On careful consideration the rival submissions, first of all I proceed to adjudicate the first legal contention of assessee that the AO has initiated reassessment proceedings by recording reasons based on incorrect facts and without application of mind. From the sake of completeness of my findings, I find it appropriate to reproduce reasons recorded by the AO (PB pages 19-20) for initiation of reassessment proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act, which is as follows: -

“ANNEXURE A

Reasons for the belief that Income has escaped assessment in the case of M/s. Namah Shivay Trading Private Ltd. (PAN AABCN7434R)

It is a proposal for reopening the case u/s 147 of the IT Act for the A.Y. 2008-09 in the prescribed proforma.

A search and seizure action u/s 132/133A of the Income Tax Act, 1961, was conducted at the residential

and business premises of Shri Surender Kumar Jain group of cases (entry operator). During the course of post search investigation and preparation of appraisal report it has been evidently established that Shri Surender Kumar Jain is known entry providers and is in the business of providing accommodation entries to various beneficiary companies/entities/persons through cheques through a number of paper & dummy companies in lieu of cash. These dummy companies are totally managed and controlled by Shri Surender Kumar Jain.

During the course of search action vast number of incriminating documents were found and seized. These documents includes date wise and month wise hand written cheque books and cash books maintained by Shri Surender Kumar Jain over a long period of time. In these cheque books and cash books details of cheque provided to the beneficiary companies/entities/persons companies/entities/ persons were recorded date wise.

From the verification of the documents seized from the residence of Shri Surender Kumar Jain it clearly appears that the assessee company had obtained accommodation entries from various paper companies of Shri Surender Kumar Jain in lieu of cash during the financial year 2007-08 relevant to the assessment year 2008-09 for a total amount mentioned against their names. These bogus share capital and premium has cleanly escaped taxation in these assessment years therefore these amounts are required to be taxed in the hands of these companies by initiating action under section 148 of the Income Tax Act, 1961.

Details of the company/ entity/ person and cheque/ pay orders issued in the name of this company/ entity/ person are reproduced below in a tabular:

Bank Book Date	From	To	Bank	Cheque / RTGS	Cheque Date	Amount	Through	Annx No.	Page No.
24.12.2007	Finage Lease & Finance India Ltd	Namah Shivaya Marketing P. Ltd	Axis	098462	24.12.2007	500000	Y.K.Gupta	A-75	37
24.12.2007	Mani Mala Delhi Pro. P.Ltd.	Namah Shivaya Marketing P. Ltd	Axis	098216	24.12.2007	500000	Y.K.Gupta	A-75	37

26.12.2007	Lotus Realcon P. Ltd	Namah Shivaya Marketing P. Ltd	Axis	094140	26.12.2007	500000	Y.K.Gupta	A-75	40
26.12.2007	Mega Top Promoters P Ltd	Namah Shivaya Marketing P. Ltd	Axis	094320	26.12.2007	500000	Y.K.Gupta	A-75	40
14.01.2008	Shalini Holding Ltd	Namah Shivaya Trading P. Ltd	Axis	190244	14.01.2008	1000000	Y.K.Gupta	A-89	18
Total						30,00,000			

I have perused the information received from the Investigation Wing, New Delhi. The Investigation Wing of the Department has sent comprehensive details comprising inter alia the Beneficiary's Name, Value of entity Taken, Date on which Entry taken etc.

In the aforesaid case return of income was filed on 09.07.2008 declaring income of Rs.7,070/-. Subsequently, after receipt of information of accommodation entries taken by the beneficiaries, it is noticed that the assessee company M/s Namah Shivay Trading Pvt. Ltd. received accommodation entries to the tune of Rs. 30,00,000/- during the F.Y. 2007-08 relevant to assessment year 2008-09 from the entry operators as mention in the chart above.

Having perused and considered the information, I have reason to believe that income of the assessee company to the extent of Rs. 30,00,000/- has escaped assessment for the A.Y. 2008-09 on account of failure on part of the assessee company to disclose fully and truly all material facts/ particulars of its income necessary for its assessment for the A.Y. 2008-09. Therefore,

proceedings u/s 147 i.e. Clause(b) of explanation 2 of provisions of Section 147 of the I.T. Act, 1961 is proposed to be initiated for A.Y. 2008-09.

Since four years have elapsed from the end of the relevant assessment year i.e. A.Y. 2008-09, approval of the Addl. Commissioner of Income Tax, Range-17, New Delhi is solicited u/s 151(2) of the I.T. Act, 1961.

*Sd/-
ITO Ward 17(3), New Delhi.”*

6.1 The name of present assessee is M/s Namah Shivaya Trading Pvt. Ltd. and copy of the reasons recorded by the AO available at pages 19-20 (supra) reveals that the AO has drawn a table in the reasons, wherein five entries has been mentioned and detail of such entries show that the first four entries pertains to M/s Namah Shivaya Marketing Pvt. Ltd. and only fifth entry dated 14.01.2008 pertains to present assessee i.e. M/s Namah Shivaya Trading Pvt. Ltd. From the copy of the objection raised by the assessee before the AO against initiation of reassessment proceedings vide dated 13.07.2015 which were rejected by the Assessing Officer and in the said rejection order dated 05.08.2015 the Assessing Officer reframed the table by changing names of first four entries from Namah Shivah Marketing Pvt. Ltd. to M/s Namah Shivah Trading Pvt. Ltd. i.e. the assessee which clearly shows that the AO himself noticed mistake crept in the reasons recorded by him. The above noted facts and conclusion clearly show that the initiation of

reassessment proceedings are based on incorrect facts taken from the information supplied by the Investigation Wing without the same being verified either from the bank or from the assessee prior to initiation of reassessment proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act. Therefore, I am inclined to hold that the AO recorded reasons based on incorrect facts which clearly show non-application of mind and such perverse action of the AO for assuming jurisdiction leads to invalidation of reassessment proceedings.

7. To support first legal contention, the Ld. AR has relied on the various judgments and orders including recent judgment of Hon'ble Jurisdictional High Court of Delhi in the case of Shamshad Khan Vs. ACIT (395 ITR 265) and PCIT Vs. SNG Developers Ltd. (404 ITR 312) (Del.) approved by the Hon'ble Supreme Court by dismissing SLP of Revenue No.42379/2017 dated 09.02.2018.

8. Regarding second legal contention of Ld. AR that the AO has not made any enquiry on the factual information received by Investigation Wing is concerned. From the copy of reasons recorded placed at pages 19-20 of the assessee's paper book. I note that at the first page upto second page the AO mentioned information received from Investigation Wing, New Delhi. Thereafter, on top

and second para at page 2 noted that he has perused the information received from Investigation Wing and noted that after receipt of information of accommodation entries taken by the beneficiaries, it is noticed that the assessee company received accommodated entries to the tune of Rs.30 lakhs during FY 2007-08 relevant to AY 2008-09 from the entry operators as mentioned in the table/chart noted above. Thereafter, in third para at page 2 the AO directly jumped to record a conclusion that he has reason to believe that income of the assessee company to the extent of Rs.30 lakhs has escaped assessment for AY 2008-09 on account of failure on the part of assessee company to disclose fully and truly all material facts/particulars of its income necessary for its assessment for AY 2008-09. I am unable to see any independent enquiry on the facts mentioned in the information received from the Investigation Wing and without making any enquiry and the AO directly jumped to a conclusion that he has reason to believe that income for AY 2008-09 has escaped assessment.

9. In the case of M/s R N Khemka Enterprises P. Ltd. Vs. ITO in ITA No.7244/Del/2019 dated 12.08.2021 ITAT of Delhi Bench on identical facts quashed the reassessment proceedings notice u/s 148 of the Act and impugned reassessment order on the ground of non-

verification of information received from Investigation Wing by the AO. Therefore, the action of AO in assuming jurisdiction to initiate reassessment proceedings also fails on the touch stone of second legal contention of assessee.

10. In the third and last legal contention it has been alleged that the AO issued notice dated 17.03.2015 u/s 148 of the Act against which the appellant company submitted return of income vide letter dated 20.03.2015 and requested the AO to supply copy of the reasons recorded. The AO issued notices u/s 143(2)/142(1) of the Act on 19.05.2015 and the reasons were supplied to the AO on 05.06.2015. After narrating the above facts the Ld. AR submitted that the for framing reassessment order the AO is mandatorily required to issue notice u/s 143(2) of the Act only after providing copy of the reasons recorded to the assessee but in the present case the AO issued said notice u/s 143(2) of the Act on 19.05.2015 before supplying reasons which means that the AO proceeded to assume jurisdiction to make reassessment before allowing appellant to file objection for assumption of jurisdiction as on 05.06.2015 i.e. subsequent to the issuance of notice u/s 143(2) of the Act. Hence, issuing notice u/s 143(2) of the Act before allowing appellant to file objection and subsequent disposal of the same is nothing but gross

non-compliance at mandatory requirement of law and thus, non-application of mind by the AO is vivid.

11. Ld. AR has placed reliance on the decision of Hon'ble Jurisdictional High Court of Delhi in the case of Mastech Technologies Pvt. Ltd. Vs. DCIT WP(c) 2858/2016 dated 13.07.2017, wherein para 30 of judgment, it was held that the issuance of notice u/s 142(1)/143(2) of the Act before supplying the reasons to the assessee and considering the petition of objection and passing reasoned order thereon does not meet requirement of law and such legal infirmity leads to inevitable invalidation of all proceedings that took place in pursuant to notice u/s 148 of the Act. Ld. AR has also placed reliance on the order of ITAT Delhi Bench in the case of M/s R N Khemka Enterprises P. Ltd. Vs. ITO in ITA No. 7244/Del/2019 dated 12.08.2021.

12. The Ld. Sr. DR has supported the orders of the authorities below but did not controvert the factual position that the AO issued notice u/s 143(2) of the Act on 19.05.2015 and subsequent to that provided copy of the reasons recorded by him for initiation of reassessment proceedings to the assessee on 05.06.2015.

13. In view of above, the third legal issue is also squarely covered in favour of the assessee by the judgment of Jurisdictional High Court of Delhi in the case of *M/s Mastech Technologies Pvt. Ltd.* (supra), wherein under identical circumstances their lordships speaking for jurisdictional High Court held that the issuance of notice u/s 143(2) of the Act before supplying the reasons for initiation of reassessment proceedings and considering the petition of objection and passing reasoned order thereon does not meet requirement of law and such legal infirmity leads to inevitable invalidation of all proceedings including impugned reassessment order passed in pursuance to the notice u/s 148 of the Act.

14. Regarding second legal contention, I am of the view that the logical analysis of the contents of reasons recorded by the AO clearly reveals that before drawing conclusion and reason to believe that income has escaped assessment the AO has not made any factual verification of the information received from the Investigation Wing, therefore, the initiation of reassessment proceedings and all constant proceedings and orders including reassessment proceedings and order has to be quashed. In view of proposition rendered by coordinate bench of ITAT Delhi in the case of *M/s R N Khemka Enterprises P. Ltd. Vs. ITO* (supra).

15. Regarding first legal contention as I have noted above that the copy of the reasons recorded available at pages 19-20 of the PB (reproduced supra) clearly reveals that the AO initiated reassessment proceedings by recording reasons based on incorrect facts and without application of mind to the factually incorrect report of Investigation Wing, therefore, the initiation of reassessment proceedings also fails in view of various judgments particularly judgment of Hon'ble Jurisdictional High Court of Delhi in the case of M/s Synfonia Tradelinks P. Ltd. (supra).

16. In view of foregoing discussion, I reach to a logical conclusion that the AO initiated reassessment proceedings without assuming valid jurisdiction and without complying with the mandatory requirements envisaged in section 147 and 148 of the Act. Therefore, I am inclined to allow legal ground no.5 of assessee and consequently initiation of reassessment proceedings u/s 147 of the Act notice u/s 148 of the Act and impugned reassessment order dated 21.03.2016 for AY 2008-09 are quashed.

17. Since in the earlier part of this order I have quashed the impugned reassessment order and Ld. Representatives of both the sides have not placed any arguments on the other grounds of

assessee, therefore, in absence of any submissions from the parties, I do not deem it proper to adjudicate the other grounds of assessee.

18. In the result, appeal of the assessee is allowed in the manner as indicated above.

Order pronounced in the open court on 29/09/2023

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 29.09.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi