

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos. 8309 & 8310/Del/2019
ITA No.2163/Del/2022
Assessment Years: 2008-09, 2011-12 & 2012-13

M/s. Shark Packaging (India) P. Ltd., 24/1A, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi 110044 PAN AABCS 8728 F	vs.	ITO, Ward 23(1), New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Mayank Patawari, Adv. Shri Shrey Sinha, Adv. Shri Anmol Jagga, Adv.
For Revenue :	Shri Anuj Garg, Addl. CIT

Date of Hearing :	19.09.2023
Date of Pronouncement :	17.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

ITA No. 2163/Del/2022

This appeal has been filed against the order of Ld. CIT(A)-28, New Delhi dated 17.01.2018 for AY 2008-09.

2. The grounds have been raised by the assessee in ITA No.2163/Del/2022 for AY 2008-09 are as follows:-

- 1. On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad in law and on facts.*
- 2. That the Ld. CIT(A) grossly erred in not considering the petition file u/s. 46A. He even failed to accept or reject such application.*
- 3. That the Ld. AO made the addition without the application of mind only on basis of the report received from investigation wing.*

4. *That the Ld. CIT(A) has erred in law and on facts by erroneously dismissing the appeal in limine alleging that the appellant failed in furnishing the documentary evidence as well as details available on records.*

5. *That the Ld. CIT(A) has erred on law and on facts by upholding the addition of Rs. 5,96,25,000/- u/s 68 on account of unexplained credit without considering the submissions along with confirmations, balance sheet, ITR and bank statements of different cash creditors.*

6. *That the Ld. CIT(A) has erred in law and on facts by upholding the adhoc addition of Rs. 4,89,600/- u/s 69C of the Income tax Act, 1961 on account commission @ 1.8% has been eared on providing accommodation entries.*

3. We have heard arguments on the application of assessee dated 13.06.2023 seeking admission of additional ground no. 3 u/s. 253 of the Act r.w.r 11 of Income Tax (Appellate Tribunal) Rules 1963. The Id. counsel submits that the proposed additional ground 3 is being raised before the Tribunal are pure legal plea which goes to the root of the matter and legitimately available to the appellant as per provisions of the Act and the same can be adjudicated on the basis of material already available on record. The Id. Counsel thus submits that in view of judgment of Hon'ble Supreme Court of India in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC) and in the case of Jute Corporation of India vs. CIT 187 ITR 688 (SC) additional ground may kindly be admitted for adjudication for AY 2008-09. Replying to the above, the Id. Senior DR opposed to the admission of additional ground and submitted that the assessee cannot be allowed to raise legal plea at this belated stage before the Tribunal to challenge the validity of assumption of jurisdiction to initiate reassessment proceedings u/s. 147 of the Act. Thus, he submits that the application may kindly be dismissed.

3.1 On careful consideration of above submissions from the application we note that the assessee seeks to raise legal contention challenging the action of the Assessing Officer for initiation of reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act in the form of following additional ground no. 3:-

"That the learned Assessing Officer made the addition without the application of mind only on basis of the report received from the investigation wing."

3.2 From the above rival contentions and additional legal grounds sought to be raised by the assessee, we note that by way of above noted additional grounds the

assessee wants to challenge initiation of reassessment proceedings u/s. 147 of the Act and issuance of notice u/s. 148 of the Act on the legal plea that the reasons recorded by the Assessing Officer for initiation of reopening of assessment does not meet requirements of sec 147 of the Act, there is no live nexus between the reasons recorded and believe formed by the Assessing Officer to allege escapement of assessment. Therefore the Id. counsel by raising ground no. 3 wants to agitate a legal issue alleging that the Id. CIT(A) has erred in both facts and in law in confirming the reopening despite the fact that the same has been made by the Assessing Officer without independent application of mind to the material. Therefore, in our considered opinion the said legal plea raised by the assessee by way of additional ground no. 3 goes to the root of the matter and can be adjudicated on the basis of material already available on record. Therefore, respectfully following the prepositions rendered by Hon'ble Supreme Court in the case NTPC vs CIT (supra) and Jute Corporation vs. CIT (supra) the application of assessee is allowed and additional ground no. 3 is admitted for adjudication.

3.3 The Id. counsel on ground no. 3 submitted that the initiation of proceedings u/s. 147 of the Income Tax Act 1961 (for short the 'Act') and issuance of notice u/s. 148 of the Act has been done by the Assessing Officer without application of mind only on the basis of report of Investigation Wing without having his own reason based an application of mind, to believe that income has escaped assessment and thus the reopening has been initiated only on the basis of borrowed satisfaction based on Investigation Wing report without evaluating, verifying and examining the said report and material before recording reasons for forming believe that income has escaped assessment as per mandatory requirement of law. The Id. counsel precisely reiterated the written submissions/synopsis which is as follows:-

Facts, as narrated in the Reasons recorded (Enclosed as Annexure-1)

Information was received from DIT(Inv.), New Delhi vide letter dated 12.03.2013 that the assessee company was allegedly a beneficiary of accommodation entries by entry operator, Sh. Surendra Kumar Jain.

Contents of material seized from the said person contained date wise hand written cheque books and cash books where cheques provided to beneficiary entities were recorded.

As informed by DIT (Inv.) from the verification of seized material, the AO formed the belief that a sum of RS.2,72,00,000/- was received through accommodation entries by the assessee company.

The AO recorded the reasons and obtained a mechanical approval from JCIT on 18.03.2015.

No independent mind applied or enquiry conducted by the AO

- There is not even a whisper of any independent mind or enquiry being conducted by the AO. This fact is apparent from the reasons recorded itself as after narrating the contents of incriminating material as shared by DIT(Inv.) at Para 1, the AO at Paras 2 and 3 starts with the words 'It is informed that' and 'In view of the additional information/documents received from the Investigation Wing', respectively. This clearly shows that the AO has merely referred to the information received from the Investigation Wing and formed the belief on that basis alone.

The law does not mandate that an Assessing Officer should act on the dictate of any other authority ipso facto and for reopening the case under section 148 of the Income-tax Act 1961 because then it would amount to "borrowed satisfaction" which cannot be the basis for issue of notice u/s 148. While the need for a live link between the information received and formation of belief by the Assessing Officer is paramount, the information so received can only raise a suspicion and ignite the need for further enquiry before he can arrive at a conclusion as to income having escaped assessment. The information received can, at best, be termed as allegations which can only raise a suspicion in the mind of the authorities, based on which an enquiry can be triggered to find out whether there is any material leading to formation of reason to believe. The mandate of law is for the Assessing Officer to undertake independent inquiry and through due diligence and application of mind to convert the information in to reason to believe. The inquiry necessitates analysis of information as well as collection of additional material that would make him believe that the information in his possession can lead to reason to believe judicially. Also, the phrase "Reason to believe" and its due compliance has been considered to be the most salutary safeguard on the exercise of power by the officer concerned before initiating action/assuming jurisdiction.

4. The Id. counsel has also relied on following case laws in support of said legal contentions:-

Case laws relied upon:-

(1) Mere statement of an entry operator that the companies in question were paper companies', by itself, was insufficient to reopen the assessment, unless the Assessing Officer had further information after making further inquiries into the matter that these companies were non-existent. It was clear that the Assessing Officer did not make any inquiry or investigation, if these companies were in fact 'paper companies'.

That being a jurisdictional issue, the assumption of jurisdiction under sections 147 and 148 was erroneous.

[Sabh Infrastructure Limited v Asst. Commissioner of Income-tax [(2017) 398 ITR 198 (Delhi)]

(i) Where information was received from investigation wing that assessee was beneficiary of accommodation entries, but no further inquiry was undertaken by assessing officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. [Principal CIT vs. RMG Polyvinyl (1) Ltd. (2017) 396 ITR 5 (Del)]

(iii) "Prior to the reopening of the assessment", the Assessing Officer has to, applying his mind to the materials concluded that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analyzing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity. "The reopening of the assessment under section 147 of the Income-tax Act, 1961 is a potent power not to be lightly exercised. It cannot be invoked casually or mechanically. The intent of the provision is the formation of belief by the Assessing Officer that income has escaped assessment. The reasons recorded have to be based on some tangible material and that should be evident from a reading of the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. According to the first part of Section 147(1) it is a mandatory requirement that the Assessing Officer should have "reasons to belief" that any income chargeable to tax has escaped assessment. The reasons must be self-evident and must speak for themselves." [Pr. Commissioner of Income-tax v. G & G Pharma India Ltd 2016) 384 ITR 147 (Delhi)]

(iv) Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessment. In the present case the Assessing Officer prima facie has not done the bare necessary/rudimentary enquiry into the material receipted before the concludes that income chargeable to tax has escaped assessment.

[Piramal Enterprises Ltd v DCIT order dated 15.2.2017 passed by Hon'ble Bombay High Court in Writ Petition No. 2958 of 2016)]

(v) Similar view has been unanimously upheld by various Benches of High Courts and Income-tax Appellate Tribunal across the Country wherein the issuance of a notice for reassessment on the basis of mere suspicion and without any independent application of mind has not been held to be valid some of which are listed below: -

Commissioner of Income-tax v. Smt Paramjit Kaur [2009] 311 ITR 38 (Punjab & Haryana)];

Commissioner of Income-tax v. SFIL Stock Broking Ltd [(2010) 325 ITR 285 (Delhi)];

PCIT v. N C Cables Pvt Ltd [2017] 391 ITR 11 (Delhi)]

Mrs. Sejal J. Panchal v. Income-tax Officer [2018] 90 taxmann.com 305(Ahmedabad - Trib.)

In addition to above noted citations, the Id. counsel has also placed vehement reliance on the judgment of Hon'ble High Court of Delhi in the case of CIT vs. Insecticides (India) Ltd. [(2013) 38 taxmann.com 403 (Delhi)]

5. Replying to the above, the Id. Senior DR strongly opposed to the above submissions of Id. counsel of assessee and submitted that the copy of the reasons recorded for initiation of proceedings available at pages 1 & 2 of assessee paper book clearly reveals that the Assessing Officer received report of Investigation Wing New Delhi dated 12.03.2013 and thereafter evaluated contents thereof. The Id. Senior DR also submitted that from the report of Investigation Wing and alleged incriminating material found and seized during the course of search and seizure operation of entry provider Shri S K Jain it was clearly revealed that the assessee was beneficiary of accommodation entries from various paper companies of Jain Group. Therefore the Assessing Officer had valid reason to believe that the income to the extent of alleged entries has escaped assessment for AY 2008-09 therefore legal contention of assessee may kindly be dismissed.

6. Placing rejoinder to the above contention of Id. Senior DR, on behalf of assessee the Id. counsel submitted that copy of the reasons recorded by the Assessing Officer clearly reveals that he received report of Investigation Wing dated 12.03.2013 and initiated reassessment proceedings after lapse of pretty time of two years on 18.03.2015 and issued notice u/s. 148 of the Act on 19.03.2015. The Id. counsel strenuously contended that from the reasons it is clear that the Assessing Officer had not applied his mind to the Investigation Wing report and other material as in the reasons it is not clear as to whether the alleged accommodation entries were unsecured loan or share application money or any other mode of bogus entry and from which entity/company alleged transaction was under taken, which could be said to be a clear narration of the Assessing Officer before forming reason to believe that income has escaped assessment therefore in view of judgment of Hon'ble Jurisdictional High Court

in the case of CIT vs. Insecticides (India) Ltd. (supra) when the reasons recorded by the Assessing Officer are totally silent with regard to the amount and nature of bogus entry and transaction and the person or entity or company with whom transactions have taken place then the initiation of proceedings u/s. 147 of the Act has to be held as not valid and justified in the eyes of law. The Id. counsel has also placed reliance on the judgments of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Atul Jain 299 ITR 383 (Delhi) and Signature Hotels P. Ltd. (supra).

7. On careful consideration of above rival submissions, reasons recorded by the Assessing Officer for initiation of reassessment proceedings and other material available on record, at the very outset, for the sake of completeness to our findings, we find it appropriate to reproduced the reasons recorded by the Assessing Officer for initiation of reassessment proceedings for A.Y. 2008-09 on 18.03.2015 as follows:-

INCOME TAX DEPARTMENT

Reasons for reopening the case of M/s Shark Packaging (India) Pvt Ltd. A.Y. 08-09, u/s 147/148 of the Income tax Act, 1961:-

1. Information/documents along with relevant details has been received from the office of Director of Income Tax (Investigation)-II, New Delhi vide their letter F.No. DIT(Inv.)-H.U/s/148/2012-13/196 dated 12.03.13 and DDIT (Inv), Unit-VI(2), New Delhi vide their letter F.No. DDIT (Inv)/U-VI(2)/Information sharing/2012-13/141 dated 12.03.2013 that the above assessee, M/s Shark Packaging (India) Pvt Ltd has received and is a beneficiary of accommodation entries provided by entry operator Sh. Surendra Kumar Jain. The Investigation Wing of the Department had carried out search/survey operations against the entry operator Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain. During the course of post search investigation it has been evidently established that Sh. Surendra Kumar Jain 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 Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain.

During the course of search action, vast number of incriminating documents were found and seized. These documents include date wise hand written cheque books and cash books maintained by Sh. Surendra Kumar Jain and his brother over a long period of time (around 6 years). In these cheque books and cash books details of cheque provided to the beneficiary companies/entities/persons were recorded.

2. It is informed that from the verification of the documents seized, it clearly appears that the following accommodation entries from various paper companies of Sh. Surendra Kumar Jain group was provided to the above assessee:

Name of the Company	Amount
M/s Shark Packaging (India) Pvt Ltd	2,57,00,000
M/s Shark Packaging (India) Pvt. Ltd. (SUS SANDEEP II)	15,00,000
Total	2,72,00,000

3. In view of the additional information/documents received from the Investigation Wing, I have reason to believe that the assessee has willfully and knowingly concealed its particulars of income to avoid tax and that income of Rs. 2,72,00,000/- chargeable to tax has escaped assessment for A. Y. 08-09, within the meaning of section 147 of the Income-tax Act, 1961.

(Ashok K Vishrant),
Income Tax Officer,
Ward23 (1), New Delhi.

8. From the above noted reasons, we clearly observe that in the first paragraph of reasons the Assessing Officer noted the fact of receipt of report of Investigation Wing vide dated 12.03.2013 and *modus operandi* of Shri S K Jain for providing accommodation entry based on said report and post search investigation. In the second

part of para 1 the Assessing Officer further mentions that during the course of search action vast number of incriminating documents were found and seized which includes date wise hand written cheque books and cash books maintained by Shri Jain and his brother over a period of six years. The Assessing Officer also mentioned that these cheque books and cash book details of cheque provided to the beneficiary company/entity/person were recorded. Therefore in para 1 the Assessing Officer has mentioned only about receipt of Investigation Wing report based on search and seizure operation on Jain Brothers and details of material found and seized in form of cheque books and cash book but there is no mentioning of name of any company/person with whom transaction has taken place and date of transaction etc.

9. In para 2, the Assessing Officer mentions that from the verification of document seized, it clearly appears that accommodation entries as noted below from various paper companies of Shri S K Jain was provided to the assessee. In para 3, the Assessing Officer directly jumped to record a conclusion that in view of the additional information/document received from Investigation Wing he has reason to believe that the assessee has willfully and knowingly concealed its particular of income to avoid the tax on the undisclosed income chargeable to tax thus the same has escaped assessment for AY 2008-09. We are unable to see any details of the company/entity through which the assessee received alleged accommodation entry, date of transaction, nature of transaction viz as to whether it was share application money or unsecured loan or any other kind of transaction and from which entity or company the assessee received alleged entry or undertaken transaction. From the reasons it is also clear that the Assessing Officer had proceeded to initiate reassessment proceedings and to issue notices u/s. 148 of the Act without any examination, verification or evaluation of the facts and documentary evidence and report received from the Investigation Wing New Delhi without having sufficient information and details of alleged entry transaction.

10. On logical analysis and evaluation of the reasons recorded, we clearly find that in the reasons recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries

or undertaken alleged transactions. It is also nowhere mentioned as to on which dates and through which mode and entity/companies the bogus entries and transactions were made by the assessee. We also note that the AO has vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the AO did not mention any facts in the said communication except that from the informations gathered by the DIT (Inv.), New Delhi it was noticed that the assessee was involved taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax Inv.). New Delhi vide letter dated 12.03.2013 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person after application of his mind to said material could have formed a belief that income had escaped assessment.

11. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the date, amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with

reference to those amounts mentioned in the assessment order. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place.

12. Above noted conclusion gets support from the judgment of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Insecticides (India) Ltd. (supra) their Lordship by referring to its earlier judgments in the case of CIT vs. Atul Jain (supra) and Signature Hotels P. Ltd. (supra) held that where the information relieved upon by the Assessing Officer for initiating proceedings u/s. 147 of the Act did not indicate the source of alleged unexplained credit and it is not clear that the transactions were taken place with whom in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of the fact in view of said preposition initiation of proceedings u/s. 147 of the Act and issuance of notice u/s. 148 of the Act has to be held as not valid and sustainable being bad in law resulting in to inevitable invalidation of assessment order. Thus, we are inclined to hold that the Assessing Officer proceeded to initiate reassessment proceedings only on the basis of vague report of Investigation Wing without applying his mind to the report and other alleged documentary evidence and thus we have no hesitation to hold that the Assessing Officer proceeded merely on basis of borrowed satisfaction and he had no factual information in his hand to have reason to believe that income had escaped assessment for AY 2008-09. Said conclusion leads to an inevitable invalidation of entire proceedings and consequent orders including reassessment order dated 28.03.2016 and consequently, we quash the same. Accordingly, ground no. 3 of assessee is allowed.

13. Since, in the earlier part of this order, we have quashed initiation of reassessment proceedings and reassessment order dated 28.03.2016 passed u/s. 147 r.w.s. 143(3) of the Act, and Id. representatives both the sides have not placed any arguments on the other grounds of assessee on merits therefore we don't deem it justified and proper to adjudicate those grounds in absence of any arguments.

13.1 In the result, the appeal of assessee for AY 2008-09 is allowed in the manner as indicated above.

ITA No. 8309/Del/2019 for AY 2011-12

14. We have heard arguments on the application of assessee seeking admission of additional grounds u/s. 253 of the Act r.w.r 11 of Income Tax (Appellate Tribunal) Rules 1963. The Id. counsel submits that the proposed additional grounds 4 to 6 are being raised before the Tribunal are pure legal plea which goes to the root of the matter and legitimately available to the appellant as per provisions of the Act and the same can be adjudicated on the basis of material already available on record. The Id. Counsel thus submits that in view of judgment of Hon'ble Supreme Court of India in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC) and in the case of Jute Corporation of India vs. CIT 187 ITR 688 (SC) additional grounds may kindly be admitted for adjudication.

15. Replying to the above, the Id. Senior DR opposed to the admission of additional ground and submitted that the assessee cannot be allowed to raise legal plea at this belated stage before the Tribunal. Thus, he submits that the application may kindly be dismissed.

16. On careful consideration of above submissions from the application we note that the assessee seeks to raise legal contentions in the form of following additional grounds nos. 4 to 6:-

Ground 4: "On the facts and circumstances of the case, learned CIT(A) has erred in both facts and in law in confirming the order of the AO despite that the reasons recorded for re-opening the assessment does not meet the requirements under section 147 of the Act, bad in law and contrary to the facts."

Ground 5: "On the facts and circumstances of the case, learned CIT(A) has erred in both facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the Assessing Officer".

Ground 6: "On the facts and circumstances of the case, learned CIT(A) has erred in both facts and in law in confirming the reopening despite the fact that the same has been made by the Ld. AO without independent application of mind."

17. From the above rival contentions and additional legal grounds sought to be raised by the assessee, we note that by way of above noted additional grounds the

assessee wants to challenge initiation of reassessment proceedings u/s. 147 of the Act on three legal pleas viz (i) the reasons recorded by the Assessing Officer for initiation of reopening of assessment does not meet requirements of sec 147 of the Act, (ii) there is no live nexus between the reasons recorded and believe formed by the Assessing Officer to allege escapement of assessment and (iii) thus the Id. CIT(A) has erred in both facts and in law in confirming the reopening despite the fact that the same has been made by the Assessing Officer without independent application of mind to the material. Therefore in our considered opinion the legal plea raised by the assessee by way of additional grounds goes to the root of the matter and can be adjudicated on the basis of material already available on record. Therefore, respectfully following the prepositions rendered by Hon'ble Supreme Court in the case NTPC vs CIT (supra) and Jute Corporation vs. CIT (supra) the application of assessee is allowed and additional grounds no. 4 to 6 are admitted for adjudication.

18. Apropos additional grounds the Id. counsel of assessee submitted that the basic details of the case, as per the Ld. AO, are that an information was received from the DDIT, Gurugram vide letter dated 20.03.2018 that the assessee was a beneficiary of accommodation entries amounting to Rs. 1.30 crore during FY 2010-11 from the Skylark Group of Companies. (Para 2 of reasons for reopening the case). He also submitted that out of Rs. 10,90,17,480/-, being the share application money received by the assessee during the F.Y. 2010-11 only an amount of Rs. 1.30 crore belongs to the company related to Skylark Group i.e. the amounts are credited from the Skylark Group. (Para 5 of the reasons for reopening the case). He also contended that the Ld. AO further reiterates in the reasons for formation of belief, at Para 6(a), that during the relevant financial year, the assessee has raised share application money from the skylark group of companies.

19. Thereafter, the Id. counsel submitted that the information received from the DDIT conveys the fact that a search was conducted on Skylark Group of Companies on 25.04.2017 and that the Skylark Group of Companies has received share capital from 4 (four) companies. He also pointed out that the names of the companies from whom the

accommodation entries were taken by the Skylark Group which were arranged through a CA Ashwini Kaushik from an individual by the name of Anirudh Joshi, who controlled the companies from which the share capital was received by the Skylark Group of Companies although he was not a part of the Skylark Group. Thus, there is no nexus in the reasons recorded by the Ld. AO and information received from the DDIT, Gurugram as it is clearly evident that the accommodation entries were in-fact provided to the Skylark Group of Companies by entities controlled by Shri Anirudh Joshi and that no accommodation entry has been provided by the Skylark Group companies to the assessee. Therefore, there has been a total non-application of mind in the reasons recorded by the Ld. AO.

20. Further drawing out attention towards para 2.2 and 2.3 of assessment order the Id. counsel submitted that the Assessing Officer, contrary to the reasons recorded, in para 2.2 of assessment order noted that in the statement Shri Anirudh Joshi has admitted the fact of having provided accommodation entry to Skylark Group of company through concerns operative and controlled by him and in para 2.3 the Assessing Officer noted names and details of seven companies controlled by Shri Joshi including two alleged companies that is KRAC Securities P. Ltd. and SSJ Foods Ltd. as in the reasons recorded the Assessing Officer mentions that the assessee has received accommodation entry from Skylark Group companies whereas the conclusion of the Assessing Officer in said para of assessment orders reveals that assessee has not under taken any transaction with any company of Skylark Group therefore the reasons recorded are clearly without application of mind by the Assessing Officer based on incorrect and perverse facts. Therefore the Assessing Officer has proceeded to initiate reassessment proceedings based on incorrect and irrelevant facts without application of mind therefore the reasons recorded based on borrowed satisfaction does not meet mandatory requirements of section 147 of the Act. Therefore the Id. counsel submits that initiation of reassessment proceedings may kindly be quashed on this count.

21. The Id. counsel, further drawing attention towards copy of the reasons available at pages 1 to 7 of assessee paper book dated 20.05.2023 submitted that at page 6 in

5th para the Assessing Officer alleges that the requirement to initiate proceedings u/s. 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of the failure on the part of assessee to disclose fully and trully all materials facts necessary for his assessment for AY 2011-12 but there is no details or description pertaining to said allegation as to which documentary evidence, material fact or transaction was not fully and trully disclose by the assessee. He further submitted that from para 5 of reasons the Assessing Officer noted that the return of income filed and 360 degree profile were examined and found that during the relevant financial period the assessee has raised share application money of Rs. 10,90,17,480/- out of said amount share application money amounting to Rs. 1.30 crores belongs to the company related to Skylark Group from which the assessee has taken accommodation entry during FY 2010-11 which reveals that the alleged transactions were recorded in the books of accounts of assessee and were before the Assessing Officer during scrutiny assessment proceeding u/s. 143(3) of the Act therefore no allegation can be made against the assessee. Therefore the Id. counsel submitted that initiation of reassessment proceeding under section 147 of the Act, notice u/s. 148 of the Act and all consequent proceedings including reassessment order dated 19.12.2018 for AY 2011-12 may kindly be quashed.

22. Replying to the above the Id. Senior DR submitted that there was sufficient material in the hands of Assessing Officer to form a reason to believe that income to the tune of Rs. 1.30 crores had escaped assessment for AY 2011-12 and this fact is also clearly discernable from the detailed reason recorded by the Assessing Officer copy of which has been submitted by the assessee at pages 3 to 7 of its paper book. The Id. Senior DR therefore submitted that the legal grounds of assessee may kindly be dismissed.

23. On careful consideration of above noted rival submissions and reasons recorded by the Assessing Officer and his observations in para 2.2 and 2.3 of assessment order we note that the Assessing Officer initiated reassessment proceedings after receiving the information from Investigation Wing. From the cogent reading and perusal of para

2, 5 and 6a of reasons recorded we note that as per the Assessing Officer an information was received from DDIT Gurugram through vide letter dated 20.03.2018 that the assessee was a beneficiary of accommodation entries during FY 2010-11 from Skylark Group of companies and out of total share application money received by the assessee during FY 2010-11 said amount belongs to the companies related to Skylark Group and thus the assessee has raised share application money from the Skylark Group companies. From the para 2.2 & 2.3 of assessment order we also note that the Assessing Officer by referring to the statement of the Shri Anirudh Joshi noted that it is clear that all the debit and credit transaction appearing in the bank account of listed firms was nothing but accommodation entries of unsecured loans or non genuine bogus share capital and share premium in the case of third parties or beneficiaries. Thereafter in para 2.3 the Assessing Officer listed names of seven companies controlled and managed by Shri Anirudh Joshi. But there is no mentioning of the fact that the assessee has taken entries or any transaction with any company of Skylark Group. Therefore the basis taken by the Assessing Officer in the reasons was not in consonance with the actual factual position which was noted by him in relevant paras of assessment order. Thus we are inclined to hold that since the Assessing Officer proceeded to initiate reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act for AY 2011-12 by recording factually incorrect allegations without any evaluation and examination and the report of Investigation Wing Gurugram and other relevant material which shows non application of mind as in the reasons Assessing Officer alleged that the assessee has taken accommodation entry from the Skylark Group companies but while passing assessment order he could not establish any link between the assessee and any company controlled and owned by Skylark Group therefore we safely accept the contention of Id. counsel of assessee that the assessee had not undertaken any transaction with any company of Skylark Group. It is pertinent to note that in the assessment order same amount and transaction has been alleged as taken by the assessee from the companies controlled by Shri Anirudh Joshi. In view of said factual contradictions and ambiguity, we are compelled to hold that the Assessing Officer had recorded reasons based on incorrect facts and without any verification, examination and

evaluation of report of Investigation Wing and other material before him at the time of recording reasons. Therefore, we hold that the Assessing Officer proceeded initiate reassessment proceeding and notice u/s. 148 of the Act without application of mind to the relevant material while recording reasons and forming reason to believe and thus he proceeded on the basis of borrowed satisfaction and thus he did not assure valid jurisdiction to initiate reassessment proceeding u/s. 147 of the Act and to issue notice u/s. 148 of the Act, which result into inevitable invalidation of all consequent proceedings and others including reassessment order dated 19.12.2018 for AY 2011-12 and consequently, we quashed the same. Accordingly, ground nos. 4 to 6 of assessee are allowed.

24. Since, in the earlier part of this order, we have quashed initiation of reassessment proceedings and reassessment order u/s. 147 r.w.s. 143(3) of the Act, and ld. representatives both the sides have not placed any arguments on the other grounds of assessee on merits, therefore, we don't deem it proper to adjudicate those grounds in absence of any arguments.

24.1 In the result, the appeal of assessee for AY 2011-12 is allowed in the manner as indicated above.

ITA No. 8310/Del/2019 for AY 2012-13

25. The assessee has raised following grounds of the appeal:-

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

2. (i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 3,51,45,000/- made by the AO on account of business loss on sale of shares of Rathi Iron Steel Industries Ltd. claimed by the assessee.

(ii) That the above disallowance has been confirmed rejecting the detailed submissions and evidences brought on record by the assessee in this regard.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO treating the loss claimed by the assessee as capital loss invoking the provision of section 71 of the Act.

4. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.25,00,000/- made by AO on account of share application money treating the same as unexplained invoking the provisions of section 68 of the Act.*

(ii) *That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the share applicant as well as the genuineness of the transaction.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the application made by the assessee submitting additional evidences under rule 46A of the income tax rules, 1962.*

6. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 43, 124/- made by the AO invoking the provision of section 14A read with rule 8D of the Income Tax Rules.*

(ii) *That the learned CIT(A) has erred in confirming the disallowance rejecting the contention of the assessee that in the absence of any satisfaction having been recorded by the AO disallowance under section 14A of the Act cannot be made.*

26. The Id. counsel submitted that except ground no. 4 the assessee does not want to press other grounds of appeal. Therefore the same are dismissed as not pressed. Apropos ground no. 4 the Id. counsel submitted that the Id. CIT(A) has erred both on facts and in law in confirming the addition of Rs. 25 lakh made by the Assessing Officer on account of share application money treating the same as unexplained by invoking provisions of section 68 of the Act. The Id. counsel also submitted that the Id. CIT(A) has confirmed the addition by rejecting the detailed explanation and rejecting prayer of admission of additional evidence placed under rule 46A of I.T Rules 1962 whereas the assessee had sufficient cause for which the said evidence was not placed before the Assessing Officer as the A.O. did not show cause the assessee asking it to provide more details or evidence before making addition u/s. 68 of the Act which prevented the assessee from giving said additional evidence during assessment proceedings despite possessing the same at the point of time. The said cause is a bonafide and sufficient cause explaining the reason due to which said additional evidence could not be provided before the A.O. Therefore the Id. counsel vehemently pointed out that the entire material and evidences including additional evidence clearly establish that the

identity and creditworthiness of investors and genuineness of transaction but the same was dismissed at the threshold without any consideration or attention to the same by the Id. CIT(A). Therefore, the Id. counsel submitted that additional evidence may kindly be admitted for consideration and relief may kindly be granted to the assessee by deleting the addition.

27. Replying to the above, the Id. Senior DR opposed to the contentions of assessee and submitted that despite sufficient opportunity by the Assessing Officer the assessee did not produce all relevant details, explanation and documentary evidence discharging its onus as per requirement of section 68 of the Act therefore the Id. CIT(A) rightly rejected additional evidences as there was no bonafide reason or cause which prevented the assessee from filing the same before the Assessing Officer. The Id. Senior DR thus, submitted that addition made by the Assessing Officer has rightly upheld by the Id. CIT(A) therefore no interference is warranted in the first appellate order.

28. On careful consideration of above submissions we note that the assessee filed copy of Appellant's ITR acknowledgment for AY 2012-13, copy of appellant's auditor's report, balance sheet, statement of P&L account, notes on accounts & other notes, shareholding patters details, unsecure loan details for the period ending 31st March 2012, copy of appellant's bank book (Bank of Baroda) for the period 1st April 2011 to 31st March 2012, copy of appellant's trial balance account for the period of 1st April 2011 to 31st March 2012. However except above noted documentary evidence the assessee has not filed any other documents before the Assessing Officer. During first appellate proceedings the assessee filed application under rule 46A of the I.T Rules seeking admission of additional evidence pertaining to investor M/s. Forefront Buidcon P Ltd. i.e. copies of name change certificate to M/s. Complete Equity P Ltd dated 14.10.2011, copies of confirmation of share application amount and premium from said entity, copy of M/s. Forefront Buildcon compliance certificate under section 383A Companies Act 1956 and copies of Directors report balance sheet for the period ending 31.12.2012, P&L Account, notes on accounts and other notes of said investor company. But said evidence was not admitted by the Id. CIT(A) by observing that there was no

reason explaining the cause which prevented the assessee from filing the same before the Assessing Officer.

29. From the relevant part of assessment order para 4 we note that the assessee during assessment proceedings through vide letter dated 12.01.2012 submitted documentary evidence as noted above and placed at pages 59 to 85 of assessee paper book. The Assessing Officer, taking on record said evidence but without any examination or verification thereof, directly proceeded to hold that the assessee has not been able to prove identity & creditworthiness of subscriber and genuineness of transaction. In case the Assessing Officer was not satisfied with the documentary evidence submitted by the assessee then it was his duty to caution the assessee by way of show cause notice or note sheet entry showing his intention and dissatisfaction about insufficient of evidence and absence of details and plausible explanation, but the Assessing Officer directly proceeded make addition u/s. 68 of the Act without any efforts. Therefore, we have no hesitation to hold that there was sufficient cause which prevented the assessee from filing additional documentary evidence before the Assessing Officer therefore the Id. CIT(A) should have admitted the same under rule 46A of the Rules for consideration and adjudication of grievance of assessee on this issue. Therefore, we decline to approve the action of Id. CIT(A) dismissing prayer for admission of additional evidence and hence the same is set aside and additional evidence place by the assessee at pages 86 to 108 are admitted for consideration. However, it is pertinent to note and mention that the Assessing Officer had no opportunity to verify and examine the additional evidence filed by the assessee therefore after admission of additional evidence the grievance of assessee on this issue is restored to the file of Assessing Officer avoiding multiplicity of proceedings. The A.O. is directed to adjudicate grievance of assessee as raised in ground no. 4 after allowing due opportunity of hearing and without being influenced with the earlier assessment and first appellate order. Needless to mention that the assessee shall be eligible to raise all the contentions and submissions in support of its claim to discharge onus as per mandate of section 68 of the Act. Accordingly, ground no. 4 of assessee is allowed for statistical purposes.

30. In the result, the appeal of the assessee for AY 2012-13 is partly allowed only on ground no. 4 for statistical purposes.

Order pronounced in the open court on 17.10.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 17th October, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi