

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1064/Del/2018
Assessment Year: 2009-10

M/s. Hartron Case Communication Ltd. 108, Dhaka Chambers, 2069/38 Naiwala, Karol Bagh, New Delhi 110005 PAN AABCH 5086 M	vs.	The DCIT, Circle-11(1), New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Anil Jain, CA
For Revenue :	Shri Manish Tiwari, Sr. DR

Date of Hearing :	17.08.2023
Date of Pronouncement :	18.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-34, New Delhi dated 01.12.2017 for A.Y. 2009-10.

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

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/143(3) without assuming jurisdiction as per law and without complying the mandatory conditions u/s 147 to 151 of Income Tax Act, 1961.

2. That in any case and in any view of the matter, impugned reassessment order passed by Ld. AO u/s 147/143(3), is bad in law and against the facts and circumstances of the case and not sustainable on various legal and factual grounds, and thus Ld. CIT(A) ought to have quashed the same.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.1,29,77,000/- on account of share capital and share premium received by treating it as alleged unexplained credit u/s 68 and that too by recording incorrect facts

and findings and without providing opportunity of cross examination and without providing entire adverse material and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs. 1,29,77,000/- on account of share capital and share premium u/s 68, is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,33,586/- (i.e. 1.8% of Rs.1,29,77,000/- on account of alleged commission paid u/s 69C of Income Tax Act, 1961.

6. That having regard to the facts and circumstances of the case Ld.CIT(A) has erred in law and on facts in not reversing the action of the Ld. AO in charging interest u/s 234A, 234B and 234C of the Income Tax Act 1961.

Grounds No. 1 & 2 of assessee

3. The Id. Assessee's Representative (AR) submitted that having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/143(3) without assuming jurisdiction as per law and without complying the mandatory conditions u/s 147 to 151 of Income Tax Act, 1961 (for short the 'Act'). He further contended that in any case and in any view of the matter, impugned reassessment order passed by Ld. AO u/s 147/143(3), is bad in law and against the facts and circumstances of the case and not sustainable on various legal and factual grounds, and thus Ld. CIT(A) ought to have quashed the same. Further drawing our attention towards page 26 of assessee paper book the Id. AR submitted that from the reasons recorded it is amply clear that the Assessing Officer after recording modus operendi adopted by alleged entry provider noted that from verification of documents seized, it is clearly appears that the list of companies containing 195 names have obtained accommodation entries from various paper companies of Shri S.K Jain Group and in the said list the assessee was named at serial no. 139. Thereafter the Assessing Officer alleged that the assessee has obtained accommodation entries of Rs. 45 lakhs during the relevant financial period 2008-09 pertaining to present AY 2009-10. The Id. AR submitted that with these vague observations the Assessing Officer directly proceeded

to record his satisfaction that he has reason to believe that income to the extent to the said amount has escaped assessment in the hands of beneficiary assessee company.

4. The Id. AR vehemently pointed out that from the review of the above it will be observed that these reasons are not in fact the reasons to believe but only conclusions one after the other. The expression accommodation entry has been used without explaining the basis for such a conclusion. He vehemently pointed out that the crucial live link between the information made available to the AO and the formation of the belief is absent. The Id. AR also contended that the reasons must be self evident and they must speak for themselves regarding the tangible material which forms the basis for the belief that income has escaped assessment must be evident from the reading of the reasons. Further, the AR also submitted that nothing has been mentioned about the nature of accommodation entries whether it is share capital or loans or expense bills etc. even the names and addresses of the companies from whom the assessee company has taken alleged accommodation entries of Rs. 45,00,000/- has not been mentioned. He also pointed out that there is also no reference of cheque number, date and the amount received from the alleged paper company of Shri S.K. Jain. The Id. AR thus, submits that from the above it can be inferred that there is no independent application of mind by the Ld AO and the reasons have been recorded only on borrowed satisfaction from the documentary evidence received from the A.O. of Jain Brothers without having own reason believe as per mandate of section 147 of the Act. Furthermore, the Id. AR submitted that the reasons which were recorded by the Ld AO for reopening an assessment was the only reasons which were to be considered to decide the validity of the reopening of the assessment. The AR finally submitted that nothing can be added later on. The Id. AR also placed reliance on the following cases where it has been held by the Hon'ble jurisdictional High Court of Delhi that proceedings initiated u/s 147 on the basis of scanty and vague reasons are illegal and bad in law therefore the same may kindly be quashed. The Id. AR has placed reliance on various judgments and others including judgments of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Shri Atul Jain 299 ITR 383(Delhi), Signature Hotels

P. Ltd. vs. ITO 338 ITR 51 (Delhi) and judgment in the case of CIT vs Insecticides (India) Ltd. (2013) 38 taxmann.com 403 (Delhi), in support of above legal contentions.

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 24 to 26 of assessee paper book clearly reveals that the Assessing Officer received report of Investigation Wing New Delhi and thereafter evaluated contents thereof. The Id. Senior DR also submitted that during the course of search/survey action u/s. 132/133A of the Act conducted at the residential and business premises of Shri S K Jain and his brother Shri V. K Jain certain incriminating material found and seized. Which included cheque books and cash books maintained by Jain Brothers. From the said documents found and seized from 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 2009-10 therefore legal contention of assessee may kindly be dismissed.

6. Placing rejoinder to the above contention of Id. Senior DR on behalf of the Department, the Id. counsel appearing for the assessee submitted that copy of the reasons recorded by the Assessing Officer (paper book page no. 26) it is clearly discernable that the Assessing Officer had not applied his mind to the said alleged documentary evidence/incriminating and other materials 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 details of transaction, segregation of alleged amount and nature of bogus entries & transactions 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, we find it appropriate to reproduced the reasons recorded by the Assessing Officer for initiation of reassessment proceedings for AY 2009-10 on 05.08.2014 as follows:-

During the course of search/survey action u/s 132/133A of the I.T.Act conducted at the residential and business premises of Sh. Surender Kumar Jain and his brother Virender Jain, certain incriminating documents were found and seized. These documents include date wise hand written cheque books and cash books maintained by Shri S.K.Jain Group of cases. These cheque books and cash books details of cheque provided to the beneficiaries companies/entities/persons and receipt of cash by Sh. Surender Kumar Jain from these beneficiary companies/entities/persons were recorded. During the course of post search investigation, it has been evidently established that Shri S.K. Jain and his brother Sh. Virender Jain are in the business of providing accommodation entries to various beneficiary companies/entities/person through cheques through a number of paper & dummy companies in lieu of cash. These dummy companies are totally managed and controlled by Sh. Surender Kumar Jain and his brother Sh. Virender Jain.

2. From the verification of the documents seized, it clearly appears that the list of companies containing 195 names have obtained accommodation entries from various paper companies of S.K. Jain Group in lieu of cash. In this list at Sr. No.139, it is found that M/s Hartron Case Communications Ltd. (PAN: AABCH5086M) has obtained accommodation entries of Rs. 45,00,000/- during the financial year 2008-09 relevant to assessment year 2009-10.

3. Therefore, I am satisfied and has reason to believe that a sum of Rs. 45,00,000/= has escaped assessment in the hands of M/s Hartron Case Communications Ltd., as M/s Hartron Case Communications Ltd., is the beneficiary of accommodation entry for the assessment year 2009-10.

8. From the above noted reasons, we clearly observed that in the first paragraph of reasons the Assessing Officer noted fact of post search investigation in the case of Shri S.K Jain and noted that Shri Jain and his brother were involved in the business of providing accommodation entries to various beneficiary companies/entities/persons, through cheques through a number of paper and dummy companies. In the first part of

said para the Assessing Officer has mentioned about the search/survey action u/s. 133(2)/133A of the Act conducted at the residential and business premises of Shri S.K Jain and his brother and seizure of some documentary evidences, hand written cheque books and cash books details regarding entries provided to the beneficiary companies/entities/persons by said Jain Brothers. Therefore it is clearly discernable that in the first paragraph of reasons the Assessing Officer has only mentioned facts pertaining to the search/survey operation and seizure of certain documentary evidences and modus operandi adopted by the said entry providers.

9. From the second para of the reasons we further observed that the Assessing Officer has noted that on verification of document seized a list of 195 companies was found and name of assessee was listed at serial no. 139 and thus it was found that the assessee has obtained accommodation entry of Rs. 45 lakh during FY 2008-09 relevant to AY 2009-10. But we are unable to see any verification, examination or any other endeavour by the Assessing Officer to gather and extract some relevant facts that on which date from which company the assessee took accommodation entry of which amount and what was the mode of transaction/entry as to whether the same was unsecured loans or share application money or any other kind of bogus transaction which shows non application of mind by the Assessing Officer to the material received by him from the search and seizure operation on Jain Brothers. Thereafter, in para 3 the Assessing Officer directly jumped to record a satisfaction that he has reason to believe that a sum of Rs. 45 lakhs in the hands of assessee, being beneficiary of accommodation entry, has escaped assessment for AY 2009-10.

10. At the cost repetition we may again point out that 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 2009-10. 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 bogus 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 u/s. 147 of the Act 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 officer/competent authority of search/survey operation during which alleged documentary evidence found and seized from Jain Brothers.

11. 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 documentary evidences including a list of 195 companies found and seized during search/survey operation on Jain Brothers to allege that the assessee company (listed at S.No. 139) 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.

12. 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 kind of bogus entry 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 legal position 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 merely because name of assessee was found mentioned at S.No. 139 of a list of 195 companies, 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. Therefore, we are compelled to hold that the A.O. initiated reassessment proceedings without application of mind to the material and without having a valid and sustainable reason to believe that income had escaped assessment from A.Y. 2009-10.

13. 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) wherein 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 relied 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 also 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 material received from search/survey authority of Jain Brothers 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 2009-10. Said conclusion leads to an inevitable invalidation of entire proceedings and consequent orders including reassessment order dated 28.03.2016 from A.Y. 2009-10 and consequently, we quash the same. Accordingly, grounds no. 1 & 2 of assessee are allowed.

14. 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 for AY 2009-10, 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 justified and proper to adjudicate those grounds in absence of any arguments.

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

Order pronounced in the open court on 18.10.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 18th October, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi