

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 279/Del/2019, A.Y. 2009-10

M/s. MAH Impex Private Ltd. Plot No. 117 & 118, A-3, Sector-11, Rohini, New Delhi PAN : AAECM8575F	Vs.	ITO, Ward-16(1), New Delhi
Appellant		Respondent

Assessee by	Sh. Vinod Kumar Bindal, CA Sh. Saurabh Sharma, Adv. Ms. Rinky Sharma, AR
Revenue by	Shri Alok Bhura, Sr. DR

Date of hearing:	11.10.2023
Date of Pronouncement:	31.10.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee against the order dated 19.11.2018 of Commissioner of Income Tax (Appeals)-28, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 214/17-18 arising out of an appeal before it against the order dated 20.12.2016 passed u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-16(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the return of income was filed by assessee on 01.10.2009 declaring the loss of Rs. 43,54,356/-. The case was processed u/s 143(1) of the Act. Subsequently, information was received by AO from the Investigation Wing of the Department that the assessee is beneficiary of taking accommodation entries of Rs. 66,00,000/- in the garb of share application money/share capital from entry providers namely Shri S. K. Jain group in the names of following entities:--

Sr. No.	Date	From	To	Bank	Intermediary	Mode of payment	Amount
1.	10.11.2008	Virgin Capital Services Pvt. Ltd	MAH Impex Pvt. Ltd	Axis Bank	Vijay Gupta	Cheque No. 033606	2000000/-
2.	14.11.2008	Virgin Capital Services Pvt. Ltd	MAH Impex Pvt. Ltd	Axis Bank	Vijay Gupta	Cheque No. 033615	1100000/-
3.	25.12.2008	Virgin Capital Services Pvt. Ltd	MAH Impex Pvt. Ltd	Axis Bank	Vijay Gupta	Cheque No. 098354	2000000/-
4.	29.12.2008	Virgin Capital Services Pvt. Ltd	MAH Impex Pvt. Ltd	Axis Bank	Vijay Gupta	Cheque No. 098357	500000/-
5.	28.03.2009	Virgin Capital Services Pvt. Ltd	MAH Impex Pvt. Ltd	Axis Bank	Vijay Gupta	RTGS	1000000/-
Total							6600000/-

2.1 On the basis of the above information, reasons were recorded and reassessment proceedings were initiated by him by issuing notice u/s 148 of the Act dated 19.02.2016. However, during the reassessment proceedings, after analyzing the material found during the search proceedings in the case of entry providers and co-relating with the details of return of income of the assessee, it was found by AO that the assessee has received total share application money of Rs. 66,00,000/- as accommodation entry from S.K. Jain Group.

Consequently, he added the same u/s 68 of the Act and completed the assessment proceedings u/s 143(3)/147 of the Act after making following additions :-

- | | |
|------------------------------------|-----------------|
| 1. Unexplained cash credits u/s 68 | Rs. 66,00,000/- |
| 2. Unexplained commission | Rs. 1,18,800/- |

Consequently, the income of assessee was determined at Rs. 23,64,444/- against the returned loss of Rs. 43,54,356/-.

3. The Ld. CIT(A) however sustained the addition primarily considering that assessee had failed to discharge its onus of establishing genuineness of creditworthiness of the parties.

4. The assessee is in appeal raising following grounds ;

“1. The CIT(A) erred in law and on facts confirming that the reopening the assessment u/s 148 is valid ignoring that the notice for reopening was issued merely on the basis of information supplied by the Investigation wing without fulfilling the conditions laid down under the Act for valid reopening of assessment. Therefore, the assessment so framed u/s 147 on borrowed satisfaction and an invalid notice should be cancelled.

2. The CIT(A) erred in law and on facts in confirming the reopening of the assessment u/s 148 on the basis of incriminating material found in the search of a third party as valid ignoring that provisions of section 153C alone could be applied to the exclusion of sections 147 and 148. Thus, the assessment so framed u/s 147 should be cancelled.

3. The CIT(A) erred in law and on facts in confirming the reopening of the assessment as valid ignoring that the sanction for reopening the assessment has been granted in mechanical manner without application of mind by the sanctioning authority. Thus the assessment so framed should be cancelled.

4. The CIT(A) erred in law and on facts in confirming the reopening of the assessment as valid ignoring that the valid notice

u/s 148 was not served on the assessee and subsequent notices u/s 148 which were served on the assessee were not valid. Thus the assessment so framed without service of a valid notice should be cancelled.

5. The CIT(A) erred in law and on facts in confirming an addition of Rs. 61,00,000/- u/s 68 as unexplained credit for share application money received from a company ignoring the facts, evidences and submissions placed on record. Thus, the addition so made should be deleted.

6. The CIT(A) erred in law and on facts in confirming an addition of Rs. 61,00,000/- on the basis of material seized during the course of search from the premises of Surendra Kumar Jain group without providing the copies of the recorded statements of the searched persons and their alleged associates/mediators and also without affording an opportunity to cross-examine them and, thus, ignoring the principles of natural justice. Thus, the addition so made should be deleted.

7. The CIT(A) erred in law and on fact in confirming an addition of Rs. 1,09,800/- as unexplained investment for commission paid @ 1.8% for obtaining the accommodation entry on surmises and ignoring the facts, evidences and submissions placed on record. Thus, the addition so made should be deleted.

8. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

5. Heard and perused the record.

6. It is pertinent to mention that at the time of arguments, Id. AR made an endorsement in the appeal memo not pressing ground no. 4 and argued the matter on the basis that the reopening was invalid and in any case the assessment should have been u/s 153C instead of Section 147 and 148 of the Act.

7. Ld. DR however submitted that Ld. CIT(A) has fallen in error in considering the Income Tax return of the creditor to conclude about genuineness. It was submitted that there is no error in the assessment u/s 147.

8. Appreciating the submissions it comes up that Ld. AO has primarily examined the issue on the basis of Investigation Wing information to consider the disputed entries to be accommodation ones. He mentions the reopening was on the basis of seized document seized from Jain Brothers. The capital was considered introduced by way of accommodation entry. Ld. AO specifically mentions that Jain brothers received Rs. 66 lakhs from an intermediary Vijay Gupta in lieu of accommodation entry to the instant assessee. He has narrated the various receipts of intermediary Vijay Gupta as per the cash books of entry provider. It was concluded that this cash has been received by the intermediary during the same period when the accommodation entry has been given to the instant assessee. The whole exercise which Ld. AO did was to understand the modus operandi of Jain Brothers and he heavily relied on information received from the Investigation Wing, assessment record of the case, assessment record of Jain Brothers and then material on record having direct bearing on the present proceeding to disbelieve the evidences furnished by the assessee in the Form of PAN, Income Tax Return etc of the Investor Company.

8.1 It comes up from the order of Ld. AO in para 10.3 that regarding the claim of assessee that assessment of investee companies has been completed u/s 153A on return income was also one of the explanations of assessee but the same was not considered by the Ld. AO observing that the same has no bearing on the merits of transactions.

9. The CIT(A) has dealt with the issue that reopening of the assessment u/s 148 on the basis of incriminating material found in the search of the third party is erroneous and provisions of Section 153C alone could be applied to the exclusion of Section 147 and 148 of the Act. In this context his observations have been recorded in para 7.3 as follow :

“7.3 It has been further pleaded by appellant that there was search proceedings u/s 132(1) of the Act in the case of S. K. Jain Group, on the

basis of which, the proceedings in the case of appellant have been initiated, therefore, AO should have initiated the proceedings u/s 153C of the Act, not u/s 147 of the Act. The plea taken by appellant is misplaced. During the search proceedings in the case of S. K. Jain Group, information in respect of large number of beneficiaries taking accommodation entries were found and after analyzing the same and making further enquiries with the beneficiaries and other persons, Investigation Wing prepared report in respect of each and every beneficiary and forwarded the information to the relevant assessing officers for further enquiry and assessment. It is not the case where incriminating document or information was found independently for each and every beneficiary, rather, after making an examination and further enquiry, in the case of these beneficiaries, Investigation Wing reached to the conclusion that these beneficiaries have taken accommodation entries in lieu of cash deposited by them from undisclosed sources. On the basis of such reports, the AO has initiated the reassessment proceedings u/s 147 of the Act in the case of the appellant which is valid and tenable in law. The several decisions, as mentioned above, of Jurisdictional High Court as 'Well as other Courts also substantiate this fact that the information received from Investigation Wing is a tangible material for initiating the reassessment proceedings in the case of any assessee. In view of this, the objection raised by AO is not acceptable and deserves to be rejected.'

10. We are of the considered view that Ld. Tax Authorities have fallen in error as the reopening u/s 147/148 is on the basis of income chargeable to tax which has escaped the assessment due to concealment or furnishing inaccurate particulars. While here is a case where Ld. AO intends to make an addition u/s 68 of the Act, for any sum found credited in the books, by rebutting the explanation given by the assessee u/s 68 of the Act, on the basis of incriminating material found in the search of another person who has also been subject to assessment u/s 153A. We are of considered opinion that the assessment of the any assessee, whose explanation u/s 68 of the Act is being discredited on the basis of incriminating evidence found elsewhere alone, then the assessment of such other person should be u/s 153C as 'other person', and not u/s 147 of the Act.

11. In the case in hand a thorough examination of the reasons for reopening and the manner in which the Id. AO has relied the incriminating evidences and materials allegedly recovered in the hands of S.K.Jain and the intermediary that only go to show that Ld. AO has fallen in error in invoking powers of Section 147/148 in the absence of reasons of satisfaction being drawn u/s 153C by the Assessing Officer of the searched person.

12. It will be appropriate to reproduce para 11.2 of assessment order below and to conclude that the aforesaid observations of this bench make the assessment order void ab initio ;

“11.2 It is indeed surprising to note that the assessee has made unsuccessful efforts to prove, that these transactions were genuine. It is quite possible that the assessee could have succeeded in its scheme but for the search in the case of Jain Brothers where complete evidence of scheme of tax evasion used by the assessee were seized. The incriminating seized documents are self-speaking and give graphic picture of the modus operandi adopted by the parties involved. It is quite disturbing to note the ease with which the assessee has been conducting its affair by laundering its unaccounted money at into regular transactions. The law allows the Assessing Officer to lift the corporate veil to unmask the real from the apparent and also to go behind the transaction to understand their true import. The law also allows the authorities to test the transactions on a touches tone of human probability to arrive at a conclusion which the rationale mind would arrive at. After going behind the transactions on paper and after lifting the corporate veil, as discussed in earlier paragraphs, it has been proved that the apparent was not real.”

13. Further, in ITA No. 2668/DEL/2019 [Assessment Year: 2010-11] **City Life Projects Pvt. Ltd. Vs. The I.T.O** SMC Bench at Delhi vide order dated 17/9/2021, has dealt with similar issue involving similar facts and alleged entries given by SK Jain Group and held as follows;

“10. I have given thoughtful consideration to the orders of the authorities below and have carefully perused the decisions relied upon Id. counsel for the assessee. I find that the decision of the coordinate bench in the case of Naval Oil and Containers Pvt. Ltd [supra] squarely applies on the facts of the case in hand, in as much as, in that case also, information was received out of the search operation carried out in S.K. Jain group of cases which is evident from the facts extracted at Para 4 of the order and the same are as under:

"4. The brief facts of the case are that assessee filed its return of income on 30.9.2009 declaring income of Rs. 2,73,720/-. The AO processed the same u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) on 21.2.2011. On the information received from the office of the Director of Income Tax (Investigation-II), Jhandewalan Extension, New Delhi dated 12.3.2013 mentioning therein that a search operation was carried out in the case of Surendra Kumar Jain group of cases wherein after scrutiny of the incriminating documents seized during the course of search and subsequently post search enquiry, it has been noticed that the said group was involved in providing accommodation entries to the persons who were named in the Report. The Assessee was also figures in the list as one of the beneficiaries of the accommodation entries provided by the Group. After examining the details and copies of seized documents, AO is of the view that assessee company has taken the accommodation entries amounting to RS. 25 lacs in FY 2008-09 from S.K. Jain Group of Companies and specifically from M/s Shalini Holding Ltd. in the garb of share application money on 30.08.2008. On the basis of this information found during the search, AO issued notice u/s. 148 of the Act dated 8.3.2016 after recording the reasons in writing and after obtaining sanction u/s. 151(1) of the Act from PCIT, Delhi-6, New Delhi which was served upon the assessee on 10.3.2016 by speed post. In response to the same, assessee filed a letter dated 06.4.2016 wherein it was submitted that the original return filed earlier may be treated as returned filed in response to the notice u/s. 148 of the Act. The Assessing Officer issued notice u/s. 143(2) of the Act and u/s. 142(1) of the Act alongwith questionnaire to the assessee. In response to the same, assessee appeared and filed required documentary evidences and answer the query raised by the AO, but the AO did not agree with the explanation given by the assessee and finally made the addition u/s. 68 of the Act of Rs. 25 lacs as discussed in para 15 of the assessment order and completed the assessment at Rs. 28,23,720/- u/s. 147/148 read with section 143(3) of the Act vide order dated 15.12.2016. Against the assessment order dated 15.12.2016, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.11.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 30.11.2018 of the Ld. CIT(A), assessee is in appeal before the Tribunal."

11. On the afore-stated facts, the coordinate bench held as under;

"5. At the time of hearing, Ld. Counsel for the assessee stated that assessee has raised as many as 13 grounds of appeal which includes legal as well as on merits. But he draw my attention towards the ground no. 3 regarding jurisdiction of the AO ignoring the provisions of section 153C of the Act which ought to have been applied by the revenue instead of section 147 as the former provisions are non-obstantive provisions and exclude the operations of section 147 of the Act. He draw my attention towards a small paper book containing pages 1-62 in which he has attached various documentary evidences including various judgements on the issue in dispute and stated that the ground no. 3 has already been adjudicated and decided in favour of the assessee by the various Benches of the ITAT including the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007-08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal. Vs. ITO, Ward 2(3), Ghaziabad. He especially draw my attention towards the facts of the case and the decisions mentioned in para no. 8 at page 7 to 9 of the aforesaid Tribunal's order dated 08.08.2017 and requested by following the same ratio, the appeal of the assessee may be allowed.

6. On the contrary, Ld. DR relied upon the orders passed by the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order on the ground raised by the assessee. He has also filed the written submissions on legal as well as merits with supporting various decisions rendered by various Courts.

7. I have heard both the parties and perused the records and gone through the issue raised by the assessee in grounds of appeal alongwith orders passed by the revenue authorities especially the impugned order. No doubt that Ld. Counsel for the assessee has argued on the issue in ground no. 3 and stated that Ld. CIT(A) has erred in affirming the jurisdiction of the AO that the provisions of section 153C ought to have been applied by the revenue instead of 147, as the former provisions are non-obstantive provisions and exclude the operations of section 147 of the Act. On this issue, he relied upon the various orders passed by the ITAT, Delhi Benches including the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007-08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal. Vs. ITO, Ward 2(3), Ghaziabad, which was passed by the undersigned by respectfully following the various orders mentioned in para no. 8 of the order at page no. 7 to 9 of the order. For the sake of convenience, the relevant para no. 8 is reproduced as under:-

“8. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.”

7.1 After going through the aforesaid finding of the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007-08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal vs. ITO, Ward 2(3), Ghaziabad, I am of the considered view that ground no. 3 of this appeal has already been adjudicated and decided by the various Benches of the ITAT, which I have mentioned in the aforesaid paragraphs and I am of the view that this issue has already been adjudicated and decided in favour of the assessee by holding that on the basis of incriminating material found, **once reassessment proceedings was initiated on the basis of incriminating material found in the search of 3rd party then the provisions of section 153C of the I.T. Act were applicable which exclude the**

application of section 147 and 148 of the I.T. Act and notice u/s. 148 of the Act and proceeding u/s. 147 are illegal and void ab initio. Therefore,, respectfully following the aforesaid order of the Tribunal dated 08.08.2017, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate the other grounds. Ld. DR has not brought to my notice any contrary decision on exactly similar facts and circumstances of the case mentioned in para no. 8 of the Tribunal order dated 08.08.2017, as reproduced above. Therefore, there is no help can be given to the revenue on the issues mentioned in the written submissions by the Ld. DR”

12. On finding parity in the facts of the case in hand with the facts of Naval Oil and Containers Pvt. Ltd [supra] respectfully following the decision of the coordinate bench, I direct the Assessing Officer to delete the impugned addition.”

14. Thus Ld. CIT(A) has fallen in error is not examining the assessment order to see as to how the AO exclusively and extensively relied only the alleged incriminating material found in the case of S.K.Jain Group of Companies to make addition under 147/148. Consequently, we are inclined to decide the ground no. 2 in favour of the assessee and which makes consequential other grounds superfluous. **The appeal of assessee is allowed and impugned assessment is set aside.**

Order pronounced in the open court on 31st October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 31.10.2023

Binita, SR.P.S

Copy forwarded to:

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4. CIT(Appeals)
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**ASSISTANT REGISTRAR
ITAT, NEW DELHI**