

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 3291/Mum/2019 (A.Y. 2011-12)

M/s. Ankur Power Projects Pvt. Ltd. B-60, Station Plaza, Station Road Bhandup West, Mumbai-400 078. PAN : AAICA9913H	Vs.	ITO-15(1)(1) Room No. 456 4 th Floor Aayakar Bhavan M.K. Road Mumbai-400020.
(Appellant)		(Respondent)

Assessee by	Shri Neelkanth Khandelwal & Shri Aakash Kumar
Department by	Ms. N.V. Nadkarni & Shri Ujjawal Kumar Chavan
Date of Hearing	13.10.2023
Date of Pronouncement	23.11.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 8.3.2019 passed by the learned CIT(A)-24, Mumbai and it relates to A.Y. 2011-12. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the validity of reopening of the assessment and also in confirming the assessment of Rs. 66.25 crores being share capital including share premium received by the assessee, as unexplained income under section 68 of the I.T. Act.

2. The facts relating to the case are stated in brief. The assessee company is engaged in the business of production, collection and distribution of electricity. The assessee filed its return of income on 29-09-2010 for the year under consideration declaring loss of Rs.39,901/-. The said return was processed under section 143(1) of the Act. Subsequently regular assessment

was completed under section 143(3) of the Act on 14.3.2014 accepting the loss declared by the assessee. The DDIT, Jodhpur had conducted search in the case of M/s. Varah Infra Group of Jodhpur and it was found that the said company and its group were providing accommodation entries in the form of investments in share capital of various other companies located in Kolkata, Mumbai, Indore and Jodhpur. The main person involved in providing bogus entries was Mr. Jagdish Prasad Purohit. In the statement recorded from him under section 132(4) of the Act, he admitted that he is engaged in the business of providing accommodation entries in the form of share capital, share premium, unsecured loans and bogus bills etc., by receiving commission. Mr. Jagdish P. Purohit also furnished a list of 24 companies, which were controlled and managed by him for this purpose. Based on the said search, the DDIT informed the assessing officer that the assessee herein is one of the beneficiaries of accommodation entries. As per the said information, the assessee has also taken accommodation entries in the form of security premium to the tune of Rs. 64.11 crores during the financial year 2010-11.

3. Upon receiving the above said information, the Assessing Officer reopened the assessment of the year under consideration by issuing notice under section 148 of the Act on 22.3.2016. In the reopened assessment, the Assessing Officer assessed the share capital of Rs. 2.13 crores and share premium of Rs. 64.11 crores both aggregating to Rs. 66.24 crores as income of the assessee as unexplained cash credit.

4. In the appellate proceedings, the Ld CIT(A) upheld the validity of reopening of the assessment also confirmed the additions made under section 68 of the Act towards unexplained cash credit. Aggrieved the assessee has filed this appeal.

5. The assessee is contending that the reopening of assessment is bad in law. Besides the above, the assessee is also challenging the addition made u/s 68 of the Act. The Learned AR first advanced his argument with regard to the validity of reopening of the assessment. The Learned AR invited our attention to the reasons recorded by the Assessing Officer, which reads as under :-

“The above mentioned assessee has filed the return of income for A.Y. 2011-12 23.01.2012 declaring loss at Rs. 39,901/-. The return was processed u/s 143(1) on 13.02.2012.

In this case, an information has been received from DDIT(Inv.)-II, Jodhpur, Rajasthan that a search & Seizure Action u/s. 132 of the LT. Act, 1961 was carried out in the case of M/s. Varash Infra Group of Jodhpur on 21.01.2015. The main allegation against the company was that, it has rotated its unaccounted money in the form of Share Premium to various paper companies based at Kolkata, Mumbai, Indore & Jodhpur. Main Bogus Entry Provider in this case was Jagdish Prasad Purohit and its associates namely Eknath Mandavkar, Raj Kumar Kanodia, and family members Sushil Kumar Purohit, Anil Kumar Purohit and Kailash Prasad Purohit based at Kolkata and Mumbai. Its associates were working as dummy directors managed by Jagdish Prasad Purohit. Mr. Jagdish Prasad Purohit accepted that he was a entry provider engaged in providing accommodation entries to willing companies in the form of share capital, share premium, bogus bill, unsecured loans etc. in lieu of commission. Mr. Jagdish Prasad Purohit provided list of 246 companies, which were controlled and managed by him for this purpose. M/s. Ankur Power Projects Pvt Ltd. in one of the beneficiary company who had taken accommodation entry in the form of security premium amounting to Rs. 64,11,34,873/- during the F.Y. 2010-11.

In view of above facts, I have reason to believe that income chargeable to tax amounting to Rs. 64,11,34,873/- has escaped assessment for A.Y. 2011-12 within the meaning of section 147 of the Income Tax Act, 1961.

Issued notice u/s 148 after taking necessary approval dated 21.03.2016 und section 151(2) of the I.T. Act from Jt. CIT Range 15(1), Mumbai.”

6. The Learned AR submitted that the fact would remain that the assessment u/s 143(3) had been completed for this year prior to the reopening of assessment. However, in the above said reasons for reopening, the Assessing Officer did not refer to the assessment completed u/s 143(3) of the Act, but is referring to the intimation issued u/s 143(1) of the Act upon

processing of the return of income. Further the Assessing Officer has simply narrated the information received from DDIT, i.e., the facts relating to the search carried out at Varah Infra Group and the allegation that the assessee is one of the beneficiaries of the accommodation entries. He submitted that the AO did not make any enquiry on the information so received by him. The Ld A.R further submitted that the Assessing Officer is mentioning only security premium of Rs. 64.11 crores in the reasons and did not mention about share capital received by the assessee. He submitted that the Assessing Officer has not mentioned as to how share premium of Rs. 64.11 crores collected by the assessee is accommodation entry and how it will constitute income in the hands of the assessee, which are essential requirement for forming belief about escapement of income. Accordingly, he contended that the Assessing Officer has not arrived at the satisfaction about the escapement of income in the hands of the assessee in an independent manner as contemplated u/s 147 of the Act, i.e. the Assessing Officer has simply accepted the information given by the Investigation Wing and concluded that there was escapement of income without making any independent enquiry. Accordingly, the learned AR submitted that that the satisfaction reached by the Assessing Officer is borrowed satisfaction and not its own satisfaction. Further, there was no proper and independent application of mind by the Assessing Officer on this escapement and hence the reopening of assessment is bad in law.

7. The Learned AR also invited our attention to the copy of the approval given by JCIT-15, Mumbai dated 21.3.2016, which is placed at page No. 507 of the paper book filed by the assessee. He invited our attention to the same, more particularly the point No. 7 of the Approval Form, which reads as under:-

“whether assessment is proposed to be made for the first time. If the reply is in the affirmative, please state the reasons.

The answer field is “yes”.”

He submitted that this is not the case of first assessment, but it was a case of reassessment as noticed earlier, i.e., regular assessment had been completed earlier by the Assessing Officer under section 143(3) of the Act prior to reopening of the assessment. Accordingly, he submitted that the answer given to Point No.7 mentioned above is also wrong, which also confirms non-application of mind by the AO. He submitted that the Ld JCIT has also not verified this fact and accordingly contended that the JCIT also has also not applied his mind on the case. Accordingly, he contended that his approval should also be considered to be mechanical in nature and on that reason also the impugned reopening of assessment is liable to be quashed. The Learned AR placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of B.U. Bhandari Autolines (P) Ltd. Vs. ACIT (2023) 149 taxmann.com 219 (Bombay) and also decision rendered by Hon'ble High Court of Delhi in the case of PCIT Vs. Meenakshi Overseas (P) Ltd. (2017) 82 taxmann.com 300(Del).

8. The Learned AR further submitted that the assessee has obtained copy of the sworn statement taken from Mr. Jagdish Prasad Purohit on 21.1.2015. In the answer given to Question No. 10, the above said person has submitted a list of 246 companies controlled and managed by him. The above said list is attached as Annexure-A to the statement. Inviting our attention to the above said list, the learned AR submitted that the assessee has not obtained share capital from any of the 246 companies mentioned in the list. On the contrary, name of the assessee is shown as one of the companies controlled by him at serial No. 16 in the list. Hence the question whether the assessee is a conduit or one of the beneficiaries was not examined by the Assessing Officer. Since the AO has not examined the materials supplied by DDIT, it goes to prove that the Assessing Officer has not applied his mind on the issue of reopening of the assessment.

9. Accordingly, the Ld A.R submitted that the AO has not applied his mind at all on the information passed on by DDIT. Hence without proper application of mind, he could not have formed belief that there was escapement of income. Accordingly, he contended that the reopening of assessment is bad in law.

10. The Ld D.R, however, relied upon the order passed by Ld CIT(A) on this issue.

11. We have heard rival contentions and perused the record. We noticed earlier that the assessing officer has reopened the assessment of the year under consideration on the basis of information received from DDIT. The Ld A.R pointed out various defects in the reasons so recorded, viz.,

- (a) The assessment had earlier been completed u/s 143(3) on 14-03-2014. However, the AO did not refer to the regular assessment, but was referring to the intimation issued u/s 143(1) of the Act in the reasons recorded.
- (b) In the application submitted to JCIT for seeking his approval also, the AO states that the proposed assessment is first assessment.
- (c) The AO is referring to Share premium amount only in the reasons for reopening of assessment, i.e., he did not mention about share capital amount.
- (d) The allegation of DDIT is that the assessee is one of the beneficiaries of accommodation entries provided by Shri Jagdish Prasad Purohit through his group companies numbering 246. The list of 246 companies is given along with the statement taken from him. It is peculiar that the assessee's name finds place at serial no.16 as one of the companies controlled by Shri Jagdish Prasad Purohit.
- (e) It is the contention of Ld A.R that the assessee has not received share capital/share premium from any of the 246 companies.

All the above said defects, in our view, are major defects and they support the case of the assessee that there was no application of mind by the AO on the information supplied by the DDIT.

12. Under section 147 of the Act, it is mandatory that the assessing officer should have reason to believe that any income chargeable to tax has escaped assessment. In the instant case, the reasons recorded by the AO (which have been extracted earlier), would show that the assessing officer has only narrated the information shared by DDIT and the allegations made by the said authority that the assessee has taken accommodation entry. After that, the AO simply states that he has reason to believe that income chargeable to tax has escaped. It is well settled proposition of law that the “reason” contemplated in sec.147 is that of the assessing officer and not of anyone else.

13. At this juncture, we may take support of principles laid down by Hon’ble High Courts on the matter of reopening of assessment. In the case of B U Bhandari Autolines (P) Ltd, (2023)(149 taxmann.com 219)(Bom), the AO reopened the assessment on the basis of information provided by DDIT that the above said assessee has taken accommodation entries by way of bogus purchase bills. The Hon’ble Bombay High Court noticed that the assessing officer did not furnish any explanation as to on what basis and material he came to the conclusion that the supplier was a shell entity and its transactions with the assessee was not genuine. Further, the Hon’ble Bombay High Court observed that the reasons recorded did not suggest at all that the AO had independently applied his mind to the said information received or did he conduct his own enquiry into the matter for the purpose of concluding that indeed income assessable to tax had escaped assessment or that sale transaction in question with alleged shell entity was only a paper transaction. Accordingly, the Hon’ble Bombay High Court held that the reopening of assessment was to be quashed.

14. The Hon'ble Delhi High Court has quashed the reopening of assessment in the case of PCIT vs. Meenakshi Overseas (P) Ltd (2017)(82 taxmann.com 300)(Delhi), when it noticed that

- (i) there was no independent application of mind by the assessing officer to the tangible material
- (ii) the conclusions of Assessing officer were reproduction of conclusion in investigation report
- (iii) reasons failed to demonstrate link between tangible material and formation of reasons to believe that income had escaped assessment.

15. In our considered view, the principles laid down in both the above said decisions apply to the facts of the present case. We noticed earlier that the AO has reproduced the information passed on by DDIT and simply concluded that there was escapement of income. There is no independent application of mind by the AO. Various defects in the reasons recorded by the AO, which were pointed out by Ld A.R, also go to suggest that there was no independent application of mind by the AO. Further, the AO has not shown as to how the share capital/premium would constitute income that has escaped assessment. Further, the assessee herein is mentioned as a company controlled by Shri Jagdish Prasad Purohit in the list attached with the sworn statement taken from the above said person, while the allegation of the DDIT is that the assessee herein is one of the beneficiaries of Shri Jagdish Prasad Purohit. Admittedly, both these information contradicts with each other. We notice that the AO has not examined this vital aspect while forming belief that there was escapement of income, which also goes to show that there was complete non-application of mind on the part of the assessing officer. It also shows that the assessing officer has failed to demonstrate link between the material and formation of reasons to believe that income has escaped assessment.

16. In view of the foregoing discussions, we hold that the re-opening of assessment is bad in law. Accordingly, we quash the orders passed by both the tax authorities.

17. Since we have quashed the orders passed by Ld CIT(A) and the assessing officer, there is no requirement to adjudicate the grounds urged on merits.

18. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 23.11.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai.; Dated : 23/11/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS