

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 323 & 324/Del/2019
(Assessment Year: 2011-12 & 2012-13)
Trident Towers Pvt. Ltd, Vs. ACIT,
C/o. Ravi Gupta, Advocate, E- Central Circle-30,
6A, Kailash Colony, New Delhi New Delhi
(Appellant) (Respondent)
PAN: AAAC0951C

Assessee by : Shri P. C. Yadav, Adv
Shri Shivam Garg, Adv

Revenue by: Shri Anuja Garg, Sr. DR

Date of Hearing 09/10/2023
Date of pronouncement 05/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. All these appeals of the Assessee arises out of the orders of the Learned Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Ld. CIT(A)], dated 26.11.2013 against the orders passed by ACIT, Central Circle-30, New Delhi for Assessment Years 2011-12 and 2012-13 respectively.
2. Identical issues involved in these appeals and hence they are taken up together and disposed of by this common order.
3. Both the parties mutually agreed that the appeal of the assessee for AY 2011-12 may be taken as lead case and the decision rendered thereon would apply with equal force for AY 2012-13 in view of the identical facts except with variance in figures.
4. The assessee has raised the following grounds of appeal for AY 2011-12:-

"1. On the facts and in the circumstances of the case Ld. CIT (A) New Delhi New Delhi has erred both on facts and in law in upholding the impugned order passed by the respondent illegally, violating the principles of natural justice, without fair and objective application of mind to the facts of the case and the law applicable and without being guided by the binding decisions of courts and tribunals and hence liable to be set aside and quashed and declared non est in law.

2. On the facts and circumstances of the case, the Ld. CIT (A) New Delhi has erred, both on facts and in law, in sustaining the assessment of the appellant at income of Rs.8,485,507/- as against the income of (Rs.514,493/-) declared by the appellant.

3. On the facts and circumstances of the case, the Ld. CIT (A) New Delhi has erred, both on facts and in law, in sustaining the assessment that could not have been re-opened u/s 147/148 as no valid reasons have been recorded by the Assessing Officer to establish any satisfaction on his part that any income belonging to the appellant has escaped assessment.

4. On the facts and in the circumstances of the case Ld. CIT (A) New Delhi has erred both on facts and in law, in sustaining the action of AO as no incriminating material whatsoever was found/unearthed as a result of search.

5. On the facts and circumstances of the case, the Ld. CIT (A) New Delhi has erred, both on facts and in law, in sustaining the action of AO in completion of proceedings u/s 147, of the IT Act, solely on the basis Unverified/ unratified/ unsubstantiated/ unconfirmed statement of Shri Mul Chand Malu.

6. That the Ld. CIT(A) has erred, both on facts and in law, ins sustaining the addition of Rs.9,000,000/- u/s 68 on account of unsecured loan without appreciating the facts of the case.

7. On the facts and circumstances of the case, Ld. CIT (A) New Delhi has erred, both on facts and in law, in sustaining the said addition arbitrarily rejecting the explanation and evidences brought on record by the appellant.

8. On the facts and in the circumstances of the case Ld. CIT (A) New Delhi has erred both on facts and in law, in sustaining the action of AO violating the principle of natural justice by not providing opportunity for cross-examination of persons, whose statements have been relied upon by the AO, in spite of specific request made by the appellant in assessment proceedings as well as before CIT(A).

9. On facts and in the circumstances of the case Ld. CIT (A) New Delhi has erred both on facts and in law, in sustaining the action of AO violating the principle of natural justice by not providing opportunity for cross-examination of persons, whose statements have been relied upon by the AO, in spite of specific request made by the appellant in assessment proceedings as well as before CIT(A).

10. That the provisions of sections 234A, 234B and 234C of the Act are not at all applicable."

5. Ground Nos. 1, 4 and 7 raised by the assessee for AY 2011-12 were stated to be not pressed by the Id AR at the time of hearing, for which necessary

endorsement was duly made in our file. Accordingly, the ground Nos. 1, 4 and 7 are hereby dismissed as not pressed.

6. Ground Nos. 3 and 5 raised by the assessee are challenging the validity of reopening of assessment passed u/s 147 of the Act. Ground Nos. 6, 8 and 9 raised by the assessee are challenging the validity of addition made u/s 68 of the Act on merits.

7. We have heard the rival submissions and perused the material available on record. The assessee is a company deriving income from dealing in commodities and letting out of properties. The return of income for AY 2011-12 was filed by the assessee on 29.09.2011 declaring loss of Rs. 5,14,493/-. This return was duly processed u/s 143(1) of the Act. A search and seizure operation was carried out u/s 132 of the Act in Kuber Group of companies on 09.10.2014, pursuant to which the case of the assessee was centralized with Central Circle-30, vide order passed u/s 127 of the Act dated 13.10.2016. The assessment of the assessee company was sought to be reopened vide issuance of notice u/s 148 of the Act on 31.03.2017 after recording reasons for reopening thereon. Since, the reopening of assessment is beyond four years from the end of financial year, the reopening was done after getting necessary approval from Id Pr. CIT in terms of section 151 of the Act. The reasons recorded for reopening the assessment are as under:-

M/s Trident Tower Pvt Ltd
(PAN: AA ACT0951C)
A.Y. 2011-12
Reason recorded u/s 147 of the I.T. Act, 1961

A search and seizure operation was carried out on the Kuber Group of cases on 09.10.2014. During search and post search proceedings, information relating to entities providing accommodation entries of share application money, share premium, share capital and unsecured loans to Kuber group entities came to light. As per information gathered it was found that during the A.Y. 2011-12, M/s Trident Towers Pvt. Ltd, a Kuber Group company has received unsecured loan from M/s Powmex Sales Pvt. Ltd as per details below :

S.No.	Name of the company	Address	Unsecured Loan
1	Powmex Sales Pvt Ltd	125/1, Cotton Street, Kolkata - 700007	90,50,301/-

During the post-search investigation, summons were issued u/s 131 of the Income Tax Act 1961 to M/s Powmex Sales Pvt. Ltd providing unsecured loan to M/s Trident Towers Pvt.Ltd seeking evidence to verify the transactions made however no replies were filed nor did anyone appear on behalf of M/s Powmex Sales Pvt. Ltd. The summons were either returned un-served or no compliance was made.

During the assessment proceedings of Kuber group of companies, enquiries were conducted in the case of M/s Powmex Sales Pvt. Ltd by issuing commissions u/s 131(1d) of the I.T. Act and information was gathered from the Investigation Wing, Kolkata. During the enquiries it was found that M/s Powmex Sales Pvt Ltd is not physically existing at the given address at 125/1, Cotton Street, Kolkata - 700007. (the report is enclosed as annexure A)

During the assessment proceedings of various other Kuber group companies where M/s Powmex Sales Pvt. Ltd. has provided share application money/share premium/share capital/unsecured loan, the same was confronted to the authorized representative of the Kuber group and asked to produce the directors of the investor company for examination.

However, none of the directors of M/s Powmex Sales Pvt. Ltd. were produced for examination by the Kuber group companies during assessment proceedings even when specific requirement for the same was communicated to the assessee.

The above facts clearly establish that the assessee company M/s Trident Towers Pvt Ltd has taken accommodation entries in the form of unsecured loan amounting to Rs. 90,50,301/- from entry providing company, M/s Powmex Sales Pvt. Ltd during the F.Y. 2010-11 relevant to A.Y. 2011-12.

The assessee did not disclose fully and truly the above material facts necessary for his assessment for AY 2011-12.

It is pertinent to mention that in the case of **CIT v/s Nova Promoters & Finlease (P) Ltd. (ITA no.342 of 2011)** dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the assessing officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

"We are aware of the legal position that at the stage of issuing notice u/s 148, the merits of the matter are not relevant and the Assessing officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment"

Here it would be worthwhile to mention that in the case of **Rajesh Jhaveri Stock Brokers Pvt. Ltd. v ACIT(2007) 291 ITR 500/161 Taxman 316 (Supreme Court)**, The Hon'ble Apex Court has held that :-

"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."

Also, in the case of **Phoolchand Bajrang Lal v. ITO 203 ITR 456 (SC)**, the Hon'ble Apex Court has held that :-


"An assessment completed u/s 143(3) but later on information received which was indefinite, specific, and reliable and the AO duly recorded the reasons for his belief that the assessee had not fully and truly disclosed particulars of his income and hence there was escapement of income. Held that the reopening of the case was valid."

Also in the case of **Raymond Wollen Mills Ltd. 236 ITR 34 (SC)**, the Hon'ble Apex Court has held that :-

"Assessee did not include certain direct manufacturing costs and fiscal duties in the valuation of closing stock. This came to light in the subsequent years assessment proceedings. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness is not a thing to be considered at the stage of issue of notice u/s 148."

In the present case, the live link between the information/material at hand and the reasons for belief that income has escaped assessment has been sufficiently demonstrated.

After considering the above facts and patiently applying my mind on the same, I have reason to believe that an amount of Rs. 90,50,301/- has escaped assessment in the case of M/s Trident Towers Pvt Ltd for the A.Y. 2011-12 within the meaning of section 147/148 of Income Tax Act, 1961.


(Dr. Dhrubasish K. Deka)
Assistant Commissioner of Income Tax,
Central Circle -30, New Delhi

8. The assessee is one of the companies belonging to Kuber Group. It is a fact that the assessee had received unsecured loan of Rs. 90 lakhs from M/s. Powmex

Sales Pvt. Ltd during the year under consideration. During the course of search and seizure action, a statement u/s 132(4) of the Act was recorded from Shri Mul Chand Malu who offered to declare undisclosed income of Rs. 150 crores for Kuber Group of companies and their Directors under specific head of accommodation entries/ share premium. The various items for which the disclosure was made by Shri Mul Chand Malu in the subsequent statement recorded u/s 131 of the Act on 02.01.2015 in response to Question No. 8 are as under:-

<i>Detail of the item</i>	<i>Amount (in crores)</i>
<i>Share premium/share application money/ capital formation</i>	<i>100</i>
<i>Jewellery/ornaments/bullion</i>	<i>4</i>
<i>Expenditure in various forms, sources not substantiated</i>	<i>10</i>
<i>Properties construction /repair /renovation</i>	<i>6</i>
<i>Revolving liquid funds</i>	<i>30</i>
<i>Total undisclosed income declared u/s 132(4)</i>	<i>150</i>

9. In the reasons recorded, the Id AO observed that during the post search investigation in the case of Kuber Group of companies, summons were issued u/s 131 of the Act to M/s. Powmex Sales Pvt. Ltd to verify the veracity of the unsecured loan provided by them to assessee company for the sum of Rs. 90 lakhs in AY 2011-12. No compliance to this summon was made. It is pertinent to note that the summons was served in the address of M/s. Powmex Sales Pvt. Ltd at 125/1, Cotton Street, Kolkata-700 007. The assessee when confronted by the Id. AO submitted that the address in which the summons were served on M/s. Powmex Sales Pvt. Ltd is the wrong address and that correct address of M/s. Powmex Sales Pvt. Ltd is 16A, Shakespeare Sarani, New B. K. Market, 5th Floor, Kolkata 700071. Accordingly, it was submitted that the Id AO had sought to enquire at the incorrect address by M/s. Powmex Sales Pvt. Ltd. Further, it was pointed out by the Ld. AR that Commission u/s 131(1)(d) of the Act was issued by Delhi

Investigation Wing to Kolkata Investigation Wing on which Kolkata Investigation Wing vide their report dated 25.11.2016 submitted that whereabouts of M/s. Powmex Sales Pvt. Ltd are not known based on the report of the Income Tax Inspector of Kolkata. This fallacy had happened because of the fact that Kolkata Investigation Wing had sought to examine M/s. Powmex Sales Pvt. Ltd at the wrong address i.e. at 125/1, Cotton Street, Kolkata-700 007 instead of correct address at 16A, Shakespeare Sarani, New B K Market, 5th Floor, Kolkata-71. Accordingly, he argued that any adverse inference drawn on the assessee regarding the loan received from M/s. Powmex Sales Pvt. Ltd would not be justified in the eyes of law.

10. The Id AR before us submitted that no search proceedings of assessee was pending on 10.11.2016 on the date of issuance of Commission u/s 131(1)(d) to Kolkata Investigation Wing. The Id AR argued that the assessee was never subjected to search and that is why no assessment u/s 153A and 153C of the Act was framed on the assessee for the year under consideration. Merely because of the fact that M/s. Powmex Sales Pvt. Ltd could not be found at the address at 125/1, Cotton Street, Kolkata-7 by the Investigation Wing, Kolkata, it cannot be inferred to treat the loan received from M/s. Powmex Sales Pvt. Ltd as ingenuine in the hands of the assessee company.

11. The Id AR submitted that the entire reopening was made based on the report given by Kolkata Investigation Wing dated 25.11.2016 pursuant to Commission issued u/s 131(1)(d) of the act. The Id AR argued that as on 10.11.2016 i.e. being the date of issuance of commission u/s 131(1)(d) of the Act, no proceedings against the assessee company were pending. Hence, he argued the very basis of reopening of assessment based on the report of Kolkata Investigation Wing stated supra is faulted and not tenable in the eyes of law.

12. We find that the assessee on its part to prove the genuineness of the loan received from M/s. Powmex Sales Pvt. Ltd and to prove the creditworthiness of the lender together with their identity, had furnished the following documents before the Id AO:-

- a) name and address of the lender;
- b) income tax return acknowledgement of the relevant year of the lender;
- c) bank statements of the lender duly reflecting the loan transaction given to the assessee together with the source thereon;
- d) confirmation from the lender for having granted the loan to the assessee through regular banking channels;
- e) Master data of lending company downloaded from the website of Ministry of Corporate Affairs to prove that the company is in active category.

13. We find that the Id AO at para 6.6 of his order states that mere furnishing of bank statements of the lender company would not be sufficient to prove their creditworthiness. We further find that on perusal of para 6.6 of the assessment order, the Id AO had completely proceeded on a misconception that M/s. Powmex Sales Pvt. Ltd had invested in share capital and share premium of the assessee company which is factually incorrect. Factually, M/s. Powmex Sales Pvt. Ltd had only granted unsecured loan of Rs. 90 lakhs to the assessee company during the year under consideration. No enquiries whatsoever were sought to be carried out by the Id AO at the correct address of the M/s. Powmex Sales Pvt. Ltd. The Id AO on the contrary vehemently relied on the Investigation Report of the Kolkata Investigation Wing dated 25.11.2016 where enquiries were purportedly carried out by the Kolkata Investigation Wing at the wrong address of the M/s. Powmex Sales Pvt. Ltd, and proceeded to treat the loan received by the assessee company in the same of Rs. 90 lakhs as unexplained cash credit u/s 68 of the Act. Further, yet another basis for the Id AO to treat the loan received from M/s. Powmex Sales Pvt. Ltd as unexplained cash credit was reliance placed on the statement of one Shri Mul chand Malu recorded by the search team u/s 132(4) on 09.10.2014 and later u/s 131 of the Act on 02.01.2015. It is pertinent to note that in the said statement of Shri Malu, there was absolutely no disclosure of unaccounted income made by him on behalf of Kuber Group of companies and their directors with regard to

unsecured loan received by the parties. This is crystal clear from the disclosure of unaccounted income made by Shri Mul Chand Malu which is tabulated hereinabove. Hence any reliance placed on the statement of Shri Mul Chand Malu in this regard would be grossly misconceived. We have already stated that the enquiries made by the Kolkata Investigation Wing on M/s. Powmex Sales Pvt. Ltd at the wrong address had triggered the reopening proceedings as well as drawing adverse inference with regard to unsecured loan received by the assessee company for the year under consideration. Hence both the reasons of the Id AO to frame the addition in the hands of the assessee, i.e. i) M/s. Powmex Sales Pvt. Ltd could not be found at the address by the Kolkata Investigation Wing; that Directors of M/s. Powmex Sales Pvt. Ltd were not produced by the assessee for examination; and ii) Shri Mul Chand Malu had given statement that Kuber group of companies and their Directors had received accommodation entries from various parties and for that purpose a disclosure of unaccounted income of Rs. 150 crores was made by him, falls flat. Further, we find that this Tribunal had an occasion to consider the veracity of the loan received from M/s. Powmex Sales Pvt. Ltd in the hands of various concerns of Kuber Group of companies and had held that the loan to be genuine:-

- a) Kuber Khanpan Udyog Pvt. Ltd Vs. ACIT-ITA NO. 580/Del/2019-AY 2011-12- dated 22.10.2019
- b) Kuber Food Products India Pvt. Ltd Vs. ACIT, ITA NO. 322/Del/2019-AY 2011-12 dated 22.10.2019
- c) Kuber Khanpan Udyog ITA No. 581 and 582/Del/2019-AY 2012-13 and 2013-14 respectively dated 22.02.2022.
- d) Vijayshree Food Pvt. Ltd Vs. ACIT ITA No. 587/Del/2019 dated 06.12.2021.

14. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to delete the addition made on account of unsecured loan received by M/s. Powmex Sales Pvt. Ltd u/s 68 of the Act by holding that the assessee had proved all the three ingredients of section 68 of the Act by furnishing the requisite documents before the Id AO and the Id AO had not found anything adverse in those documents and had not resorted to any further enquiry on the lender company at the correct address. Accordingly, the Ground Nos. 6, 8 and 9 raised by the assessee are allowed.

15. Since, the relief is granted on merits, the various grounds raised by the assessee challenging the validity of reopening of assessment on various facets need not be gone into and they are left open. Accordingly, Ground Nos. 3 and 5 raised by the assessee are left open.

16. As stated in the earlier part of the order, the decision rendered hereinabove in AY 2011-12 shall apply with equal force in AY 2012-13 also in view of the identical facts except with variance in figures.

17. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 05/01/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 05/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi