

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A': NEW DELHI)**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 4559/Del/2019  
Assessment Year : 2010-11**

Akik Marketing India Pvt. Ltd. N-39, Ground Floor, Greater Kailash-I, New Delhi-110048	Vs.	ITO, Ward 2(1), New Delhi
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PAN : AAACA6579K

(Appellant)

(Respondent)

Assessee by	:	Shri Gurjeet Singh, CA & Shri Shantanu Jain, Adv.
Revenue by	:	Shri Kanav Bali, Sr. DR

Date of hearing:	30.10.2023
Date of Pronouncement:	11.01.2024

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal is preferred by the Assessee against the order dated 15.03.2019 of Commissioner of Income Tax (Appeals)-1, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 440/2017-18, A.Y. 2010-11 arising out of an appeal before it against the order dated 27.12.2017 passed u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-2(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts of the case are that the assessee had filed the return of income for A. Y 2010-11 on 29.09.2010 declaring an income of Rs. 5,06,090/-. Information was received from the ADIT (investigation), Unit-2(1), New Delhi vide letter F. No. ADIT (Inv)/Unit-2(1)/PKJ/2016- 17/178 date 20.03.2017 that the assessee company i.e. M/s Akik Marketing India Pvt. Ltd. had received accommodation entries from the companies and its associates run and controlled by Sh. Pradeep Kumar Jindal during F.Y 2009-10 relevant to the Asstt. Year 2010-11. The assessment was completed u/s 147/143(3) of the Act vide order dated 27.12.2017 and the income was assessed at Rs. 3,91,31,450/-.

2.1 The Ld. AO made additions amounting to Rs. 3,78,68,000/- on account of Share application money u/s 68 and Rs. 7,57,360/- on account of Commission Charges. Aggrieved with the said addition, appellant filed appeal before the Ld. CIT(A).

3. The Ld. CIT(A) however, sustained the additions by following conclusive findings in para 5.3.8:-

*“5.3.8 The decision of Hon’ble Supreme Court in the case of PCIT v. NRA Iron & Steel (P) Ltd. (supra) is squarely applicable to the facts of the case. Respectfully following the above decision of Hon’ble Supreme Court, I hold that the appellant company has taken accommodation entry of Rs.3,78.68,000/- in the form of unsecured loan & other forms from entities controlled and managed by Shri Pradeep Kumar Jindal. Neither genuineness of transaction nor the creditworthiness of the entities, the onus of which rested on the appellant has been discharged. The explanation offered regarding the amounts credited in the books of accounts of the appellant company has correctly been found to be unsatisfactory by the AO. Considering the facts of the case I am of the considered view that the provisions of section 68 are attracted in the instant case. Accordingly, the addition made by the AO with regard to unexplained credit of Rs.3,78,68,000/- is upheld. The AO has also brought to tax commission payment of Rs.7,57,360/- to arrange for the said accommodation entry which is also part of elaborate modus operandi for obtaining accommodation entries. In view thereof, addition of Rs.7,57,360/- is in order and is confirmed. These grounds of appeal (Ground No. 1 to 11) are ruled against the appellant.”*

4. Assessee is in appeal raising following grounds:

*“1. Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.*

*2. Because the action for the assumption of jurisdiction of reassessment proceedings and the misapplication of the jurisdiction sanction being 'a fit case for issue of notice' is being challenged on facts and law.*

*3. Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non-application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/ reasonable cause and justification.*

*4. Because the action is being challenged on facts and law for making addition u/s 68 amounting Rs. 3,78,68000/- on the basis of Hon'ble supreme court in the case of PCIT vs NRA Iron & Steel P Ltd. (2019) 103 taxmann.com 48 whereas per assessee the facts of said case law is distinguishable and additionally in the alternative the quantum thereof too is being disputed.*

*5. Because the action is being challenged since the addition of Rs 3,78,68000/- has been made without having provided the cross examination of the person on whose statement or information the proceedings under section 147 were initiated which is in violation of the settled principle of law.*

*6. Because the action is being challenged since the addition of Rs 3,78,68,000/- has been made without making proper investigation from the other party whereby assessee has discharged the onus by providing relevant documents*

*7. Because the action for addition u/s 68 amounting Rs.1,14,00,000/- (out of total addition of Rs. 3,78,68,000/-) is being challenged on facts and law while all parameters for the provision of law required by assessee fulfilled as revealed in findings from acquiescence by silence.*

*8. Because the action for addition u/s 68 amounting Rs.1,12,00,000/- (out of total addition of Rs. 3,78,68,000/-) is being challenged on facts and law as the said amount has been received back during the year from Hajima Resorts Ltd., Mamta Jindal, Pradep Kumar Jindal and Instant Travels and Tours Pvt Ltd which has been given as loan/ advance in preceding assessment year.*

*9. Because the action for addition u/s 68 amounting Rs.1,37,68,000/- (out of total addition of Rs. 3,78,68,000/-) is being challenged on facts and law as the said amount is accommodation entries provided by*

*Pradeep Kumar Jindal to various companies through Bank A/c in the name of Akik Education Centre (P) ltd. (Old Name).*

*10. Because the action for addition u/s 68 amounting Rs 15,00,000/- (out of total addition of Rs. 3,78,68,000/-) is being challenged on facts and law as the said amount is a duplicate entry wrongly taken by AO relating to Luster Finlease & Invest P Ltd.*

*11. Because the action is being challenged on facts and law for making addition on account of commission paid amounting Rs.7,57,360/- at the rate of 2% of Rs.3,78,68000/-*

*PRAYER*

*For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

5. Heard and perused the records. The grounds no. 1 and 2 are general in nature. Nothing was argued on ground no. 5.

6. As with regard to ground no. 3, the Ld. AR submitted that the requirements of the provisions of Section 147 are that there should be 'reasons to believe' by the AO towards the escapement of the income and reasons recorded dt. 29.03.2017 itself reveals, that the 're-opening was on the basis of the reasons as provided in the information of ADIT(Inv.)-2(1), New Delhi, thus an independent satisfaction of AO of assessee was not recorded. It was submitted that the satisfaction mandated has to reveal in itself through the 'application of mind' on the examination and appreciation of the 'material facts' containing 'material particulars' which Ld. AR alleges lacked on touch stone of the reading of the 'reasons to believe' resulting in a 'borrowed satisfaction'.

6.1 It was submitted that in reason recorded dt. 29/03/2017 AO has not applied his mind as the information received by AO is of Rs 5,61,85,006/- from Investigation wing wherein the detail contained double entries too and case has been reopened on the basis that assessee company has shown receiving unsecured loan from others of Rs.1,14,00,000/- during the year. It is submitted

that Ld.AO, no where in reasons recorded mentioned the parties name from whom assessee has received Rs. 1,14,00,000/- as unsecured loan as accommodation entry out of detail mentioned Rs. 5,61,85,006/- and by what mode or through which bank the amount is transferred. It was submitted that in similar circumstances the Tribunal in assessee's own case for AY 2011-12 vide order dated 06/11/2020 in ITA 8884/D/2019 the co-ordinate bench has set aside the re-assessment for want of valid and sustainable reasons.

6.2 Further, in above said entries of Rs. 5,61,85,006, the entry relating to Euphoria Capital Pvt. Ltd. amounting to Rs. 8,00,000/- has not been mentioned from whom assessee company has received unsecured loan, hence no case of specific and valid material is brought on records which may justify the instant reopening action u/s 148 of the Act.

6.3 Ld. AR submitted that the AO had thus acted only on the basis of suspicion and it could not be said that it was based on belief that the income 'chargeable' to tax had escaped income. The Assessing Officer had to act on the basis of "reasons to believe" and not on "reasons to suspect".

6.4 Further it was highlighted by Ld. AR with reference to reasons that one major weakness in reasons is no where statement of searched persons is brought on records qua seized papers which vitiate the entire exercise. Moreover only one sided version of investigation wing on seized material that too which is not found from assessee's possession is relied and that cannot be made as valid basis to infer income escaping assessment u/s 148 of the Act. Ld. AR placed reliance upon following mentioned judgments: -

- i) *Hon/ble Delhi High Court in G & G Pharma 384 ITR 147*
- ii) *Hon'ble Delhi High Court in Meenakshi Overseas 395 ITR 677*
- iii) *CIT vs. Shree Rajasthan Syntex Ltd. (2009) 313 ITR 231 (Raj.)*
- iv) *Sarthak Securities Co. (P) Ltd. vs. ITO (2010) 47 DTR 201 (Delhi)*
- v) *Hon'ble Delhi high Court Sabh Infrastructure 398 ITR 198*

7. As with regard to ground no. 4, Ld. AR has submitted that Section 151 of the Act clearly stipulates that the Pr.CIT, who is the competent authority to authorize the reassessment notice made available at PB 1 Pg. 16, has to apply his mind and form an opinion. The mere appending of the expression 'I am satisfied' says nothing. It is not as if the Pr. CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In assessee's case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. Ld. AR relied judgement in Gorika Investment & Export (P) Ltd. Vs ITO (2018) 53 CCH 0168 (Delhi), Hon'ble ITAT, Delhi bench 'D' in the case of Virat Credit & Holdings (P) Ltd. in ITA No. 89/D/2012 vide order dt. 09.02.2018 (PB 2 Pg. 31-43), Sanjay Kumar vs. ACIT in W.P. (C) No. 999/2022 dated 27.02.2023 (High Court of Delhi) and CIT vs. S. Goyanka Lime & Chemical Ltd. (2016) 237 Taxman 278 (SC)

8. As with regard to ground no. 6 to 9, touching merits of the case covered under these grounds, it was submitted by Ld. AR that Assessee has received amount in 3 ways and there was one duplicate entry. Ld. AR pointed that Assessee company had received back the loan given in AY2009-10 Rs.1,12,00,000/-. There is alleged accommodation entries provided by Pradeep Kumar Jindal for Rs. 1,37,68,000/- to various companies through Bank A/c in the name of Akik Education Centre (P) Ltd. (Old Name). There is duplicate entry wrongly taken by AO relating to Luster Finlease & Invest P Ltd. for Rs. 15,00,000 and Assessee company received amount as Loan which were repaid/transferred to share capital in succeeding years for Rs. 1,14,00,000/-. Total of same is Rs.3,78,68,000/-.

9. Ld. AR has provided an explanatory chart of the aforesaid which is being reproduced below for convenience;

Date	Name, Address & PAN	Amount (Rs.)	Documents
1) Assessee company received back the loan given in AY 2009-10			
09.06.2009 09.06.2009 17.06.2009	Hajima Resorts Ltd  PAN: AABCH3775P	50,00,000 25,00,000 <u>15,00,000</u> 90,00,000	Opening Balance Shown as Debit Balance (Loan & Advances given in AY 2009-10) Audited Balance Sheet as on 31.03.2009 & List showing name of party at (PB 1 Pg. 38). Confirmation of A/c (PB 1 Pg. 63) Mamta Jindal Bank Statement (PB 1 Pg. 64-66). Assessee Bank Statement (PB1 Pg. 49-50)
15.06.2009	Mamta Jidal PAN: AEEPJ6955K	7,500,000	Opening Balance Shown as Debit Balance (Loan & Advances given in AY 2009-10) Audited Balance Sheet as on 31.03.2009 & List showing name of party at (PB 1 Pg. 38). Confirmation of A/c (PB 1 Pg. 67) Mamta Jindal Bani Statement (PB 1 Pg. 68-69) Assessee Bank Statement (PB1 Pg. 49)
16.06.2009	Pradeep Kumar Jindal PAN: AAIPJ8526A	7,50,000	Opening Balance Shown as Debi Balance (Loan & Advances given in AY 2009-10) Audited Balance Sheet as on 31.03.2009 & List showing name of party at (PB 1 Pg. 38). Confirmation of A/c (PB 1 Pg. 70) Pradeep Kuma Jindal Bank Statement (PB 1 Pg. 71-72) Assessee Bank Statement (PB1 Pg 49)

06.10.2009	Instant Travels & Tours (P) Ltd.	7,00,000	Opening Balance Shown as Debi Balance (Loan & Advances given in AY 2009-10) Audited Balance Sheet as on 31.03.2009 & List showing name of party at (PB 1 Pg. 36). Confirmation of A/c (PB 1 Pg. 73) Instant Travels & Tours Bank Statement (PB 1 Pg. 74) Assessee Bank Statement (PB 1 Pg. 47)
	Total	1,12,00,000	
3) Duplicate entry wrongly taken by AO relating to Luster Finlease & Invest P Ltd.			
15.06.2009	Lustre Finlease & Invest (P) Ltd. PAN: AAAL7150P	15,00,000	Confirmation of Lustre Finlease PB 1 Pg 75. Bank Statement of assessee in Akik Education Centre (P) Ltd. PB 1 Pg. 49.

10. It is submitted by Ld. DR that in investigation report of ADIT (Inv)-Unit 2(1), name of Akik Marketing India Pvt Ltd is in the list of front and non-descript companies of Sh. Pradeep Kumar Jindal (previous Director) (PB 2 Pg. 9 Point 13). Further, it is submitted that in AY 2011-12, similar issue of accommodation entry from related concerns of Pradeep Kumar Jindal was raised in Company's Director Sh. Amish Agarwal (current Director) case wherein it has been accepted by the Ld.AO that large deposit entries in bank accounts are treated as being used for the purpose of providing accommodation entries by charging commission @ 1% on the same (copy of assessment order u/s 143(3) of the Act is at PB 2 Pg. 1-6). It was thus submitted that, in any case, following the investigation report by the Investigation Wing of the Income Tax Department itself and assessment order u/s 143(3) of Sh. Amish Agarwal, Assessee may be liable only with charge of 1% commission as undisclosed income on total deposits Rs.2,51,68,000/- arising from aforesaid two entries of Rs. 1,37,68,000/- and Rs. 1,14,00,000/-.

11. As with regard to ground no.12, regarding commission amounting Rs. 7,57,360/- @ 2% on Rs. 3,78,68,000/-, it is submitted that assessee's submission made regarding addition of Rs.3,78,68,000/- be considered with regard addition of commission income

12. Ld. DR has however relied the orders of Ld. Tax authorities below. It was submitted that reasons are well founded. Ld. DR submitted that Ld. AO has mentioned at time of recording of reasons that books were examined and reproduction of every aspect is not necessary. He relied the judgement of Hon'ble Delhi High Court in *Experion Developers Pvt. Ltd. Vs. ACIT WP(C) 11302/2019 order dated 13/02/2020* to contend that DIT report has to considered tangible material to form opinion of escapement.

13. As we appreciate the material before us and the submissions it comes of that in the reasons recorded for reopening the case made available at pages 18-19 of the paper book, the Ld. AO has relied the information received from the investigation Wing, where cases of the "beneficiaries" who had received accommodation entries from Pradeep Kumar Jindal (entry operator), were to be reopened. Ld. AO observes in the reason for invoking that assessee is one of the "beneficiary companies" which has received entries from the companies and its associates run and controlled by Pradeep Kumar Jindal. Ld. AO has mentioned in the reasons for the reopening:

*"During the year under consideration the assessee company has taken a some of INR 5,61,85,006/-as accommodation entries from the companies and its associates run and controlled by Pradeep Kumar Jindal during the FY 2009-10 which is relevant to assessment year 2010-11. The above amounts are just only accommodation entries in lieu of giving cash and taking checks in the form of share application money /share capital/Premium /share forfeiture/exempt long-term capital gain/loss short term capital gain/loss /advance against property/unsecured loans/transfer of company/bogus sale/bogus purchase etc."*

14. The learned AO then observe that;

*“In view of above facts, the assessee company has received amounts of Rs.5,61,85,006/-as accommodation entries in the form of share application money and other forms from Pradeep Kumar Jindal group of companies. But, on examined the return of income filed for the AY 2010-11 by the assessee company, the assessee company has shown to receive unsecured loan from others of Rs. 1,14,00,000/- during the year. After examined the information available on record and return of income filed for AY 2010-11, I have reasons to believe that the income amounting to Rs. 1,14,00,000/- for the AY 2010-11 has escaped assessment and provisions of section 147/148 of the IT Act 1961 are clearly attracted. It is a fit case for initiating proceedings u/s 147/148 of the IT Act 1961 and for issue of notice u/s 148 of the IT Act 1961.”*

15. Now when these observations of the assessing officer in the reasons for reopening are considered it appears that the assessing officer had merely relied the information of the investigation being without actually concluding specifically as to what was the nature of alleged accommodation entry proceeded to reopen the case.

15.1 The assessing officer mentions he is reopening to examine Rs. 1,14,00,000/-which is reflected as unsecured loan in the books of assessee. However has failed to observe and point out as to if this amount of Rs. 1,14,00,000/- is part of or cumulative of any of the 27 entries totaling Rs. 5,61,85,006/- which were shown to be received from Pradeep Kumar Jindal group of companies.

15.2 The reasons are silent as to if in the information received from the investigation Wing there was any material detail about mode of transaction regarding unsecured loans of Rs. 1,14,00,000/- from the companies allegedly giving accommodation entries.

16. Then assessing officer in the assessment order observes that this investigation Wing report to the extent of Rs. 5,61,85,006/- when verified from the bank statement of the assessee company reflected that assessee received Rs. 3,70,68,000/- only. In this reconciliation the assessing officer found that the investigation Wing report was incorrect in regard to 3 entries which were not credited in the account of assessee, 5 entries were duplicate and there was an entry shown to be received in investigation Wing report from M/s IKA Processors and Distributors Pvt. Ltd. but same was not received from this company in the bank account. Ld. AR has also established that even after reconciliation Ld. AO has added one duplicate entry of Rs. 15,00,000/- from M/s Luster Finlease and Investment Pvt. Ltd..

17. In fact as appraised to us by Ld. AR, on basis of Investigation Wing report, made available at page no 7-21 of PB, that in the Investigation Wing report a list of 62 companies of Pradeep Kumar Jindal is mentioned and the assessee company is shown to be one of the front and non-descript company of Pradeep Kumar Jindal, with directors name mentioned as Amish Agarwal and Chhavi Agarwal, who are mentioned as new directors in case of transferred company or otherwise dummy directors of Pradeep Kumar Jindal. If that was the case then assessee company is not beneficiary but conduit of Pradeep Kumar Jindal. Ld. AR has also appraised of the a fact, page 1-6 of PB, that in case of Amish Agarwal, Assessee company's director for the assessment year 2011-12, addition was made treating him as beneficiary of commission of entries provided by Pradeep Kumar Jindal.

18. This shows that at the stage of recording reasons assessing officer had not shown any indulgence of his own. It appears that the assessing officer had blindfolded himself to rely the investigation Wing report and made the same foundation of recording the reasons for the reopening. The manner in which the

reasons have been recorded make it appear that the assessing officer without actually applying his mind to the information made available by the investigation Wing proceeded to open the cases of all beneficiaries of alleged entries from Pradeep Kumar Jindal group of companies by recording reasons in same template/format and included assessee also as a beneficiary while assessee was a company of Pradeep Kumar Jindal and assessee is providing accommodation entries to the beneficiaries.

19. The judgement which Ld. DR has relied in the case of Experion Developers Pvt. Ltd. (supra), is distinguishable on fact. In that case the Investigation wing report was with regard to sources of a investing/ parent company located in Singapore were found to be not sufficient to make huge investment and that parent company was found to be conduit. However, here in case in hand the issue was of accommodation entries from numerous companies of one operator and for that assessing officer, while recording reasons the ld. AO should have justified that he has traveled the distance between 'reasons to suspect' and 'Reasons to believe'. Which he failed and Ld. CIT(A) has erroneously sustained the reasons to believe, by very general discussion holding that reason are based on specific information. The information as narrated in the reasons may have been specific qua Pradeep Kumar Jindal, but not as against the assessee.

20 We are thus inclined to sustain the ground no 3, challenging the illegal exercise of jurisdiction of reopening u/s 147/148 of the Act and the other grounds are rendered academic so are left open.

**21. Consequently, appeal of assessee is allowed and impugned assessment order is quashed.**

**Order pronounced in the open court on 11<sup>th</sup> January, 2024.**

**Sd/-**

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Date: 11.01.2024

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**