

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 2483/MUM/2023
Assessment Year: 2010-11

M/s Coral Ventures Pvt. Ltd.,
B-406, Mayur CHSL,
Sodawala Cross Road, Borivali
West, Mumbai-400092.

PAN NO. AADCC 2159 A

Appellant

Vs.

Asstt. CIT, Circle-12(1)(2),
Aayakar Bhavan, M.K. Road,
Churchgate Mumbai-400020.

Respondent

Assessee by : Mr. Subhash Chhajed and
Mr. Hitesh Rathod
Revenue by : Mr. H.M. Bhatt, Sr. DR

Date of Hearing : 04/12/2023
Date of pronouncement : 10/01/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 19.06.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2010-11, raising following grounds:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi has erred in upholding the reassessment proceedings initiated u/s 147 of the IT Act without serving the notice u/s 148 of the Act within the period of six years from the end of the Assessment year 2010-11 as required u/s 148 of the Act. Hence the entire reassessment order passed u/s 147 r.w. sec. 143(3) of the Act is liable to be quashed on the lack of jurisdiction.*



2. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi erred in upholding the reassessment order passed u/s 147 r.w. sec. 143(3) of the Act., pursuant to notice u/s 148 issued without obtaining the requisite approval u/s 151 of the Act. Hence the entire reassessment order passed u/s 147 r.w. sec. 143(3) of the Act is liable to be quashed for the foundational error of jurisdiction.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT (A) NFAC, Delhi has erred in upholding the reassessment proceedings initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without application of independent mind on the material, if any, provided by the Inv. Wing of the department. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.*
4. *The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of section 147/148 of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*
5. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi erred in upholding the reassessment order passed u/s 147 r.w. sec. 143(3) of the Act based on the incorrect facts and reasons to believe the escapement of income within the meaning of section 147 of the Act. Hence the entire Reassessment proceedings are liable to be annulled and quashed.*
6. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi erred in upholding the reassessment order passed u/s 147 r.w. sec. 143(3) of the Act without disposing off the objections raised by the Appellant to the reopening of the Assessment by a reasoned order in accordance with the judgment of Hon. Supreme Court in the case of GN Driveshafts 259 ITR 19(SC).*
7. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC,Delhi erred in upholding the addition of Rs. 47,00,000/- u/s 68 of the IT Act being the proceeds received on sale of 4700 shares of J M D Sounds Ltd. From jai Ambe Cassetts Private Limited @ Rs. 1000/- each, as unexplained cash credit ignoring the fact that the assessee has discharged its primary onus u/s 68 of the IT Act explaining nature, source, identity, creditworthiness and genuineness of credit by filing requisite documents during assessment proceedings.*
8. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi failed to appreciate that the appellant was not provided the opportunity to cross examine the statement of the witness relied upon by Ld. AO and other relied upon documents and evidences for their rebuttal/defense under the principals of natural iustice while making the impugned addition of Rs. 47,00,000/- u/s 68 of the Act. Hence the addition based on such un-confronted statement and documents cannot be held as validly sustainable therefore the same may kindly be deleted.*



9. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi failed to appreciate that there is no cash trail against the consideration of Rs. 47,00,000/-received against the sale of 4700 shares of J M D Sounds Ltd as per the bank statement submitted by the Appellant during the Assessment proceedings.*
10. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi ought to have appreciated that the entire transactions of sale of 4700 shares of J M D Sounds Ltd for Rs. 47,00,000/- has been confirmed by the buyer of shares jai Ambe Cassetts Private Limited responding to the notice issued u/s 133(6) of the act seeking the relevant information.*
11. *On the facts and circumstances of the case and in law, the Ld. CIT(A),NFAC, Delhi erred in not dwelling upon and distinguishing the judicial rulings relied upon by the Appellant on facts and law in support of their arguments and defense to contest the reopening of the Assessment u/s 147/148 and the addition made u/s 68 of the Act.*
12. *The Ld. CIT(A),NFAC, Delhi erred in not providing the appropriate opportunity of being heard by not granting the personal hearing by Video Conferencing (VC) in faceless regime in spite of specific request by the Appellant vide their written submissions uploaded on the portal. Hence the Assessment order passed in complete contravention of cardinal principals of natural justice is liable to be quashed and annulled*

2. Briefly stated facts of the case are that on receipt of information from the Investigation Wing of Income-tax Department, Kolkata, the Assessing Officer recorded reasons to believe that income escaped assessment and reopened the assessment u/s 147 of the Income-tax Act, 1961 (in short 'the Act') by way of issuing notice u/s 148 of the Act on 29.03.2016. The assessment proceedings were completed on 19.12.2017 after making addition u/s 68 of the Act amounting to Rs.47 lakhs.

3. On further appeal, the Ld. CIT(A) also upheld the addition as well as rejected the challenge to validity of reassessment proceedings u/s 147 of the Act.



4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. The grounds raised consist mainly of two categories, firstly, challenging the validity of the reassessment proceedings and, secondly, addition on merit.

6. We have heard rival submission of the parties and perused the relevant material on record. In the case, the Assessing Officer received information from the Dy. Director of Income-tax Investigation, Kolkata that M/s Jaiambe Cassettes Pvt. Ltd. is a 'Jamakharchi' Company which was indulged in providing bogus entries to the beneficiaries through their bank account No. 411010200002622. The said letter of the investigation wing mentioned that assessee company had enjoyed bogus entries to the tune of Rs.90,00,000/- in the assessment year under consideration. During assessment proceedings, the Assessing Officer issued notice u/s 133(6) of the Act to M/s Jaiambe Cassettes Pvt. Ltd. asking to produce ledger copies of the assessee company nature of transaction etc. The said company confirmed the transaction of Rs.47 lakhs with assessee company. The assessee further provided detail of transaction of Rs.47 lakhs as under:

Sr. No.	Date of Receipt	Amount	Particulars	Remarks
1.	10.10.2009	12,00,000	Consideration for sales of 1200 shares of JMD Sounds Ltd. at Rs.1000 each	Original Shares allotted by JMD Sounds Ltd. for Rs.1000 each on 20.02.2008 to the assessee.
	19.10.2009	35,00,000	Consideration for sale of	Original shares



			3500 shares of JMD shares Ltd. for Rs. 1000 each	allotted by JMD Sounds Ltd. for Rs.1000 each on 20.02.2008 to the assessee
	Total	Rs.47,00,000		

6.1 The Assessing Officer noticed that the transaction with M/s Jaiambe Cassettes Pvt. was of sale of 4700 shares of M/s JMD Sounds Ltd. However, the Assessing Officer held that the amount of Rs.47 lakhs received from M/s Jaiambe Cassettes Pvt. Ltd. as unexplained cash credit u/s 68 of the Act due the following reasons:

(i) M/s Jaiambe Cassettes Pvt. Ltd. was a 'Jamkharchi' company as per the letter received from Kolkata Investigation Wing and it had provided bogus entries to various beneficial entities including the assessee.

(ii) M/s Jaiambe Cassettes Pvt. Ltd. had filed return of income for assessment year 2010-11 at Rs.11,450/- only and no real business was carried out by said company except other income of Rs.81,000/-.

(iii) The assessee though being the Mumbai based company, it had purchased shares of Kolkata based company JMD Sound Ltd. and after holding for 20 month, it sold the said share to another Kolkata Based Company i.e. M/s M/s Jaiambe Cassettes Pvt. Ltd. at exactly same price. The Assessing Officer



questioned the physical purchase of the shares of Kolkata based company by the assessee company.

(iv) In the bank statement of M/s Jaiambe Cassettes Pvt. Ltd., there was immediate entry of deposit from another concerns.

(v) No valuation certificate was submitted by the assessee company for the shares at the time of the purchase as well as sale.

(vi) Majority of shares of JMD Sounds Ltd. were also held by the M/s Jaiambe Cassettes Pvt. Ltd.

(vii) Shri Kailash Prasad Purohit was a common director in JMS Sound Ltd. and M/s Jaiambe Cassettes Pvt. Ltd.

6.2 On further appeal, the Ld. CIT(A) upheld the addition on merit observing as under:

“7.5 I have carefully considered the AO's viewpoint contained in the Assessment Order and the grounds of appeal and statement of facts made by the appellant in Form 35 including relevant judicial decisions in the matter.

7.6 During the year under consideration, it is seen that no further documentary evidence, whatsoever, has been produced to prove the genuineness of the transaction. Apart from written submission, the appellant has produced copies of documents produced before AO as mentioned above in appellant's submission. I have examined these documents. Instead of supporting the case of appellant, these documents only reinforces the findings of the AO which are based on his detailed analysis of the facts and circumstances of the case along with deep and wide Investigation carried out by the department as these documents are in tune with the modus-operandi through which accommodation entries have been provided by the company.



7.7 In the present case, I find that the appellant has failed to discharge its burden of proof and the AO, on the other hand, even in the limited time available, analysed the available material and has proved that the claim of the appellant was incorrect. As discussed above, there is overwhelming evidence discussed in paras 4 to 4.5 of the assessment order that the transactions on which adverse views have been taken are pre-arranged transactions under taken with the sole motive to evade tax.

7.8 In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that amount received by the appellant company as unexplained cash credit are arranged transactions to introduce its unaccounted income through entry providers with the sole motive to account for the undisclosed income. Accordingly, in view of the above discussion and judicial precedents, it is held that AO was justified in making addition of Rs 47,00,000/- u/s 68 of the IT Act as unexplained cash credit of the appellant. Ground No. 2 is accordingly dismissed.”

6.3 On perusal of the order of the lower authorities and after considering the arguments of the parties, we are of the opinion that lower authorities have not given any documentary evidence to support that assessee did not discharge burden of proof prescribed u/s 68 of the Act. In the case, the share purchase party has already confirmed the transaction in independent action carried out by the Assessing Officer u/s 133(6) of the Act. Further as far as creditworthiness of the party M/s M/s Jaiambe Cassettes Pvt. Ltd., the assessee submitted before the Assessing Officer net worth of Rs.12,12,95,355/- as on 31.03.2010., which has not been disputed either by the AO or the Ld CIT(A). The Ld. counsel also referred to the balance sheet of the said company which is available on Paper Book Page 63 and 65. The ld DR also did not controvert the net worth of said company. Further, the Assessing Officer questioned



genuineness of the transaction merely for the reason that assessee being Mumbai based company however purchased shares of Kolkata based company in physical transaction. In our opinion, Mumbai based persons are not bared from buying securities of Kolkatta based entities in physical transaction and this alone can't basis for doubting genuineness of transaction. The Investigation wing of Kolkatta in their information referred the M/s M/s Jaiambe Cassettes Pvt. Ltd. as 'Jamakahrchi' company but not a single evidence to hold said conclusion has been brought on record by the Assessing Officer. Similarly, the holding majority shares of JMD Sound Ltd. by the M/s Jaiambe Cassettes Pvt. Ltd. is no reason to doubt the genuineness of the transaction. Further, the Director of the both companies being same cannot be the ground for raising doubts on the genuineness of the transaction. The conclusion of the lower authorities is based merely on the speculation and without any documentary evidence to support their contention. The liability cannot u/s 68 of the Act be fastened on the assessee merely on the basis of allegation being supported with documentary evidence. In the circumstances, we set aside the order of the lower authorities and delete the addition on merit. The relevant grounds challenging the merit of the addition are accordingly allowed. Since, we have already allowed the ground of the appeal on merit and therefore, grounds challenging validity of reassessment are merely academic and therefore, we are not adjudication upon the same.



7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 10/01/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/01/2024

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai