

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.1732/Del/2016
Assessment Year: 2011-12

ACIT Central Circle -2 New Delhi	Vs.	Green Gem Estates Pvt. Ltd. R/o B- 4/43, 2nd Floor, Safdarjung Enclave, New Delhi – 110029 PAN No.AAACG3209Q
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Somil Aggarwal, Advocate Sh. Deepesh Garg, Advocate Sh. Shrey Jain, Advocate

Date of hearing:	01/02/2024
Date of Pronouncement:	01/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-23, New Delhi dated 29.01.2016 pertaining to A.Y. 2011-12.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.298500000/- made by the AO on account of unexplained cash credit u/s. 68 of the Act.

3. Briefly stated the facts of the case are that the AO came to know that the assessee has received Rs.29.85 crores as advance from customers namely Queen Commercial Private Limited Group Company which in turn received money from Kolkata based company. The case was reopened u/s. 147 of the Act after recording the reasons and notices u/s. 148 of the Act was accordingly issued and served upon the assessee.

4. During the course of the scrutiny assessment proceedings the assessee was asked to explain the transaction of the Queen Commercial Private Limited Group with supporting evidences. Assessee filed detailed reply alongwith documentary evidence explaining the source of funds of Queen Commercial Private Limited which have been extracted by the AO at pages 225 of the Assessment Order. The AO issued notice u/s. 133 (6) to all the companies from whom Queen Commercial Private Limited claimed to have received the funds to be given to the assessee.

5. The notices were returned unserved. The AO formed a belief that the assessee failed to discharge the onus cast upon it by the provisions of the section 66 of the Act and accordingly made the addition of Rs.29.85 crores.

6. Assessee challenged the assessment before the CIT(A). Before the CIT(A) it was strongly contended that the reopening of the assessment is bad in law.

7. After considering the facts and the submissions and after strong support from several judicial decisions the CIT(A) observed as under :-

“4.1.6.2 The AO right in the beginning of the reasons recorded has observed that these funds are "unaccounted funds" without making any observation as to how these funds were generated and from what activity, how and why these funds are 'unaccounted' and based on what material evidence such conclusion was drawn. Though stating that the source of QCPL was share premium received in the preceding year, he also states that the unaccounted income of the SS group generated through its real estate business have been introduced into above mentioned Kolkata based company as share premium without observing as to what is the evidence available or brought on record to suggest that such amount represented unaccounted income was generated from real estate and the same was introduced as share premium in QCPL in spite of the fact that the bank statement of QCPL submitted to the AO indicates that the amounts deposited in the account of QCPL is through cheques/RTGS received from different persons and not from the appellant's account nor in cash. The satisfaction of the AO is thus based on mere surmises and conjectures as has been alleged by the appellant. It is well settled law that the satisfaction of the AO has to be based on material evidence brought on record and the AO has to examine the information or evidence available

with him/her, make necessary enquiries relevant to the matter and apply his mind before arriving at the satisfaction, which is absent from the reasons recorded by the AO in this case. It is also settled law that mere information from the Investigation Wing, unverified by the AO, cannot form the basis of bonafide belief of the AO.

*“4.1.7 As regards reopening of assessment u/s 147 of the Act and recording of reasons therefore, it is settled law as held by various Courts including the Hon’ble Supreme Court that the belief of the A.O. should not be a product or imagination or speculation; the belief must be of an honest and reasonable person based upon reasonable grounds; that the belief must not be based on mere suspicion; the belief must not be vague and there must be material, having live nexus with the belief of escapement of income; the belief entertained must not be arbitrary or irrational and it must be reasonable and be based on reasons which are relevant and material; there should be facts before the A.O. that reasonably give rise to such belief that income has escaped assessment and the formation of belief is possible only on the basis of certain material and if there was no such material, reason to believe cannot be entertained; certain facts, specific in nature and reliable in character, have to exist to show that assessment can be reopened and the existence of such reasons and a direct nexus between those reasons and the alleged evasion is a condition precedent for reopening of assessment; and in the absence of application of mind to the facts alleged to have been found the decision arrived at that income escaped assessment is not maintainable in law. Further, in *Lupin Ltd. v. Assistant Commissioner of Income-tax (LTU), Mumbai [2014] 46 taxmann.com 396 (Bombay)* it has been held that the reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons are the manifestation of the mind of the*

Assessing Officer and therefore, should be self- explanatory and should not keep the Assessee guessing for the reasons..... the AO must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for assessment for that assessment year, so as to establish the vital link between the reasons and the evidence, and that this vital link is the safeguard against arbitrary re-opening of a concluded assessment"; in CIT vs SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), Signature Hotels Pvt. Ltd. Vs ITO 338 ITR 51 (Del), (Pr.CIT v India Business Network Ltd.) and Pr. CIT v G&G Pharma India Ltd. (ITA No. 545/2015) Delhi High Court order dated 08.10.2015 it has been held that "mere information received from DDIT(Inv) cannot constitute valid reasons for initiating reassessment proceedings in the absence of anything to show that A.O. had independently applied his mind to arrive at a belief that the income had escaped assessment and that "an assessment cannot be reopened without the AO having made necessary enquiry before initiating of the assessment proceeding to arrive at his own independent satisfaction regarding the escapement of income". The appellant has cited quite a few judgments on this account and further reliance is placed on Commissioner of Income-tax-V v. Orient Craft Ltd. [2013] 29 taxmann.com 392 (Delhi), Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd. [2010] 187 TAXMAN 312 (SC), Commissioner of Income Tax -Central I v Indo Arab Air Services [2015] 64 taxmann.com 257 (Delhi), Income-tax Officer v. Varshaben Sanatbhai Patel [2015] 64 taxmann.com 179 (Gujarat). Therefore, the reopening of assessment by issuance of notice u/s 148 of the Act is not sustainable and cannot be held legally valid in terms of the various pronouncements in this regard. As such, considering the circumstances of reopening of the assessment together with the observations at para-4.1.4 herein

*above, the reassessment order u/s 147 of the Act is not sustainable.
I hold accordingly. This ground is therefore allowed.”*

8. Thereafter the CIT(A) went on to delete the addition on merits.
9. We have given a thoughtful consideration to the aforementioned findings of the CIT(A) qua the ground of appeal taken by the revenue.
10. In our considered opinion once the CIT(A) has held that reopening of the assessment is not sustainable thereby quashing the assessment order and the revenue has not raised this issue before us the findings of the CIT(A) have attained finality. Since the assessment order has been quashed we do not find it necessary to dwell into the merits of the case.
11. In the result, the appeal of the revenue is dismissed.
12. Decision announced in the open court on 01.02.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI