

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2136/Del/2023
Asstt. Year: 2011-12

Provestment Securities P. Ltd. 601, Prabhat Kiran Building, 17, Rajindra Place, New Delhi – 110 008 PAN AAACP8116H	Vs.	ACIT, Circle 20(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	06/12/2023
Date of pronouncement	06/12/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 25.05.2023 of the Ld. Commissioner of Income Tax (Appeals)-29, New Delhi (**"CIT(A)"**) pertaining to the Assessment Year (**"AY"**) 2011-12.

2. The assessee has raised the following grounds of appeal:-

- “1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal for non-prosecution Hence, opportunity of being heard should be given to the appellant for the sake of natural justice..

Without prejudice to the Ground of Appeal No. 1

2. *That on facts and in circumstances of the case, the Ld. CIT(A) erred in law in upholding the reopening of assessment proceeding u/s 147 of the Act valid which would otherwise liable to be quashed being reopening u/s 147 is barred by limitation i.e. after expiry of four years from end of the relevant assessment year, as case of appellant was already assessed u/s 143(3) and there is no failure on the part of appellant to disclose fully and truly all material facts necessary for its assessment.*
- 3, *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in upholding the reopening of assessment proceeding u/s 147 of the Act valid which would otherwise liable to be quashed being reopening u/s 147 of the Act was made merely on the basis of "change of opinion" on the same subject matter which have already been assessed u/s 143(3) of the Act which is in violation of law settled by the Hon'ble Supreme court in the case of Commissioner of Income Tax v Kelvinator India Limited [2010] 320 ITR 561 (SC)*
4. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in upholding the reopening of assessment proceeding u/s 147 of the Act valid which would otherwise liable to be quashed being reopening u/s 147 of the Act were made merely on the basis of information received from Assistant Director of Income Tax (Investigation)-Unit-3(3), Delhi i.e. on "borrowed satisfaction" instead of his "own satisfaction" which is contrary to the settled preposition of law.*
5. *That on the facts and in the circumstances of the case, the order of Ld. CIT(A) is perverse to the law and to the facts of the case in upholding initiation of assessment proceedings u/s 147 of the Act as Ld. AO has not obtained subjective approval from the concerned / competent authority u/s 151 of the Act being approval given is in mechanical manner and without judicious application of mind which is against the law.*
6. *That on the facts and in the circumstances the Ld. CIT(A) erred both in fact and in law in upholding addition of Rs. 6,06,42,000/- u/s 68 of the Act made in violation of principle of natural justice being*
 - (i) *complete as well as legible copy of relied upon documents/ information received from Investigation wing were not provided to*

the appellant for its rebuttal even though specific request was made by the appellant.

(ii) relied upon information received from British Virgin Island through FT&TR were never confronted nor provided to the appellant for its rebuttal

7. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both in fact and in law in upholding addition of Rs. 6,06,42,000/- u/s 68 of the Act made by Ld. AO merely by relying upon information received from Investigation wing without appreciating the facts that the appellant has completely discharged its primary onus u/s 68 of the Act by providing sufficient documentary evidence to prove identity, creditworthiness of investors and genuineness of transaction of allotment of Preference share.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both in fact and in law in upholding addition of Rs. 6,06,42,000/- u/s 68 of the Act made by Ld. AO without bringing any cogent or substantive material on record by conducting any independent enquiry which could prove that director of the appellant has brought his own unaccounted fund in the form of Preference share capital in the appellant company.”

3. Briefly stated, the assessee is engaged in the business of investment. For AY 2011-12, the assessee filed its return on 30.09.2011 declaring loss of Rs. 1,05,53,160/-. The case of the assessee was selected and regular scrutiny was made and assessment was completed under section 143(3) of the Income Tax Act, 1961 **(the “Act”)** making disallowance of Rs. 32,88,913/- and the loss was restricted to Rs.72,64,250/-. The assessee’s appeal filed before the Ld. CIT(A) resulted in loss determined at Rs. 1,02,61,413/-. The case of the assessee was re-opened under section 147 of the Act by recording the following reasons:-

“Re-opening u/s. 148

Subsequently, information was received from the office of Asst. Director Income Tax (Investigation). Unit 3(3), Delhi that during the year under

consideration, assessee company on January 17, 2011 issued 6,06,420 compulsorily convertible preference shares of Rs. 100/- each share to M/s India Focus Cardinal Fund which is a private company incorporated in Mauritius. Assessee had sought post-facto approval of the Foreign Investment Promotion Board to receive preferential share capital from the India Focus Cardinal Fund.

It was also observed that at the time of seeking approval from FIPB, Government of India, it was stated that the Credit Suisse A.G. is the sole investor with respect to the investment in IFCF and has invested an amount of USD 13,50,000/- in IFCF Mauritius. Enquiry was conducted with Credit Suisse A.G. through its Mumbai Branch. In response, Credit Suisse confirmed that Credit Suisse A.G. has not made any investment in IFCF by its own assets but indirectly through its 100% subsidiary company namely Credit Suisse Condon Nominees Ltd. World Class D assets of the above mentioned funds on behalf of an underlying agent. Credit Suisse A.G. also informed that its client was M/s Musk Holding Limited, domiciled in British Virgin Island with address at Mill Mall, Wickhams Cay-1, Suite 6, VG- Road Town, Tortola. It was also informed that the beneficial owner of the said account is Sh. Sameer Thapar who incidentally is also the director of the assessee company.

The above information was duly perused by the undersigned and from the above it was noted that the assessee company received funds from a company registered in Mauritius against the issuance of preference shares. However, from the detailed analysis and unveiling the layers of transactions, it was found that the funds were received in the Mauritius based company from Musk Holding Limited whose beneficial owner is Sh. Sameer Thapar who is the director of the assessee company.

Therefore, the AO had reason to believe that this clearly is a case of round tripping, wherein the funds were infused in the books of the company through an off-shore entity which is directly linked to the Director of the assessee company. This way the genuineness of the transaction entered into between the Assessee Company and Mauritius-based entity remains questionable so does the identity and creditworthiness of the above party. The ITR filed by the assessee company was perused. In its return of income assessee has camouflaged the above transaction as a genuine share issuance transaction and the case was reopened u/s 147/148 of the Act, after recording the reasons in writing and taking prior approval from the Pr CIT. Notice u/s 148 was issued to the assessee on 27.03.2018 which was duly served upon the assessee through speed post as well as through email.”

4. In response to notice under section 148 of the Act, the assessee filed its return on 28.04.2018. Though copy of reasons recorded was provided,

the assessee did not file objection against the re-opening of the case. During re-assessment proceedings initially the assessee was non-compliant but attended the proceedings on 07.12.2018. The assessee was confronted with all the documents received from the foreign authorities. Vide order sheet entry dated 07.12.2018 the assessee was given final show cause notice dated 15.10.2018 and reply was sought by 11.12.2018. However, the assessee filed its reply on 15.12.2018 relevant portion of which is reproduced by the Ld. Assessing Officer (**"AO"**) at pages 7-9 of the assessment order.

5. The explanation of the assessee was not acceptable to the Ld. AO. He, therefore added Rs. 6,06,42,000/- to the income of the assessee under section 68 of the Act by holding and recording the following findings:-

"Addition of unexplained share capital u/s 68 :

The findings of the AO recorded in the reasons for reopening of this case were that the assessee company has received funds in form of share capital from a Mauritius based company i.e. M/s India Focus Cardinal Fund of Mauritius and further enquiry from the investing companies in M/s India Focus Cardinal Fund of Mauritius, it was found that the only investing company in the M/s India Focus Cardinal Fund of Mauritius was the Credit Suisse A.G. which further confirmed that it received funds from M/s Musk Holding Pvt. Ltd to buy shares of the assessee company.

Further in view of information received from authorities of British virgin Islands, it is evident that Sh. Samir Thapar was shareholder as well as director of M/s Musk Holding Pvt. Ltd. during the FY 2010-11, ie. the same period when assessee company, where Samir Thapar was director, received money against share issuance to M/s India Focus Cardinal Fund of Mauritius.

Therefore in view of above facts, it is clear that it is clear case of round tripping of funds through a layer of transactions and the assessee also failed to justify the same during the proceedings. Therefore the ultimate source of funds in the hands of M/s India Focus Cardinal Fund of Mauritius remained unexplained on part of the assessee. Therefore the amount of Rs.6,06,42,000/- received as share capital by the assessee company from M/s India Focus Cardinal Fund of Mauritius, ultimate source of the same remained

unexplained, is considered as unexplained credits in books of accounts of the assessee and added back to the income of the assessee u/s 68 of the Act.”

6. Accordingly, the Ld. AO completed the assessment on total income of Rs. 5,03,80,590/- on 16.12.2018 under section 147/143(3) of the Act.

7. The assessee appealed. Due to non-compliance of notice(s) the Ld. CIT(A) proceeded to adjudicate the appeal on the basis of material available. The Ld. CIT(A) confirmed the impugned addition made by the Ld. AO under section 68 of the Act by observing as under:-

“7. Ground No.s. 1 to 6: *I have carefully considered the facts of the case and the assessment order. It is seen that the case of appellant was re-opened on the basis of information received from ADIT, (Inv.)-Unit 3(3), Delhi that appellant on 17th January, 2011 issued 6,06,420 compulsorily convertible preference shares of Rs. 100/- each share to M/s India Focus Cardinal Fund (IFCF) which is a private company incorporated in Mauritius. During the Investigation it was revealed that Credit Suisse A Mauritius. On Gis the sole revealed that its client was M/s Musk Holding Ltd., BVI whose beneficial owner was Sh. Sameer Thapar. Therefore, it was held by the so that the appellant had introduced his own unaccounted income in his books of account through round tripping using several layers of foreign entities. It is seen that the reasons for re-opening of assessment u/s 148 were duly recorded and provided to the assessee vide letter dated 04.09.2018 of the AO. Statutory notice u/s 143(2) of the Act, dated 27.09.2018 was issued and duly served upon the assessee. No objections were filed by the appellant. Accordingly, it is seen that there is no prima- facie irregularity in the re-opening of case u/s 148 and all the statutory provisions seem to be complied with, and the AO had tangible material on records within the meaning of 148 of the Act to initiate the proceedings. It is seen that a further clarification was received by the Investigation Wing from the BVI Authorities through an FTTR reference. AO had thus concluded that Sh. Sameer Thapar, Director in the appellant company is also a share holder and director in M/s Musk Holding Ltd. located in BVI during the F.Y. under consideration. Thus, the amount received as share capital was treated as unexplained credit in the books of account within the meaning of u/s 68 of the Act.*

7.1 *During the appellate proceedings, inspite of numerous opportunities as mentioned in the pre paras no reply has been filed by the appellant to justify that the addition made by the AO was not correct. In view of the same, I do not find any reason to interfere with the addition made by the AO.*

Accordingly, the addition made u/s 68 by the AO is hereby confirmed. Accordingly, these grounds of appeal are dismissed.”

8. Aggrieved thereby, the assessee is in appeal before the Tribunal and all the grounds of appeal relate to challenge as to the validity of re-opening of assessment as also the merits of the impugned addition under section 68 of the Act.

9. We have heard the Ld. Representative of the parties, considered their submissions and perused the records. We have carefully gone through the order(s) of the Ld. AO/CIT(A). The Ld. CIT(A) did not find any prima-facie irregularity in re-opening of the case under section 148 of the Act and confirmed the addition under section 68 for the reason that no reply has been filed by the assessee to prove that the addition made by the Ld. AO was not correct. For these reasons rejection of the assessee's appeal by the Ld. CIT(A) is not just and fair. We, are therefore of the view that the matter be restored to the file of the Ld. CIT(A) to decide it afresh after allowing reasonable opportunity of being heard to the assessee. The assessee shall also co-operate in the appeal proceedings and present its case before the Ld. CIT(A). We order accordingly.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 6th December, 2023.

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

Dated: 06/12/2023
Veena

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Copy forwarded to-

1. Applicant

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	