

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1445/Kol/2023
Assessment Year: 2011-12**

Godawari Traders Pvt. Ltd. C/o Deo Chand Jain Station Road Khurai Sagar, Madhya Pradesh-470117. (PAN: AACCG7872R)	Vs.	Income Tax Officer, Ward-6(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sunil Surana, AR
Respondent by : Shri Arup Chatterjee, Addl. CIT

Date of Hearing : 29.02.2024
Date of Pronouncement : .04.2024

ORDER

PER BENCH :

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1058359285(1) dated 30.11.2023 passed against the assessment order by ITO, Ward-6(1), Kolkata u/s. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 03.11.2017 for AY 2011-12.

2. Grounds taken by the assessee are reproduced as under:

“(1) For that the Ld. CIT(A) erred in confirming the action of the AO in initiating the proceedings u/s 147 since there was no reasonable belief or tangible material that any income has escaped assessment.

(2) For that the Ld. CIT(A) erred in accepting the contention of AO that the objections filed by the assessee were disposed off when the same remained undisposed, therefore the assessment is liable to be quashed.

(3) For that the approval granted U/s.151 was not in accordance with law and as such the assessment is bad in law.

(4) For that the Ld. CIT(A) erred in confirming the addition made by AO for Rs.48,32,900/- by treating the payment made as unexplained expenditure U/S 69C when all of the requisitions made by AO were fully complied with, all the transactions were duly recorded in the books of accounts, further no evidence or other material was brought on record to prove that the assessee had made any such payment.

(5). For that the Ld. CIT(A) erred in confirming the addition made by AO for Rs.48,32,900/- by treating the payment made as unexplained expenditure U/S 69C when the AO neither examined the party himself nor gave any opportunity of cross examination to the appellant.”

3. Assessee has essentially challenged the initiation of proceedings u/s. 147 by claiming that there is no reasonable belief or tangible material to hold that income has escaped assessment. Assessee has also contended that objections filed against the said initiation of proceeding have not been disposed of by the Ld. AO. On the merits, assessee has challenged the addition of Rs.48,32,900/- by treating the payments made as unexplained expenditure u/s. 69C even though all the requisitions called for by the Ld. AO were fully complied with. Assessee has also contended that the said addition has been made without giving opportunity of cross examining the parties on whose behest the addition has been made.

4. Brief facts of the case are that case of the assessee was opened for reassessment by issuing notice u/s. 148 dated 30.03.2017. Vide letter dated 18.04.2017, assessee submitted that its original return filed on 20.08.2012 be treated as return in response to notice u/s. 148. Copy of reasons to believe recorded by the Ld. AO were supplied to the assessee against which objections were filed vide letter dated 12.09.2017 along with copy of confirmation of payments made to Divya Dev Developers (P) Ltd. (DDDPL). Ld. AO alleged that in the

statement of facts furnished by DDDPL before the Settlement Commission it had accepted that an amount of Rs.22,60,850/- was received by it towards on-money from the assessee, being one of the customers for transfer of plot of land. This information was received by the Ld. AO from ACIT, (Central)-1, Indore consequent to a search and seizure operation conducted in the premises of DDDPL. Ld. AO noted the details about payments made by assessee to DDDPL for the purchase of plot of land. The said details are extracted as under:

(i)	Booking Advance scheme Christa-1-101	Rs.2,00,000/-
(ii)	Booking Advance scheme Oracia-1-101	Rs.2,00,000/-
(iii)	Booking Advance scheme Oracia-1-201	Rs.2,00,000/-
(iv)	Booking Advance scheme plot no. A-6 Uptown Apollo	Rs.22,60,850/-
(v)	Club membership & Society deposit	Rs.1,14,288/-
(vi)	Electricity deposit	Rs. 50,000/-
(vi)	Apollo DB City Sinking Fund	Rs. 22,000/-
(vii)	Apollo DB City Sinking Fund	Rs. 22,000/-
	Total	Rs.30,69,138/-

4.1. Assessee declined that it had made the payment of Rs.48,32,900/- alleged by the Ld. AO which was not accepted. Thus, he completed the assessment by making addition of Rs.48,32,900/- as unexplained expenditure u/s. 69C of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) challenging both, on the jurisdictional aspect as well as merits of the case. Ld. CIT(A) sustained the addition and dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee referred to copy of reasons to believe recorded by the Ld. AO, placed in the paper book at page 2 for contesting the jurisdictional ground raised in the present appeal.

5.1. The reasons so recorded by the AO are reproduced as under:

*“As per the information available in record it was seen that M/s. Divya Dev Developers Private Limited engaged in business of promoter, development of land. During the FY 2010-11 promoters received on money of Rs.48,32,900/- from M/s. Godawari Traders Private Limited, PAN-AACCG7872R. Source and credit worthiness of assessee for payment of Rs.48,32,900/- **needs to be examined.**”*

Considering the information available on record, I have reason to believe that case is fit for initiating proceeding u/s. 147 of the I. T. Act, 1961.”

(emphasis supplied by us)

6. From the above, ld. Counsel pointed out that the case of the assessee has been opened for reassessment u/s. 147 for the purpose of verification. In the first para of the said reasons to believe, Ld. AO has noted that payments of Rs.48,32,900/- “needs to be examined.” Ld. Counsel further pointed out from the said reasons to believe that there is no quantification of the income which has escaped assessment for the purpose of initiating the said proceedings u/s. 147. According to him, there is no tangible material with the Ld. AO to come to conclusion that there is an escapement of income. According to him, said reasons to believe have no live link with the formation of the belief by the AO. He contended that assessment has been opened only to examine the source and creditworthiness of the assessee for making payment to DDDPL.

6.1. According to him, the Ld. AO has neither applied his mind nor examined the assessment records while arriving at the satisfaction. He has simply stated some unverified information of third party. In this context, Ld. Counsel for the assessee referred to the audited financial statement placed in the paper book. He pointed to ‘Schedule D – Fixed Asset’ placed at page 15 wherein investment made by the

assessee in the flat at 'Uptown Apollo- Indore' has been disclosed and reported for an amount of Rs.33,19,138/-. Thus, there was no basis to rely on the uncorroborated information for initiating the impugned proceeding which is not backed by any material or evidence to form reasonable believe. Ld. Counsel also contended that no addition can be made in the hands of the assessee merely on the basis of observation made by a third party. He also strongly contended that Ld. AO has made a wrong observation while disposing of the objections filed by the assessee against the initiation of proceeding u/s. 147 which in fact, have never been disposed of by passing a speaking order as enunciated by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. 259 ITR 19.

6.2. On the merits of the case, it was strongly contended that all the details relating to payment made by the assessee to DDDPL were filed before the Ld. AO along with details of source of the said payments. These records are placed in the paper book. Assessee had also filed copy of confirmation from the said builder who had duly confirmed the receipt of this amount from the assessee which are corroborated from the bank statements reflecting these transactions. He stated that no evidence or any other material was brought on record by the Ld. AO to prove that assessee has made payment of any on-money to the said party for transaction of property except for the statement of facts filed by the said party before the Settlement Commission. In this respect it was also contended that copy of the statement of facts referred by the AO has never been made available to the assessee. Furthermore, AO has never given any opportunity to cross examine the said party.

6.3. Ld. Counsel also referred to the letter dated 12.09.2017 submitted before the AO and referred by him in that assessment

order, placed in the paper book at pages 3 and 4. In the said letter at para 3.2, assessee has given the details of payment made by it to DDDPL totalling to Rs.33,19,138/- which is shown as investment in the Balance Sheet. In para 3.3 of the said letter, assessee has given details about source of its payment which include:

- (i) Maturity of own FD with State Bank of India, Khurai Rs.30,06,812/-.
- (ii) Loan from Sanjay Industries Khurai Rs.3,50,000/-

6.4. To corroborate this, assessee provided copies of bank statement of SBI, Khurai which reflected these transactions. Ld. Counsel thus, claimed that the reassessment made by making the addition is ought to be quashed and addition so made be deleted.

7. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below. He referred to the observation of the AO that assessee has not disclosed the source of payment to the revenue and, therefore, addition made is justified.

8. We have heard the rival contentions and perused the material available on record. It is a fact on record that assessee had purchased a property from DDDPL which it has duly reported in its audited financial statement as investment. We have gone through the reasons to believe recorded by the Ld. AO and notes the observation made by him therein which are nothing but for examination of payments of Rs.48,32,900/- made by the assessee as to its source and creditworthiness.

8.1. Further, there is no quantification of the income which has escaped assessment. To initiate the reassessment proceeding u/s.

147, it can be used by the Ld. AO if there is any tangible material having live links with the escapement of income from assessment. An assessment cannot be reopened merely to verify the genuineness of expenses as it would amount to an impermissible fishing or roving enquiry without any tangible material to show escapement of income. In absence of any quantification of amount of income escaped from assessment at the time of issue of notice u/s. 148, the reasons recorded by the AO are not valid since formation of the belief of escapement of income should have live link with the tangible material with the AO. In this respect, we draw our force from the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator India Ltd. (2010) 320 ITR 561 (SC) wherein it is stated that expression "reason to believe" cannot comprehend mere change of opinion which would only amount to an impermissible review. An assessment cannot be reopened merely to verify the genuineness of expenses/claims.

8.2. On the contention of the assessee about not giving an opportunity to cross examine the third party i.e. DDDPL, we do find force in the said submission since the AO has based his formation of belief on the information relating to DDDPL only. In this connection, we place our reliance on the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE, (2015) 127 DTR 241 (SC).

8.3. Further, Ld. AO has made the addition for want of explanation on source of making the payments and creditworthiness of the assessee for making the said payments. From the material placed on record before us, we find that assessee has adequately discharged its onus giving all the relevant details for the source of payments and its

creditworthiness, duly supported by the corroborative material, all of which had already been discussed above.

8.4. Considering the facts on record and material placed before us, contentions raised by the Ld. Counsel for the assessee and the judicial precedence relied upon, we hold that jurisdictional condition to reopen the assessment as required by the law has not been made in the reasons to believe recorded by the AO in the present case. Furthermore, we find that assessee has duly disclosed its investment in its audited financial statement and explained the source of the said investment in the assessment proceeding. Therefore, the action of the Ld. AO to reopen the assessment and making the addition u/s. 69C as unexplained expenditure is null in the eyes of law. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced on April, 2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

(Anikesh Banerjee)
Judicial Member

(Girish Agrawal)
Accountant Member

Dated: April, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT, .
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of dictation- 01/04/2024
2. Date on which the typed draft order is placed before the Dictating Member and Other member 02/04/2024
3. Date on which the approved order comes to the Sr. P.S./P.S. - /04/2024
4. Date on which the file goes to the Bench Clerk /04/2024
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....