

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3013/Mum/2023
(Assessment Year: 2011-12)**

Dhaval Dhushant Vora 402, Vasant Kaikuth, MGX Road, Kandivali (W), Maharashtra - 400067 PAN : AABPV6328D	Vs.	ACIT-33(1) Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Viraj Mehta, CA
Revenue/Respondent by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 04.04.2024
Date of Pronouncement : 04.04.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 08.08.2023 for the AY 2011-12. The assessee raised the following grounds:

“1. On facts and circumstances of the case, the Lr. C.I.T. (A) NPAC, Delhi has erred in upholding the validity of the Notice U/s 148 and consequential re-assessment proceeding U/s 147 even though the legal course was to proceed U/s 153 C of the Act and to make the assessment of income U/s 153 A of the Act invalidating the jurisdiction assumed by the A.O.

2. The reasons recorded and the assessment completed are solely on the basis of information from the Investigation Wing being not in the nature of Tangible material vitiating the assumptions of jurisdiction since it was out of borrowed satisfaction.

3. Despite on the aforesaid facts and the circumstances of the case, the Lr. C.I.T (A) has erred in confirming the addition of Rs. 75,00,000/- U/s. 69 in total disregard to the fact that the appellant has not been given any access to the adverse material like Ledger A/C and any other documentary proof etc.

4. The Lr. C.I.T (A) has also erred in confirming the impugned addition in total disregard to the fact that the appellant was not provided with the copies of the statements recorded U/s. 132(4) and thereby not granted an opportunity to rebut the alleged addition by cross-examining the witnesses of the department and their statements.

5. The confirmation of the impugned additions by the Lar C.LT (A) is out of misconceived surmises and conjecture and merely on arbitrary basis and hence be deleted by quashing the order.”

2. The assessee is a partner in M/s Shashikant Sayer and Bros doing business in brokerage in chemical market. For the AY 2011-12 the assessee filed the return of income on 25.09.2011 declaring a total income of Rs. 41,61,047/-. Pursuant to receipt of information from DDIT (Inv.), Unit 5(4), Mumbai that for the Financial Year 2010-11 the assessee had advanced a cash loan of Rs. 75,00,000/- to M/s Evergreen Enterprises whose place of business was searched under section 132 of the Income Tax Act, 1961 (the Act) the Assessing Officer (AO) issued a notice under section 148 of the Act by reopening the assessment of the assessee. The assessee vide letter dated 02.04.2018 requested the AO to treat the original return filed as the return filed in response to notice under section 148 of the Act. The AO issued the show-cause notice on 30.11.2018 asking the assessee why the amount of Rs. 75,00,000/- should not be added as the income of the assessee. The assessee filed its reply on 05.12.2018. The AO was not satisfied to the reply filed by the

assessee and therefore treated the entire amount of Rs. 75,00,000/- as unexplained investment under section 69 of the Act.

3. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee contended the appeal both on legal as well as on merits. The CIT(A) dismissed both the grounds of the assessee and confirmed the addition. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. We have heard both the parties and perused the material on record. The ld AR did not press for the legal grounds raised during the course of hearing and hence the same are dismissed as not pressed. We notice that the AO has made the addition based on the search conducted in M/s Evergreen Enterprises and statement recorded from employees of the said concern. On perusal of the assessment order, we notice that the AO has merely stated that his is not satisfied with the reply filed by the assessee but has not given any specific finding with regard to the reply filed by the assessee. The CIT(A) upheld the addition by holding that –

“6.0 In ground nos.1 to 5, the appellant has contended that the entire addition of Rs. 75.00.000/- is presumptive, without jurisdiction and bad in law. The appellant argues that the A.O. has erred in not providing Letter of Sanction U/s. 151 rendering the entire reassessment proceedings without jurisdiction. It is further argued that the Ld. A.O. has neither provided the copies of the statements recorded U/s. 132(4) on oath from the partner and four other employees, nor provided the copies of the Ledger Sheet. It is the argument of the appellant that reliance can't be placed on the statement of third parties. Further, it is contended that these parties have retracted their statement.

6.1 I have considered the submission of the appellant. From the perusal of the assessment order, I find that the prior approval of the Principal Commissioner of Income Tax was duly obtained. Therefore, the argument

of the appellant that due procedure was not followed for reopening the assessment is not correct. Further, it is noticed that the notices u/s 143(2) and 142(1) of the Act were duly served on the appellant. Also, it is evident from the assessment order that the reasons recorded for reopening of the assessment were also supplied to the appellant on 06.04.2018. Therefore, the due procedure was followed by the AO for reopening the assessment u/s 147 r.w.s. 148 of the Act. The principle laid down by the Hon'ble Supreme Court in case of GKN and Driveshaft 259 ITR 19 (SC) have been duly complied with. The notice u/s 148 of the Act was issued after recording the reason for reopening which was supplied to the appellant. In the case of Experion Developers (P.) Ltd. Vs ACIT [2020] 115 taxmann.com 338 (Delhi)/[2020] 422 ITR 355 (Delhi), Hon'ble court held that where necessary sanction to issue notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer. From the above narrated undisputed facts, it is clear that there is no violation of provision or settled principles by the AO in initiating the reassessment proceeding.

6.2 I find that the Ld AO has made addition on the basis of the statement recorded from the employees of the company, Mr. Jagdish T Ramani and Mr Shankar Jadhav, who maintain and handle the cash transactions for the company. It is to be noted that the statement u/s 132(4) is recorded on oath and also in the presence of independent witnesses. I also note that although the appellants contend that statements recorded u/s 132(4) have been retracted, however, no such retraction letter is filed by the appellant during the appellate proceedings.

6.3 In the case of Surjeet Singh Chhabra vs. Union of India AIR 1997 SC 2560. The hon'ble court noted that the statements were recorded u/s 132(4) and section 131 of the Income Tax Act, 1961. These statements are recorded on oath. Income Tax Authorities are not Police officers. Therefore, the confession though retracted, is an admission and binds the deponent. Also, in the case of CIT Vs H. Dasappa & Sons (Kar) 49 DTR 119; 237 CTR 324, it is held that retraction of sworn statement after lapse of significant time without any material, is not relevant. Further, Hon'ble

High Court of Chhattisgarh in the case of ACIT vs. Hukumchand Jain reported at 337 ITR 238 (2011) held that if an allegation of duress or coercion was made after a lapse of significant time, then such allegation has to be overruled. The statement recorded under section 132 (4) has great evidentiary value and there is no material which has been brought on record that such statement has been recorded and obtained forcefully/by coercion/undue influence.

*6.4 The AO in the assessment order has observed that the assessee filed reply on 05.12.2018 but could not respond satisfactorily to the show cause notice issued. Therefore, the addition of Rs 75,00,000/- was made u/s 69 of the Act. Therefore, it is clear that the assessee failed to prove the genuineness of the transaction during the assessment stage as well as before the appellate stage. Accordingly, I uphold the action of Ld AO in making addition of Rs 75,00,000/- u/s 69 of the Act. Grounds of the appellant are **dismissed.**”*

5. From the above observations of the CIT(A) we notice that the assessee did not furnish any further details and that the CIT(A) has upheld the addition for the reason that the genuineness of the transaction was not substantiated by the assessee. During the course of hearing the ld. AR submitted that the entire addition is based on the statement recorded from the employees of M/s Evergreen Enterprises that the assessee had given cash loan and that the AO has not brought any other material on record to substantiate that the assessee has given cash loan. The ld. AR further submitted that the assessee has not given any cash loans and the onus is therefore on the revenue to prove that the assessee has given the alleged cash loan to M/s Evergreen Enterprises. From the facts and circumstances of the present case, it is clear that the revenue has proceeded to make the assessment merely based on the statement recorded and that the assessee has also failed to provide necessary documents to controvert the claim of the revenue. Therefore, in the interest of justice and fair play, we are of the considered view that the assessee

be given one more opportunity to represent the case afresh. Accordingly, we remit the appeal back to the AO for denovo verification of the issues under consideration after giving a reasonable opportunity of being heard to the assessee and the assessee is at liberty to raise the legal contentions before the lower authorities.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04-04-2024.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member
**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai