

**IN THE INCOME-TAX APPELLATE TRIBUNAL MUMBAI
“A” BENCH, MUMBAI.**

**BEFORE SHRI AMIT SHUKLA (JM)
&
SMT. RENU JAUHRI (AM)**

**I.T.A. No. 3650/Mum/2023
(A.Y. 2010-11)**

M/s. Aishwarya Publication Pvt. Ltd. 3 rd Floor, Centre Point 18 th Road, Chembur Mumbai-400 070. PAN : AAACA3569K (Appellant)	Vs.	ITO, Ward 1(1)(1) Room No. 534/579A Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri S.G. Goyal & Shri Harsh S. Goyal
Department by	Shri Manoj Kumar Sinha
Date of Hearing	16.04.2024
Date of Pronouncement	03.05.2024

ORDER

PER RENU JAUHRI (AM) :-

The assessee has filed this appeal challenging the order dated 31.7.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11.

2. Grounds of appeal read as under :-

“1. The Ld. CIT (A) erred in appreciating the fact that the copy of order passed by the Pr. CIT under sec. 127 for transfer of

jurisdiction from the AC/DC to the ITO was never made available to the appellant despite a demand being made there for.

2. The Ld. CIT (A) erred in appreciating the fact that a Notice under sec. 148(1) could have been issued only by the Officer holding jurisdiction over the Appellant's case and not by any other AO.

3. The Ld. CIT (A) erred in appreciating the fact that jurisdiction over the Appellant's case lay with the AC/DC based on income returned for the AY in question as per Instruction No. 1/2011 dated 31st January 2011 issued by the CBDT for being assessed and that they were binding on the Officers in the Department.

4. The Ld. CIT (A) erred in appreciating the fact that the Ld. AO has not issued the reasons for re-opening with the prescribed time limit as laid down by the judicial precedents in spite of a demand being made immediately after the filing of the ROI in response to the notice under sec. 148.

5. The Ld. CIT (A) has failed to appreciate the fact that the reasons for re-opening were recorded by the Ld. AO in haste based on the report of the DIT (Inv) and without proper inquiry being made independently.

6. The Ld. CIT (A) failed to appreciate that approval under sec. 151 was obtained in a mechanical manner from the Authority by simply stating "Yes, I am satisfied."

7. The Ld. CIT (A) failed to appreciate that the statement of the witness who deposed before the DIT((Inv) was never given to the Appellant during the course of proceedings to make a rebuttal.

8. The Ld. CIT (A) failed to appreciate that the Ld. AO had in spite of a demand being made for cross examination of the persons who deposed before the DIT (Inv.) didn't provide the Appellant an opportunity of doing so.

9. The Ld. CIT (A) has failed to appreciate that the statement of the persons who deposed before the DIT (Inv.) has not contained the name of M/s. Prerna Inc, the party from whom the appellant had made purchases.

10. The Ld. CIT (A) failed to appreciate that the notice under sec. 143(2) which is required to be issued for an assessment/reassessment of income is to be made by the JAO and not by any other officer.

11. The Ld. CIT (A) failed to appreciate that the appellant was not duty bound to physically produce the party from whom it

made purchases, but to only provide the address and bank details of the said party along with the VAT TIN Nos., which were last known to him.”

3. At the time of hearing, ground No. 1,4,8 are not pressed by learned counsel of the appellant, hence, these are dismissed as not pressed.

3.1. In essence, the appellant has challenged the validity of the order on the ground that notice was issued by another officer (i.e. ACIT) while jurisdiction over the case was with ITO. Further, the reasons of reopening were recorded in haste, based on the report of the investigation wing without proper independent inquiry. He has also challenged the approval of PCIT on the ground that the same has been given in a mechanical manner without any application of mind.

4. The relevant facts of the case are as under:-

(i) A search and survey action was carried out in the case of Sh. Praveen Kumar Jain & related entities. In view of the evidence showing no genuine activities Sh. Praveen Kumar Jain admitted that the entities were merely providing accommodation entries against receipt of cash.

(ii) It was noticed that the appellant company had taken entries relating to purchase of Rs.65,00,000/- from M/s. Prerna Inc. run

by Sh. Pravin Kumar Jain & his group without actual delivery of goods as accepted by them during the course of search.

(iii) Information was passed on 20/03/2017 to the ACIT Circle 1(1) Mumbai. He issued a notice u/s.133(6) dt. 27/03/2017 to the appellant seeking copy of the ledger account of M/s. Prerna Inc. by 28/03/2017. The appellant responded on 29/03/2017 by filing the copy of ledger account. Thereafter, reasons were recorded on 29.03.2017 itself and notice u/s.148 of the I.T Act was issued on 31/03/2017 after taking approval of the PCIT. Since the information regarding receipt of accommodation entry of Rs.65,00,000/- was received from Investigation Wing by the ACIT Circle 1(1) Mumbai, and as the returned income for the A.Y.2009-10 was Rs.53,77,300/-, the ACIT had jurisdiction to issue the notice. Subsequently the case was transferred to ITO Ward (1)(1) u/s.127 of the I.T Act on 17/10/2017. The assessee's objection against reopening of assessment u/s.148 filed vide letter dated 03/10/2017 were disposed off by the AO on 31/10/2017.

(iv) Since notice u/s.148 was issued after 4 years from the end of the assessment year, approval of competent authority was

required to be taken which was sought on 29/03/2017. It is seen that the approval was granted after recording satisfaction in one line i.e. 'Yes, I am satisfied', on the same date. It was contended by the appellant that the notice was handed over to the postal authorities beyond 31/03/2017. However, as per copy of acknowledgement of the post office, the notice was received by postal authorities on 31/03/2017 (as agent of the appellant).

(v) In response to the notice, appellant filed a letter on 25/04/2017 to treat the return filed earlier as return filed in response to the notice u/s.148 of the I.T.Act.

(vi) Notice issued to M/s. Prerna Inc. u/s.133(6) dated 14/11/2017 was returned back by the postal authorities with remarks 'Not Known'.

(vii) Since the appellant could neither produce the party nor filed any evidence such as transport bill, octroi receipt etc., the purchases were treated as bogus by the Assessing Officer. He estimated 30% of the disputed purchases as net profit and completed the assessment.

(viii) In appeal the CIT(A), upheld the validity of reopening of assessment but reduced the net profit on disputed purchases from 30% to 12.5%.

5. Before us, the Ld. AR vehemently argued that the entire basis and procedure followed for reopening is not as per law. The Ld. CIT DR on the other hand relied on the order of Ld. CIT(A) upholding the validity of reopening of assessment. The rival submissions of the parties have been carefully considered in view of the above facts stated hereinbefore and it is observed as under:

(i) Regarding the reason recorded by the ACIT, it is seen that he had received specific information from the Investigation Wing regarding bogus purchases of ₹ 65,00,000/- by the appellant, which was sufficient for forming a prima facie belief regarding escapement of income. Further an opportunity was also given to the appellant vide notice dated 27.03.2017 to furnish copy of ledger account alongwith supporting documents.

(ii) The ACIT had received information regarding income escaping assessment of ₹65,00,000/- and for the relevant year, returned income was ₹53,77,300/- as such the notice issued u/s

148 was not without jurisdiction with regard to the threshold limits.

(iii) The allegation that the approval of PCIT was given without due application of mind is again not based on any evidence but is merely a conjecture. Simply because the satisfaction has been recorded in one line at the fag end of the prescribed time limit., does not prove that there is no application of mind by the Pr.CIT or that the approval was not obtained in time.

(iv) The appellant has also objected to the passing of order by the ITO in violation of monetary limits prescribed in Instruction No.6/2011 dated 08/04/2011 by the CBDT vide F.No.187/12/2010/ITA-1 which is also not tenable as the relevant A.Y. in 2010-11 and the said instructions have been issued on 08.04.2011.

(v) Regarding the issue of notice u/s 148 of the Act after 31.03.2017, it is seen that the copy of acknowledgment of the post office shows receipt of notice by the postal authorities on 31.03.2017. It is settled law that the word 'issued' has to be given its natural meaning. When the notice is handed over to the postal authorities (as agent of the appellant) within time but served

later, it cannot be treated as invalid as held by the Hon'ble Supreme Court in the case of R. K. Upadhyay v/s Shanabhai P. Patel (1987) 166 ITR 163. The appellant's claim that the notice was issued on 03.04.2017 based on information available on the website of the postal department is also not accepted.

(vi) Some other objections regarding not providing reasons recorded before issue of notice u/s.143(2) and denial of four weeks time from disposal of objection to commencement of proceedings u/s.143(2) have also been raised but not found to have any merit.

6. After careful consideration of the submissions made by the ld. AR and the Ld. CIT (DR), we decide as under:

i. The AO had recorded the reasons to believe based on the specific and credible information received from the Investigation Wing of the department which prima facie showed escapement of income. Reasons recorded were duly furnished to the appellant. Since the return of income u/s.139(1) was filed at an income of Rs.53,77,300/-. (well above the prescribed monetary limits) the ACIT had jurisdiction to issue the notice u/s.148 of the I.T. Act. Necessary approval has also been taken from the Competent

authority. Subsequently, the case was transferred u/s.127 of the I.T. Act from ACIT Circle 1(1), Mumbai to ITO Ward (1)(1), Mumbai. As such the grounds of appeal relating to reopening of assessment and the procedure followed are found to be without merit and hence rejected.

ii) With regard to the issue of treating the transaction of Rs.65,00,000/- as bogus and calculating net profit @30% of disputed purchases, it is seen that the notice u/s.133(6) issued on 14/11/2017 to M/s. Prerna Inc at the address provided by the assessee company was returned back by the postal authorities with the remarks 'Not Known'. The appellant was, therefore, asked to produce the above party along with documentary evidences to prove the genuineness of the aforesaid transaction. The appellant could not produce the above party for verification. Mere filing of purchase bills and other documents cannot establish the genuineness of the transaction especially since the transaction is alleged to be bogus with no delivery of goods having been made. No transport bill, octroi receipt etc., have been submitted by the appellant to establish the delivery of goods.

In view of above facts, the ld. AO has rightly held that books of accounts are not reliable and, after rejecting the same, made as addition of 30% of the disputed purchase amount. The CIT(A) has sustained the addition to the extent of 12.5% of total disputed purchases. The same is considered reasonable and is therefore upheld.

7. In the result, the appeal is dismissed

Order pronounced in open court on 3rd May, 2024

Sd/-

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai.;

Dated : 03.05.2024

Aniket Singh Rajput (Steno)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai