

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.1092/Kol/2023
Assessment Year : 2011-12

Alma Assets Consultancy Pvt. Ltd.....Appellant
341-K1, Post Office:
Sahabana, Chandigarh Road,
Mundian Khurd Ludhiana.
[PAN: AAICA6234H]

vs.

ITO, Ward-4(3), Kolkata..... Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 10, 2024

Date of pronouncing the order : May 20 , 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 21.08.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the confirmation of addition of Rs.10,26,99,100/- made by the Assessing Officer as unexplained cash credits into the income of the assessee.

3. The assessee through its grounds of appeal has contested not only the validity of the additions on merits but also relating to the validity of the reopening of the assessment u/s 147 r.w.s. 148 of the Act and also the validity of the assessment for want of issue of notice u/s 143(2) of

the Act. Since, the legal grounds hit at the very jurisdiction of the Assessing Officer to frame the assessment, they are taken first for adjudication.

4. At the outset, the ld. Counsel for the assessee has brought our attention to the reasons for reopening of the assessee, which are extracted as under:

“An information has been received from the DDIT(Inv.), Unit-2(1), Kolkata stating that M/s. Om Creation, Prop: Mr. Balkishan Joshi maintains a current account with Indusind Bank Burrabazar Branch. The transactions are cash deposits followed by RTGS debits. On perusal the ITD database, it has been found that the assessee has never filed his return of income whereas he transactions through his bank account were huge. It has been reported by the investigation wing that the bank accounts have been used for layering of funds before transfer to the account of beneficiary. As per the cash trail several beneficiaries have been traced out where it was seen that before transfer to the beneficiary, the alleged funds were rotated through 2-3 intermediate bank accounts. One of the beneficiary is the assessee Company and it has received Rs. 50,00,000/- from M/s. Sanhit Vincom Pvt Ltd during F.Y.-2010-11. Another information has been received from the DDIT(Inv.), Unit-2(1), Kolkata stating that Amit Sutradhr have transferred funds to the account of Barbarik Marketing Pvt Ltd and there were several other transactions in bank account of Amit Sutradhar and Barbarik Marketing Pvt Ltd without any financial rationale. As apparent from the transaction pattern Barbarik Marketing Pvt Ltd is a shell company whose bank account was used for rotation of money. One of the beneficiary is the assessee company and it has received Rs.50,00,000/- from M/s Barbarik Marketing Pit Ltd during F.Y 2010-11. So, I have reason to believe with the materials on record hat income of Rs.1,00,00,000/- as escaped assessment within the meaning of section 147 of I. T Act 1961. Hence, notice u/s 148 of the Income-Tax Act 1961 has to be issued after obtaining necessary approval from Ld. Pr. CIT-2, Kolkata.”

4.1 The ld. Counsel for the assessee, at the outset, has submitted that the aforesaid reasons recorded by the Assessing Officer was not valid reasons to form the belief that the income of the assessee has escaped assessment. He pointed out that the Assessing Officer in this case has mentioned that the assessee has never filed its return of income, whereas, the transactions in its bank account were huge. The ld.

Counsel pointed out that this information received by the Assessing Officer was factually wrong. The ld. Counsel invited our attention to page 1 of the paper-book, which is the copy of acknowledgement of filing of return of income on 30.03.2012 for assessment year 2011-12. The ld. Counsel has further invited our attention to page 2 of paper-book, which is a copy of intimation issued by the department u/s 143(1) of the Act dated 17.07.2012 processing the return of income. The aforesaid evidence is sufficient to prove that the information to the Assessing Officer that the assessee has not filed its return of income, was factually incorrect. The ld. Counsel has further submitted that the only information to the Assessing Officer from the Investigation Wing was that the assessee has received Rs.50,00,000/- from M/s Sanhit Vincom Pvt. Ltd. during F.Y 2010-11 and further Rs.50,00,000/- from M/s Barbarik Marketing Pvt. Ltd. during F.Y 2010-11. However, the said information was not enough to believe that the income of the assessee has escaped assessment. There is no mention as to on what account, the said amount was received by the assessee from the aforesaid parties. There was general mention that the amount was routed through various channels, however that information was not enough to form belief that the income of the assessee has escaped assessment. The ld. Counsel has submitted that the assessee had received the funds from sale of shares, however, this fact has not been examined by the Assessing Officer before reopening of the assessment.

5. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

6. After considering the rival submissions, we are of the view that after receipt of information about some movement of fund into the account of the assessee, the Assessing Officer was supposed to examine

the assessment records of the assessee and correlate the said information before forming belief of escapement of income of the assessee. Though, the information was received through Investigation Wing that the assessee has never filed its return of income, whereas, the transactions through its bank account were huge, however, the Assessing Officer without verifying about the correctness of the said information straightway acted on the said information and reopened the assessment of the assessee. The ld. Counsel has demonstrated from the record that the assessee had duly filed its return of income, which was duly processed u/s 143(1) of the Act. Secondly, the information received by the Assessing Officer was that some amount was received in the bank account of the assessee from M/s Sanhit Vincom Pvt. Ltd. & M/s Barbarik Marketing Pvt. Ltd. After receiving of this information, the Assessing Officer did not tally the said information with the assessment records and even did not notice on what account or as to the nature of the transaction relating to the said receipt of the income. Mere information of receipt of funds into the account of the assessee is not enough to form the belief that the income of the assessee has escaped assessment. The satisfaction recorded by the Assessing Officer was a borrowed satisfaction. It has been held time and again that the belief of the Assessing Officer regarding escapement of income should be based on some tangible material and it should not be a mere pretence of the Assessing Officer. The belief of the Assessing Officer should be based on his own satisfaction after going through the records and further that the reopening of the assessment on the basis of borrowed satisfaction by blindly relying upon the information from the Investigation Wing cannot be held to be justified. The assessee succeeds on this ground.

7. The next contention raised by the ld. Counsel for the assessee is that no notice u/s 143(2) of the Act was issued. The said plea was also

taken by the assessee during the assessment proceedings, however, the Assessing Officer noticed that the assessee had not filed Income Tax Return for assessment year 2011-12 in response to the notice u/s 148 of the Act. The ld. Counsel for the assessee has, however, brought our attention to the copy of reply dated 17.09.2018 to notice u/s 148 of the Act, which is placed at page 12 of the paper-book, wherein, the assessee has specifically written to the Assessing Officer that its return of income filed electronically on 30.03.2012 under acknowledgement no.373968741300312 be treated as return filed in response to notice u/s 148 of the Act. The issue is covered by the decision of the Coordinate Bench of the Tribunal in the case of DCIT vs. M/s Sudarshan Paper & Board Pvt. Ltd. in ITA No.130/Kol/2018 order dated 23.10.2019, wherein, the Tribunal has considered the aforesaid plea of the department that the assessee had only filed a letter stating that his earlier return filed be treated as return of income in response to notice u/s 148 of the Act and no fresh return was filed. The relevant part of the order of the Tribunal is reproduced as under:

“5. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the Revenue’s case on the preliminary issue involved in Ground No. 1 relating to the validity of the assessment made by the AO u/s 147/144, the learned DR has contended that there being no return of income filed by the assessee in response to the notice issued by the AO u/s 148, there was no requirement of issue of notice u/s 143(2) and the Ld. CIT(A) is not justified in quashing the assessment made by the AO u/s 147/144 for want of issue of notice u/s 143(2). In support of this contention, he has relied on the decision of Hon’ble High Court of Jammu & Kashmir in the case of Pr. CIT vs Broadway Shoe Co. 259 Taxman 223 wherein it was held that where there was no return filed in pursuance to notice issued u/s 148, issue of notice u/s 143(2) was not required for making the assessment.

6. The learned counsel for the assessee, on the other hand, has submitted that a letter was submitted by the assessee during the course of reassessment proceedings before the AO on 09.07.2014 stating that the return originally filed u/s 139 on 26.09.2011 may be treated as the

return filed in response to notice u/s 148. He has contended that the notice issued u/s 148 thus was duly complied with by the assessee and it was mandatory for the AO to issue a notice u/s 143(2) before proceedings to make an assessment u/s 147. In this regard, the learned DR has contended that the letter filed by the assessee cannot replace the return and by filing such letter, the assessee cannot be said to have complied with the requirement of filling the return of income in response to notice issued u/s 148. It is however observed that this aspect has already been considered by Hon'ble Delhi High Court in the case of Jai Shiv Shankar Traders Pvt. Ltd. 383 ITR 448 cited on behalf of the assessee and relied upon by the Ld. CIT(A) in his impugned order wherein a letter was filed by the assessee on 16.12.2010 informing the AO that the return originally filed should be treated as the return filed pursuant to the notice u/s 148. The AO thereafter, proceeded to complete the reassessment without issuing a notice u/s 143(2) and it was held by the Hon'ble Delhi High Court that the failure by the AO to issue a notice to the assessee u/s 143(2) subsequent to 16.12.2010 when the assessee made the statement before the AO to the effect that the original return filed should be treated as a return filed pursuant to a notice u/s 148 of the Act, was fatal to the order of reassessment. It was held that there was thus no legal infirmity in the order of the Tribunal cancelling the reassessment made by the AO on the ground that the same was made without issue of notice u/s 143(2). In our opinion, the ratio of the decision of Hon'ble Delhi High Court in the case of Jai Shiv Shankar Traders Pvt. Ltd. is squarely applicable in the facts of the present case and the Ld. CIT(A) was fully justified in quashing the assessment made by the AO u/s 147/144 of the Act by treating the same as void ab initio by relying on the same. We, therefore, uphold the impugned order of the Ld. CIT(A) on this preliminary issue and dismiss Ground No. 1 of the Revenue's appeal.

7. As a result of our decision rendered on the preliminary issue as involved in Ground No. 1 of the Revenue's appeal upholding the impugned order of the Ld. CIT(A) quashing the assessment made by the AO u/s 147/144 of the Act, other grounds raised by the Revenue in its appeal as well as all the grounds raised in the cross-objection of the assessee have become infructuous and we do not consider it necessary or expedient to adjudicate upon the same."

7.1 The said order of the Tribunal has been further confirmed by the Jurisdiction Calcutta High Court in the case of PCIT vs. M/s Sudarshan Paper & Board Private Limited in ITAT/182/2022 IA No.GA/1/2022/

GA/2/2022 dated 05.12.2022. The relevant part of the order of the Calcutta High Court is reproduced as under:

“The revenue has raised the following substantial question of law for consideration:

- i) *Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal is justified in upholding the order of the Learned Commissioner of Income Tax (appeal), quashing the order of the Assessing Officer under Section 147/144 of the Income Tax Act, 1961 for non- issuance of notice under section 143(2) of the Act, without appreciating the facts that assessee did not comply with the notice under section 148 of the Income Tax Act, 1961 and as such notice under section 143(2) of the Income Tax Act, 1961 is not required in assessee's case ?*

On perusal of the order passed by the learned Tribunal we find the legal issue involved in the case has been rightly dealt with by the learned Tribunal affirming the order passed by the Commissioner of Income Tax (Appeals) and quashing the reassessment proceeding for want of notice under Section 143(2) of the Act. In this regard usual reference may be made to the decision of the High Court of Madras in M/s. Sapthagiri Finance & Investments -vs- The Income Tax Officer TC(A) No. 159 of 2006 dated 17.07.2012. In the said decision after taking note of the decision of the Hon'ble Supreme Court in Asstt. CIT v. Hotel Blue Moon; [2010] 321 ITR 362(SC) the reassessment proceeding was set aside. The initial view was that failure to issue notice is an irregularity, which is curable when subsequently the law is well settled that it being an inherent defect is not curable. To the same effect are the decisions in Principal Commissioner of Income Tax-vs-Jai Shiv Shankar Traders Pvt. Ltd. 383 ITR 448 (Delhi) and Tiwari Kanhaiya Lai -vs- Commissioner of Income-Tax 154 ITR 109 (Raj).

In the light of the above, the order passed by the learned Tribunal is legal and valid and does not call for any interference.

Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.”

8. In view of the aforesaid decision of the Jurisdictional Calcutta High Court, this issue is also covered in favour of the assessee and against the department. Since, the assessee succeeds on legal grounds,

therefore, at this stage, any discussion on merits of the case should be rendered academic in nature. In view of the above observations, the reopening of the assessment in this case being bad in law and is hereby quashed and the consequential additions stand deleted.

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

Kolkata, the 20th May, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated:20.05.2024.

RS

Copy of the order forwarded to:

1. Alma Assets Consultancy Pvt. Ltd
2. ITO, Ward-4(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches