

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'A' : NEW DELHI)

BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.3200/Del/2019
(Assessment Year : 2009-10)

M/s. Ashwini Finman Services Pvt. Ltd. 79, Agroha Kunj, Sector-13 Rohini New Delhi- 110085 PAN : AAECA5417G	Vs.	PCIT-1 New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Ved Jain, Adv. & Ms. Supriya Mehta, CA
Revenue by	Shri Javed Akhtar, CIT, DR

Date of hearing:	05.04.2024
Date of Pronouncement:	04.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is an appeal filed by the assessee against the order passed by PCIT u/s 263 of the Act revising the reassessment order passed by AO u/s 147 of the Act.

2. Brief facts of the case are that the assessee filed its return of income on 24.09.2009 declaring income of Rs.74,470/- which was processed u/s

143(1) of the Act. However, AO received information that the income of the assessee has escaped assessment and therefore the case of the assessee was reopened u/s 147 of the Act. Relevant extract of reasons recorded by AO is reproduced hereunder for the sake of convenience:

“3.3 As per information received, the entry of assessee found in the seized documents of Jain brothers corroborates with the Banking channel and during the year the following entries have been taken by the assessee from the entry operators.

<i>Cheque Book date</i>	<i>From Company name</i>	<i>To company/ person name</i>	<i>Name of the issuing Bank</i>	<i>Cheque / R/TGS/PO No./ Cheque date</i>	<i>Amount (Rs.)</i>	<i>Name of the Middleman/ Mediator</i>	<i>Annexure no.</i>	<i>Page no.</i>
19/Nov/08	Virgin Capital Services Pvt. Ltd.	Ashwini Finman Services P. Ltd.	AXIS	RTGS 19/Nov/08	3,50,000	Satis Goel Ji	A-29	Back Page 36
31/Dec/2008	VIP Leasing & Finance Pvt. Ltd.	Ashwini Finman Services Pvt. Ltd.	AXIS	RTGS 31/Dec/2008	6,50,000	Satish Goel	A-28	36
04/Feb/2009	Eagle Infotech Pvt. Ltd.	Ashwini Finman Services pvt. Ltd.	AXIS	Ch. No. 017149 04/Feb/2009	5,00,000	Satish Goel	A-26	52

6... Keeping in view all the above, I have reasons to believe that an amount of at least Rs. 15,00,000/- has escaped assessment in case of M/s. Ashwini Finman Services Pvt. Ltd. for A.Y. 2009-10 within the meaning of Section 147/148 of Income Tax Act, 1961.”

2.1 During the course of reassessment proceedings, the assessee vide reply dated 28.11.2016 submitted that the share capital of Rs. 15,00,000/-

was introduced by the director of the assessee company i.e. Ms. Anuradha Mittal which has also been declared under **Income Declaration Scheme, 2016** (hereinafter referred to as IDS,2016) in the her name. The due taxes had also been paid. The assessee has also furnished copy of challans of taxed paid wherein it was specifically disclosed that the amount of Rs.15,00,000/- was invested in shares of the assessee company in the name of VIP Leasing & Finance Pvt. Ltd, Eagle Infotech Pvt. Ltd. and Virgin Capital Services Pvt. Ltd. Considering the replies and evidences furnished by the assessee, the AO accepted that the tax has already been paid by the director on the amount of Rs. 15,00,000/- which formed the basis for initiation of proceedings u/s 147. And thus the income of the assessee was assessed at returned income vide Assessment Order dated 30.11.2016.

2.2 However PrCIT issued a show cause notice dated 15.03.2019 alleging that the assessment order passed by AO u/s 147 of the Act is erroneous in so far prejudicial to the interest of revenue on account of the following reasons:

- i. Since the accommodation entries of Rs. 15,00,000/- were received from M/s Virgin Capital Services Pvt. Ltd. M/s VIP Leasing & Finance Pvt. Ltd. and M/s Eagle Infotech Pvt. Ltd., therefore, the amount of Rs. 15,00,000/- should have been considered as income of the assessee company u/s 68 of Tax.
- ii. After the assessee produced IDS 2016 documents, the AO did not make any further enquiry from the assessee company regarding genuineness of introduction of share capital/ share premium.
- iii. Ms. Anuradha Mittal in IDS, 2016 has made declaration of Rs. 15,00,000/- for AY 2009-10. However, no declaration in respect of

accommodation entries of Rs. 10,00,000/- taken in AY 2008-09 and Rs. 6,50,000/- taken in AY 2007-08 were disclosed in IDS, 2016. The reasons for the same were neither called for by the AO nor submitted by the assessee company.

iv. Though Ms. Anuradha Mittal has paid tax on Rs. 15,00,000/- in IDS, 2016, however, without making proper enquiry, it could not be ascertain that this was the same amount which was introduced by Ms. Anuradha Mittal in the assessee company for purchase of shares as the nature of undisclosed income stated in IDS, 2016 was investment in unquoted equity shares.

v. The assessee company has not produced any document to prove the genuineness of the transaction. Also Ms. Anuradha Mittal was not asked to prove that she had made payment to the assessee company.

2.3 In response to the above mentioned observations made by the Pr. CIT, the assessee vide reply dated 28.03.2019 reiterated its submissions made before AO during the reassessment proceedings.

2.4 However, PrCIT disregarded the reply furnished by the assessee and held that AO should have made further inquiries/investigations so as to establish the identity, creditworthiness and genuineness of the share applicants u/s 68 the Act. And thus, the order passed by AO was erroneous in so far prejudicial to the interest of revenue.

3. Aggrieved by the order of Pr. CIT, the assessee is in appeal before the Tribunal raising following grounds;

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (CIT) under Section 263 of the Act is bad, both in the eye of law and on facts.

2. *On the facts and circumstances of the case, the order passed by the learned CIT cancelling the assessment order passed by the A.O is untenable in the absence of order of the A.O. being erroneous as well as prejudicial to the interest of the Revenue.*

3. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the fact that all the issues raised by him in notice under Section 263 were before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed.*

4. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in rejecting the contention of the appellant that the alleged issue was before the AO in proceedings under Section 147/143(3) and was allowed after application of mind by him as such the same cannot be the matter for reassessment under Section 263 of the Act.*

5. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding under Section 263 cannot be used for substituting option of the A.O. by that of the CIT.*

6. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in invoking revisionary power under Section 263 of the Act despite the fact that even after thorough examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.*

7. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in setting aside the matter to the file of the A.O. without giving a finding as to the error and prejudice caused to the revenue by the assessment order.*

8. *That the appellant craves leave to add, amend or alter any of*

the grounds of appeal.”

4. Heard and perused the record.

5. Ld. AR submitted that the amount of Rs. 15,00,000/- was introduced by Mrs. Anuradha Mittal, Director of the company through four companies. Therefore, it was the unaccounted income of the director which was invested in the assessee via these three companies and tax has also been paid by the director on such amount by making a declaration under IDS 2016. Therefore, tax on the amount of Rs. 15,00,000/- has already been paid by the director of the assessee.

5.1 Ld. DR has although defended the impugned order of Pr. CIT.

6. We have given a thoughtful consideration to submission and record what comes up that Ld. Pr. CIT has apparently made a very erroneous observation that after the assessee produced IDS 2016 documents, the AO did not make any further enquiry from the assessee company regarding genuineness of introduction of share capital/ share premium. Ld. AR is right to contend that the objective of introduction of this scheme was to provide an opportunity to offer income which was not disclosed earlier. Once the declaration was verified and accepted by the PCIT/concerned authority, no further inquiry about the sources of such income was called for. The immunity was from such enquires only. Certainly conducting such inquiry would have defeated the object of this scheme.

6.1 Then Ld. Pr. CIT has gone beyond the relevant AY to observe that assessee in IDS, 2016 has made declaration of Rs. 15,00,000/- for AY 2009-10. However, no declaration in respect of accommodation entries of Rs. 10,00,000/- taken in AY 2008-09 and Rs. 6,50,000/- taken in AY 2007-08

were disclosed in IDS, 2016. The Bench fails to appreciate that how Pr. CIT could flawed the re-assessment order by going beyond the reasons recorded for the relevant AY.

6.2 We are also of firm view that there was no justification with Pr. CIT to draw conclusion on conjectures and surmises alleging that though Ms. Anuradha Mittal has paid tax on Rs. 15,00,000/- in IDS, 2016, however, without making proper enquiry, it could not be ascertain that this was the same amount which was introduced by Ms. Anuradha Mittal in the assessee company for purchase of shares as the nature of undisclosed income stated in IDS, 2016 was investment in unquoted equity shares. We are of the considered view that the scope of re-assessment was restricted to the fact the amount of Rs. 15,00,000/-, which was introduced in the assessee company by those three companies and assessee in information provided under IDS, 2016 Form 1 placed at PB Pg.26-32, relevant page 30 Clause (b) had disclosed the name of the assessee company, name of those three shareholders, no. of shares alongwith value of shares and date of allotment, so there was direct nexus between alleged entries and disclosed income.

6.3 The sequitur to a declaration under the IDS leads immunity from taxation in the hands of declarant. In the case before us the Assessee is a Private Limited company and declarant is the Director. Therefore as with regard to money introduced by the Director through investee companies the declaration of Director extends immunity to the assessee company also. Therefore, Ld. AO was not supposed to do any enquiry as to if Rs. 15 Lacs declared by Mrs. Anuradha Mittal under IDS was the same amount which she had introduced in the assessee company.

6.4 Lastly Pr. CIT has fallen in error to conclude that the assessee

company has not produced any document to prove the genuineness of the transaction. The Forms of IDS 2016 seems to not have been examined by PrCIT, wherein it was disclosed that the amount of RS. 15,00,000/- introduced by Mrs. Anuradha Mittal was invested in the assessee company in the name of VIP Leasing & Finance Pvt. Ltd, Eagle Infotech Pvt. Ltd. and Virgin Capital Services Pvt. Ltd and such declaration was duly verified and accepted by the PCIT/concerned authority. No defect or discrepancy was pointed out in the such declaration and it is after due verification that Form 4 was issued. Once the declaration under IDS 2016 was accepted, it was not in the jurisdiction of the AO to ask the assessee to justify the source of such income.

7. Thus, the order of ld. AO accepting the source cannot be said to be erroneous. There was no error on part of AO to have accepted the IDS documents and any way once tax has been paid in accordance with the said Scheme, for the impugned amount for which assessment was reopened, the re-assessment order cannot be said to be prejudicial to the interest of Revenue. The impugned order under proceedings u/s 263 cannot be sustained. Grounds are sustained and **the appeal of assessee is allowed.**

Order pronounced in the open court on 04th June, 2024.

Sd/-

**(G.S.PANNU)
VICE PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- .04.06.2024

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI