

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 939/MUM/2024
Assessment Year: 2011-12**

Ritu Multitrade Services Pvt. Ltd. 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai – 400025 (PAN : AAACR1995C)	Vs.	Income Tax Officer, Ward 8(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Devendra Jain, Advocate
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 25.06.2024
Date of Pronouncement : 28.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1058829194(1) dated 18.12.2023 passed against the assessment order by Income Tax Officer, Ward 8(1)(2), Mumbai, dated 21.12.2018, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for Assessment Year 2011-12.

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

1. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in deciding the appeal exparte.*
2. *On the facts and circumstances of the case and in law Ld. Commissioner of Income Tax (Appeals) has erred in not adjudicating the issue that reopening of the assessment itself was bad in law therefore the assessment order was void abinitio.*

3. On the facts and circumstances of the case and in law Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition made on protective basis by ld.A.O. u/s 68 of the Income Tax Act, 1961 amounting to Rs.1,00,02,281 on account of unexplained cash credit.

3. The Ld. Counsel for the assessee has strongly contested on the legal issue of the re-opening of the assessment which is bad in law and thus the assessment order is void ab initio.

4. Brief facts of the case are that the assessee filed its return of income on 24.09.2011, reporting a total income at Rs.15,174/-. Subsequently, on receipt of information from the DDIT(Inv) Unit-7(3), Mumbai that assessee had transacted with M/s. Dulron Procon Pvt. Ltd. whose bank account showed circulation of un-explained funds and assessee received a sum of Rs.45,02,000/- from the said party, ld. Assessing Officer recorded reasons to believe for issuing notice u/s.148 which was issued on 29.03.2018.

4.1. The Ld. Counsel for the assessee referred to the reasons to believe recorded by the Ld. Assessing Officer and pointed from para – 2 that the Ld. Assessing Officer has noted the fact of assessee receiving Rs.45,02,000/- from M/s. Dulron Procon Pvt. Ltd. He further, referred to Para-4 and submitted that in this also the Ld. Assessing Officer has noted about fund received by the assessee from M/s. Dulron Procon Pvt. Ltd. which is un-explainable. Thus, in para-5, Ld. Assessing Officer noted that information as received gives substantial basis for reason to believe that income chargeable to tax of Rs.45,05,000/- has escaped assessment.

4.2. From these factual notings by the Ld. Assessing Officer in the reasons to believe for the purpose of initiating proceedings u/s.147 r.w.s. 148, Ld. Counsel submitted that sole premise is on receipt of Rs.45,02,000/- by the assessee from M/s. Dulron Procon Pvt. Ltd. However, assessee had both purchase and sale transaction with M/s. Dulron Procon Pvt. Ltd. In the year under consideration, assessee had

purchased fabric from M/s. Dulron Procon Pvt. Ltd. worth Rs.45,02,184/-. For these purchases, assessee made payment of said amount to M/s. Dulron Procon Pvt. Ltd. through proper banking channel. Thus, it is a case of payment made by the assessee to M/s. Dulron Procon Pvt. Ltd. against purchases contrary to the incorrect fact of receipt of this amount noted by the Ld. Assessing Officer in the reasons to believe recorded by him. To this effect, Ld. Counsel referred to the ledger account of M/s. Dulron Procon Pvt. Ltd. in its books of account wherein purchases and payment made thereon are duly accounted for. The said ledger is reproduced for ease of reference.

Dulron Procon Pvt Ltd (Cr)					
Ledger Account					
1-Apr-10 to 31-Mar-11					
Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
9-Aug-10	By Purchase Fabrics	Purchase	160		9,63,014.00
	By Purchase Fabrics	Purchase	161		9,90,756.00
	By Purchase Fabrics	Purchase	162		9,99,045.00
	By Purchase Fabrics	Purchase	163		9,90,856.00
	By Purchase Fabrics	Purchase	164		5,58,513.00
11-Aug-10	To Corporation Bank CBCA/01/000672	Payment	310	45,02,184.00	
				45,02,184.00	45,02,184.00

4.3. Ld. Counsel also referred to the ledger account for sales made by assessee to M/s. Dulron Procon Pvt. Ltd. during the year under consideration. Assessee had sold fabrics worth Rs.1,00,02,281/- against which it had received the same amount through proper banking channel and has been duly accounted and reported in its sales as disclosed in profit & loss account. The said ledge for sale made by the assessee to M/s. Dulron Procon Pvt. Ltd. from its books of accounts is reproduced as under:

Dulron Procon Pvt Ltd						
Ledger Account						
1-Apr-10 to 31-Mar-11						
						Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
12-Nov-10	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/035	9,58,634.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/036	6,30,587.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/037	5,85,147.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/038	9,73,421.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/039	9,87,682.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/040	9,81,701.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/041	9,58,700.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/042	7,34,088.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/043	6,90,893.00		
13-Nov-10	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/047	9,39,510.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/048	7,28,367.00		
	To Sales Fabrics	Sales of Fabrics	RM/10-11/NOV/049	8,33,551.00		
15-Nov-10	By Corporation Bank CBCA/01/000672	Receipt	119		21,74,368.00	
	By Corporation Bank CBCA/01/000672	Receipt	120		29,42,804.00	
	By Corporation Bank CBCA/01/000672	Receipt	121		23,83,681.00	
16-Nov-10	By Bank the BOR A/c No.3390301114196	Receipt	123		11,34,813.00	
	By Bank the BOR A/c No.3390301114196	Receipt	124		13,66,615.00	
				1,00,02,281.00	1,00,02,281.00	

4.4. Ld. Counsel, thus pointed out that there are two separate transactions undertaken by the assessee with M/s. Dulron Procon Pvt. Ltd., one for purchases which is settled independently and other of sales which is also settled independently. There is no netting of amount payable and receivable against the purchase and sale transaction undertaken by the assessee with M/s. Dulron Procon Pvt. Ltd.

4.5. Ld. Counsel then referred to the addition made by the Ld. Assessing Officer in the course of assessment which is towards the sale transaction of Rs.1,00,02,281/- by resorting to provisions of section 68. However, there is no addition made in respect of amount of Rs.45,02,000/- as alleged by the Ld. Assessing Officer in the reasons to believe, being receipt by the assessee from M/s. Dulron Procon Pvt. Ltd. He thus, placed strong reliance on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom) which squarely covers the case of the assessee. According to the Ld. Counsel, Ld. Assessing Officer has

accepted the contention of the assessee in respect of purchase transaction for which assessee had made a payment of Rs.45,02,000/- , though the Ld. Assessing Officer had initially formed a reason to believe that such an income has escaped assessment. The Hon'ble Jurisdictional High Court in the said decision had dealt with similar issue, wherein it has held as follows:

“Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee

17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament.”

4.6. The Ld. Counsel also submitted that the addition made by the Ld. Assessing Officer in respect of sales transaction has already been offered by the assessee in its sales, reported in profit & loss account and the addition made amounts to double taxation. Further, he asserted that Section 68 cannot be applied in respect of realisation of sales proceeds for establishing the identity and credit worthiness of the customers to whom sales are made and establishing the genuineness of the transaction. To this effect, he placed reliance on the decisions of Coordinate Bench of ITAT, Mumbai in the case of ACIT vs. Ramlal Jewellers Pvt. Ltd. in ITA No.1600/Mum/2023 dated 26.07.2023 and

ITAT, Vishakapatnam in the case of ACIT vs. Heera Panna Jewellers in ITA No.253/Viz/2020, dated 12.05.2021.

4.7. Further, he submitted that Ld. Assessing Officer has made the addition towards the sales transaction on a protective basis by invoking reopening proceedings u/s.147 of the Act. He thus, strongly asserted that the proceedings so initiated u/s.147 r.w.s.148 are bad in law and the assessment so passed is liable to be quashed abinitio.

5. Per contra, Ld. Sr.DR submitted that there is no clarity on the substantive additions in the hands of M/s. Dulron Procon Pvt. Ltd. and the additions so made by the Ld. Assessing Officer on protective basis in the hands of assessee is justified. She also pointed out that, in the reasons to believe it is noted that assessee has transacted with M/s. Dulron Procon Pvt. Ltd. which shows circulation of un-explained funds. According to her, circulation of funds would include both receipt and payment and therefore there is reasonable basis for invoking the reopening proceedings by the Ld. Assessing Officer. She placed reliance on the orders of authorities below for sustaining the additions so made.

6. We have heard the rival contentions and perused the material on record. In order to deal with the legal issue raised by the assessee, admittedly, it is a fact that in the reasons to believe, Ld. Assessing Officer has taken note of receipt of Rs.45,02,000/- from M/s. Dulron Procon Pvt. Ltd. In the entire reasons to believe recorded by him, his approach on arriving at the belief that income has escaped assessment is that assessee has received the funds from M/s. Dulron Procon Pvt. Ltd. of Rs.45,02,000/-. To this effect, Ld. Counsel for the assessee has evidently and corroboratively demonstrated that assessee had both purchase and sale transactions with M/s. Dulron Procon Pvt. Ltd. which have been executed separately without netting off. Further, both the purchase transaction and sale transactions are duly recorded in the books of accounts of the assessee and both receipts and payments for

the two separate transactions of purchase and sale have been undertaken through proper banking channel. Also, there is no rejection of books of accounts on this count by the Ld. Assessing Officer to disturb the purchase or sale recorded by the assessee in its books of account.

6.1. From the assessment order, we note that there is no addition made by the Ld. Assessing Officer in respect of alleged receipt of Rs.45,02,000/- by the assessee from M/s. Dulron Procon Pvt. Ltd. which infact relates to the purchases made by it. Assessee had in fact made payment of this amount to M/s. Dulron Procon Pvt. Ltd. against its purchases. Thus, the very premise/basis on which the re-assessment proceedings were initiated has failed since no addition has been made to that effect. Contrary to this, Ld. AO has proceeded to make an addition in respect of sale transaction undertaken by the assessee with M/s. Dulron Procon Pvt. Ltd. which forms part of the recorded sales of the assessee duly reported in its profit & loss account and offered to tax. Such an addition made by the Ld. Assessing Officer tantamounts to double taxation of the same income. Further, Ld. Assessing Officer has resorted to provisions of section 68 for making this addition which is uncalled for.

6.2. We note that the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Jet Airways (Supra) squarely applies in the present set of facts. Thus, respectfully following the said decision and in the given set of facts as discussed elaborately above, corroborated by documentary evidences, we hold that the re-assessment proceedings initiated u/s.147 r.w.s. 148 and the assessment order passed thereon is bad in law. We thus, quash the impugned assessment order as void ab initio. Accordingly, ground taken by the assessee in this respect is allowed. Since we have quashed the impugned assessment order on the

legal issue, grounds raised by the assessee on the merits of the case are rendered academic in nature and therefore not adjudicated upon.

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

Order is pronounced in the open court on 28 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 June, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai