

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.4580/Del/2019
(ASSESSMENT YEAR 2010-11)**

M/s Rewin Ceramic Pvt. Ltd. A-410, Ansal Chamber-I Bhikaji Cama Place New Delhi PAN:AADCK5934F (Appellant)	Vs.	Income Tax Officer Ward-21(3) New Delhi (Respondent)
-------------------------------------------------------------------------------------------------------------------------------------	-----	----------------------------------------------------------------------

Assessee by	Shri Salil Agarwal, Adv. , Shri Shailesh Gupta, CA & Sh. Madhur Agarwal, Adv.
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	21/05/2024
Date of Pronouncement	18/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals),-7, New Delhi ["Ld. CIT(A)", for short], dated 07/03/2019 for Assessment Year 2013-14.

2. The brief facts of the case are, the assessee is incorporated on 08/02/2009 under the Companies Act, 1956 and filed its return of income for the Assessment Year 2010-11 declaring income of Rs. Nil on 15/10/2010, the same was processed u/s 143(1) of the Act, 1961 ('the Act' for short) on 16/04/2011. Subsequently, the Assessing Officer received information from ADIT (Investigation) Unit-6(3), New Delhi that a search was conducted in the case of Himanshu Verma Group on 29/03/2012 which was engaged in the activities of providing accommodation entries to various beneficiaries. The Himanshu Verma Group was found to have provided accommodation entries through various corporate and non-corporate entities controlled by them. Based on the above information, the Assessing Officer recorded the reasons for reopening the case of the assessee and issued notice u/s 148 of the Act and served on the assessee. The reasons recorded was shared with the assessee and in the reasons recoded, the Assessing Officer observed that during the Financial Year 2009-10 assessee has entered into transactions with three of the companies belonging to Himanshu Verma Group involving an amount of Rs.65 lacs. By

recording the above reasons, notice u/s 148 dated 31/03/2017 was issued and served on the assessee after obtaining the approval of competent authorities. The Assessee also filed computation of income and financial statements for Assessment Year 2010-11 vide letter dated 28/07/2017. After receipt of above response, the Assessing Officer issued notice u/s 143(2) dated 28/07/2017 and served on the assessee. Similarly, notice u/s 142(1) were also issued and served on the assessee. Similar notice u/s 133(6) were also issued to the relevant entities of the above said group.

3. During the assessment proceedings, the Assessing Officer observed that the facts involved in the operation of the Himanshu Verma Group and has discussed the modus of operandi operated by Himanshu Verma Group in providing accommodation entries and further relied on the detailed findings of the Investigation Wing. In the case of the Himanshu Verma Group, the Assessing Officer came to the conclusion that all the entries provided by the Himanshu Verma Group were managed and accommodation entries were provided by Himanshu Verma Group. He also observed that all the transaction appearing in the books of the

Himanshu Verma and others entities were carried out only for routing the funds from one entity to other in order to provide accommodation entries to the various beneficiary entities. Therefore, he observed that assessee has received total amount of Rs.65 lacs from the three entities managed and controlled by Himanshu Verma group which is nothing but accommodation entries through the bogus companies/entities. Accordingly, he proceeded to make the addition u/s 68 of the Act.

4. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and raised the various grounds. After considering the detailed submissions of the assessee, the Ld. CIT(A) sustained the addition made by the Assessing Officer.

5. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

"1. That the order dated 7-03-2019 passed by Ld. CIT(A) -7, Delhi is bad in law and against the facts of the case.

2. That the Ld. CIT(A)-7 while sustaining the proceedings under section 148 as legal has erred both in law and in facts by holding:

2.a. That the Assessing officer was justified in initiating the proceedings under section 148 on the basis of the information received from the Investigation Wing.

2.b. That the Assessing officer was justified in initiating the proceedings under section 148 and the reasons recorded prior its initiation were after due application of mind.

3. That the Ld. CIT(A)-7 while sustaining the addition of Rs. 65,00,000/- made under section 68 by the assessing officer on account of unexplained share capital has erred both in facts and in law by holding:

3.a That the share application money received by the appellant were accommodation entries received from M/s Jaguar Softech Pvt. Ltd., M/s Shubh Propbuild Pvt. Ltd. and USK Exim Pvt. Ltd. the companies controlled by Shri. Himanshu Verma on whom search operations were carried out.

3.b That the appellant failed to establish the credit worthiness of the share applicant and the genuineness of the transaction.

4. That the appellant prays leave to add, delete or amend any of the grounds of appeal on or before the disposal of the present appeal.”

6. At the time of hearing, the Ld. AR brought to our notice the findings of the Assessing Officer in the assessment order and submitted that assessee company was incorporated on 06/02/2009 and during the year, the Assessing Officer received information from Investigation Wing and purely based on findings of the Investigation Wing, the Assessing Officer proceeded to make the addition u/s 68 of the Act, merely discussing the various aspect of findings in the case of Himanshu Verma Group. In this regard, he filed various proposition for making objections against the reassessment proceedings initiated by the Assessing Officer in

assessee's case. For the sake of brevity, the relevant propositions are reproduced below:-

PROPOSITION 1: It is incumbent upon the Assessing Officer to proceed against the assessee in light of provisions of section 153C of the Act and not section 147 of the Act. As section 153C of the Act covers the situation where an alleged incriminating document/information pertaining to an assessee is found during search at third party premises.

1. Shri Naveen Kumar Gupta vs ITO (ITAT Delhi) in ITA No. 592/Del/2020.
2. Jasneet Kaur Chastwal vs ITO (ITAT Delhi) in ITA No.215/Del/2016
3. Vikram Munishwarlal Bajal vs ITO (ITAT Pune) ITA No.2552/Pun/2017

4. Copy of judgment in the case of Shyam Sunder Khandelwal vs ACIT reported in 161 taxmann.com 255 (Rajshthan).

PROPOSITION 2: Reopening of Assessment Merely based on investigation report without being any material or statement is unjustified and untenable.

1. Signature Hotels Pvt. Ltd. vs ITO (Delhi HC) reported in 338 ITR 51.
2. PCIT vs. RMC Polyviny (P) Ltd. (Delhi HC) reported in 396 ITR
3. PCIT vs Meenakshi Overseas (P) Ltd. (Delhi HC) reported in 395 ITR 677.

4. Copy of order in the case of ITO vs. Jai Gajanan Enterprises Pvt. Ltd. Order Dated 15.03.2019 in ITA No.4861/Del/2015.

PROPOSITION 3: Reopening on non application of mind and without even specifying the nature of credit not justified.

1. PCIT vs. G & G Pharma India Ltd. (Delhi HC) reported in 384 ITR 147.
2. PCIT vs Meenakshi Overseas (P) Ltd. (Delhi HC) reported in 395 ITR 677

PROPOSITION 4: Notice U/s 143(2) issued on the same date of filing of return of income is illegal and untenable in law.

1. DIT vs Society for Worldwide Interbank Financial, Telecommunications (Delhi HC) reported in 323 249.
2. Sh. Ajay Sharma vs. DCIT (ITAT Delhi) in ITA No.3555/del/2015
3. Sh. Santosh Mahalingam vs ACIT (ITAT Delhi) in ITA No.283/Del/2020.

PROPOSITION 5: Once assessee had discharged its burden of proving identity, capacity and genuineness of transaction, than the onus shifts on the Assessing Officer by conducting enquiries to discard the evidences so furnished and since both the subscribers to share capital were farmers, who have duly submitted necessary evidence along with confirmations regarding investment in share capital in cash and have also explained their source, thus, if learned AO was not satisfied with the material placed on record, he should have enforced their attendance by using coercive powers available to him before making any addition under section 68 of the Act.

1. Commissioner of Income-tax vs. Real Time Marketing (P.) Ltd. (Delhi HC) reported in 306 ITR 35
2. Food Corporation of India vs. Provident Fund Commissioner and Anr. (SC) reported in 1990 1 SCC 68.
3. Nathu Ram Premchand vs CIT (Allahabad HC) reported in 49 ITR 561
4. CIT vs Genesis Comment (P) Ltd. reported in 163 Taxman 482
5. Mehta Parikh & Co. vs. CIT (SC) reported in 30 ITR 181.

PROPOSITION 6: Once assessee establishes the transaction with its creditors/lenders to be genuine and creditors identity and creditworthiness has been established, than the assessee is not suppose to know the source of source of the creditor/lender (prior to 01.04.2013)

from whom the amount if received and even AO is precluded from raising such a query.

1. Mehta Parikh & Co. vs CIT (SC) reported in 30 ITR 181.
2. Sarogi Credit Corpn. vs. Commissioner of Income-tax (Patna HC) reported in 103 ITR 344.
3. CIT vs Diamond Products Ltd. (Delhi HC) reported in 177 Taxman.331.
4. CIT vs Dwarkadhish Investment P. Ltd. (Delhi HC) reported in 330 ITR 298.
5. CIT vs Matachem Industries (MP HC) reported in 245 ITR 160
6. CIT vs. Ram Narain Goel (P&H HC) reported in 224 ITR 180
7. DCIT vs Rohini Builders (Guj HC) reported in 256 ITR 360

PROPOSITION 7: Once the initial onus is discharged by the assessee, than the Revenue has to peruse the matter by enforcing the attendance of the creditor/lender and in absence of the same, addition under section 68 is unsustainable.

1. Commissioner of Income-tax vs. Orissa Corp, (P.) Ltd. (SC) reported in 159 ITR 78.
2. CIT vs. Divine Leasing and Finance Ltd. (Delhi HC) reported in 299 ITR 268

PROPOSITION 8: In absence of enquiry/investigation made by AO and failure to rebut documents furnished so furnished by assessee/third party, no addition can be made under section 68 of the Act.

1. CIT vs Gangeshwari Metals P. Ltd. (Delhi HC) reported in 361 ITR 10.
2. CIT vs FCS International Marketing (P) Ltd. (P&H HC) reported in 203 ITR 601.
3. ACIT vs Anima Investments Ltd. (ITAT Delhi TM) reported in 73 ITD 125.
4. CIT vs Kamdhenu Steel & Alloys Ltd. (Delhi HC) reported in 361 ITR 220.
5. PCIT vs. Laxman Industrial Resources Ltd. (Delhi HC) in ITA No.169/2017.

7. On the other hand, the Ld. DR objected to the various propositions raised by the Ld. AR and submitted that the issues raised are debatable and distinguishable. He relied on the findings of the lower authorities.

8. Considered the rival submissions and material placed on record, we observed that the Ld AR has submitted before us various propositions against the maintainability of reopening of the assessment in the case of the assessee. We observed that the reassessment proceedings were initiated by the AO based on the notification from the Investigation Wing, as per which various beneficiaries have taken accommodation entries from the Himanshu Verma Group. In the search conducted in the cases of Himanshu Verma Group, it was found that they were providing systematically accommodation entries. Since It is established in the case of above group, all the parties who have dealt with the group were under scanner of the department. In that process, it was found that the assessee has made certain transaction with above said group involving transaction to the extent of Rs. 65 Crores. Since, the AO only received the general information from the Investigation Wing

and not any incriminating material from the search proceedings carried in the case of Himanshu Verma Group (HVG). Therefore, the AO found that the assessee has made certain transactions with the group, accordingly, he has proceeded to initiate the proceedings u/s 147 of the Act.

9. With the above facts on record, we observe that in proposition 1, the assessee has raised the issue that when the material relied by the AO is from the search proceedings, he should have initiated proceedings u/s 153C and not u/s 147. After careful consideration, as indicated above, the case of the assessee was reopened based on the general information from the Investigation Wing to verify the genuineness of the transactions with the above group. Therefore, there is no incriminating material involved in this case, in our considered view, the proceedings initiated by the AO is proper. The case law relied by the assessee are distinguishable.

10. Coming to the proposition 2, as indicated above, the information received by the AO is general information along with the list of person who have dealings with the above said group. The

transactions under consideration are doubtful owing to the findings in the case of “HVG”. Therefore, it is wrong to say that there is no material information with the AO, the AO had list of person who had dealt with the above said group who have accepted to have provided accommodation entries. It is normal to proceed with the investigation of connected parties to verify the genuineness of the transaction. It may not lead to investigation on any incriminating material however, the AO had specific information to initiate proceedings. Therefore, the proposition 2 also dismissed and case law relied are distinguishable to the facts of record.

11. After careful consideration of propositions 3 and 4, we have noticed that the AO had reopened the assessment based on the information from the investigation wing and had properly recorded the same to initiate the reopening of assessment proceedings, we do not see any reason the question the same. We are inclined to dismiss this proposition as well. With regard to proposition 4, we observed that the assessee had filed the ROI in response to the 148 notice, after receipt of the ROI, the AO has issued the 143(2) notice on the same day of receipt of ROI. The issue under consideration is

reopening of the assessment where the assessee had already filed the ROI which was also processed u/s 143(1) of the Act. This is not the case of regular assessment where the AO has to follow the due process of law for issue of notices u/s 143(2), 142(1) etc., Therefore, the issue raised by the assessee in the proposition 4 is dismissed.

12. With regard to proposition 5, we observed that the AO has relied on the findings of Investigation Wing, also discusses the modus operandi used by the H V Group to provide the accommodation entries and reached to the conclusion that the assessee is also beneficiary of the above transaction without even bring on record the nature of the transaction or any findings on genuineness of the transaction entered by the assessee. We observed that he has merely analysed the various statement recorded in the search proceedings in the case of H V Group without properly making investigation of the actual transaction in the hands of the assessee. He reached to the conclusion that these are accommodation entries with the observation that H V Group receives the cash and next day or same day the transactions are concluded. The findings of the AO is generic without bringing on

record how the transactions are bogus or tainted, not even brought on record the nature of transaction. Therefore, the whole process of investigation is defeated without concluding the assessment with the proper findings or making proper enquiry. This shows that the AO had made only roving enquiry without having any material with him. The initiation of the reopening proceedings is proper with the information from the Investigation wing but the assessment was bad without their being any substance. Therefore, we are inclined to set aside the assessment made by the AO. Accordingly, the ground No.3 raised by the assessee is allowed.

13. We have not found it appropriate to discuss the other propositions raised by the assessee at this stage. All the other grounds /propositions raised by the assessee are dismissed.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 18th July, 2024.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 18/07/2024
Pk/sps

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI