

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER**

**ITA NO. 733/MUM/2019 (A.Y: 2010-11)**

<b>RBW GLOBAL SARL</b> C/o Regus Level 2 Raheja Centre Point 294 CST Road, Near Mumbai University Opp Bandra Kurla Complex Santacruz (E), Mumbai-400098  <b>PAN: AAECR8196H</b> <b>(Appellant)</b>	v.	<b>ACIT (INTERNATIONAL TAXATION)</b> <b>CIRCLE-4(1)(1)</b> 1712, 17 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai - 400021  <b>(Respondent)</b>
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<b>Assessee Represented by</b>	:	<b>Shri P.J. Pardiwala &amp; Shri Abdul Kadar Jawadala</b>
<b>Department Represented by</b>	:	<b>Shri Anil Sant</b>
<b>Date of conclusion of Hearing</b>	:	<b>24.06.2024</b>
<b>Date of Pronouncement</b>	:	<b>22.07.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

**1.** This appeal by the assessee is preferred against the order dated 07.09.2018 framed under section 144C(13) r.w.s. 143(3) r.w.s. 147 of Income-tax Act, 1961 (in short "Act") pertaining to A.Y. 2010-11.

2. The grievance of the assessee read as under: -

**1:0 Re.: Validity of the Order:**

1:1 *The Appellant submits that the Order dated 07 September 2018 passed by the Assessing Officer, in pursuance of the Directions of the Dispute Resolution Panel is bad in law and deserves to be struck down.*

**WITHOUT PREJUDICE TO THE FOREGOING:**

**2:0 Re.: Validity of the re-assessment proceedings:**

2:1 *The Assessing Officer / the Dispute Resolution Panel have erred in re-opening the assessment u/s. 147 of the Income-tax Act, 1961*

2:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the impugned re-opening and the Order passed in pursuance thereof was in excess of jurisdiction and is also otherwise bad in law.*

2:3 *The Appellant submits that the re-assessment proceedings and the Order passed in pursuance thereof is not in accordance with law and consequently ought to be struck down.*

**WITHOUT PREJUDICE TO THE FOREGOING**

**3:0 Re.: Taxing the receipts in respect of membership cards as Fees for Technical Services under the Income-tax Act, 1961 :**

3:1 *The Assessing Officer / the Dispute Resolution Panel have erred in treating the receipts in respect of sale of membership cards of Rs. 3,28,58,448/- as "Fees for Technical Services" under the Income-tax Act, 1961.*

3:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the amount received by it during the year under consideration on sale of membership cards does not fall within the purview of the term "Fees for Technical Services" and is therefore not taxable and the stand taken by the Assessing Officer / Dispute Resolution Panel in this regard is illegal, incorrect, erroneous and misconceived.*

3:3 *The Appellant submits that the Assessing Officer Panel be directed to delete the addition and to re-compute its total income and tax thereon accordingly*

**4:0 Re.: Short credit for tax deducted at source of Rs. 16,88,320/-:**

4:1 *The Assessing Officer has erred in granting credit for tax deducted at source short by Rs. 16,88,320/-.*

4:2 *The Appellant submits that considering the facts and circumstances in its case and the law prevailing on the subject the Appellant is entitled to full credit of Rs. 43,52,500/- in computing its tax liability for the year and the stand taken by the Assessing Officer is incorrect and illegal.*

4:3 *The Appellant submits that the Assessing Officer be directed to grant full credit for tax deducted at source and to re-compute its tax liability accordingly.*

**5:0 *Re.: Levy of interest u/s. 234A of the Income-tax Act, 1961 of Rs. 10,587/-:***

5:1 *The Assessing Officer has erred in levying interest u/s. 234A of the Income-tax Act, 1961 on the Appellant.*

5:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject no interest u/s. 234A is leviable and the stand taken by the Assessing Officer in this regard is misconceived, incorrect, erroneous and illegal.*

5:3 *The Appellant submits that the Assessing Officer be directed to delete the interest u/s. 234A so levied on it and to re-compute its tax liability accordingly.*

**6:0 *Re.: Levy of interest u/s. 234B of the Income-tax Act, 1961 of Rs. 10,79,874/-:***

6:1 *The Assessing Officer has erred in levying interest u/s. 234B of the Income-tax Act, 1961 on the Appellant.*

6:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject no interest u/s. 234B is leviable and the stand taken by the Assessing Officer in this regard is misconceived, incorrect, erroneous and illegal.*

6:3 *The Appellant submits that the Assessing Officer be directed to delete the interest u/s. 234B so levied on it and to re-compute its tax liability accordingly.*

**7:0 *Re.: General***

7:1 *The Appellant craves leave to add, alter, amend and/or substitute all or any of the foregoing grounds of appeal at or before the hearing of the appeal."*

**3.** Representatives of both the sides were heard at length. Case records carefully perused. Judicial decisions relied upon by the representatives duly considered.

4. The entire quarrel revolves around the reasons recorded for reopening the assessment and the same is reproduced as under: -



Office of the  
Assistant Commissioner of Income Tax (International Taxation)-4(1)(1),  
17<sup>th</sup> Floor, R.No.1712, Air India Building, Nariman Point, Mumbai-400 021.  
☎ Ph. No. 022-22048152; E-mail [mumbai.dcit.it4.1.1@incometax.gov.in](mailto:mumbai.dcit.it4.1.1@incometax.gov.in)

No. ACIT (IT)-4(1)(1)/Scrutiny/2017-18/47

Dated: 14/07/2017

P.A.N. - AAECR8196H

To,

Principal Officer  
M/s REGUS BUSINESS WORLD LIMITED  
C/O LEVEL 2, RAHEJA CENTRE POINT,  
294 CST ROAD, NEAR MUMBAI UNIVERSITY,  
OPP BANDRA KURLA COMPLEX,  
SANTACRUZ (EAST), MUMBAI 400098.

Sir / Madam,

In connection with the assessment for the assessment year 2010-11, you are hereby provided with the reason for re-opening of assessment within the meaning of section 147 of the IT Act, as recorded by the erstwhile assessing officer on date 31.03.2017, which is reproduced below:

1. Name of Assessee:	M/s REGUS BUSINESS WORLD LIMITED
2. Address:	(1) C/o Level 2, Raheja Centre Point, 294 CST Road, Near Mumbai University, Opposite Bandra Kurla Complex, Santra Cruz (East), Mumbai 400098
	(2) 22 Grenville Street, St Helier, Jersey KY, 999999.
3. PAN:	AAECR8196H
4. F.Y.:	2009-10
5. A.Y.:	2010-11
6. Reasons for issue of notice u/s 148:	Escaped income on transaction of Rs. 1,68,29,942/-



of ₹.1,68,29,942/- but was not certain whether the same is business income or capital gains. In our understanding of the law every receipt is not income as held by the Hon'ble Supreme Court in the case of 57 ITR 532. We find that the Hon'ble Supreme Court has held that "*By ss. 3 & 4 the Act imposes a general ability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing, provision.*"

**6.** We are of the considered view that the reasons which lead to the formation of the believe must have a material bearing on the question of escapement of income of the assessee from assessment which means that there must exist reasonable grounds for the officer to form the believe that what trigger to assume jurisdiction to issue notice. We are of the view that the "reason to believe" must be held in good faith. From the reasons mentioned hereinabove and as mentioned elsewhere the Assessing Officer had no reason to believe that the alleged sum of money is business income of the assessee or capital gains. On the contrary, it appears that the Assessing Officer has simply assumed that the said sum of money is either business income or capital gains.

Reopening cannot be done merely on suspicion. We are of the considered view that before issuing notice u/s 148 of the Act, the AO could have asked the assessee in respect of the alleged income and their nature.

**7.** The Hon'ble Bombay High Court in the case of Ingram Micro (India) Exports (P.) Ltd. v. DCIT [78 taxman.com 140] has held as under: -

*"4. The reasons as recorded in support of the impugned notice arrives at a reasonable belief that income chargeable to tax has escaped assessment on the basis of accounts submitted by the petitioner during assessment proceedings for the Assessment Year 2008-09, for the financial year ending 3rd January, 2009. On the above facts. the Assessing Officer finds that the period from January to March of the financial year 2009 pertains to Assessment Year 2009-10. On the above basis he forms a prima facie view that part of the transaction relates to Assessment Year 2009-10 to conclude that he has reason to believe that income amounting to Rs. 12.63 crores has escaped assessment.*

*5. The petitioner objects to reasons recorded in support of impugned notice, inter alia pointing out that the reasons as recorded do not indicate any reasonable belief to form a prima facie view that the income chargeable to tax has escaped assessment. This appears so as the Assessing Officer refers to the period from January to March of the financial year 2009 i.e. period from 3rd January, 2008 to 31st March, 2008 being the income chargeable to tax that has escaped assessment. Besides the petitioner contended that it does not have a Permanent Establishment in India and thus no income would be chargeable to tax in India. Further, the reasons as recorded states that the figures obtained for the financial year ending 3rd January, 2009 as being the income from related party transaction amounting to Rs.12.63 crores is income chargeable to tax and has escaped assessment. The reasons as recorded prima facie indicate non application of mind to materials before the Assessing Officer.*

*The order disposing of the objections do not deal with the above issues.*

6. *It may be pointed out that in the present facts, the petitioner had not filed its return of income. Mr.Chhotaray, learned counsel appearing for the respondent-revenue placed reliance upon Explanation 2(a) to Section 147 of the Act to contend that in cases where no return has been filed there is a deemed reason to believe that income chargeable to tax has escaped assessment.*

7. *However, it appears that for Explanation 2(a) of the Act (sic.) to apply, the income chargeable to tax which is deemed to have escaped assessment does not arise simplicitor on not filing of return of income but must also be coupled with the prima facie satisfaction of the Assessing Officer that the income of a person concerned is chargeable to income tax even if it exceeds the maximum amount not exigible to tax. Therefore, prima facie for Explanation 2(a) of Section 147 of the Act to be invoked, the reasons must indicate that the Assessing Officer has applied his mind to the fact that the income is chargeable to tax under the Act and it has exceeded maximum amount not chargeable to income tax. The above satisfaction is not found in the reasons.*

8. *This Court in Hindustan Lever Ltd v. R.B. Wadkar, Asstt. CIT [2004] 268 ITR 332/137 Taxman 479 has held that reopening notice has to be justified on the basis of the reasons recorded at the time of issuing the impugned notice. The impugned notice must stand or fail on the reasons recorded. These reasons recorded cannot be supplemented by further reasons or by filing an affidavit and/or making oral submission. The reasons are a manifestation of the mind of the Assessing Officer and must be self explanatory and should not keep the assessee guessing. It cannot be justified on the basis of inferences or interpretation. The reasons as recorded prima facie do not seem to indicate reasonable belief that income chargeable to tax has escaped assessment.*

9. *In view of above, prima facie the impugned notice is without jurisdiction. Accordingly, pending hearing and disposal of this petition there shall be stay of the impugned notice dated 31<sup>st</sup> March, 2016."*

**8.** It would be pertinent to refer to another judgement of the Hon'ble Bombay High Court which is in the case of Hindustan Lever Ltd., [268 ITR 332] wherein the Hon'ble High Court has observed as under: -

*"20. .... It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*

**9.** In the light of the aforementioned decisions, for the sake of repetition, reasons recorded by the Assessing Officer do not specify which is escaping assessment business income or capital gains as there

is vagueness and incompleteness in the reasons recorded by the Assessing Officer mentioned hereinabove. We do not find any merit in the assumption of jurisdiction under section 148 of the Act for reopening the assessment. The Ld. DR has placed strong reliance on the decision of the Hon'ble Bombay High Court in the case of Devi Electronics Pvt Ltd., in Writ Petition No. 3029 of 2016. We have carefully considered this judgement of the Hon'ble High Court but do not find to be applicable on the facts of the case in hand, for the simple reason that, in that case the assessee itself admitted that it is not carrying on any business activity during the year which is also apparent from the financial statements of the assessee but yet the assessee claimed business expenditure. On these facts, the Hon'ble High Court dismissed the Writ Petition filed by the assessee. Whereas in the case in hand, the officer himself is not sure as to which income has escaped assessment. Therefore, the decision relied upon by the Ld. DR is misplaced.

**10.** Considering the facts of the case in totality, in the light of the decision of the Hon'ble Jurisdictional High Court of Bombay discussed hereinabove, we set-aside the notice issued under section 148 of the Act as bad in law and accordingly quash the impugned assessment. Since

we have quashed the assessment we do not find it necessary to dwell into the merits of the case.

**11.** In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22<sup>nd</sup> July, 2024.

*Sd/-*

**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

Mumbai / Dated 22.07.2024  
Giridhar, Sr.PS

*Sd/-*

**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**

		Date	Initials	
1.	Draft dictated on:			Sr. PS/PS
2.	Draft placed before author:			
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	Dictation pad is enclosed			
8.	Date on which the final order is upload on the website of ITAT			
9.	File sent to the Bench Clerk:			
10.	Date on which file goes to the Head Clerk:			
11.	Date on which file goes to AR			
12.	Date of dispatch of Order:			