

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

**MS. PADMAVATHY S, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3008/MUM/2023
(Assessment Year: 2011-12)**

Mahavir Metal And Alloys,
161, 3rd, M.G. Mahimtura Marg, 3rd
Kumbharwada Lane, Mumbai - 400004
[PAN: AAKFM9869P]

..... **Appellant**

Vs

Income Tax Officer
Ward 19(2)(3),
Mumbai

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vimal Punmiya
For the Respondent/Department : Shri Nayanjyoti Nath

Date

Conclusion of hearing : 24.07.2024
Pronouncement of order : 30.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 28/06/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had Partly Allowed the appeal of the Assessee against the Assessment Order, dated 20/12/2018, passed by the Commissioner of Income Tax (Appeals) under Section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The appellant has raised following grounds of appeal :

"1. *Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (the "CIT(A)) vide ITBA/NFAC/S/250/2023-24/1054009365(1) under section 250 of Income Tax Act 1961*

dated 28th June 2023 has erred in confirming the re-opening of the assessment by The Income Tax Officer, Ward 19(2)(3) invoking the provisions of 147 read with section 148 Of Income Tax Act 1961 and assessing the total income at Rs 65,20,770 as against the assessed income of Rs NIL u/s 143(3) of Income Tax Act vide order dated 19/03/2024. The Appellant submit that notice issued under Sec 148 Of Income Tax Act for re-opening the assessment is bad in law illegal, and contrary to the provisions of the Income Tax Act and shall be quashed.

2. *Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (the "CIT(A)") vide ITBA/NFAC/S/250/2023-24/1054009365(1) under section 250 of Income Tax Act 1961 dated 28th June 2023 has erred in confirming the addition of Rs.20,00,000/- as unexplained cash credit to its taxable income for the assessment year 2011-12 on account of an accommodation entry received from SUN DIAM.*

3. *However, the Appellant has presented evidence that this particular loan transaction was in the normal course of business hence the Appellant respectfully submits that the CIT(A) has erred in confirming the addition of Rs.20,00,000/- to the Appellant's taxable income and the same addition of Rs 20,00,000/- should be should be deleted."*

3. The relevant facts in brief are that the Appellant, a partnership firm, had filed return of income for the Assessment Year 2010-2011 on 29/09/2011 declaring 'Nil' income. Vide Assessment Order, dated 19/03/2014, assessment was formed on the Appellant under Section 143(3) of the Act. Subsequently reassessment proceedings we initiated against the Appellant under Section 147 of the Act. Vide order dated 20/12/2018 passed under Section 143(3) read with Section 147 of the Act, addition of INR 65,20,767/- was made in the hands of the appellant in relation to loan received by the appellant from M/s. Sons Diam.

4. Being aggrieved the Appellant preferred appeal before the CIT(A) against the Assessment Order, dated 20/12/2018 passed under Section 143(3) read with section 147 of the Act challenging the

validity of the reassessment proceedings as well as addition of INR 65,20,770/- made in the hands of the Appellant under Section 68 of the Act. Vide order dated 28/06/2023, the CIT(A) granted partial relief of the appellant and restricted the addition to INR 20,00,000/-, being the amount of loan received by the Appellant from M/s. Son Diam during the relevant previous year.

5. Not being satisfied with the above relief granted by the CIT(A), the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced paragraph 2 above.
6. We have heard both the sides, perused the material on record and examine the position in law.
7. We would first take up Ground Number 1 raised by the Appellant challenging the validity of reassessment proceedings.
8. During the course of hearing it was contended on behalf of the Appellant that there was no application of mind on the part of the Assessing Officer while recording reasons for reopening assessment. Assessing Officer has failed to appreciate the correct facts. It was contended by the Learned Authorized Representative for the Appellant that the reasons recorded failed to meet the requirement of Section 147 of the Act and were, therefore, bad in law. Per contra, the Learned Departmental Representative relied upon the orders passed by the authorities below and submitted that the reassessment proceeds were initiated after following the due process and after recording reasons in writing which clearly state that the Appellant had failed to make full and true disclosure of facts.
9. In the case of **Hindustan Lever Ltd. vs. R.B. Badkar 268 ITR 332 (Bom)** the Hon'ble Bombay High Court has, while examining re-opening assessment in a case where assessment was

previously framed under Section 143(3) of the Act, held that the reasons are to be read as they have been recorded by the Assessing Officer. Neither any addition/substitution can be made to the reasons recorded nor can any inference be drawn. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission. Therefore, the reasons recorded must be self-explanatory disclosing application of mind by the Assessing Officer. Further, the reasons recorded must identify the link between the tangible material and formation of belief that income as escaped assessment. Accordingly, we proceed to examine the reasons recorded for reopening the assessment which read as under:

- "1. The assessee has filed the return of income for A.Y. 2011-12 on 27.09.2011 declaring total income at Rs. Nil. The return was processed u/s 143(1) of the Act at income of Rs. Nil.
2. *Information was received that a Search & seizure action has been carried out by the DGIT (Inv.), Mumbai in the case of Shri. Rajendra Jain / Sanjay Choudhary / Dharmichand Jain and their Group Concerns on 3.10.2013. During the course of search/survey action, it was revealed that these group concerns were merely providing accommodation entries through various benami concerns operated and managed by them. It was also found that these concerns are indulged into fraudulent transactions of issuing accommodation/hawala entries which purportedly shows transaction of purchase and sale of materials and bogus unsecured loans and advances.*
3. *On the basis of information received and also on perusal of the records of the assessee, it is noticed that the above mentioned assessee has availed accommodation entries from the said Group Concerns during the year under consideration.*
4. Details of the hawala entities from whom the assessee has obtained accommodation entries for the year under consideration are given as under:

Sr. No.	Name of the hawala entities	PAN	Amount involved (In Rs.)
1.	Sun	ABAFS0852K	65,20,767

5. *Shri Rajendra S. Jain in his statement recorded on oath on 05.10.2013 has accepted that he and his group concerns are indulged In providing accommodation entries only. The name of above entry is appearing in this statement of Shri Rajendra S. Jain.*
6. *In view of the facts narrated in aforesaid paragraphs, it is opined that the assessee has obtained accommodation entries during the year. Thus, after applying my mind I have reason to believe that the income of the assessee chargeable to tax for the A.Y. 2011-12 amounting to Rs.65,20,767/- or any other income chargeable to tax which comes to my notice subsequently in the course of proceedings for re-assessment has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts in the return of income, in terms of provisions of section 147 of the Income Tax Act.*
7. *In this case, return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded in para- 5 & 6 above. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment."*
(Emphasis Supplied)
10. The above reasons recorded for reopening the assessment state that the return for the assessment year 2011-2012 was processed under Section 143(1) of the Act. The reasons recorded do not make reference to the assessment order, dated 19/03/2014, passed under Section 143(3) of the Act. Further, we note that in

paragraph 7 of the reasons recorded [*as reproduced in notice under section 142(1) dated 08/10/2018*] the Assessing Officer has gone on to state that for the assessment year 2011-2012 no scrutiny assessment under Section 143(3) of the Act was framed on the Appellant and that in absence of scrutiny assessment it would be deemed that income liable to tax had escaped assessment. Thus, it is clear that the Assessing Officer had formed the belief that income had escaped assessment on the basis of incorrect understanding of facts. While forming belief that income had escaped assessment the Assessing Officer had failed to take into consideration the fact that regular scrutiny assessment was framed on the Appellant under Section 143(3) of the Act and had incorrectly invoked provisions contained in Clause (b) of Explanation 2 to Section 147 of the Act to conclude that in the present case income shall be deemed to have escaped assessment. Thus, there is no link between the tangible material and the formation of belief that income has escaped assessment. Further, we note that in the reasons recorded for reopening assessment it has been stated that the Appellant has taken accommodation entry of INR 65,20,767/-. However, the nature of such accommodation entry being an accommodation entry for bogus purchases or for bogus unsecured loan has not been stated. The fact that CIT(A) has restricted the addition made under Section 68 of the Act to INR 20,00,000/-, being the loan credited during the relevant previous year, also supports the contention of the Appellant that the Assessing Officer had failed to apply mind and/or examine the records to find out the amount credited during the relevant previous year. In view of the aforesaid we find merit in the contention advanced on behalf of the Appellant to the effect that the Assessing Officer had proceeded to initiate the assessment proceedings without due application of mind and on the basis of incorrect understanding of facts. Therefore, we hold that the reasons recorded for reopening the assessment fail to

satisfy the requirements of Section 147 of the Act. Accordingly, the notice, dated 04/03/2015, issue under Section 148 of the Act initiating reassessment proceedings for the Assessment Year 2011-12 under Section 147 of the Act as well as the consequent re-assessment order, dated 30/03/2019, passed under Section 143(3) read with Section 147 of the Act are quashed. Thus, Ground No. 1 raised by the Appellant is allowed. All the other grounds raised by the Appellant are dismissed having been rendered infructuous.

9. In result, in terms of paragraph 8 above, appeal preferred by the Assessee is allowed.

Order pronounced on 30.07.2024.

Sd/-
(Ms. Padmavathy S)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.07.2024
Poonam Mirashi,
Stenographer

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai