

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2110/MUM/2024
Assessment Year: 2012-13**

Jain Machine Tools,
16, Meghal Industrial Estate,
Devidayal Road, Mulund (West)
Mumbai-400080.

Vs.

ITO, Ward 26(1)(7),
Room 625, 6th floor, Kautilya
Bhavan, C-41 to C-43, G Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051.

**PAN NO. AACFJ 6163 H
Appellant**

Respondent

Assessee by : Mr. Devendra Jain
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 09/07/2024
Date of pronouncement : 19/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 21.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:



1. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the reassessment proceedings under section 147 in gross violation of first proviso to section 147 of the Act.

2. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of the Ld. Assessing Officer of completing the reassessment proceedings under section 147 without first disposing of objections raised by the appellant by a speaking order thereby violating the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. D.C.I.T. (2003) 259 ITR 19 (SC).

3. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the reassessment proceedings under section 147 without section 19 the recode and on the erroneous belief that no assessment under section 431) section 143(3) had been done in the case of appellant.

4. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer of initiating the reassessment proceedings u/s 147 of the Act without being in possession of any fresh tangible material after completion of the first reassessment.

5. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer of issuing notice u/s 148 on borrowed satisfaction merely relying on the basis of alleged information received without any independent application of mind thereon.

6. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer of initiating the reassessment proceedings u/s 147 of the Act on the basis of vague, ambiguous and unclear reasons.

7. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of the Ld. Assessing Officer of initiating the reassessment proceedings under section 147 on the basis of the approval note under section 151 which is not signed by the specified authority Pr. CIT 29, Mumbai.

8. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the reassessment proceedings which was initiated with a mechanical and invalid sanction granted u/s 151.

9. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of the Ld. Assessing Officer of completing the reassessment proceedings under section 147 by making additions of Rs. 2,27,46,240/- while the approval note under section 151 was obtained for income escaping assessment of Rs. 1,00,000/- only.



10. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming additions of Rs. 2,27,46,240/- under section 69A of the Act merely on surmises and conjectures.

2. Briefly stated, facts of the case are that against return of income filed by the assessee on 28.09.2012 declaring total income at Rs.3,87,743/-, the assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 16.02.2015 assessing total income at Rs.4,56,290/-, wherein addition for disallowance u/s 40(a)(ia) of the Act amounting to Rs.68,548/- was made. Subsequently, the Assessing Officer received information from the office of the Dy. Director of the Income-tax Investigation, Mumbai vide letter dated 21.12.2018 that assessee had maintained partnership bank account wherein there had been high value transaction of credit aggregating to Rs.12.31 crores for the period from April, 2009 to February, 2015. The Assessing Officer recorded reasons to believe that returned income of the assessee was significantly less than the credits appearing in the bank account and therefore, same need to be verified. Consequently, the Assessing Officer reopened the assessment by way of issue of notice u/s 148 of the Act dated 31.03.2019 and completed the assessment u/s 147 r.w.s. 144 of the Act. The Assessing Officer added the total credits in the bank account of the assessee amounting to Rs.2,27,46,240/-.

3. On further appeal, the assessee challenged the validity of the reassessment proceedings as well as addition on merit. The Ld.



CIT(A) rejected the contention of the assessee on the validity of the reassessment. As regards merit is concerned, the Ld. CIT(A) has recorded that assessee did not file any documentary evidence to controvert the finding of the Assessing Officer, therefore, he sustained the addition on merit.

4. We have heard rival submission of the parties and perused the relevant material on record including the Paper Book containing pages 1 to 53 filed by the assessee. In support of ground No. 1 , the Ld. counsel for the assessee referred to reason recorded available on page 47 of paper book and submitted that assessment year under reference is 2012-13 , which was already scrutinized under section 143(3) of the Act but notice u/s 148 of the Act has been issued on 31/03/2019, which is beyond the period of four years from the end of the relevant assessment year and therefore, in view of the proviso below section 147 of the Act, an assessment completed u/s 143(3) of the Act could be reopened beyond the period of four years from the end of the relevant assessment year only in case of failure on the part of the assessee in disclosing all the material facts truly and fully, but the Assessing Officer in the reasons recorded nowhere mentioned any such failure on the part of the assessee and therefore, the reassessment proceedings need to be quashed in view of the decision of the Hon'ble Bombay High Court in the case of Hindustan Writ Petition No. 483 of 2022.



4.1 In support of ground No. 2, the ld counsel for the assessee referred to page 48A of the Paper Book which is a copy of objections raised before the Assessing Officer on 3rd may 2019, and submitted that following the procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts(India) ltd Vs DCIT (2003) 259 ITR 19(SC), the Assessing Officer was required to dispose off those objection by way of a separate speaking order, but the objections raised by the assessee against reassessment proceedings have not been disposed off by the Assessing Officer and therefore, reassessment proceedings being in violation of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) p ltd (supra) and hence same need to be quashed.

4.2 The Ld. counsel for the assessee referred to Ground No. 3 of the appeal and submitted that at the time of recording reasons to believe that income escaped assessment, the Assessing Officer was not having any knowledge that assessment in the case was already completed u/s 143(3) of the Act, which is evident from the reasons recorded as he has only recorded the fact of return processed u/s 143(1) of the Act and he was not aware that the assessment was already completed u/s 143(3) of the Act on 16/02/2015 (which, subsequently he has recorded in the assessment order). Further, the Ld. counsel for the assessee submitted that Assessing Officer has recorded reasons under the belief that no prior scrutiny proceedings were carried out in the case of the assessee and source



of the credit in bank in HDFC bank account were not examined whereas the bank statement was duly examined by the Assessing Officer.

4.3 In support of ground No. 4, He submitted that there was no afresh tangible material available with the Assessing Officer for reopening of the assessment proceedings.

4.4 In support of ground No. 5 , the Ld. counsel submitted that the Assessing Officer has not applied his mind independently to the information and he has recorded reasons merely on the suspicion that those credit entries were not from genuine sources, whereas this aspect was duly examined in the regular assessment proceedings.

4.5 On the contrary, the Ld. Departmental Representative (DR) relied on the order of the Ld. CIT(A).

4.6 We have heard rival submission the parties and perused the relevant material on record. Before the Ld. CIT(A), the assessee has challenged the reassessment proceedings on grounds, **firstly**, the reasons for reopening were too general, **secondly**, the period of credit in bank account mentioned in reasons recorded (i.e. April, 2009 to February, 2015) is beyond the concerned previous year, **thirdly**, absence of reason to believe that income had escaped assessment as the bank account is a regular bank as per books of account and entries were explained in earlier scrutiny assessment,



fourthly, objections filed for reopening during assessment were not disposed off and **lastly**, e-assessment proceedings was not compulsory.

4.7 The Ld. CIT(A) after considering submission of the assessee rejected the contention of the assessee observing as under:

“5.5 As seen from the Assessment Order completed u/s 144 of the Act, i.e. ex-parte, the AO issued statutory notices and show cause letter, but the appellant did not respond to the same. The appellant did not file ROI in response to notice u/s 148. The reasons for reopening the case were specific and based on information received from the Investigation Wing, Mumbai, which is also part of the Department. While the period referred to in the information spanned from April 2009 to February 2015, the information/details relevant to the FY under consideration was specifically enquired into and addition was made with reference to such relevant period only as seen from the Order. As regards the appellant's claim that the issue of reopening was explained during earlier scrutiny assessment proceedings, the same is not borne out from records. A copy of the brief earlier Assessment Order furnished by the appellant itself shows that the only disallowance made was u/s 40(a)(ia) of the Act on account of non-deduction of TDS on interest paid to an unsecured loan-giver. There is nothing on record to show that conscious consideration of the material had been made and that specific books of account / issues related to the reopening matter were examined and considered then. Nothing has been brought on record by the appellant to show that there was no omission on its part to disclose fully and truly all material facts. The appellant has brought no document/detail/evidence on record in support of its ground that the basis on which the reopening was done constituted information which was already in possession of and examined by the AO and explained by the appellant at the time of earlier scrutiny assessment.”

4.8 In the instant case, the assessee has challenged reasons recorded and submitted that reasons have been recorded merely the suspicion without any believe that income escaped assessment. In view of controversy it is imperative to reproduce the reasons recorded by the Assessing Officer, a copy of which is available on Paper Book Page 47 to 48 :



“1. On verification of records it is seen that the assessee has filed return of income for A. Y.2012-13 on 29.09.2012 declaring total income of Rs.387743/-. Enquiries made on FTBA (360 degree portal) show that the assessee has filed normal business income of Rs.387743/-. The return was processed u/s 143(1) on 28.09.2012 resulting in demand of Rs.NIL.

2. Information has been received from office of Deputy Director of Income-tax (Investigation), Unit-6(2), Mumbai that On February 02, 2015 Mulund West branch, Mumbai received a letter from the Mumbai Sales Tax authorities stating that the assessee M/s.Jain Machine Tools Mumbai (a/c no 00152320000605) is liable to pay a sum of Rs.9,05,244/-for the period April01, 2009 to March 30, 2012 under the Maharashtra Value Added Tax Act 2002.

ii) The assessee M/s Jain Machine Tools Mumbai (a/c no.00152320000605) maintains partnership account with Mulund West branch, Mumbai since October 20, 2001. Mr Shailesh Shah and Ms. Pratiti Shah are the partners and have declared the profile as trader of machine tools with an annual turnover of Rs 80. 00 Lakhs. PAN is updated as AACFJ6 163H.

iii) Scrutiny of the account statement of M/s Jain Machine Tools Mumbai (a/c no 00152320000605) from April2009 to February 2015 revealed that the customer has received total credits aggregating to Rs.12. 31 Crores out of which cheque deposits are aggregating Rs. 4. 23 Crores cash deposits are aggregating to Rs 6. 05 Lakhs from various locations such as Powai, Ulhas Nagar in Mumbai, Noida, Belgaum, Goa, Coimbatore, fund transfers aggregating to Rs 3. 07 Crores mainly from self account (Rs 8. 50 Lakhs-a/e no 08782020002841), M/s Simpra Engineering and Services Pvt Ltd (Rs 3. 14 Lakhs a/e no 02768020000164), M/s Jaymech Engineers (Rs 5. 00 Lakhs-a/e no 04882020000107), Ms. Nirmalaben Nagda (Rs 5. 00 Lakhs-a/e no 01631330001199), Mr. Bhavanji Nagda (Rs 5. 50 Lakhs-a/e no 01631330001214), NEW/RTGS credits aggregating to Rs 2. 14 Crores mainly from M/s K J Tech (Rs 14. 86 S-Axis Bank), M/s Shanti Communication (Rs 31. 61 Lakhs-Bank of India).M/s Sahyadri Agrovet (Rs 33. 78 Lakhs-IDBI Bank) (Rs 11. 56 Lakhs-Bank of Maharashtra) followed by managers cheque issuance of Rs 51. 27 Lakhs. Credits were immediately followed by cheque issuances aggregating to R\$7. 90 Lakhs, fund transfers aggregating to Rs. 2. 24 crores mainly to M/s. Hindustan Motor Mfg Co (Rs 66. 99 Lakhs-a/e no 00862320002603), M/s. HEM industries (Rs 56. 63 Lakhs-a/c no.00862790000129), M/s Shiv Enterprise (R 10. 95 Lacs a/c no 16962320000147), NEM/RTGS transfers aggregating to Rs 1. 13 Crores mainly to self account (Rs 88. 50Lakhs Bank of Baroda), M/s JMT Drive solution (Rs 2. 03 Lakhs Punjab National Bank), managers cheque issued aggregating to Rs 56. 67 Lakhs followed by cash withdrawals across the counter aggregating to Rs 23. 45 Lakhs.

3. On the basis of the information received/available and the assessee have not been incorporated in the computation and return of income during the year under consideration I have reason to believe that the income chargeable to tax in the case of M/s. Jain Machine Tools to the tune of above Rs. 1,00,000/- has escaped assessment for A.Y.2012-13 and needs



to be assessed in its proper perspective and to bring to tax appropriate income of the assessee. It is needs to be assessed in its proper perspective and bring to tax appropriate income of the, assessee.

4. Considering the facts and circumstances of the case. I have reason to believe that income chargeable to tax in the hands of the assessee for the year under consideration to the tune of above Rs.1,00,000/- has escaped assessment due to failure on the part of the assessee to disclosed fully and truly all material facts

5. In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s.148 has to be obtained separately from Principal Commissioner of Income Tax-29, Mumbai as per the provisions of section 151 of the Act.”

4.9 On perusal of the above reasons recorded, we find that there is no information that any income had escaped assessment. The Assessing Officer has referred to various credit entries stated to be received from the customers. Name of the customers have also been mentioned in the the reasons recorded. The Assessing Officer has nowhere mentioned that either those parties are bogus or the entries received are in the nature of accommodation entries. The assessment has been reopened only for the purpose of verification of those credits and on the premise that assessee had not included income arising from said transactions into the return of income. The Assessing Officer has merely speculated and the information nowhere suggests that assessee had not offered income corresponding to those transactions in the return of income. The full Bench of the Hon'ble Delhi High Court in the case of **Commissioner of Income-tax-VI, New Delhi v. Usha International Ltd. (2012) 348 ITR 485 (Del)** held that following conditions are required for reopening in assessment made u/s 143(3) of the Act. (i) The Assessing Officer must form a tentative or



prima facie opinion on the basis of material that there is under-assessment or escapement of income; (ii) He must record the prima facie opinion into writing; (iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion; (iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income; (v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts.

4.10 In the instant case reasons to believe recorded by the Assessing Officer is merely based on the information from the Investigation Wing that there is a credit in bank statement in the course for the period from 2009 to 2015 there is no such information that those credits were non-genuine or accommodation entry. Even the Assessing Officer is mentioning the name of the customers from whom those credits were received. Obviously there is a mere suspicion in the mind of the Assessing Officer and notice has been issued for the purpose of verification and for clearing the cloud of suspicion. The reasons to believe recorded do not show as on what basis Assessing Officer formed reasonable believe that those credit appearing constitute income escaped assessment. Mere suspicion is not enough and the reasons to believe should



demonstrate that such requisite belief could be formed by a reasonable person upon a plain reading of some basis/foundation or the relevant material, as held by the Hon'ble Supreme Court in the case of **Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316 (SC)**. The words 'reasons to believe' indicate that belief must of a reasonable person , which is based on the reasonable grounds emerging from or through circumstantial evidences and not merely on suspicion. In view of the above discussion, we are of the opinion that the Assessing Officer has acted merely on surmise without any rational basis and therefore, action of the reopening is thus contrary to the law and unsustainable. Further, the assessment has been reopened beyond the four years from the end of the relevant assessment year and therefore, the Assessing Officer was required to justify whether there was any failure on the part of the assessee in disclosing all the material facts fully and truly. However no such satisfaction has been recorded in the reasons to believe by the Assessing Officer. Not only this failure, but we find the Assessing officer is unaware of the fact the assessment was completed u/s 143(3) of the Act, as he though mentioned the fact of processing under 143(1) of the Act but did not mention any prior scrutiny u/s 143(3) of the Act, therefore, also the reassessment proceedings are not liable to be sustainable. Accordingly, the reassessment order is quashed. The grounds raised by the assessee challenging validity of the reassessment are accordingly allowed. Since, we have already quashed the



reassessment proceedings; we are not adjudicating the other grounds challenging merit of the additions.

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

Order pronounced in the open Court on 19/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/08/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai