

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 2983/Mum/2023
Assessment Year 2014-15

Alka Commodities Limited, 10, Maitri NS Rd No. 10, JVPD Scheme, Juhu Vile Parle West, Mumbai. PAN : AAECA0555B	vs.	Income Tax Officer-4(1)(3), 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Aditya Maheshwari, C.A.
For Revenue :	Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing :	22-08-2024
Date of Pronouncement :	30-08-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 28-06-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [Ld.CIT(A)] and it relates to the Assessment Year (AY.) 2014-15. The assessee has raised grounds relating to validity of reopening of assessment and additions made by the AO.

2. The assessee is a commodity broker. It filed NIL return of income for the year under consideration and the same was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act'). Subsequently, the AO reopened the assessee by issuing notice u/s. 148 of the Act on the reasoning that the assessee has taken accommodation entries from bogus entities to the extent of Rs. 5,87,180/- [debit of Rs. 3,87,180/- and credit of Rs. 2 lakhs]. The reasons recorded by the AO for the year under consideration is extracted below:-

"Reasons for re-opening u/s 147 of the I.T.Act

"In this case, the assessee has filed its return of income for A.Y. 2014-15 on 29.11.2014 declaring total income of Rs. NIL. The return was processed u/s 143(1) of the Act on 23.12.2014 accepting the returned income. No assessment has been made in this case. As per information received from the office of the Dy. Director of Income Tax (Investigation, Unit-7(4), Scindia House, Mumbai vide letter No. DDIT(Inv.)/Unit-7(4)/Information/2016-17 dated 26.09.2016 that a search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out in the case of Mr. Vipul Vidur Bhatt and his other related entities viz.(i) M/s Sunrise Asian Limited, (ii) M/s Sampada Chemicals Limited, (iii) M/s P. Saji Textile Limited, (iv) Victory Sales Pvt. Ltd, (vii) M/s Lunked Textile Private Ltd., (viii) M/s Eager Corporation, (ix) M/s Vikrant Marketing, (x) M/s Acute Consultancy Limited & (xi) M/s Dolex Commercial Private Limited on 05.02.2016, during the search action the statement of Mr. Vipul Vidur Bhatt was recorded on 09.02.2016 u/s 132(4) of the Income Tax Act, 1961. In the statement, Mr. Vipul Vidur Bhatt has accepted that he is an entry operator and all the above mentioned entities/companies are bogus entities/companies managed, controlled and operated by Shri. Vipul Vidur Bhatt, it is seen that the assessee i.e M/s. Alka Commodities Ltd. has taken the bogus accommodation entries from said bogus entities amounting to Rs. 5,87,180/- in the F.Y. 2013-14 (Debit Amount of Rs. 3,87,180/- and Credit Amount of Rs. 2,00,000/-).

In view of this, it is observed that there is under assessment of Rs. 5,87,180/- and the assessment for A.Y. 2014-15 is escaped assessment. The assessee has not disclosed fully and truly all material facts necessary for its assessment, for the assessment year 2014-15 since no assessment has been made so far. The

conditions specified under the provisions of sec. 147 of the Act are satisfied. Therefore, I have reason to believe that the income chargeable to tax has escaped for assessment and it is a fit case to re-open u/s 147 of the Act".

3. Though the assessee has challenged the validity of reopening in the appeal filed before the Ld.CIT(A), yet the First Appellate Authority (FAA) dismissed the grounds of the assessee.

4. The Ld.AR submitted that the AO has reopened the assessment for the year under consideration on the reasoning that the assessee has taken accommodation entries from the entities operated by Shri Vipul Vidur Bhatt. He has referred to two entries, viz., debit entry of Rs.3,87,180/- and credit entry of Rs.2.00 lakhs. The Ld.AR submitted that the AO had examined the above said two issues in the assessment of AY. 2010-11. In this regard, the Ld.AR invited our attention to the letter dt. 21-11-2017 issued by the AO for the AY. 2010-11. In that letter, the AO had called for details relating to debit balance of Rs.3,87,180/-, shown in the name of Sanjay G. Parmar, HUF and credit balance of Rs. 2 lakhs, shown in the name of Vidur M. Bhatt, HUF. The Ld A.R submitted that the assessing officer examined both these entries and AO did not make any addition in AY 2010-11.

5. The Ld A.R submitted that the AO again reopened the assessments of the assessee for the AYs. 2012-13 and 2013-14, wherein also the above said two items were again examined by him, but did not make any addition. Accordingly, the Ld.AR submitted that these facts would show that these two items belong to the earlier years and they have been duly examined by the AO. Accordingly, he submitted that there was no reason for the AO to believe that these two items are related to the year under consideration. Further, since the AO had examined these two entries in the earlier years and taken the view that they do

not give rise to any taxable income, the AO could not have reopened the assessment of the current year, as the same results in change of opinion. Accordingly, the Ld AR submitted that that the impugned reopening of assessment is bad in law.

6. We heard the Ld.DR, who submitted that the AO has reopened the assessment on the basis of the information received from the Investigation wing with regard to the bogus accommodation entries.

7. We heard the parties and perused the record. Admittedly, the AO has examined the alleged bogus accommodation entries consisting of debit balance of Rs. 3,87,180/- and credit balance of Rs. 2 lakhs during the course of regular assessment proceedings in the AY. 2010-11 and did not make any addition. Both these entries were again examined by the AO in the reopened proceedings relating to AYs. 2012-13 and 2013-14 also and did not make any addition. These facts show that these entries do not relate to the year under consideration and hence, the AO could not have reopened the assessment of the year under consideration. In any case since the AO has taken an opinion with regard to these two entries, the reopening of assessment for the AY. 2014-15 can only be categorized as on account of change of opinion. Before us, the revenue could not demonstrate that these two entries are new items and they are not connected with the items considered in the earlier years.

8. Accordingly, we are of the view that the AO was not justified in law in reopening the assessment for the AY. 2014-15 and hence we hold that the reopening of the assessment of AY 2014-15 is bad in law. Consequently, the impugned assessment order is liable to be quashed. Accordingly we quash the impugned orders of the tax authorities.

9. Since we have decided the above said legal issue in favour of the assessee, there is no necessity to adjudicate the grounds urged on merits.

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

Order pronounced in the open court on 30th August, 2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 30-08-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai