

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
**BEFORE SMT. KAVITHA RAJGOPAL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 245/Mum/2024 (A.Y.2007-08)

M/s. Jas Trading Pvt. Ltd.

6-D-603, Prem Nagar,
S.V.P. Road, Borivali
West, Mumbai – 400 092
PAN No. AAAFV3003E

..... Appellant

Vs.

ITO 9 (2) (1)

Aayakar Bhavan,
M. K. Road,
Mumbai-400 020

..... Respondent

Appellant by	:	Shri Rahul Hakkani and Ms. Neelam Jadhav, Ld. ARs
Respondent by	:	Ms. Rajeshwari Menon, Ld. DR
Date of hearing	:	31/07/2024
Date of pronouncement	:	02/09/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 28.11.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2007-08. The assessee has raised the following grounds of appeal: -

I. Reopening is bad in law

1. the Learned National Faceless Appeal Centre (NFAC) failed to appreciate that; the recorded reasons were for an estimate of commission income of 1% of the total transactions amounting to Rs.4, 75,100/-, whereas no addition was made in respect of the reasons recorded. Hence, the reassessment is bad in law, and consequently, the addition made under section 68 of the Act is also bad in law and liable to be deleted.

2. Without prejudice to the above, though the return was filed in pursuance of notice issued under section 148 of the Act and the specific request was made in writing along with the return for a supply of reasons recorded, however, the reasons were supplied to the Appellant during the reassessment proceeding vide letter dated 10/09/2013 i.e. 2 days before the notice issued u/s. 142(1) & 143(2) of the Act dt.12/09/2013. As the requirement of the mandatory requirement of the law is not complied with. Therefore, reassessment order passed u/s.143 (3) r.w.s. 147 of the Act is bad in law and the same may be quashed and set aside.

3. the ground on reassessment being a jurisdictional issue is raised for the first time before the Honourable Appellate Tribunal, the same may be admitted and reassessment notice may be quashed and consequently, the additions confirmed by the CIT (A) may also be quashed and set aside.

On Merits**II. Addition made u/s. 68 of the Act of Rs. 4, 75, 00,000/- as Unexplained Credit**

4. The Learned National Faceless Appeal Centre (NFAC) failed to appreciate that since the reasons recorded for reopening state that, the income escape for assessment of Rs.4,75,000/- for undisclosed commission, based on the statement of the director of the Appellant Company Mr. Shailesh Shah, that the appellant was providing accommodation entries and said entries in the book of accounts were paper entries hence the entire credit in the bank passbook as cash credits may be directed to be deleted.

5. The Learned National Faceless Appeal Centre (NFAC) failed to appreciate that, the appellant company had filed confirmation with address and PAN details, ledger accounts, and a copy of master data from the Ministry of Corporate Affairs, wherein all details of the lender are available. As the appellant company has discharged its burden by providing the details, hence the addition of Rs. 4, 75, 10,000/- confirmed may be directed to be deleted.

6. Without prejudice to the above, the Learned National Faceless Appeal Centre (NFAC) failed to appreciate that, the Assessing Officer has relied on a single statement recorded

on oath of the Director dtd. 13/10/2008 for all the assessment years, which was retracted hence addition merely based on the retracted statement is not valid and may be directed to be deleted.

7. Without prejudice to the above, entire credit entries cannot be assessed as cash credits, there are credits as well as debits hence if the explanation is not accepted only the peak amount can be added not the entire credit in the bank passbook.

8. without prejudice to the above, the additions made for earlier years may be allowed to be set off against the additions made as cash credits of the relevant year.

9. without prejudice to the above, the statement of the appellant director may be read as a whole if the Revenue has reopened on the ground that the appellant is only providing accommodation entries then only the percentage of commission as stated in the statement allowing the reasonable expenses may be estimated.

10. the appellant craves leave to add, amend, alter, or delete any of the above grounds of appeal.

ADDITIONAL GROUNDS OF APPEAL

Reopening is bad in law

1 The learned National Faceless Appeal Centre (NFAC) failed to appreciate that; the recorded reasons were for an estimate of commission income of 1% of the total transactions amounting to Rs. 4,75,100/-, whereas no addition was made in respect of the reason recorded. Hence, the reassessment is bad in law, and consequently, the addition made under section 68 of the Act is also bad in law and liable to be deleted.

2 Without prejudice to the above, though the return was filed in pursuance of notice issued under section 148 of the Act and the specific request was made in writing along with the return or a supply of reasons recorded, however, the reasons were supplied to the Appellant during the reassessment proceeding vide letter dated 10/09/2013 i.e. 2 days before the notice issued u/s. 142(1) and 143(2) of the Act dated 12/09/2013. As the mandatory requirement of the law is not complied with. Therefore, reassessment order passed u/s. 143(3) r.w.s. 147 of the Act is bad in law and the same may be quashed and set aside.

3 The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

2. The brief facts of the case are that the assessee company filed its return of income on 08.03.2009 declaring total income at Rs. NIL. The return of the assessee was processed u/s. 143(1) of the Act. Subsequently a search action was conducted in the SKS Ispat Group and others on 10.11.2016. The assessee company was engaged in the trading of iron and steel. During the assessment proceedings u/s. 132 of the Act in the case of SKS Ispat group it was noticed that the assessee under consideration indulged in alleged transactions of bogus purchase and sale of steel without any delivery of material. Based on this information notice u/s. 148 of the Act was issued on 26.03.2013. In response to this notice the assessee filed a letter vide dated: 09.04.2013 stating that the original return filed earlier may be treated as the return filed in response to the notice issued u/s. 148 of the Act.

3. In the Assessment proceedings it was observed by the assessee that during the F.Y. 2006-07 in bank account no. 319252 with Central Bank of India cheques amounting to Rs. 4,75,11,000/- have been deposited and the same amount have been issued through cheques by the assessee to the various parties. The AO did not convince with the explanation/ evidence furnished by the assessee about the source of amount mentioned (supra) and added back the same to the income of the Assessee u/s. 68 of the Act. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO. The assessee being further aggrieved preferred the present appeal before us.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. Before analyzing

the other relevant facts of the matter we deem it fit to deliberate upon the reasons supplied by the AO for reopening of the matter vide Pg. No. 17 of the Paper Book No. 1, reproduced as under:

(17)

OFFICE OF THE
INCOME TAX OFFICER -9(2)(1),
ROOM NO.225, AAYAKAR BHAVAN, M.K. ROAD, MUMBAI – 400 020.
TEL-022 22032040

No.ITO-9(2)(1)/reasons/148-50/2013-14

Date : 10.09.2013

PAN :AAACJ9837H

To
The Principal Officer,
M/s. Jas Trading Pvt. Ltd.
6/D/603, Prem Nagar,
Near Kora Kendra, S.V.P. Road,
Borivali (W)
Mumbai – 400 092

Sir,

SUB: Reasons recorded for reopening u/s 147 of the Income-tax Act, 1961 in your case for AY 2007-08 – Reg.

Kindly refer to the above.

In response to your letter dated 04.04.2013 filed in this office on 09.04.2013, you are hereby provided with the reasons recorded for reopening u/s 147 of the Income-tax Act, 1961 for AY 2007-08. The reasons are as under:

"In this case, the paper return for A. Y. 2007-08 was filed by the assessee on 08/03.2009 declaring total income at Nil.

Reassessment proceedings were initiated u/s 148 in the case of the assessee for A. Y. 2004-05, 2005-06 & 2006-07 on the basis of information received from the DCIT.CC-45, Mumbai that admissions had been made by Shri Shailesh Shah, Director of the assessee company in the statement on oath given before the DCIT, CC-45, Mumbai on 13.11.2008 that no



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actual transactions of either sale/purchase or share application money were entered into by his company, M/s.JAS Trading Pvt. Ltd. and that they have only given entries in respect of share application/unsecured loans in return for a commission @ 1% of the total transactions.

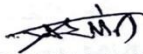
During the course of reassessment proceedings in the case of the assessee company, bank statements pertaining to A/c. No.319252 held by the assessee with Central Bank of India were called for the period 01.04.2003 to 31.03.2007, it is seen that cheques for a sum of Rs.4,75,11,000/- have been deposited in the assessee's bank a/c. and cheques worth Rs.4,75,11,000/- have been issued by the assessee to various parties.

Further, since no trading activity was conducted by the assessee for A.Y. 2007-08, it is seen that the sum of Rs.4,75,100/- being commission @ 1% of the total transactions admitted to have been received by the assessee from various parties is not reflected in the P & L A/c. of the assessee for the F.Y. 2007-08.

In view of the foregoing facts, I have therefore reason to believe that the income chargeable to tax to the tune of Rs.4,75,100/- being commission received by the assessee has escaped assessment for the A.Y. 2007-08. Therefore, reassessment proceedings u/s 147 of the IT Act, 1961 are warranted."



Yours faithfully,


(PRASHANT A GORDE)
Income-tax Officer -9(2)(1)
Mumbai.
प्रशांत ए. गोरडे/PRASHANTA. GORDE
INCOME TAX OFFICER
9 (2) (1), MUMBAI

5. In view of the above it is certain that information received by the AO from the office of DCIT – CC – 45, Mumbai was with reference to an admission made by

Shri Shailesh Shah Director of the assessee company on 13.11.2008 that no actual transactions of either sale/purchase or share application money were entered into by the company M/s. JAS Trading Pvt. Ltd. and that they have only given entries in respect of share application/ unsecured loans in return for a commission @1% of the total transactions. During the course of reassessment proceedings in the case of the assessee company, bank statements pertaining to A/c. No. 319252 held by the assessee company with the Central Bank of India were called for the period 01.04.2003 to 31.03.2007, it is seen that cheques for a sum of Rs. 4,75,11,000 /- have been deposited in the assessee bank a/c. And cheques worth Rs. 4, 75, 11,000/- have been issued by the assessee to various parties. Further, since no trading activity was conducted by the assessee for A.Y. 2007-08, it is seen that the sum of Rs. 4, 75, 11,000/- being commission @1% of the total transactions admitted to have been received by the assessee from various parties is not reflected in the P & L A/c. of the assessee for the F.Y. 2007-08.

6. During the course of reassessment proceedings in the case of the assessee company, bank statements pertaining to account number 319252 held by the assessee which Central Bank of India has been called for. On perusal of said bank statement for the period 01.04.2006 to 31.03.2007, it is seen that cheques amounting to Rs. 4, 75,11,000/- have been deposited in the assessee's bank account and the cheques worth Rs. 4,75,10,000/- have been issued by the assessee to various parties.

7. During the assessment proceedings the AO prepared a chart to compare the transactions appearing in the balance sheet as under:-

No.	Particulars	Amount as on 31.03.2006	Amount as on 31.03.2007	Variations
1	Unsecured Loans	0	3,50,00,000/-	+3,50,00,000/-
2	Sundry Debtors	24,43,900/-	0	-24,43,900/-
3	Cash & Bank Balances	1,30,081/-	34,988/-	-95,093/-
4	Loans & Advances	0	4,04,43,900/-	+4,04,43,900/-
5	Current Liabilities	20,76,166/-	50,70,656/-	+29,94,490/-

Although the AO ultimately ignored the above mentioned chart and proceeded on the basis of actual movement of funds through the bank account of the assessee details of which are mentioned (supra). As per actual movement of funds assessee received Rs. 4, 75, 10,000/- during the year and the same amount transferred to the other parties. Now here a question arises that when the AO was in a position to work out the figure of Rs. 4, 75,100/- being 1% of the figure received during the year, i.e. Rs. 4, 75, 10,000/-, then why in the show cause u/s. 148 of the Act and reasons supplied to the assessee there is no mention of the figure of Rs. 4, 75, 10,000/-?

8. We have gone through the paper book submitted by the assessee and observed that similar issue has been dealt by the department and further adjudicated by the co-ordinate bench for A.Y. 2004-05 vide **ITA No. 07/ Mum / 2013** dated 06.07.2018 and A.Y.s 2005-06, 2006-07 vide **ITA No. 5850 / Mum /**

2014 and **ITA No. 3603/ Mum/ 2013** respectively dated 21.10.2022. Facts of the matter are similar in these appeals and the co-ordinate bench after due consideration of the facts quashed the assessment orders of all the three years. Here in this appeal as argued by the Ld. A.R. of the assessee ***“that, the recorded reasons were for an estimate of commission income of 1% of the total transactions amounting to Rs. 4, 75,100/-, whereas no addition was made in respect of the reasons recorded. Hence, the reassessment is bad in law, and consequently, the addition made under section 68 of the Act is also bad in law and liable to be deleted.”***

Without prejudice to the above, though the return was filed in pursuance of notice issued under section 148 and specific request was made in writing along with the return for a supply of reasons recorded, however, the reasons were supplied to the appellant during the reassessment proceeding vide letter dated 10/09/2013 i.e. 2 days before the notice dated 12/09/2013. As, the mandatory requirement of law is not complied with. Therefore, reassessment order passed u/s. 143 (3) r.w.s 147 of the Act is bad in law and the same may be quashed and set aside.

9. Considering the facts of the case and orders of the co-ordinate benches for A.Y.s 2004-05 to 2006-07 read with the judicial pronouncement of the Hon'ble jurisdictional High Court in the cases of **CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom.) (HC)**, **Asian Paints Ltd. v. DCIT (2008) 296 ITR 90 (Bom) (HC)** and **PCIT-14 v, Alag Securities Pvt. Ltd. ITA No. 1512 of 2017 dated 12/06/2020 (Bom) (HC)**, we do not have any other option but to quash the reassessment proceedings for the year under consideration. As the reasons taken by the AO for reopening of the assessment are different from what actually has been carried

out in the assessment order. In the result Ground No. 1 raised by the assessee is allowed in the result all other Grounds raised by the Assessee need not to be disposed off.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 2nd day of September 2024.

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 02/09/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Asstt .Registrar)
ITAT, Mumbai