

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3922/Mum/2024
Assessment Year: 2012-13**

Ambaji Avenues Private Limited A-109, Akshay Mittal Indl. Premises, M.V. Road, Sanjay Building No. 5, Andheri (W), Mumbai-400059. PAN: AAJCA 8264 G	Vs.	Income Tax Officer- 9(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ramesh Kumar Malpani
Revenue by : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 09.09.2024
Date of Pronouncement : 25.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 19.06.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case as well as in law, the Id. CIT (A), NFAC, DELHI [CIT (A)] has erred in upholding the validity of re-opening of the case of appellant and consequent assessment order passed u/s 143(3) r.w.s. 147 of the I. T. Act, 1961 (the Act), whereas the re-opening of the case of appellant and entire proceeding carried u/s 147/148 of the Act and consequent assessment order passed are clearly invalid, bad in law and beyond the law. Appellant prays for quashing the same.

2 Without prejudice to generality of ground no. 1' above, the appellant contends that re-opening of its case is clear invalid and impermissible as per first proviso below S. 147 of the Act. Id. CIT (A) has clearly erred on facts and in law in dismissing this ground of appeal without considering the elaborate submission made by the appellant and without considering the judicial pronouncements relied upon by appellant.

3. That on the facts and in the circumstances of the case as well as in law, the Id. CIT (A) has erred in confirming the addition of Rs. 75,00,155/- made by the A.O. u/s 68 of the Act by wrongly and unjustifiably holding the share capital and share premium received by appellant in F.Y. 2011-12 as accommodation entries just by mentioning about statement of an irrelevant person named Mukesh Banka recorded in the year 2018 (i.e. after more than six years) without providing copy of any such statement to the appellant. Addition so made by the A.O. and confirmed by Id. CIT (A) is grossly wrong, unjustified and contrary to the settled law. Appellant prays for deleting the same.

4. Without prejudice of generality of ground no. 3' above, that the Id. CIT has clearly erred in confirming above addition of Rs. 75,00,165/- just by relying on the case law of Hon'ble Calcutta High Court (which was on different set of facts) and by ignoring the case laws of Hon'ble Bombay High Court (jurisdictional High Court) and of Apex Court relied upon by the appellant and having binding effect, and without considering the vital evidences and elaborate submission furnished by appellant.

5. That on the facts and in the circumstances of the case as well as in law, Id. CIT has erred in confirming the addition of share capital and share premium received of Rs. 75,00,165/- in the first year of incorporation of appellant and before commence of any business or income earning activity, whereas it has been clearly held by Hon'ble Apex Court that such capital contribution received in first year cannot be added as income of an assessee. Id. CIT (A) has erred in law in ignoring the case laws of Hon'ble Apex Court relied upon by appellant in this regard.

6. That on the facts and in the circumstances of the case as well as in law, the Id. CIT (A) has erred in not deleting the addition of Rs. 85,000/-, being pre-incorporation expenses incurred by the promoter / director in respect of incorporation of appellant company and credited to his account on first day of incorporation, by wrongly assuming the same as unexplained cash credit u/s 68 of the Act.

7. Appellant craves leave to add, alter, delete or modify any ground of appeal.”

2. Fact in brief is that in this case assessment u/s 143(3) read with section 147 of the Act was finalized on 27.11.2018 assessing the total income at Rs. 25,00,000/- after making an addition on account of unexplained cash credit u/s 68 of the Act. Subsequently, the case was reopened again on 22.03.2019 by issuing of notice u/s 148 of the Act on the basis of information received from the DDIT (Inv.) Unit, Kolkata that assessee has received share application money of Rs. 25,00,055/- from Grewal Steel & Holdings Pvt. Ltd., Rs. 25,00,055/- from M/s. Samit Finance Pvt. Ltd. and Rs. 25,00,055/- from Shareen Hire Purchase Pvt. Ltd. managed controlled by Shri Mukesh Banka, an entry provider. The assessing officer completed the assessment u/s 143(3) read with section 147 of the Act on 16.12.2019 by assessing the total income at Rs. 101,22,666/- after making the aforesaid additions totaling to Rs. 75,00,165/-.

3. Aggrieved with the order of the assessing officer, the assessee preferred appeal before the ld. CIT(A) on the aforesaid issue of making disallowance u/s 68 of the Act. The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us, the ld. Counsel has discussed the case of the assessee on the issue of reopening of the case in respect of ground no. 1 and 2 filed. The ld. Counsel vehemently contended that original assessment in the case of the assessee was made on 27.11.2018 on the basis of

information received from the DDIT (Inv.), Kolkata in respect of movement of funds in the bank account from the companies controlled and managed by Shri Manohar Lal Nangalia. The ld. Counsel submitted that assessee has disclosed the information in its return of income and the notice u/s 148 of the Act was issued after 4 years from the end of the assessment year which is not valid. The ld. Counsel referred page no. 17 of the paper book comprising copy of return of income filed in ITR Form 6 on 28.09.2012 wherein assessee has disclosed name and addresses of shareholders in respect of Samkit Finance Pvt. Ltd., Grewal Steel & Holdings Pvt. Ltd. and Shareen Hire Purchase Pvt. Ltd. with particulars of persons who were beneficial owners of shareholding not less than 10% of the voting power at any time of the previous year. The ld. counsel also referred page no. 153 and 154 of the paper book pertaining to balance sheet and notes forming part of the financial statement for the year ended 31.03.2012 pertaining to the share capital along with details of shareholding including the aforesaid three parties filed before the assessing officer on the basis of which again second time the case was reopened. The ld. Counsel also referred page no. 32 and 34 of the copy of reasons recorded wherein the AO has mentioned that earlier assessment was completed u/s 144 r.w.s. 147 of the Act after making an addition u/s 68 of the Act amounting to Rs. 25,00,000/- on account of accommodation entries received by the assessee company from M/s. Harsharatna Finance & Investment P. Ltd. In support of his contention, the ld. Counsel has referred decision of Hon'ble Bombay High Court in the case of Everest Canto Cylinder

Ltd. vs UOI (2024) 159 taxmann.com 51 (Bombay) decision of Hon'ble Bombay High Court in the case of Ananta Landmark (P) Ltd. vs DCIT, Central Circle, Mumbai (2021) 131 tamann.com 52 (Bombay). The ld. Counsel has also referred the decision of Hon'ble Bombay High Court in the case of PCIT vs Shodiman Investments (P) Ltd. (2018) 93 taxmann.com 153 (Bombay) and decision of Hon'ble Bombay High Court in the case of South Yarra Holdings vs ITO, Bombay (2019) 104 taxmann.com 2016 (Bombay).

The ld. Counsel also submitted that there was no mention in the reason recorded of any specific failure on the part of the assessee to disclose of the material factfully and truly.

5. On the other hand, ld. DR submitted that in the case of the assessee assessment was not made u/s 143(3) of the Act and same was made u/s 147 of the Act therefore condition of reopening the assessment after four years is not applicable to the case of the assessee. The ld. Counsel also submitted that information was received subsequently from the DDIT (Inv.) on the basis of which the case was reopened after satisfaction of the assessing officer. On the submission of the ld. Counsel that AO has not mentioned any date on the reasons recorded for reopening of the case in this regard the ld. Counsel submitted that reasons for reopening is given in Annexure therefore no date is required on the proposal.

6. Heard both the sides and perused the material on record. It is undisputed fact that the original assessment in the case of the assessee u/s 147 of the Act was already completed on 27.11.2018.

The notice u/s 148 of the Act for the second time for reopening of the case was issued on 22.03.2019 after the end of the four years period from the end of assessment year 2011-12. The four years period was expired as on 31.03.2017. We have perused the return of income filed by the assessee as referred supra in this order wherein the assessee has disclosed the information and facts relating to the receipt of share capital from the three entities in the ITR Form 6 and in the financial statements filed before the AO at the time of original assessment order passed u/s 147 of the Act on 27.11.2018.

The AO failed to substantiate that there was any fault on the part of the assessee to disclose fully and truly all material facts.

7. We perused the decision of Hon'ble Bombay High Court in the case of Everest Kanto Cylinder Ltd. vs Union of India (2024) 159 taxmann.com 51 (Bombay) as referred above by the ld. Counsel wherein it is held that since the notice u/s 148 has been issued more than 4 years after the expiry of the relevant assessment year, proviso to section 147 shall apply in as much as re-assessment is not permissible unless there has been failure to truly and fully disclosed necessary facts required for the assessment.

We have also perused the decision of Hon'ble Bombay High Court in the case of Ananta Landmark (P) Ltd. vs DCIT (2021) 439 ITR 168 (Bombay) wherein it is held that after a period of 4 years even if the assessing officer has some tangible material given to the conclusion that there is an escapement of income from

assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee.

We have also perused the decision of Hon'ble Bombay High Court in the case of PCIT vs Shodiman Investment Pvt. Ltd. as referred by the Id. Counsel wherein it is held that reopening notice has to be issued by the assessing officer on his own satisfaction and not on borrowed satisfaction.

8. We have also considered that the assessee had already disclosed the detail of all the shareholder who have subscribed to the share capital of the assessee in the case of the shareholders, the assessing officer has already made addition in the case of one shareholder in the original reopening assessment order passed in the case of the assessee as already discussed above in this order. It is categorically mentioned in the proviso to section 147 of the Act that condition of reopening of the assessment beyond the period of 4 years of the assessment year in which the return was filed is also applicable to the cases reopened u/s 147 of the Act. Therefore, we consider that reopening of the assessment in the case of the assessee made by the assessing officer beyond the period of 4 years without bringing on record any lapses on the part of the assessee for not disclosing fact of the case truly and fully is invalid. Therefore, ground no. 1 and 2 of the assessee pertaining to invalidity in reopening of the assessment are allowed. The other ground of appeal of the assessee on merits of the case are left open. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 25.10.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 25.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai