

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**  
**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER**  
**ITA No.4892/M/2024**  
**Assessment Year: 2013-14**

<b>M/s. Srimy Jewels Private Limited through Mr. Subodh Modi, Director of the Appellant Company</b> JE-3010, Bhrat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai- 400051. <b>PAN: AAGCS0025G</b>	Vs.	<b>DCIT Circle 4(3)(1),</b> Mumbai.
<b>Appellant</b>	:	<b>Respondent</b>

**Present for:**  
**Assessee by** : Shri Lalchand Choudhary  
**Revenue by** : Ms. Pradnya Gholap (Sr. D.R.)

**Date of Hearing** : 05.12.2024  
**Date of Pronouncement** : 31.12.2024

**ORDER**

**Per Beena Pillai, JM:**

Present appeal arises out of order dated 01/08/2024 passed by NFAC Delhi for assessment year 2013-14 on following grounds of appeal:

*“The appellant prefers the following Appeal against the order dated 1 August, 2024 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as "Hon'ble CIT (A)") passed under section 250(6) of*



the Income Tax Act, 1961 ("The Act"). Each of the grounds is in alternative and without prejudice to other.

1. Hon'ble CIT (A) was not justified in confirming the addition of Rs. 1,63,00,000 made by the AO under Section 68 of the Income Tax Act, 1961 on the basis of patently incorrect information. Hon'ble CIT failed to appreciate and consider the legal as well as factual submissions of the appellant.

2. Hon'ble CIT (A) failed to appreciate that no addition under S. 68 of the Income Tax Act, 1961 could be made on facts of this case where the AO did not find any amount of alleged cash credit in the books of this appellant.

3. Hon'ble CIT (A) erred in not considering and adjudicating the legal ground raised by this appellant.

(i) Hon'ble CIT (A) failed to appreciate that regular assessment having been completed in this case; notice under S. 148 issued after elapsing of four years from the end of the relevant assessment is illegal and invalid due to limitation.

(ii) Without prejudice, Hon'ble CIT (A) failed to appreciate that notice under S. 148 issued after elapsing of six years from the end of the relevant assessment year is illegal and invalid due to limitation.

(iii) Hon'ble CIT (A) failed to appreciate that the notice issued under S. 148 without containing proper Document Identification Numbers (DIN) is in gross violation of Board Circular No. 19/2019 dated 14/08/2019 hence bad in law.

(iv) Hon'ble CIT (A) failed to appreciate that the notice dated 29/04/2021 as well as notice dated 26/07/2022 both issued under S. 148 by the Jurisdictional Assessing Office (JAO) were bad in law. Hon'ble CIT (A) failed to appreciate that after insertion of S. 151A on the statute, the JAO had no authority and competence to issue a notice under S. 148 on the date of issue of these notices.

(v) Hon'ble CIT (A) failed to appreciate that in spite of a specific request, the AO failed to provide cross examination of the party whose bank statement has been relied upon to make the impugned assessment.

(vi) Hon'ble CIT (A) failed to appreciate that the sanction of Hon'ble superior competent authority has been obtained on the basis of absolutely incorrect information. The Hon'ble CIT (A) failed to appreciate that any approval under S. 151 obtained on the basis of incorrect information would itself be illegal and cannot initiate legal proceedings.

(vii) Hon'ble CIT (A) failed to appreciate that Hon'ble Principal CIT (PCIT) whose approval under S. 151 has been obtained in this case was not competent to grant approval under S. 151 where the assessment is proposed to be re-opened after 3 years from the end

*of the relevant assessment year. Hon'ble CIT (A) failed to appreciate that Hon'ble Principal Chief CIT or the Chief CIT only were competent to grant approval under S. 151(ii) of the Income Tax Act, 1961.”*

**Brief facts of the case are as under:**

**2.** Assessee is a company engaged in the business of trading of cut and polished diamonds. It filed its usual return of income declaring total loss of Rs.1,16,56,083/-. It is submitted that, the assessment order under section 143(3) was passed on 23/12/2015 assessing the loss as declared by the assessee.

**2.1.** Subsequently, notice under section 148 was issued on 26/07/2022. In response to the notice, assessee filed return of income on 17/05/2023. The assessee also sought for the reasons recorded for reopening of assessment, which is reproduced in the assessment order dated 28/05/2023.

**2.2.** The crux of the reasons recorded is that, an information was received, wherein, it is stated that proprietor of assessee made payments one Shree Bhairav Star Jewels Pvt.Ltd., and that, Shree Bhairav Star Jewels Pvt. Ltd is found to be a paper company and that its accounts are used as conduit for layering of funds. The information received by the department was that, assessee has made payment of Rs.1,63,00,000/- to Shree Bhairav Star Jewels Pvt. Ltd., and has taken accommodation entry to that extent.

**2.3.** The Ld.AO thus issued notice under section 143(1) of the act, in compliance to which, the assessee filed various details and written submissions challenging the issuance of notice under



section 148 of the act. The assessee also submitted that, the assessee neither received nor paid Rs.1,63,00,000/- to Shree Bhairav Star Jewels Pvt.Ltd and therefore the entire basis for reopening of the assessment is bad in law.

**2.4.** The assessee also furnished confirmation letter from the suppliers, purchase invoices, stock register showing in word of the goods and bank statement showing transaction of the payments made. It was thus submitted that, these documents do not reveal payment of Rs.1,63,00,000/- made to Shree Bhairav Star Jewels Pvt.Ltd. The Ld. AO after considering the submission of the assessee made addition under section 68 of the act by observing as under:

*“On verification of Bank Statement of Shree Shree Bhairav Star Jewels Pvt. Ltd. (Account no.550011028178 with Kotak and Mahindra Bank) it is found that during the year 2012-13 there is credit entry totaling to Rs. 1,63,00,000/- from Srimy Jewels Pvt. Ltd. It means that Srimy Jewels made transaction totaling to Rs. 1,63,00,000/- from Shree Bhairav Star Jewels Pvt. Ltd. Further, the assessee company requested for personal hearing through video conference. The assessee company was provided personal hearing through video conference which was scheduled on 22.05.2023 at 1.47 PM. During the course of video conference, the assessee company denied to have transaction with Shree Bhairav Star Jewels Pvt. Ltd. of Rs. 1,63,00,000/-. The assessee company also stated that he did not know about this transaction as to how it reflected in the credit side of the bank account of Shree Bhairav Star Jewels Pvt. Ltd. Reply of the assessee is not acceptable as inquiry report proved that the assessee company made transaction of Rs. 1,63,00,000/- with Shree Bhairav Star Jewels Pvt. Ltd. which is also reflected in the bank account of Shree Bhairav Star Jewels Pvt. Ltd. Hence added to the total income of the assessee.”*

**2.5.** The Ld.AO further noted that, assessee since received accommodation entry, the prevailing market rate for providing such

accommodation entry for charging commission was at the rate of 2-3% of the amount. The Ld.AO thus computed 2% of Rs.1,63,00,000/- and made disallowance under section 69 C mounting to ₹ 3,26,000/- as unexplained expenditure.

Aggrieved by the additions, the assessee preferred appeal before the Ld. CIT(A).

**3.** Before the Ld.CIT(A) assessee challenged valedictory of issuance of notice under section 148 for the year under consideration under the old provisions of the act, that was issued after 01/04/2021 which is beyond the period of limitation as stipulated under section 149 of the act. The assessee also raised various other legal issues that notice under section 143(2) was not issued to assessee and therefore, the assessment order so passed is bad in law.

**3.1.** On merits of the addition, the assessee has challenged that information received on the inside portal shows that assessee provided accommodation entry to the tune of ₹1.63 crores. Whereas during the financial year relevant assessment year under consideration, the assessee neither made any payment nor received any ₹ 1,63,00,000 to alleged Shree Bhairav Star Jewels Pvt.Ltd and therefore the addition made as bad in law.

**3.2.** The Ld. CIT(A) after considering the submissions of the assessee dismissed the legal issue by observing as under:

*“5.3. I have gone through the submissions of the appellant and the assessment order. In this case, specific information has been received that the assessee has traded with a paper company. In other words, the assessee has made transaction merely on paper and their bank accounts*

are used as conduit for layering of funds. Hence it is evident that entire credit transactions in their bank accounts are unexplained credits. Section 147 of the Act lays down that the reopening the assessment can be done by the Assessing Officer (AO) if he has 'reason to believe' that the income has escaped assessment. Escapement of income chargeable to tax can be due to not filing of return of income by the appellant despite having taxable income, receipt of information from other agencies, or failure on part of the AO during the initial assessment proceedings to account for a portion of the income or allowing of excess loss or depreciation etc. In such a case, the provisions of Section 147 would be applicable and the assessment can be reopened. Explanation 2 to Section 147 enlists other conditions under which the section is applicable (deeming provision); which is when the income has been assessed but there has been under- assessment, the income has been assessed at too low a rate, excessive relief has been provided and/or excessive loss, depreciation allowance or any other allowance has been computed under the provisions of the Act. The very fact that reasons are recorded and notice u/s.148 was issued goes to show that the AO had applied his mind and was satisfied himself about the re-opening of the case. The IT Act envisages that the AO should only have a reason to believe to re-open a case, he need not establish beyond doubt that there is escapement of income before issuing the notice.

5.3.1 The AO is not required to carry out any investigation before reopening as held by Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd v ITO 236 ITR 34(SC)*. Hon'ble Apex Court held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of reopening. In view of this, the action of the AO to re-open the case by issuing of notice u/s.148 is held to be valid. The grounds of appeal Nos. 2 & 3 are dismissed.”

**3.4.** On merits of the addition, the Ld. CIT(A) confirmed the additions made by placing reliance on the concepts of human probability and conduct in such kind of transactions.

Aggrieved by the order passed by the Ld. CIT(A), assessee is in appeal before the *Tribunal*

4. The Ld.AR submitted that, **Grounds 1-2** are on the merits of the additions. He submitted that in **Ground 3** following propositions challenging validity of the notice issued under section 148 are raised by the assessee:

- The notice being issued under the old regime is issued beyond the period of limitation specified under section 149 of the Act applicable the year under consideration.
- The reassessment proceeding having culminated without issuance of notice under section 148 of the Act is bad in law.
- The notice under section 148 is issued without any DIN number and therefore is bad in law.
- The notice is issued without proper approval from the appropriate authority as per section 151 of the Act.
- The notice being issued by the jurisdictional assessing officer instead of faceless assessing officer is bad in law.

**4.1.** The Ld.AR for all the above prepositions drew support from various decisions of *Hon'ble Supreme Court, Jurisdictional High Court and circulars issued by CBDT.*

**4.2.** On merits of the addition, the Ld.AR submitted that, the all details of the suppliers filed at page 200-214 of the paper book, was already there before the assessing officer during the original assessment proceedings. He submitted that the ledger account of Shree Bhairav Star Jewels Pvt.Ltd as well as that of assessee placed at page 158 and 159 clearly reveals that no payment was either made or received amounting to ₹ 1.63 crores. He submitted that no

independent enquiry was carried out by the Ld.AO categorically clear from the assessment order passed and the entire addition is based on surmises and conjuncture of the alleged payment having been made by the assessee.

**4.3.** The Ld.AR relying on the ledger statement placed at page 159 submitted that assessee made payment of ₹ 88 lakhs to Shree Bhairav Star Jewels Pvt.Ltd, against the purchases made in support of which all necessary evidences/documents were filed during the assessment as well as reassessment proceedings.

**4.4.** Regarding validity of notice under section 148 of the act having issued beyond the period of limitation, the Ld.AR submitted that notice under section 148 was issued on 12/04/2021 based on an information received on the inside portal. He submitted that the assessee in response filed its return of income on 29/04/2021 declaring loss as declared in the original return of income without any variation.

**4.5.** The Ld.AR submitted that, as per the old provisions, notice under section 148 can be issued within a period of 6 years from the end of the assessment year under consideration that ended on 31/03/2020. The Ld.AR placed reliance on the ratio laid down by *Hono'ble Supreme Court* in case of *Union of India & Ors. vs Ashish Agarwal* in *Civil Appeal No. 30005/2022* and *Union of India vs Rajeev Bansal* in *Civil Appeal No.862/2024*.

**4.6.** On the contrary the Ld.DR vehemently supported the view taken by the Ld. CIT(A).



I have perused the submissions advanced by both sides in light of records placed before me.

**5.** The propositions raised by the assessee challenging validity of the reopening of notice is carefully analysed and considered by me. Be that as it may, on merits, it is noted that the assessee had transacted with Shree Bhairav Jewels Pvt.Ltd during the year under consideration. Whereas, the Ld.AO had information that assessee had entered into accommodation entries with one Shree Bhairav Star Jewels Pvt.Ltd. It is noted that Ld.AO did not carry out any verification in regards to the details furnished by the assessee regarding the transaction with Shree Bhairav Jewels Pvt.Ltd.. At page 159, from the ledger account of Shree Bhairav Jewels Pvt.Ltd., standing in the books of the assessee. It is also noted that in total the assessee transacted with Shree Bhairav Jewels Pvt.Ltd., worth Rs.6,78,67,632/- for the year under consideration. There is no payment reflected in the books of the assessee of payment amounting to Rs.1.63 crores between assessee and with Shree Bhairav Jewels Pvt.Ltd.

**5.1.** Further it is noted that the assessee had denied any transacted with Shree Bhairav Star Jewels Pvt.Ltd., the Ld.AO did not have any corroborative materials to establish correctness of information regarding transaction of assessee with Shree Bhairav Star Jewels Pvt.Ltd. Once assessee has denied any transaction with Shree Bhairav Star Jewels Pvt.Ltd., during the year under consideration

merely because the assessee could not produce the parties with whom it had transacted, does not amount to admission.

**5.2.** It is further noted that in the information received by the assessee, the name of the party with whom assessee is alleged to have bogus entry is different, the PAN number of the alleged party mentioned in the information was of the Shree Bhairav Jewels Pvt.Ltd. Under such circumstances, it is for the revenue to prove its allegation by adducing cogent evidence. *Hon'ble Supreme Court* in a verdict on legal fictions and presumptions has held that:

*“There is a clear distinction in law between a legal fiction and presumption. A distinction commonly taken between the fiction and the legal presumption runs something as follows: A fiction assumes something which is known to be false; a presumption (whether conclusive or rebuttable) assumes something which may possibly be true. This distinction is regarded as being reinforced, as it were, in the case of the rebuttable presumption because such a presumption assumes a fact which probably is true.”*

**5.3.** No doubt the burden of proof lies on the assessee to establish that assessee did not have any transaction with Shree Bhairav Star Jewels Pvt.Ltd., which has been discharged by furnishing all invoices, ledger accounts and related documents. The Ld.AO thereafter did not carry out any enquiry in respect of the same. The Ld.CIT(A).AO had all relevant details on which detailed enquiry could have been conducted. Based on the doubt that PAN number, the Ld.CIT(A).AO could have enquired in details regarding the alleged transaction mentioned in the information.



**5.4.** It is not the case of the revenue that there was any unaccounted sales or purchases unearthed during the re assessment proceedings. The addition is made only based on the information received and no independent enquiries have been made by the Ld.AO. Thus in my view, the information received by the Ld.AO being not supported by any corroborative evidences deserves to be deleted.

**Accordingly the grounds raised by the assessee stands allowed.**

**In the result the appeal filed by the assessee stands allowed.**

**Order pronounced in the open court on 31/12/2024.**

**Sd/-  
BEENA PILLAI  
JUDICIAL MEMBER**

Place: Mumbai,

Dated: 31/12/2024

*Snehal C. Ayare, Stenographer/ Dragon*

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai
4. Guard File
5. CIT

//True Copy//



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**ITA No. 4892/MUM/2024**  
**M/s. Srimy Jewels Private Limited.; A. Y.2013-14**

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**