



ITA NO. 4930/Mum/2015  
M/s Enrich Enterprises Private Limited  
Assessment Year 2006-07

**आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI SAKTIJIT DEY, JM AND  
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4930/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2006-2007)

<b>ENRICH ENTERPRISES PVT. LTD.</b> 30 Gopal Bhuvan, 2 <sup>nd</sup> floor Princess Street Mumbai – 400002.	<b>बनाम/</b> Vs.	<b>INCOME TAX OFFICER-4(1)(4)</b> Room No. 637, 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCI-2035-B		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Bhupendra Shah, AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri K.C. Kanojia, DR
सुनवाई की तारीख / Date of Hearing	:	20/01/2017
घोषणा की तारीख / Date of Pronouncement	:	25/01/2017



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## **आदेश / ORDER**

### **Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2006-07 assails order of Ld. Commissioner of Income Tax (Appeals) – 9, [CIT(A)], Mumbai dated 25/07/2015 *qua* technical grounds as well as on merits. The assessee, by way of Ground No.1, has contested the validity of reopening u/s 147. As the legal ground take taken by the assessee goes to the very root of the matter, we take up the same first.
2. Briefly stated, the assessee was a resident corporate assessee who was assessed for impugned AY u/s 143(3) by Assessing Officer [AO] order dated 23/12/2008 wherein total income was determined at Rs.27,754/-. Subsequently, upon receipt of certain information regarding accommodation entries / bogus bills from investigation wing of the Income Tax Department, the assessee was saddled with reassessment proceedings by issuance of notice u/s 148 dated 28/03/2012 wherein reasons for reopening were stated as follows:-

*“On verification of records, it is seen that the company has received Rs.13,00,000/- from M/s Mahasagar Securities Pvt. Ltd. and Rs. 15,00,000/- from M/s Talent Infoway Ltd., a group concern of Mukesh Choksi, as subscription for equity shares. During the period relevant to A.Y. 2006-07, 1,30,000/- shares of the company have been allotted to M/s Mahasagar Securities Pvt. Ltd. and 1,50,000 shares of the company have been allotted to Talent Infoway Ltd.*

*Further as per note on activities of Mahasagar group forwarded by the Addl. DIT, Unit-1, alongwith his letter, M/s Mahasagar Securities Pvt. Ltd and its group companies are declaring their profession as entry provider in their returns and are disclosing their income @0.15% of the total entries provided by them. This is done on the basis of the ITAT order dated 29.08.2008 in appeal No. ITA No. 4624/MUM/2005 for the A.Y.2002-03 in the case of M/s Mahasagar Securities Pvt. Ltd.*

*In view of the above evidences I have reason to believe that the 28,00,000/- received as share application money by the assessee company is the unaccounted money of the company and the same has been introduced in the accounts with the help of group*



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*companies of M/s Mahasagar Securities Pvt. Ltd. Thus income of Rs.28,00,000/- has escaped assessment in this case.”*

3. The assessee objected to reopening vide its letter dated 20/10/2012 and contended that detailed information was supplied by assessee with respect to share application money during assessment proceedings u/s 143(3) and hence, re-opening could not be done by merely relying upon information of third persons and / or mere change of opinion. But, AO rejected the same vide its order date 01/11/2012 on the ground that reopening was triggered on the basis of specific information received which constituted fresh tangible material so as to justify re-opening. Thereafter, AO completed re-assessment u/s 143(3) ‘*read with section*’ 147 on 05/03/2013 after making impugned addition of Rs.28.00 Lacs. The reassessment was challenged without success before Ld. CIT(A) by raising similar contentions. Aggrieved, the assessee is in appeal before us and assailed the reopening primarily on legal ground.

3. The Ld. Counsel for Assessee [AR], while placing various documents in the paper-book, contended that the original assessment was subjected to scrutiny assessment u/s 143(3) and reopening was done beyond 4 years which require additional condition of ‘*failure to disclose fully and truly all material facts*’ to be fulfilled as per first proviso to Section 147. The AO called for information regarding increase in share capital during original assessment proceedings and in reply, detailed information was duly supplied from time to time as per the queries raised. Therefore, whatever information was sought by AO in this regard was duly supplied and after due deliberations and application of mind, AO concluded the assessment. Nevertheless, there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment. Our attention has been drawn towards various queries raised during original assessment proceedings and replies / documents submitted by the assessee in this regard. Reliance has been placed



ITA NO. 4930/Mum/2015  
M/s Enrich Enterprises Private Limited  
Assessment Year 2006-07

on various judicial pronouncements. Per *Contra*, the Ld. DR asserted that the assessee obtained accommodation entries in the garb of share application money which was very clear from the search operations carried upon the accommodation entry providers and this information constituted fresh tangible material in the hands of AO which was not available him at the time of original assessment proceedings and therefore, AO rightly invoked re-opening. Further, AO did not apply his mind on the aspect of increase in share capital during original assessment proceedings and hence, reopening is justified.

4. We have heard rival contentions and perused material available on record. First of all it is observed that the assessee has changed its name from '*Infinite E Solutions Private Limited*' to '*Enrich Enterprises Private Limited*' vide 'fresh certificate of incorporation consequent upon change of name' dated 13/12/2006 issued by Registrar of Companies, Maharashtra. Proceeding further, some undisputed facts are that the assessment year in question is 2006-07 which has been subjected to scrutiny assessment u/s 143(3). The notice has been issued on 28/03/2012 which is clearly beyond 4 years from the end of relevant AY and therefore, the first proviso to Section 147 gets attracted in this case which reads as follows:-

*“Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year”.*

Hence, apart from prime condition of '*reasons to believe that income has escaped assessment*', there was an additional requirement of '*failure to disclose fully and truly all material facts*' as contained in first proviso to Section 147. A perusal of notice u/s



ITA NO. 4930/Mum/2015  
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142(1) dated 17/06/2008 issued during original assessment proceedings reveals that the assessee was asked to provide the details of Shareholders and complete details of increase in share capital including name of shareholder, Address, PAN and confirmation. The assessee, in reply, provided the details of shareholders, PAN, Address, Share Application form, Confirmation from respective applicants along with their Board resolutions, Return of allotment, Board resolution of the assessee company regarding Share Allotment etc. After appreciating the same, the assessing officer concluded the assessment. The above facts show that the assessee has disclosed all material facts at relevant places during original assessment proceedings u/s 143(3) of the Act. The AO himself asked for specific questions and full details were supplied by the assessee. AO examined these documents and framed the assessment only after proper application of mind. There was no failure on the part of the assessee to fully and truly disclose all the material facts. Thus, reassessment is being sought by the AO on mere change of opinion and apparently on the basis of information received from the investigation wing but nevertheless, all the information was available before AO during original proceedings. At this juncture, the following observation of the Hon'ble Apex Court in the case of CIT Vs. Kelvinator of India Ltd. 320 ITR 561 would be relevant here:-

*“Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief”.*

Further, the Hon'ble apex Court in the case of *CIT vs. Foramer France (2003) 264 ITR 566 (SC)* has clearly laid down the principle that where there is no failure on the



ITA NO. 4930/Mum/2015  
M/s Enrich Enterprises Private Limited  
Assessment Year 2006-07

part of the assessee to disclose material facts necessary for assessment, the reassessment proceedings after the expiry of four years is not possible in view of the provisions of Sec. 147 of the Act. In the circumstances of the case and after appreciating the statutory provisions and judicial pronouncements, we conclude that reassessment proceedings are bad in law and the same are, therefore, set aside. Accordingly, we are inclined to quash the reassessment proceedings. In view of the same, other grounds of assessee's appeal become infructuous and require no adjudication.

5. In the result, the assessee's appeal stands allowed.

*Order pronounced in the open court on 25<sup>th</sup> January, 2017.*

Sd/-  
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.01.2017

PS:- Pooja K.

Sd/-  
(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File



*ITA NO. 4930/Mum/2015*  
*M/s Enrich Enterprises Private Limited*  
*Assessment Year 2006-07*

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**