

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'सी' मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'C' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA No.1076/Mum/2012
Assessment Year: 2004-05**

M/s Panna Gold Impex Ltd. (Formerly Known as M/s Shree Marudhar Jewellers Ltd.), 11/12, Chunawala Bldg. 3 rd Floor, 489B, JSS Road, Chira Bazar, Mumbai-400002	बनाम/ Vs.	Income Tax Officer-4(3)(4), R. No.637, Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No. AACCG7035Q		

निर्धारिती की ओर से / Assessee by	Shri Sharad Patel
राजस्व की ओर से / Revenue by	Shri Pratap Singh CIT-DR & Shri A. Ramachandran-DR

सुनवाई की तारीख / Date of Hearing :	01/12/2016
आदेश की तारीख /Date of Order:	28/12/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 21/12/2011 of the Ld. First Appellate Authority, Mumbai. The assessee has raised following grounds:-

1. *On the facts and circumstances of the case and in law the CIT(A) erred in confirming the Action of the Income Tax Officer, Ward - 4(3)(4), Mumbai of completing the assessment and passing the order u/s 147/148 of the Act by holding that the assessment is not bad in law since the re-opening of the assessment was based on proper application of mind and not based on mere surmise and doubts.*
2. *On the facts and circumstances of the case and in law the CIT(A) erred in holding that order passed by the ITO u/s 147 for disposal of objection against notice u/s 148 is proper, since the objection of the assessee has been appropriately dealt with by the ITO and therefore, the order is not bad in law.*
3. *On the facts and circumstances of the case and in law the CIT(A) erred in confirming the action of the ITO of making addition of Rs. 15,00,0001- u/s 68 of the Act, being the share application money on the alleged ground that the amount is unexplained cash credit although the existence, identity and credit worthiness of the share applicant was established by the assessee.*
4. *On the facts and circumstances of the case and in law the CIT(A) erred in holding that by not providing copies of the statement of Mr. Narendra R Shah and by not allowing the opportunity to cross examining him to the assessee, natural justice has not been denied to the assessee and therefore, the re- opening which is solely based on the letter of Mr. Narendra R Shah to CIT(A)-37, Mumbai and the addition of Rs. 15,00,0001- are not bad in law.*

2. The facts, in brief, are that the assessee is closely held company, engaged in the business of gold jewellery. The assessee filed original return of income which was

processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter the Act) and no assessment u/s 143(3) of the Act was made by the Revenue. The Assessing Officer received information that the assessee company has received share application money from M/s Surya Deep Salt Refinery and Chemical Works Ltd., which was found to be engaged in providing accommodation entries per share application money, etc. and the assessee was one of the beneficiary of the share application of money of Rs.15 lakh. It was observed by the Assessing Officer that one Mr. Naredra R. Shah was in control of the M/s Surya Deep Salt Refinery and Chemical Works Ltd. along with many other companies. A search and seizure action was carried out u/s 132 of the Act, by the investigation wing and said Shri Narendra R. Shah was found providing bogus financial accommodation entries towards share profit, capital gains, donations, gifts, and one time entry by share application money/share capital. During the course of appellate proceeding, the said Narendra R. Shah has admitted of providing accommodation entries by various concern including the company M/s Surya Deep Salt Refinery and Chemical Works Ltd. The said list of beneficiaries provided by said Shri Narendra R. Shah with address in which Rs.15 lakhs was shown to have been given to the assessee by way of share application from the bank account of M/s Surya Deep Salt Refinery and Chemical Works Ltd. Based upon this information, the Assessing Officer recorded the reasons, that income chargeable to tax has escaped assessment,

amounting to Rs.15 lakh, in the case of the assessee, as the assessee has received accommodation share entry from the M/s Surya Deep Salt Refinery and Chemical Works Ltd. Accordingly, notice u/s 148 of the Act was issued to the assessee and assessment was reopened. It is pertinent to mention here that no assessment was originally framed u/s 143(3) of the Act and return was originally processed u/s 143(1) of the Act. Notice u/s 148 of the Act was issued on 31/03/2010, which was beyond four year from the end of the Assessment Year. Reasons were communicated to the assessee in the course of hearing by the Assessing Officer on 01/07/2010, to which the assessee filed objection to the issuance of notice u/s 148 of the Act which was dealt with by separate order passed by the Assessing Officer on 13/09/2010, by following the directions of Hon'ble Supreme Court in the case of G. K. N. Driveshafts (India) Ltd. vs Income Tax Officer in (2003) 259 ITR 19. The assessee in the course of reassessment proceedings, submitted that payment of Rs.15 lakhs was received from M/s Surya Deep Salt Refinery and Chemical Works Ltd. towards share application money vide through banking channel, copy of board resolution along with share application, copy of accounts of M/s Surya Deep Salt Refinery and Chemical Works Ltd. with an explanation that the said company has share capital of Rs.8 crores which is sufficient to prove the creditworthiness of the said company. Assessing Officer was not satisfied with the genuineness of the transaction and notice u/s 133(6) was issued to M/s Surya Deep Salt

Refinery and Chemical Works Ltd., to furnish the details of transaction. The said company i.e. M/s Surya Deep Salt Refinery and Chemical Works Ltd. did not furnish the details of transactions with the assessee to the Assessing Officer in response to notice u/s 133(6) of the Act . The Assessing Officer asked the assessee to substantiate the genuineness of the transaction and assessee reiterated the same contention as were made earlier. The ld. Assessing Officer rejected the contention of the assessee and made the addition of Rs. 15 lakh as unexplained cash credit in the books of the assessee u/s 68 of the Act.

2.1. The aggrieved assessee has filed appeal before the ld. CIT(A) and challenged the issuance of notice u/s 148 of the Act. The assessee submitted that no original records were available with the Assessing Officer and reopening has been done without reference to the original record and is being made merely on the basis of surmises and conjectures and no satisfaction was recorded to the effect that income has escaped assessment and reopening was done merely on the basis that information was received from investigation wing that too on the basis of statement of Shri Narendra R. Shah, who was searched by the Revenue u/s 132 of the Act. The Ld. Commissioner of Income Tax (Appeal) rejected the contention of the assessee as the information divulged by the Shri Narendra R. Shah during appellate proceedings, before CIT(A)-37, that he is providing bogus accommodation entries and name of the assessee was found mentioned in

the details, furnished by said Narendra R. Shah, which conclusively proves that he is in control of M/s Surya Deep Salt Refinery and Chemical Works Ltd. and also engaged in the business of providing accommodation entries. Thus, the Assessing Officer has acted on specific information coupled with categorical admission of Shri Narendra R. Shah who was in control of M/s Surya Deep Salt Refinery and Chemical Works Ltd. and the said company has provided accommodation entries of Rs.15 Lakh to the assessee which has led to the reason to belief that income has escaped assessment in the hands of the assessee to the tune of Rs.15 lakh leading to reopening of the assessment. The contention of the assessee that Assessing Officer has not given the copy of statement of Shri Narendra R. Shah and has not allowed the opportunity of cross examine said Narendra R. Shah was met by Ld. Commissioner of Income Tax (Appeal) by remanding matter to the Assessing Officer with a direction to make necessary enquiry with the company M/s Surya Deep Salt Refinery and Chemical Works Ltd. The Assessing Officer issued summons u/s 131 of the Act to M/s Surya Deep Salt Refinery and Chemical Works Ltd. and in response, neither anybody appeared nor any written submissions were filed. The Assessing Officer has also issued notices u/s 133(6) of the Act but no information was received and none appeared in response to said notices. The Assessing Officer furnished the copy of letter written by Shri Narendra R. Shah along with the list of beneficiary submitted by him to CIT(A)-37, was forwarded to

CIT(A) along with remand report. The CIT(A) forwarded the remand report along with documents to the assessee. The assessee also did not produce the above parties. Thus, it was observed by the Ld. Commissioner of Income Tax (Appeal) that sufficient opportunity was given. The said party Shri Narendra R. Shah has confirmed before the Revenue that he has received cash against the share application money of Rs.15 lakh given to the assessee. With respect to the share holding of investment of Rs.3,42,25,000/- as on 31/03/2004 held by M/s Surya Deep Salt Refinery and Chemical Works Ltd, it was observed by the Ld. Commissioner of Income Tax (Appeal) that the balance sheet of M/s Surya Deep Salt Refinery and Chemical Works Ltd. did not contain the names of the various companies/concerns in which investments are made. Thus, the CIT (A) came to the conclusion that assessee has not substantiated the genuineness of the transaction, credit worthiness and identity of the party/parties and hence the additions were confirmed by Ld. Commissioner of Income Tax (Appeal) vide appellate order dated 21/12/2011. The Ld. Commissioner of Income Tax (Appeal) distinguished the case laws relied upon by the assessee, which are detailed in page no.11 to 14 of the impugned order.

2.2. Aggrieved by the decision of the Ld. Commissioner of Income Tax (Appeal), the assessee is in appeal before the Tribunal. The ld. counsel for the assessee submitted before

us that the additions of Rs.15 lakh has been made u/s 68 of the Act with respect to the share application money received by the assessee from M/s Surya Deep Salt Refinery and Chemical Works Ltd. merely on the basis of statement of Shri Narendra R. Shah It was submitted that the original assessment was not framed u/s 143(3) of the Act but originally the return was processed u/s 143(1) of the Act. The Assessing Officer having received information from the investigation wing based upon the search and seizure operations carried out u/s 132 of the Act in the case of Shri Narendra R. Shah, wherein he admitted to have given accommodation entries to various parties through various concern controlled by him in which the name of assessee also appeared in one of the correspondence with the Ld. Commissioner of Income Tax (Appeal)-37 in his own appellate proceedings. It was submitted by the ld. counsel for the assessee that the whole reassessment proceedings are bad in law that Assessing Officer does not have original record and the reopening has been done without making any reference to the original records, which is bad in law as no conclusion can be drawn in such circumstances that any income has escaped assessment. The notice has been issued u/s 148 of the Act beyond the period of four year from the end of the Assessment Year. It was submitted that this is the first year of assessment of the assessee as assessee was incorporated in the previous year relevant to the impugned Assessment Year. The return of income was filed with Income Tax Officer-15(1)(1) while the notice u/s 148 was

issued by Income Tax Officer-4(3)(4). Our attention was drawn to page 95 of the paper book filed by the assessee which contains the reason for reopening. It was submitted that no approval was taken by the Assessing Officer from the Ld. CIT and hence whole proceeding are bad in law. Our attention was also drawn to page no. 156 of the paper book, which is in order sheet entry, which clearly shows that the Assessing Officer never perused the records. Our attention was also drawn to page 161 to 163, wherein the proposal to CIT was submitted by the Assessing Officer for seeking approval for reopening. It was submitted that these are the additional pleas raised by the assessee for the first time before the Tribunal and since these are legal plea, which goes to the root of the matter, the same should be allowed to be argued. It was further submitted that no amount has been received by the assessee from Shri Narendra R. Shah and assessee is not aware how Shri Narendra R. Shah is connected with M/s Surya Deep Salt Refinery and Chemical Works Ltd.. Statement of Shri Narendra R. Shah has not been provided to the assessee nor any connection was established between Narendra R. Shah and said M/s Surya Deep Salt Refinery and Chemical Works Ltd. and merely based upon the statement/letter given by Shri Narendra R. Shah, during appellate proceeding, no addition can be made in the hands of the assessee. The assessee was also not allowed to cross examine said Narendra R. Shah, which is a direct infringement of principle of natural justice and prejudice has been caused to the assessee as the statement

of Shri Narendra R. Shah was never confronted to the assessee and without allowing the cross examination to the assessee and hence the reassessment order u/s 147 r.w.s 143(3) is not sustainable in law. It was submitted that Shri Narendra R. Shah is not connected with the said company M/s Surya Deep Salt Refinery and Chemical Works Ltd. and its annual return as at 30/09/2004 is placed on record at page No.62 to 67 of the paper book. It was submitted that despite being specifically asked for cross examination, the Revenue has not provided opportunity to the assessee of cross examination of Shri Narendra R. Shah. Our attention was invited to the paper book page no.50, wherein, the letter to the Assessing Officer is placed on record. It was also submitted that no statement was recorded of the assessee by the Revenue.

2.3. On the other hand, the ld. DR, , relied upon the order of the CIT(A) and confirmed that no case record is available with the Assessing Officer with respect to the original assessment records and processing of the return u/s 143(1) of the Act. he also confirmed that no statement of the assessee was recorded by the Revenue.

2.4. We have considered the rival submissions and perused the material available on record. We have observed that the assessee is engaged in the business of gold jewellery and is closely held company incorporated on 11/08/2003 and this is the first year of assessment of the assessee. The original assessment was not framed u/s 143(3) of the Act

while the return of income was processed u/s 143(1) of the Act. The Assessing Officer has received information from the investigation wing, based upon searched and seizure operation u/s 132 of the Act, in the case of Shri Narendra R. Shah, that he is engaged in business of providing accommodation entries in lieu of cash, through various concerns, controlled by him and he has confirmed to have provided share application money of Rs.15 lakh, as accommodation entries, in lieu of cash, to the assessee during the previous year relevant to the impugned Assessment Year. The case of the assessee was reopened u/s 147/148 of the Act, based upon the information received from the investigation wing as set out above. The notices u/s 133(6) were issued by the Assessing Officer to verify the genuineness of the transaction, which remain un-complied with. Further summons were issued u/s 131 of the Act by the Assessing Officer and again there was no compliance with respect to these summons. The assessee was asked to produce the party, which assessee failed to do so during the proceedings before the authorities below. The assessee has submitted copies of share application, bank statement, detail of PAN of M/s Surya Deep Salt Refinery and Chemical Works Ltd., however, in view of the incriminating evidence/by way of statement of Shri Narendra R. Shah, the Revenue has doubted the genuineness of the transaction. Once the Revenue has doubted the genuineness of the transaction, the onus shifts back to the assessee to prove by the cogent

evidences/material that the above said transaction in shares was genuine. The assessee during the course of proceedings before us has raised legal issues which goes to the root of the matter that the Assessing Officer has does not have the original records of the assessment and also that no approval of CIT was taken before reopening of the assessment. Further contention was raised that the statement of Shri Narendra R. Shah was not provided to the assessee nor opportunity to cross examine said Narendra R Shah was given to the assessee. Further the assessee has raised the contention that said narendra R. Shah is not connected with M/s Surya Deep Salt Refinery and Chemical Works Ltd.. All these contentions are legal contention, which requires investigation of facts, therefore, the interest of justice will be best sub served if the matter is set-aside and restored to the file of the Assessing Officer to denovo determine the issue on merits after giving opportunity of being heard to the assessee. The Assessing Officer is directed to provide the copy of statement of Shri Narendra R. Shah to the assessee and allow cross examination of Shri Narendra R. Shah. The assessee shall be allowed to raise all legal contentions and be allowed to submit all necessary and relevant evidences in support of its contentions before the Assessing Officer in remand proceedings. We would like to clarify at this stage that once the Revenue has doubted the genuineness of the transaction with incriminating material, the onus shifts back to the assessee to prove by cogent material that the said share transaction is genuine. Needless to mention here

that the assessee be provided due opportunity of being heard with further liberty to furnish necessary evidence, if any, in support of its claim.

Finally, the appeal of the assessee is allowed for statistical purposes only.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 01/12/2016.

Sd/-

Sd/-

(Rajesh Kumar)

(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/12/2016

Shekhar, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai