

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'B' NEW DELHI]****BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
A N D
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)****ITA. No. 3395/DEL/2019
Assessment Year: 2009-10**

Duggal Estates Pvt. Ltd., HN-1140, Nehru Colony, NH-3, Faridabad, Haryana - 121 001. PIN : AACCD1642A APPELLANT	Vs.	Income Tax Officer, Ward : 1 (2) Faridabad. RESPONDENT
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A N D**ITA. No. 3396/DEL/2019
Assessment Year: 2009-10**

Duggal & Sons Buildwell Pvt. Ltd., HN-1140, Nehru Colony, NH-3, Faridabad, Haryana - 121 001. PIN : AACCD5891M (APPELLANT)	Vs.	Income Tax Officer, Ward : 1 (2) Faridabad. (RESPONDENT)
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Assessee by :	Shri Kapil Goel, Adv.
Department by:	Ms.Nidhi Srivastava, CIT-DR

Date of Hearing	06.05.2021
Date of Pronouncement	24.05.2021

O R D E R**PER SUCHITRA KAMBLE, JM :**

Both these appeals are filed by the assessee against the order dated 10/04/2019 passed by the Commissioner of Income Tax (Appeals) Faridabad, for Assessment Year 2009-10.

2. The common grounds of appeal (except for the amount) are as under :-

1. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) rws 147 without appreciating that the Assessment Order is bad in law, void-ab-initio and is liable to quashed.

2. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3)/147 without appreciating that all the additions made are null and void because of no correlation to corresponding incriminating material found during the course of extensive search operation u/s 132 of the Income Tax Act, 1961.

3. That on the facts and in the circumstances of the case and in law, Ld CIT-A has grossly erred and seriously committed a mistake in not declaring the assessment as null and void as admittedly in assessee's case, provisions of Sec 147/148 can't be made applicable when search was conducted u/s 132, as strictly excluded u/s 153A/153B/153C of the Income Tax Act, 1961.

4. That on the facts and in the circumstances of the case and in law, Ld CIT-A has grossly erred and seriously committed a mistake in not declaring the assessment as null and void as admittedly in assessee's case, as no application of mind by the Ld AO and no independent enquiry was made by Ld AO while recording the reasons u/s 147/148 of the Act.

5. That on the facts and in the circumstances of the case and in law, Ld CIT-A has grossly erred and seriously committed a mistake in not declaring the assessment as null and void as admittedly in assessee's case as the prescribed procedure was not followed while framing the assessment, as the objections filed in response to the reasons recorded were not quashed by separate independent speaking order.

6. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3)/147 without appreciating that Ld AO has erred in law and on facts of the case in making following additions to the returned income of the assessee Rs.100,00,000.00 as fresh share capital introduced during the year due to which the Assessment Order is bad in law, void-ab-initio and is liable to set aside in full.

7. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3)/147 without appreciating that Ld AO has erred in law and on facts in arbitrarily approving the unlawful addition made by Ld AO on account of Share Capital, which is in contravention to a settled legal position that without any incriminating material viz a viz the addition concerned, and without any material that stated share capital is in the nature of accommodated entry and merely on the basis of direction & dictates of Investigation Wing addition is made, relying on un-

confronted appraisal report, which is confidential document & never supplied to the assessee.

Further, That the Ld Assessing Officer is misdirected himself in approaching the entire issue from incorrect prospective in gross non appreciation of the facts that Post search proceedings cannot be treated / partake the character of incriminating material in the eyes of law.

8. That entire assessment and additions made are contrary to material on record ie

- a) Search statements recorded u/s 132(4)
- b) Replies given post search to Investigation wing Faridabad
- c) Replies given during the course of assessment proceedings.

9. That the Ld Assessing Officer made a serious error in making the additions by violating the principles of audi alterm pattern ie Principles of natural justice, because the basis of additions and reasoning thereof has never been communicated to the assessee in the form of proper show cause notice.

10. That the Assessment order of the Ld Assessing Officer is bad in law and facts as it is prejudicial to the interests of the appellant due to lack of principles of natural justice or violation of principles of natural justice.

11. Benefit of telescoping in worst case : That in worst case (without prejudice) on the facts and in the circumstances of the case of law, Ld CIT(A) erred in not deleting the additions made by Ld AO applying principles of telescoping which is clearly applicable in present facts to additions made by very same orders to avoid double taxation.

12. That the Appellant prays for the grant of permission to add, alter, delete, modify, any or all of the grounds of appeal at any time on or before or during the time of hearing before the Hon'ble ITAT.”

3. Since, both the appeals are identical; we are taking up facts of ITA No. 3395/Del/2019. A Notice dated 31.03.2016 under Section 148 of the Income Tax Act, 1961 was issued to the assessee company for A.Y. 2009-10 to assess the income for the year under consideration. On 13.04.2016, the company vide letter dated 13.04.2016 submitted that the ITR filed u/s 139 may be treated as ITR in response to Section 148 of the Act and filed the copy of ITR as well as the computation. The assessee also filed copy of audited balance sheet for the year 2008-09 along with notes to accounts was also submitted before the Assessing Officer. On 13.04.2016, the assessee requested for the copy of

reasons recorded along with satisfaction / permission of Pr. CIT as mentioned in the referred notice. Further the inspection of the file was requested vide letter dated 13.04.2016 by the assessee. The assessee was provided with the copy of reasons along with form for getting approval from Pr. CIT-Faridabad. Vide Letter dated 09.05.2016, after inspect of the file, the assessee requested for the copy of letter dated 28.03.2016 from the office of ADIT (Investigation), Faridabad which was not provided to the assessee. On 09.05.2016, the assessee field objections to the reasons recorded. The same was not quashed by a speaking order except that the same was dealt in the assessment order dated 27.12.2016 which the assessee submitted that the same is against the procedures laid by the Apex Court in the case of GKN Driveshaft 2002 Supp(4) SCR 359. After various submissions to the notices issued and complied with, the Assessing Officer made an addition of Rs. 1,00,00,000/- to the income of the assessee under Section 68 of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that Ground Nos. 2 and 3 are not pressed. The Ld. AR further submitted that there are three aspects of jurisdictional issues are involved in the present appeal. Firstly, that of non-disposal of objections by separate speaking order, secondly, that of reasons recorded solely based on borrowed satisfaction and thirdly, that of approval of higher authority is arbitrarily and mechanically given. The Ld. AR submitted that these three jurisdictional aspects are fully covered in favour of the assessee by following decisions:

- i. Smt. Meena Gupta ITA No. 7372/Del/2019 order dated 10.09.2020 (Del.Tri.)
- ii. Ferrous Infrastructure Pvt. Ltd. (W.P.(C) No. 5229/2014 & CM No. 10401/2014 order dated 21.05.2015)

- iii. Haryana Acrylic 308 ITR 38 (Del. HC)
- iv. M/s Admach Auto Ltd. ITA No. 9543/Del/2019 order dated 18.12.2020
- v. CIT vs. M/s Pentafour Software Employees' Welfare Foundation 418 ITR 427
- vi. Shri Janak Shatilal Mehata Tax Case Appeal No. 273 of 2020 dated 16.12.2020 (Mad. HC)
- vii. M/s SSG Mercantile Pvt. Ltd. ITA No. 1864/Del/2019 order dated 14.01.2021 (Del. Tri.)
- viii. Eminent Computers Pvt. Ltd. ITA No. 6372/Del/2019 order dated 24.11.2020 (Del. Tri.)
- ix. Kantibhai Dharamshibhai Narola Special Civil Application No. 19549 of 2018 order dated 06.01.2021 (Guj. HC)
- x. Shri Hitesh Ashok Vaswani ITA No. 118 to 123/Ahd/2019 order dated 12.11.2020 (Ahmd. Tri.)
- xi. M/s Shodiman Investments Pvt. Ltd. 422 ITR 437 (Bom. HC)
- xii. Shri Sanjay Singhal (HUF) ITA No. 702 to 704/Chd/2018 order dated 19.06.2020 (Chd. Tri.)
- xiii. National Co-operative Development Corporation vs. CIT Civil Appeal Nos. 5105-5107 of 2009 order dated 11.09.2020.

The Ld. AR further pointed out that the reasons itself are vague as in first para of the reasons recorded dated 29.03.2016, it is mentioned that the assessee was engaged in providing accommodation entry and in second para observed that the assessee received share capital and share premium from different parties. The approval is also mechanical and does not have proper satisfaction recorded by the competent authority. Therefore, the Assessment itself is void-ab-intio. Therefore, the assessment should be quashed and the additions thereof does not sustain.

6. The Ld. DR submitted that the reasons recorded was proper and as per the provisions of the Income Tax Act, 1961. The approval and the satisfaction of the competent authority is as per the law prescribed by the Income Tax statute. Thus, the assessment order was just and proper and the same cannot be called as nullity. There is only procedural lapse and the same will not make assessment null and void. The Ld. DR relied upon the decision of the GKN Driveshaft (supra). The Ld. DR further submitted that the objections were disposed off in the assessment order itself. Thus, the same cannot be said that the objections were not disposed off. The approval is also not mechanical but is a proper approval and the same is done by the competent authority.

7. We have heard both the parties and perused all the relevant material available on record. At the time of hearing, the Ld. AR not pressed Ground Nos. 2 and 3, hence Ground Nos. 2 and 3 are dismissed. Firstly, we are taking the jurisdictional grounds that are Ground Nos. 1, 4 and 5. The reasons recorded on 29.04.2016 by the Assessing Officer are as follows:

“Reasons for initiation of proceedings under section 147 of the Income Tax Act, 1961:-

As per information received from DDIT(Inv.)-I, Faridabad vide his office letter F.No.DDIt/Inv.-I,/FBD/2015-16/4739 dated 28.03.2016 that the assessee has obtained accommodation entry in the form of share capital and share premium from paper companies of Kolkata and Delhi from different concerns for the financial year 2008-09. During the course of enquiry made by the investigation, Faridabad it has been found that a firm M/s Duggal Estate Private Limited Prop. Sh. Sanjay Duggal was engaged in providing accommodation entries in the form of share capital and share premium from paper companies to the tune of Rs. 1 Crore. The assessee has filed his income tax for assessment year 2009-10 to the tune of Rs. 13,26,300/-.

On going through the statement of share capital and share premium it has been found that the assessee has received share capital and share premium from different parties concern during the financial year 2008-09 relevant to the assessment year 2009-10 to the tune of Rs. 1 Crore. So, it is clear that the assessee has reduced his net profit by Rs. 1 Crore. I have therefore reason to believe that the assessee has failed to disclose fully and truly all material facts in its return of income for the assessment year 2009-10.

Having perused and considered the above facts, undersigned has reason to believe that income of the assessee to the tune of Rs. 1 Crore and other income which subsequently comes to notice has escaped assessment for the assessment year 2009-10 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for computing correct income and filing his return of income for the A.Y. 2009-10.”

From the reasons it can be seen that the Assessing Officer was not specific as to on what basis the Assessing Officer has the reason to believe that the income of the assessee to the tune of 1 crore has escaped assessment. In fact, in one para the Assessing Officer is observing the assessee as accommodation entry provider and in next, the assessee is treated as the receiver of the share application money. But the basis for which is not elaborated and there is contradiction in the reasons given by the Assessing Officer. Besides this the Assessing Officer has not disposed off the objections filed by the assessee prior to concluding of the assessment proceedings, but has given a general finding in the Assessment order itself which is not in consonance with the provisions of the Income Tax statute relating to disposal of the objections by the Revenue authorities. In the present case, the Assessing Officer has not taken proper cognizance of the direction of the Hon'ble Supreme Court in case of GKN driveshaft India Ltd versus ITO 259 ITR 19 wherein it has been held that:-

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.

In so far as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct the appellate authority to dispose of the same, expeditiously."

Thus, the assessment becomes a nullity and does not survive as the Assessing Officer has not passed a speaking order of disposal of the objections filed by the assessee. The assessment also becomes void-ab-intio as the reasons recorded are also not in consonance with the actual escapement of the income of the assessee. Thus, the assessment order itself is null and void-ab-intio as the reassessment proceedings becomes invalid. In view of this, there is no need of going into the merits of the case. Hence, we are not adjudicating the rest of the grounds. Ground Nos. 1, 4 and 5 are allowed.

8. As regards to ITA No. 3396/Del/2019, the facts of this appeal is identical to that of ITA No. 3395/Del/2019. In fact, the reasons are also identical, hence the appeal in case of Duggal & Sons Buildwell Pvt. Ltd being ITA No. 3396/Del/2019 is allowed.

9. In result, both the appeals of the respective assesseees are allowed.

Order pronounced in the Open Court on this 24th Day of May, 2021

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 24/05/2021

MEHTA

Copy forwarded to :-

1. Appellants;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24/05.2021
Date on which the typed draft is placed before the dictating Member	24/05.2021
Date on which the typed draft is placed before the Other Member	24/05.2021
Date on which the approved draft comes to the Sr. PS/PS	24/05.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	24/05.2021
Date on which the fair order comes back to the Sr. PS/PS	24/05.2021
Date on which the final order is uploaded on the website of ITAT	24/05.2021
Date on which the file goes to the Bench Clerk	24/05.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	