

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.2472/Del/2016
Assessment Year: 2006-07

Super Industries,
Prop. S. Jagjit Singh,
L/H Shri Joginder Singh,
N.7, Gali No.9,
Anand Parbat Industrial Area,
New Delhi.
PAN: AASPS8033M

Vs ITO,
Ward-33(3),
New Delhi.

(Appellant)

(Respondent)

Assessee by : Shri Ramesh Goyal, CA
Revenue by : Ms Ranu Mukherjee, Sr. DR

Date of Hearing : 17.03.2021
Date of Pronouncement : 26.03.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 15th September, 2015 of the CIT(A)-17, New Delhi, relating to assessment year 2006-07.

2. This appeal was earlier dismissed by the Tribunal for non-appearance. Subsequently, the Tribunal, vide MA No.118/Del/2017, order dated 16th February, 2018, recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and the proprietor of M/s Super Industries. It filed its return of income on 27th October, 2006 declaring the total income at Rs.1,89,640/-. Subsequently, the case of the assessee was reopened on the basis of information obtained that the assessee indulged in bogus purchases/accommodation entries provided by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet and Shri Vaibhav Jain. Accordingly, the case of the assessee was reopened after recording reasons as per the provisions of section 147 of the Act. Notice u/s 148 dated 28th March, 2013 was issued and served upon the assessee. The AO, thereafter, issued statutory notices. Rejecting the various explanations given by the assessee and observing that the assessee has made bogus purchase of Rs.13,03,692/- from Shree Bankey Bihari Trading Co. and Shree Shyam Trading Co., which are owned by the persons named earlier, made addition of Rs.13,03,692/- u/s 69C of the IT Act.

3.1 Before the CIT(A), the assessee challenged the order of the AO in making the addition. The ld.CIT(A) held that addition of 20% of the purchase cost is to be fair and reasonable. While doing so, he relied on the decision of the Ahmedabad Bench of the Tribunal in the case of Vijay Proteins Ltd. 55 TTJ (Ahd) 76 and the decision of the Honøble Gujarat High Court in the case of M/s American Steel Pvt. Ltd. vs. CIT.

3.2 Aggrieved with such order of the CIT(A), the assessee is in appeal before the CIT(A) by raising the following grounds:-

1. That on the facts & circumstance of the case, the order passed by the Ld. A.O. is bad both in law and on facts of the case.

2. That on the facts & circumstance of the case, The Ld. A. O. has erred in making addition of Rs. 13,03,692/- on A/c of bogus purchases & CIT(A)-17, New Delhi further erred in upholding the addition to the tune of Rs. 2,06,738/- @ 20% of Rs. 13,03,692/- on A/c of bogus purchases & balance addition of Rs. 10,96,954/- has been deleted.

3. The Ld. CIT(A)-17 is totally unjustified in upholding the addition of Rs. 2,06,738/- where there is no bogus purchase as the assessee's sale have been accepted. The additions are upheld without any basis.

4. That the appellant craves leave to add, amend or alter any of the grounds of appeal.

4. The assessee has also filed the following additions grounds:-

1. That on the facts & circumstances of the case the action of Ld. AO is totally unjustified in re-opening the case u/s 147 on the basis of information received from investigation wing and has clearly not applied his mind.

2. That the action of Ld. AO in re-opening the case u/s 147 is totally wrong and is liable to be quashed.

5. The ld. Counsel for the assessee, referring to the decision of the Hon^{ble} Supreme Court in the case of NTPC Ltd. vs. CIT, 229 ITR 383 and Jute Corporation of India Ltd. vs. CIT, reported in 187 ITR 688, submitted that this is a legal ground and all necessary facts are available on record and no fresh facts are required to be investigated. He accordingly submitted that the additional grounds raised by the assessee should be admitted.

6. The ld. DR opposed the admission of the additional grounds.

7. After hearing the rival arguments made by both the sides and considering the fact that this is purely a legal ground and all necessary facts are already on record

and no new facts are required to be investigated into, the additional ground raised by the assessee are admitted for adjudication.

8. The ld. Counsel for the assessee, referring to the order of the Tribunal in assessee's own case for AYs 2007-08, vide ITA No.4722/Del/2016, order dated 15th May, 2017 and ITA No.3187/Del/2017, order dated 07.11.2017 for A.Y. 2008-09, submitted that under identical circumstances the Tribunal has quashed the reassessment proceedings on the ground that the case was reopened on the basis of information received from the Investigation Wing and the AO has not applied his mind before reopening of the assessment. He accordingly submitted that the validity of reassessment proceedings has been decided by the Tribunal in assessee's own case in the two subsequent years and, therefore, this being a covered matter, the additional ground raised by the assessee should be allowed and the reassessment proceedings should quashed.

9. The ld. DR, on the other hand, fairly conceded that the validity of the reassessment proceedings has been decided in favour of the assessee by the order of the Tribunal in assessee's own case for A.Y. 2007-08 and 2008-09.

10. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. A perusal of the assessment order shows that the following reasons have been recorded for reopening of the assessment:-

"Reasons for the belief that the income has escaped assessment in the case of M/s Super Industries for the assessment year 2006-07"

A letter bearing F.No. Addl.CIT/(Hq)/(Coord.)/Accommodation entry/2012-13/15016 dated 26.03.2013 was received from the Office of the Chief Commissioner of I.Tax, Delhi-I, New Delhi therein forwarding letter bearing F.No. CIT(C)-II/2012-13/3898 dated 19.03.2013 received from the Commissioner of I.Tax, Central-II, New Delhi along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain and directing this office to take necessary action as per section 148 in respect of entries pertaining to A.Y. 2006-07, which is time barring on 31.03.2013.

The information provided by the CIT, Central-II, New Delhi vide his letter dated 19.03.2013 reads as under :-

"Kindly find enclosed herewith letter dated 13.03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above:

2. The assessment of search cases of Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry providers has been obtained by the A.O.

3. The list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh. Vishesh Gupta. Hard copy of the list is enclosed as Annexure A, duly signed by Sh. Vishesh Gupta. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

4. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty-seven paper entities. The list of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list 'C'.

5. The soft copy of the information in respect to annexure A, B & C is also enclosed.

6. The information of accommodation entry includes A.Y. 2006-07 also, which is a time barring year for taking action u/s 148.

7. This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)."

On examining the list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A.Y. 2006-07, it is noticed that the following accommodation entries have been taken by the assessee namely M/s Super Industries:-

Sl. No.	Accommodation entry provided by	Name of party to whom Accommodation entry is provided	Amount of Accommodation entry
1	Shree Bankey Bihari Trading Co.	M/s Super Industries	Rs. 871002/-
2	Shree Shyam Trading Co.	M/s Super Industries	Rs. 432690/-
		Total amount of entries -	Rs. 1303692/-

Since Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of assessment proceedings u/s 153A of I.Tax Act have admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT,

Central Circle-10, New Delhi, therefore, it is fair to conclude that M/s Super Industries whose name is appearing in the said list, has taken accommodation entries from Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A.Y. 2006-07.

In view of the above, I have reasons to believe that income chargeable to tax of M/s Super Industries amounting to Rs. 1303692/- for the F.Y. 2005-06 relevant to A.Y. 2006-07 has escaped assessment and it is a fit case for initiation of proceedings u/s 147 of the Act.

Proposal in the prescribed form for the A.Y. 2006-07 (F.Y. 2005-06) is submitted herewith for kind consideration and necessary approval u/s 151(2) of the I.Tax Act, 1961 as the same is getting barred by limitation on 31/3/2013.

If approved, notice u/s 148 of the act may be issued.

Sd/-
28.03.2013
(Ashwani Khanna)
Income Tax Officer
Ward-33 (3), New Delhi

Joint CIT, Range-33, N.Delhi

For the reasons recorded above, it is a fit case for issue of notice u/s 148. Hence necessary approval as per section 151(2) of I.T. Act, 1961 is hereby given for reopening the case for A.Y. 2006-07.

Sd/-
28.03.2013
Joint CIT, Range-33, N.Delhi

11. I find, the Tribunal, in assessee's own case for A.Y. 2007-08, vide ITA No.4722/Del/2016, under identical circumstances, has quashed the reassessment proceedings by observing as under:-

¶6. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the AO reopened the assessment on the basis of information received from the Investigation Wing i.e. from the ACIT, Central Circle-10, Jhandewalen Extension, New Delhi vide letter dated 13.03.2013 which was forwarded through CIT, Central-II, New Delhi and CCIT, Delhi-I, New Delhi vide their letters dated 19.03.2013 and 26.03.2013 respectively. In the present case, the AO had the reason for belief that the income had escaped assessment only on the basis of information received from the Investigation Wing and did not apply his own mind.

7. On a similar issue the Hon'ble Jurisdictional High Court in the case of Principal Commissioner of Income Tax-4 Vs G & G Pharma Ltd. 384 ITR 147 (supra) held as under:

"The basic requirement of law for reopening an assessment is application of mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to conclude that he has reason to believe that income has

escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not make an inherently defective reassessment order valid."

It has further been held as under:

"Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment."

8. Similarly, the Hon'ble Jurisdictional High Court in the case of Signature Hotels Pvt. Ltd. Vs ITO and Anr. (2011) 338 ITR 51 (supra) held as under:

"Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence on belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bonafide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/material available with the Assessing Officer. The "reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and not that the Assessing Officer should have finally ascertained the fact by legal evidence or reached a conclusion, as is determined and decided in the assessment order, which is the final stage before the Assessing Officer.

It has further been held that:

"the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed

escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed."

9. In the present case also the AO simply acted upon the information received from the Investigation Wing and did not apply his own mind. Therefore, the reopening u/s 147 by issuing the notice u/s 148 of the Act only on the basis of information received from the Investigation Wing was not valid. Accordingly, the reassessment framed by the AO is quashed.ö

12. I find, following the above decision, the Tribunal, again, in assessee's own case for A.Y. 2008-09, vide ITA No.3187/Del/2017, has quashed the reassessment proceedings on the ground that the reassessment was made on the basis of information obtained from the Investigation Wing and the AO has not applied his mind. Since the reopening was made on the basis of the information received from the Investigation Wing, i.e., from the ACIT, Central Circle-10, Jhandewalan Extension, New Delhi and the AO has not applied his mind independently, therefore, respectfully following the decision of the Tribunal in assessee's own case for the two succeeding assessment years, I hold that the reopening of the assessment in the instant case is not in accordance with the law. I, therefore, quash the reassessment proceedings. Since the assessee succeeds on this legal ground, the grounds challenging the addition on merit are not being adjudicated.

13. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 26.03.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 26th March, 2021.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi