

(2024) 04 ITAT CK 0024

Income Tax Appellate Tribunal (Delhi B Bench)

Case No: Income Tax Appeal No. 9524/DEL/2019

Compact Texfab Pvt. Ltd
APPELLANT @Hash ITO

APPELLANT

Vs

RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 68, 133(6), 139(1), 143(1), 143(3), 147

Hon'ble Judges: Saktijit Dey, (VP); M Balaganesh, (AM)

Bench: Division Bench

Advocate: Akhilesh Kumar, Ankit Kumar, Vivek Kumar Upadhyay

Final Decision: Allowed

Judgement

- The appeal in ITA No.9524/Del/2019 AY 2011-12, arises out of the order of the Commissioner of Income Tax (Appeals)-16, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10110/2019-20 dated 09.10.2019 against the order of assessment passed u/s 147 r.w.s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.12.2018 by the Assessing Officer, ITO, Ward-6(2), New Delhi (hereinafter referred to as 'Id. AO').
- At the outset, we find that the assessee had challenged the validity of reopening of assessment u/s 147 of the Act on various facets. We deem it fit and appropriate to address this preliminary issue as it goes to the root of the matter.
- We have heard the rival submissions and perused the materials available on record. The return of income for the asst Year 2011-12 was originally filed u/s 139(1) of the Act on 23.9.2011 declaring loss of Rs 17,14,025/- which was duly processed u/s 143(1) of the Act. During the year under consideration, the assessee is an investment company and engaged in the business of trading in shares and securities. Information was received from DDIT (Inv) Unit 1(3), New Delhi that assessee has done certain transaction with respect to purchase / investment /

advance/ unsecured loan / share application money / share premium/ sale to M/s Olive Vinimay Pvt Ltd. Based on this information, assessment was reopened for the Asst Year 2011-12 by the Id. AO by issuance of notice u/s 148 of the Act on 31.3.2018 for the Asst Year 2011-12. In response to the said notice u/s 148 of the Act, the assessee filed its return of income showing loss of Rs 17,14,025/- on 19.5.2018. The assessee requested the Id. AO to furnish the reasons recorded for reopening the assessment which was provided by the Id. AO. For the sake of convenience, the reasons recorded by the Id. AO are reproduced herein below:-

4. From the above reasons, it could be seen that the Id. AO had not at the outset recorded any formation of belief that income of the assessee had escaped assessment within the meaning of section 147 of the Act. For this purpose, mere mentioning in the reasons that AO has reason to believe that income has escaped assessment would not be sufficient. The Id. AO should have tangible material or information in his possession and such material / information should have live link or nexus with the formation of belief that income of a person had escaped assessment. In the instant case, the Id. AO had merely recorded the details of opening stock, purchases, sales and closing stock without even mentioning from which business, the said transactions were carried out by the assessee. He had not formed any belief. Merely based on information from Investigation wing, the Id. AO had recorded that the assessee had not reflected the true nature of transactions.

No basis was reflected for arriving to this conclusion. Further, the Id. AO had stated that the assessee was a beneficiary of accommodation entries received from 4 parties by duly mentioning certain figures. The Id. AR before us pointed out that those figures mentioned in the reasons are factually incorrect as tabulated below:-



5. Accordingly, the Id. AR stated that the entire reasons recorded were based on incorrect assumption of facts without making any verification to the facts of the assessee. It was submitted that there was no application of mind on the part of the Id. AO before assuming jurisdiction u/s 147 of the Act. He argued that infact reopening has been done only for making roving and fishing enquiries by the Id. AO. Per Contra, the Id. DR submitted that sufficiency of information need not be gone into at the time of recording of reasons. Once there is *prima facie* information that income of the assessee had escaped assessment, the assumption of jurisdiction by the Id. AO u/s 147 of the Act cannot be questioned.

6. The assessee on receipt of reasons recorded for reopening the assessment, had filed objections before the Id. AO vide letter dated 10.10.2018 which is enclosed in Pages 37 to 124 of the Paper Book. The assessee *prima facie* submitted that it is engaged in the business of investments and in trading of shares and securities. It

had derived turnover of Rs 8.80 crores and the trading business was running smoothly till financial year 2013-14 and thereafter due to fall in price of shares of Era Infra Engineering Col Ltd in Bombay Stock Exchange, the assessee company incurred huge losses and had to practically make its business dormant with effect from 4.5.2017. The assessee gave the complete list of loans and advances received and paid by the assessee company being an investment company together with their complete list. It was submitted that the loans borrowed were duly utilized for the purpose of its business and interest paid thereon was claimed as deduction. The said interest was duly subjected to deduction of tax at source. Some loans were received and paid for the purpose of purchase of shares. These shares were purchased by the assessee company as per requirement of the loanee company and many times shares were kept in common pool till they were sold on the request of the loanee. These loans and advances received by other companies were settled with the finalization of the purchase / sale of shares or at the time of booking profit / loss. The assessee specifically met the allegation leveled in the reasons that companies were in the business of providing accommodation entries who wish to introduce their unaccounted money in the form of share capital, share premium, share application money/unsecured loans, by stating that it being an investment company engaged in the trading of shares and securities and during the year under consideration had total turnover of Rs 8.80 crores. Hence it cannot be said that assessee company is providing any accommodation entry. The loans and advances received by the assessee company are utilized for the purchase of shares or they are returned back to the same entity by way of regular banking channels, if so desired by the loanee company. All loans and advances were received through regular banking channels and the same have been cleared or returned back properly from the bank account of the assessee. Hence it cannot be construed as mere accommodation entries. As regards inflation of expenses, it was submitted that no interest has been given on the loans and advances which have been received for the purpose of purchase of shares. However, loans and advances received for day to day business of the assessee were interest bearing and interest on the nominal rate of 12% per annum has been paid in the sum of Rs 5,75,285/- after due deduction of tax at source. Thereafter the assessee furnished the party wise details of aforesaid 4 entities mentioned in the reasons recorded as under:-

Particulars	Olive Vinimay Pvt Ltd	Naman Govil	Rita Govi	Padmini Wiles Pvt Ltd
Amount	1000000	1000000	1000000	1000000
Interest	120000	120000	120000	120000
Amount	1000000	1000000	1000000	1000000
Interest	120000	120000	120000	120000

7. The assessee also furnished the complete details of all the aforesaid loan creditors such as confirmation of balance , ledger account as appearing in the respective books for the relevant period, bank statements of the lenders proving the immediate source of credit, copy of income tax return acknowledgements together with their statement of total income, audited financial statements of Olive Vinimay P

Ltd, to prove the three necessary ingredients of section 68 of the Act viz identity of the lenders, creditworthiness of the lenders and genuineness of the transactions. The Id. AO was satisfied with the complete details furnished by the assessee with regard to three parties viz Rita Govil, Naman Govil and Padam Wires P Ltd and did not resort to make any addition thereon. However, with regard to loan received in the sum of Rs 10 lacs during the year from Olive Vinimay P Ltd, the Id. AO added the same as unexplained cash credit u/s 68 of the Act on the ground that the said lender in response to notice u/s 133(6) of the Act had responded that no loan was given by them to the assessee and also on the ground that the said lender company had declared Nil income in their income tax returns filed for Asst Years 2011-12 and 2017-18. We find from the ledger account confirmation given by Olive Vinimay Pvt Ltd which is enclosed in Page 126 of the Paper Book , it is clearly reflected that a sum of Rs 10,00,000/- was received as fresh loan during the year and total sum of Rs 32,00,000/- was repaid by the assessee to Olive Vinimay Pvt Ltd during the year itself. Hence the reliance placed by the Id. AO on the reply of the lender is completely misplaced in view of this fact. As far as availability of cash flow with Olive Vinimay Pvt Ltd, the same is duly reflected in the bank statement of Olive Vinimay Pvt Ltd which had been placed on record (once by the assessee and again directly by the said lender company in response to notice u/s 133(6) of the Act) and hence creditworthiness of the lender company is also proved beyond reasonable doubt. This fact is evident from perusal of the balance sheet of Olive Vinimay Pvt Ltd wherein it has interest free funds of Rs 2.27 crores in its kitty to advance interest free loan to the assessee company. All the transactions are routed through regular banking channels and in the instant case, the assessee had even repaid the entire loans to Olive Vinimay Pvt Ltd during the year under consideration. Hence the genuineness of the transactions are also proved beyond reasonable doubt. The same cannot by any stretch of imagination be construed as accommodation entries. Hence we have no hesitation to delete the addition made in the sum of Rs 10 lakhs as unexplained cash credit u/s 68 of the Act.

8. It could be seen that the entire reassessment proceedings had been initiated by the Id. AO by recording completely incorrect facts qua the assessee's transactions with respect to the aforesaid lenders as could be seen from the differential figures mentioned in para 4 supra. Hence the basic assumption of jurisdiction is based on incorrect assumption of fact. Moreover, on perusal of the reasons recorded for reopening the assessment, we find that the Id. AO had merely stated the primary facts that are either incorrect or already accounted and available in the financial statements of the assessee company. The investigation wing had alleged these loan transactions with aforesaid 4 entities to be accommodation entries. The Id. AO without making any verification from his side with regard to the aforementioned loan transactions, had arrived at a *prima facie* conclusion that these are accommodation entries. Had the Id. AO resorted to make preliminary enquiry before assuming jurisdiction u/s 147 of the Act, he would have had no other option

but to accept the transactions of the assessee as genuine, which fact is evident from the aforesaid observations made by us. Infact the Id. AO himself had subsequently accepted the loan transactions from Rita Govil, Naman Govil and Padam Wires P Ltd to be genuine and had not made any addition thereon. Hence there cannot be any reason to believe that income had escaped assessment for these loan transactions and they cannot be construed as accommodation entries. With regard to loan from Olive Vinimay P Ltd, we had already held hereinabove that the said loan transactions cannot be construed as accommodation entries as the assessee had duly repaid the entire loans in full during the year itself through regular banking channels and moreover the very basic assumption of jurisdiction u/s 147 of the Act was based on incorrect facts recorded by the Id. AO. Hence the assumption of jurisdiction u/s 147 of the Act fails on this count also. Our view is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of *Synfonia Tradelinks P Ltd vs ITO* reported in 435 ITR 642 (Del) wherein it was held as under:-

"9.5 Mr. Singh, in a desperate attempt to salvage the situation, drew our attention to the unsecured loans shown in the income tax returns of the assessee for AYs 2010-2011 and 2011-2012 amounting to Rs. 38,071/- and Rs. 25,57,206/- respectively. Apart from anything else, simple math would show that the cumulative total of these figures is Rs. 25,95,277/- and not Rs. 26,93,500/- which, according to respondent no. 1, is the unexplained credit in the books of accounts of the assessee and, hence, required to be added under section 68 of the Act. Therefore, for Mr. Singh to say that these are inadvertent errors and hence should be ignored, in our opinion, is an argument that is completely misconceived. As indicated above, if the information received (from the investigation wing) was that the accommodation entries, in lieu of cash, were taken in the form of share capital and share premium they could certainly not be linked to unsecured loans received in AYs 2010-2011 and 2011-2012.

9.6 It is pertinent to note that in the objections filed by the assessee, an attempt has been made to explain the purported accommodation entries by stating therein that the advances had been given to the 5 companies adverted to in the order recording reasons which were received back on the dates given in the said order. The assessee also went on to state, in its objections, that the opening balance (as on 1-4-2010) and closing balance (as on 31-3-2011) of the share premium account (Rs. 3,66,16,800/-) and the share capital account (Rs. 24,15,200/-) remained unchanged. In other words, the emphasis was that there was no increase in the share capital or the share premium account, as alleged, or at all. In the order passed by the assessing officer dated 8-10-2018, whereby, the objections of the assessee were rejected; none of this has been dealt with. Therefore, in our view, while the assessing officer may suspect that the taxable income of the assessee escaped assessment, he could not have formed a belief qua the same based on the material which is, presently, on record.

9.7 Therefore, in our opinion, the formation of belief by respondent no. 1 that income of the assessee chargeable to tax had escaped assessment, was unreasonable and irrational, as it could not be related to the underlining information; something which is discernible from a bare reading of the order recording reasons."

9. The Id. AO had merely resorted to reopening the assessment based on borrowed satisfaction from investigation wing without having any independent application of mind from his side. We are in agreement with the argument of the Id. AR that the reopening in the instant case had been made only with a view to make roving and fishing enquiries, which is not permissible in law. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of PCIT vs Sheetal Dushyant Chaturvedi reported in 134 taxmann.com 327 (Bom) wherein the Special Leave Petition (SLP) preferred by the revenue before the Hon'ble Supreme Court was dismissed in 285 Taxman 85 (SC). Similar views were taken in the following cases:-

- a) Decision of Hon'ble Punjab & Haryana High Court in the case of Vipin Khanna vs CIT reported in 255 ITR 220 (P&H).
- b) Decision of Hon'ble Jurisdictional High Court in the case of Ranbaxy Laboratories Ltd vs CIT reported in 200 taxman 242 (Del).

10. A perusal of the reasons recorded by the Id. AO would show that on the mere suggestion of the investigation wing of the movement of funds escaping assessment by construing it to be accommodation entries, the reassessment proceedings have been initiated by the Id. AO in the belief of escapement of income of the assessee. Apparently as between the information received and the inference drawn by the Id. AO, there is absolutely no live link or nexus which would enable him to form a belief that income of the assessee had escaped assessment warranting reopening u/s 147 of the Act. Absence of live link between the material on record and the satisfaction recorded completely mutilates the validity of the action of the Id. AO. It is with reference to the contents of the material contained in the report of the investigation wing that the nexus of the reasons for the Id. AO's formation of belief of escapement of income of the assessee would have to be tested. Absent that foundational material, the test would without doubt fail. Reliance has been rightly placed by the Id. AR before us on the decision of Hon'ble Supreme Court in the case of ITO vs Lakhmani Mewal Das reported in 103 ITR 437 (SC) , wherein at page 448, the Hon'ble Apex Court held as under:-

"As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to

disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material fact was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned judges in the High Court, in our opinion, were not in error in holding that the said material could not have led escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.

(Emphasis supplied by us hereinabove)

11. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we have no hesitation to quash the reassessment on the ground that the Id. AO had invalidly assumed jurisdiction u/s

147 of the Act in the facts and circumstances of the instant case.

12. We find that the Id. AO had also made one more addition u/s 68 of the Act in respect of loan received in the sum of Rs 1.50 crores from Vvian Construction Private Limited. Since the entire reassessment proceedings have been quashed hereinabove, the adjudication of the addition u/s 68 of the Act on merits in respect of Rs 1.50 crores would be academic in nature and hence it is left open.

13. In the result, the appeal of the assessee is allowed.