

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 18512 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PUSHPAK BULLION PVT LTD....Petitioner(s)

Versus

DEPUTY COMMISSIONER OF INCOME TAX - CIRCLE - 3 (1)

(1)....Respondent(s)

Appearance:

MR MANISH J SHAH, ADVOCATE for the Petitioner.

MR NITIN K MEHTA, ADVOCATE for the Respondent.

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 27/06/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

The petitioner has challenged a notice dated 21.3.2014 seeking to re-open assessment of the petitioner for the assessment year 2007-2008. Brief facts are as under:

The petitioner is a company registered under Companies Act. For the assessment year 2007-2008, the petitioner filed return of income on 15.11.2007. Such return was accepted without scrutiny in terms of section 143(1) of the Income Tax Act, 1961 ("the Act" for short). To re-open such reassessment, the Assessing Officer issued the impugned notice. He has recorded following reasons for issuing notice for re-opening.

"Assessee has filed return of income on 15.11.2007 at total income of Rs. 13,22,04,630/-. The return was processed under section 143(1) of the I.T. Act. Further information has been received from DDIT(Inv)-III(2), Mumbai that a search and seizure action was carried out in the case of Shri Praveen Kumar Jain group on 1.10.2013. In the statement recorded during the course of search Shri Pravin Kumar admitted that the only activity carried out by all concerns controlled by him is providing accommodatin entries in the nature of bogus unsecured loan, share application money, bogus sales and LTCG etc. Further from the statements of dummy directions/proprietors, it was revealed that they were used to sign different papers for nominal consideration given by Shri Pravin Kumar Jain, Pravin Kumar Jain himself is a

direction in few concerns only. However, through various dummy directors/proprietors he controls, operates and manages a large number of concerns. All these concerns are not carrying out any genuine business. They do not have any physical stock of goods. Further these concerns have not employed any persons except a few common accountants who manage accounts and banking transactions of all such concerns and all these concerns are indulged in the activity of providing accommodation entries only,

Subsequent to the search action in the case of Shri Pravin Kumar Jain, search and seizure action was carried out by the Mumbai Investigation Wing in Kamla Land Mark group and Subhlaxmi Group.

Kamla Land Mark Group involved in the business of real estate had taken accommodation entries on unsecured loans from various concerns including those run and operated by Shri Pravin Kumar Jain. During the course of search action, Shri Jitu Jain the promoter of the group admitted in his statement recorded on oath under section 132(4) that the group had taken unsecured loans taken from two bogus entities viz. Faststone Trading Co.Pvt.Ltd. And New Planet Trading Co.Pvt.Ltd. Controlled by Shri Praveen Kumar Jain.

Similarly, Subhalaxmi Group engaged in the business of manufacturing of textiles, had taken accommodation entries of bogus shares capital from various entry providers including the concerns of Shri Pravin Kumar Jain. In his statement recorded on oath under section 132(4), Shri Yogesh Agarwal, promoter of the group admitted that such entries of share capital are in the nature of accommodation entries only.

The above search findings corroborates that all the concerns run, controller and operated by Shri Pravin Kumar Jain are indulged in the activity of providing accommodation entries only.

From the information received it is seen that the assessee has taken accommodation entries from the following accommodation entry operation, run, controlled and operated by Shri Pravin Kumar Jain. The details are as under:

Sr. no.	Name of hawala entry operator	Amount	Date	Nature of transactions
1	Kunal Gems	6,34,00,000	20.09.2006	Bogus investment/s hare applications
2	Natasha Enterprises	3,13,90,000	21.02.2007	Bogus investment/s hare applications
3	Mohit International	3,13,80,000	10/01/07	Bogus investment/s hare applications
	Total	12,61,70,000		

From the above facts, it is clear that the assessee had failed to disclose fully and truly all material facts for the A.Y.2007-2008. In view of the above facts, I have reason to believe that income to the extent of Rs. 12,61,70,000/- chargeable to tax has escape assessment by the reason of failure on the part of the assessee to disclose fully and truly all material facts within the meaning of section 147 of the I.T.Act, 1961.

In order to bring to tax above mentioned escaped income as well as any other income which might have escaped

assessment, found during the course of proceedings, notice under section 148 is issued.”

2. Upon supplying reasons for re-opening, the petitioner raised objections under communication dated 19.2.2015. Such objections were however rejected by the Assessing Officer by an order dated 10.7.2015. Hence this petition.

3. While agreeing with the original assessment which was not framed after scrutiny, learned counsel for the petitioner submitted that the Assessing Officer had abandoned reasons which were foundation for issuance of the impugned notice. On this single ground, he challenged the notice for re-opening. To establish this ground, he invited our attention to the portion of the objections raised by the petitioner in which it was stated as under:

“2. From the reasons recorded, it may be seen that the company has received the share application money of Rs. 12,61,70,000/- from the following three parties as under:

Sr.No.	Name of Hawala entry operator	Amount Rs.	Date	Nature of transaction
1	Kunal Gems	6,34,00,000	20.09.2006	Bogus Investments/ share applications
2	Natasha Enterprises	3,13,80,000	21.02.2007	Bogus investments/ Share applications
3	Mohit International	3,13,80,000	10/01/07	Bogus

				investments/ share applications
	Total	12,61,70,000		

3. The assessee has in fact received the share application money of Rs. 90,00,000 from the following two parties as on 31.3.2007 relevant to A.Y.2007-08 as under:

Sr.No.	Name	Address	Share amount Rs
1	Ken Securities Ltd.	A/205, Fair Deal House, Nr. Swastik Cross roads, Nr.C.G.Road, Navrangpura, Ahmedabad	75,00,000
2	Winter fresh Food Pvt.Ltd.	3610, 4 th floor, flat no.15, Chandani Apartment, Kubernagar bungalow area, Ahmedabad	15,00,000
		Total	90,00,000

4. From the above, it may please be seen that the information received is erroneous and therefore the notice issued under section 148 on the basis of such information is also erroneous and ill-conceived. In fact, there is no escapement of income so far as the assessee is concerned. You are therefore, requested to drop the proceedings and this may pleased be treated as objections to the reopening of the assessment."

4. Counsel also drew our attention to the

relevant portion of the objections of the petitioner and the manner in which this objection was rejected by the Assessing Officer.

5. We have perused materials on record. We may recall that the original assessment was not framed after scrutiny. The return filed by the assessee was accepted under section 143(1) of the Act. In this context, we may refer the decision of the Supreme Court in the case of **Assistant Commissioner of Income-Tax v. Rajesh Jhaveri Stock Brokers P.Ltd.** reported in 291 ITR 500 in which it was held and observed as under:

“13.....In the scheme of things, as noted above, the intimation under section 143(1) (a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimise the Departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K.Jain,J) in *Apogee International Limited v. Union of India* (1996) 220 nITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be

deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under section 143(1) (a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise."

6. With this background, dealing with the petitioner's sole contention of the Assessing Officer having abandoned reasons for re-opening the assessment while dealing with the objections raised by the petitioner regarding the share application money, it was stated as under:

"6. The undersigned has gone through the objections filed by the assessee. The sole objection of the assessee is that the information on basis of which the reopening has been initiated is erroneous and ill conceived. As per the reasons recorded the company has received share application money from the three parties tabulated below.

S.N	Name of Hawala operator	Amount	Date	Nature of transaction

1	Kunal Gems	6,34,00,000	20.9.2006	Bogus Investments/Share application
2	Natasha Enterprises	3,13,90,000	21.2.2007	Bogus investments/Share application
3	Mohit International	3,13,80,000	10/01/07	Bogus investments/Share application
	Total	12,61,70,000		

However, as per assessee, it has in fact received share application money of Rs. 90,00,000/- from following two parties as on 31.3.2007 relevant to AY 2007-08.

Sr.No	Name	Amount
1	Ken Securities Ltd., Ahmedabad	7500000
2	Winter fresh Food Pvt.Ltd. Ahmedabad	1500000
3	Total	9000000

Thus assessee has contended that the reason recorded for reopening is erroneous.

7. The contention of the assessee has been examined. The reopening of the assessee company's case for AY 2007-2008 is valid for following reasons:

a. The three entities mentioned in the reasons recorded for reopening were run, controlled and operated by Shri Praveen Kumar Jain. During the search conducted by Mumbai Investigation wing on Shri Praveen Kumar Jain on 1.10.2013, it has been established and admitted that Shri Pravin Kumar Jain's only business was providing accommodation entries through dummy concerns. These accommodation entries were in the nature of bogus share capital, bogus unsecured loan are bogus sale/purchase entries.

b. As per information provided by the investigating wing, Mumbai. The three entities viz. Kunal Gems, Natasha Enterprises and Mohit International were not carrying out any genuine business and were engaged in providing accommodation entries of the nature of bogus share capital, bogus unsecured loan or bogus sale/purchase entries.

c. The assessee has nowhere denied that it has not made any transaction with the three concerns. The reason being that the accommodation entries must have been routed through Banking channel, for which the trail cannot be obliterated by the assessee. However, the accounting treatment of the same is in control of the assessee and it has accounted the transactions with the three entities in head other than Share capital/bogus investment i.e. as Sale transactions.

d. It can be easily presumed that entities which have no real business besides facilitating accommodation entries were not capable of such purchase of bullion/jewellery. Thus assessee has fabricated sale bill in name of these entities in order to account for the credits.

e. The information that bogus share premium has been received by the assessee from the three dummy entities was passed on by the Mumbai Investigating wing. The nature of entry provided has been gathered from the entities searched during course of search conducted by Mumbai Investigation wing on Shri Praveen Kumar Jain on 1.10.2013 and during post search investigation. Thus what treatment the beneficiary of such accommodation entry has given in its own books of accounts is subject to verification. In the assessee company's case it is certain that the assessee company has benefitted from accommodation entry which was prima facie the case of share application/bogus investment as mentioned in reason for reopening. This fact

is not vitiated by the fact that the assessee has treated the accommodation entry credits as sales in its books, which is an afterthought arrangement and fudging of books of accounts.”

7. Upon perusal of the above quoted portions of the objections of the petitioner and the Assessing Officer disposing them of, it can be seen that the Assessing Officer had nowhere abandoned reasons which were the foundation for issuance of the notice for re-opening. He had considered the objections of the petitioner and disposed them of on the basis of material on record. The sole ground of the petitioner therefore, must fail.

8. In the present case, notice for re-opening having been issued in the case of assessment which was not framed after scrutiny. The Assessing Officer would have considerable latitude in issuing notice for re-opening if it is found that he had tangible material to form a belief that income chargeable to tax had escaped assessment, it would not be appropriate on our part to strike down the notice. For such reasons, the petition is dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

VC DARJI

