# IN THE INCOME TAX APPELLATE TRIBUNAL
# PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1633/PUN/2017
निर्धारण वर्ष / Assessment Year 2008-09

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| Gopal Extrusions Pvt. Ltd.,<br>G-51, MIDC Area,<br>Jalgaon – 425 003<br>PAN : AAACG8418K | Vs. | ITO, Ward-1(2),<br>Jalgaon |
| Appellant | | Respondent |

| | |
|---|---|
| Assessee by | None |
| Revenue by | Shri Deepak Garg |
| | |
| Date of hearing | 17-03-2021 |
| Date of pronouncement | 17-03-2021 |

## आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-2, Nashik on 01-05-2017 in relation to the assessment year 2008-09.

2. The appeal was fixed for hearing for the first time on 27-07-2020. None was present and it was adjourned for 10-08-2020. Thereafter, it was adjourned four times by sending notices to the assessee through Speed post, all of which have been returned by the Postal authorities with remarks "*Left address - Return to Sender*" on 10-08-2020, 12-09-2020, 30-09-2020 and 11-01-2021 respectively. In view of the above scenario, where the assessee has left the

address and the notices sent through speed post have been returned by the Postal Department several times, we are left with no option but to dispose of the appeal *ex parte qua* the assessee, on merits.

3. The first issue raised in this appeal through ground nos. 1 and 2 is against the initiation of re-assessment proceedings. Briefly stated, the facts of the case are that the AO initiated re-assessment proceedings with the following remarks as reproduced on pages 2 and 3 of the assessment order:

> "The Income Tax Department have carried out enquiries and investigated in this case, wherein the DCIT Cir-1, Jalgaon after obtaining prior approval of the Commissioner of Income Tax-2, Nashik have issued letters u/s.133(6) to the investors which are 15 in Nos and postal remarks are as under :

| S.No. | Name of the person making investment | Date of issue of 133(6) letters | Remarks |
|---|---|---|---|
| 1 | Nico Securities Pvt. Ltd., Jogeshwari (W), Mumbai | 21/11/2013 | Return back "Left" |
| 2 | Doldrem Investment & Finance Pvt. Ltd. Dahisar (E), Mumbai | 21/11/2013 | Refused |
| 3 | Ocean Investment & Finance Pvt. Ltd. Dahisar (E), Mumbai | 21/11/2013 | Refused |
| 4 | Veena Credit & Holding Pvt. Ltd., Kolkata | 21/11/2013 | Address moved |
| 5 | Saumitra Investment & Finance Pvt. Ltd., Dahisar (E), Mumbai | 21/11/2013 | Refused |
| 6 | VDR Consultants Pvt. Ltd., Kolkata | 21/11/2013 | Address moved |

| | | | |
|---|---|---|---|
| 7 | Pingle Commerce Pvt. Ltd., Kolkata | 21/11/2013 | Address cannot be located |
| 8 | Pentium Hi Tech Pvt. Ltd., Goregaon (W), Mumbai | 21/11/2013 | Unclaimed return to sender |
| 9 | Avanti Vyapar Pvt. Ltd., Kolkata | 21/11/2013 | Unclaimed return to sender |
| 10 | Vivek Tracom Pvt. Ltd., Kolkata | 21/11/2013 | No reply received |
| 11 | Sugreev Traders Pvt. Ltd., Kolkata | 21/11/2013 | No reply received |
| 12 | Malinath Trading Pvt. Ltd., Kolkata | 21/11/2013 | Not complied till 21/12/2013 |
| 13 | Novaflex cab case systems Ltd., Kolkata | 21/11/2013 | No reply received |
| 14 | Signet Commercial Pvt. Ltd., Kolkata | 21/11/2013 | No reply received |
| 15 | Sarthak Traders Pvt. Ltd., Kolkata | 21/11/2013 | No reply received |

These investors have invested in the company Gopal Extrusions (P) Ltd., Jalgaon by paying share premium. Out of 15 letters issued u/s.133(6), 9 letters have been received back by the postal department. In 5 cases, letters have been served but there is no response/compliance.

Thus, it is clear that the so called investors, i.e. Venture Capital Companies either do not exist at the given address or are front persons to introduce non income tax paid money of the beneficiary company, i.e. Gopal Extrusions (P) Ltd., Jalgaon.

In view of the facts mentioned above, there is evidence to show that there is an escapement of income to the tune of Rs.6,98,41,500/- within the meaning of section 147(c) of the Income Tax Act, 1961 for the A.Y. 2008-09.

Since the assessment for the A.Y. 2008-09 exceeds four years and there is no assessment u/s.143(3) completed, sanction for issue of notice u/s.148 of the Income Tax Act, 1961 of the Hon'ble Addl. Commissioner of Income Tax, Range-1, Jalgaon for reopening of

> proceedings u/s.151 of the I T Act, 1961 for the A.Y. 2008-09 by issue of notice u/s.148 is requested. Hence, the proposal."

4. In response to the notice, the assessee requested that the return originally filed on 21-11-2008 may be treated as a return filed in response to the notice u/s 148 of the Act. Simultaneously, the assessee also requested for supplying the certified copy of reasons recorded for the reopening. Such reasons were supplied to the assessee. The assessee raised objections. The objections were disposed of and thereafter the reassessment was taken up. The assessee remained unsuccessful before the ld. first appellate authority.

5. We have heard the ld. DR through Virtual Court and gone through the relevant material on record. It can be seen from the record that the assessee recorded in its books of account issue of share capital at face value of Rs.10/- with premium of Rs.30/- per share. All the investor companies came either from Kolkata or Mumbai for making such huge investments of Rs.8.40 crore with the assessee company. Notices u/s.133(6) were issued to such 15 companies, out of which 9 were returned by the Postal Department. In 5 cases, notices were served but there was no response. This led

to the formation of belief by the AO that the income escaped assessment.

6. At this juncture it is pertinent to note that instantly we are concerned with the stage of issuance of notice of reassessment. In order to get jurisdiction, what is necessary is to see the existence of reason to believe about the escapement of income and not any conclusive evidence of escapement, which aspect assumes significance only when the reassessment proceedings are taken up after initiation. The Hon'ble Supreme Court in *Raymond Woolen Mills vs. ITO (1999) 236 ITR 34 (SC)* has held that there should be reason to believe about the escapement of income at the stage of initiation of reassessment proceedings. Sufficiency or correctness of such material cannot be considered at that stage. The Hon'ble Apex Court has held in *ACIT vs. Rajesh Jhaveri Stock Broker (P) Ltd. (2007) 291 ITR 500 (SC)* that : `The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. *The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion*'. Explaining the position further, it laid

down that: `at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. *At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief.* Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction.'

7. At this stage, it would be apt to take note of the judgment of the Hon'ble Supreme Court in *Phoolchand Bajrang Lal and Anr vs. ITO and Anr (1993) 203 ITR 456 (SC)*, in which the AO's jurisdiction to initiate reassessment was challenged. Repelling the assessee's arguments, the Hon'ble Supreme Court held that an ITO acquires jurisdiction to reopen assessment under s. 147(a) r/w s. 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission of failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment

proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In that case, the ITO was held to have rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable. As such, we do not find any infirmity in the initiation of reassessment proceedings in the facts of the case under consideration.

8. That apart, the assessee has also challenged that the ld. Addl. CIT erred in according approval to the reasons recorded by the AO for reassessment. In view of the elaborate discussion above about the factual panorama prevailing in the extant case, we do not concur with the submission advanced by the assessee. Any person properly instructed in law, would not hesitate, even once, in according his imprimatur to proposal for re-assessment in the facts of the case as are obtaining herein. We, therefore, uphold the impugned order and dismiss the grounds raised by the assessee.

9. Now we take up the confirmation of addition of Rs.8,40,00,000/- made by the AO u/s.68 of the Act on account of share capital and share premium on merits.

10. As discussed above, the AO issued notice u/s.133(6) seeking certain details. All except one did not either receive the notice or comply with the AO's requirement. Only one company replied in response to notice u/s.133(6) by stating that : "*it had not contributed any share capital claimed by the assessee*" as has been recorded in para 5 of the assessment order. The AO, thereafter, issued summons u/s.131 to Shri Sanjay Kumar Taparia, one of the Directors of the assessee company and recorded his statement. In response to questionNo.2, he admitted that: "*there was no business activity of the assessee company and it had closed its business of pipe fitting since 2007*". In response to question No.10 as to how the alleged investor companies from Mumbai and Kolkata came to know about the company, the director of the assessee company submitted that he and certain other fellow-directors knew some persons engaged in private equity placement. In answer to question No.15 as to how much premium was paid at the time of subscription to share capital, it was answered that premium of Rs.30/- per share was paid as against its face value of Rs.10/-. When a specific query

as to whether the assessee company had started any business/manufacturing activity in F.Y. 2007-08, it was responded in answer to question No.17 that : "*the company had closed its business of manufacturing of PVC pipe and fitting in F.Y. 2006-07*". A further question was asked whether any dividend or any return on the investments was given by the assessee to these so called shareholder companies till date, the answer was again vague submitting that he did not remember exactly about it.

11. Section 68 requires making of an addition when the identity of the creditor, his capacity or genuineness of the transaction are not proved. Here is a case in which though the identity is proved because of the alleged shareholders being companies, but the genuineness of the transactions is wanting. In the absence of any business activity of a company, which was closed since 2007, we fail to appreciate as to how all the corporate investors coming exclusively from Mumbai and Kolkata would join and invest in the shares of such a company, and that too at a premium of 300% of the face value, which had no running business and further there were no returns on such investment. None of the alleged investors responded to the AO's notices u/s.133(6) except one company which also denied to have any transaction with the assessee

company. It is further worth mentioning that no correspondence took place between the assessee company and the alleged investors companies prior to making of huge investment or after such activity as has been noted in the impugned order. In such circumstances, we are satisfied that the assessee miserably failed to prove the genuineness of the transactions. The Hon'ble Bombay High Court in *Royal Rich Developers Pvt. Ltd. VS. Pr. CIT (2020) 313 CTR 0478 (Bom)* has upheld the addition made u/s 68 by observing that no rational person will invest in shares of a shell/paper company having no worthwhile business at a premium of Rs.35. In view of the foregoing, we uphold the impugned order in sustaining the addition of Rs.8.40 crore made u/s.68 of the Act.

12. Ground no. 5 regarding levy of interest u/s.234B, being, consequential is accordingly disposed of.

13. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 17th March, 2021.

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|---|---|
| Sd/- | Sd/- |
| **(S.S.VISWANETHRA RAVI)** | **(R.S.SYAL)** |
| **JUDICIAL MEMBER** | **VICE PRESIDENT** |

पुणे Pune; दिनांक Dated : 17th March, 2021
सतीश

**<u>आदेश की प्रतिलिपि  अग्रेषित/Copy of the Order is forwarded to</u>:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Nashik
4. The Pr. CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**A**" / DR
6. 'A', ITAT, Pune;
   गार्ड फाईल / Guard file.

**आदेशानुसार**/ BY ORDER,

**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

| | | Date | |
|---|---|---|---|
| 1. | Draft dictated on | 17-03-2021 | Sr.PS |
| 2. | Draft placed before author | 17-03-2021 | Sr.PS |
| 3. | Draft proposed & placed before the second member | | JM |
| 4. | Draft discussed/approved by Second Member. | | JM |
| 5. | Approved Draft comes to the Sr.PS/PS | | Sr.PS |
| 6. | Kept for pronouncement on | | Sr.PS |
| 7. | Date of uploading order | | Sr.PS |
| 8. | File sent to the Bench Clerk | | Sr.PS |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date on which file goes to the A.R. | | |
| 11. | Date of dispatch of Order. | | |

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