

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
[THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

I.T.A. No. 2489/Del/2019
Assessment Year: 2010-11

M/s ASN Polymers Pvt. Ltd.,
D-151, East of Kailash, New Delhi
PAN-AAGCA5009G

vs. Income Tax Officer,
Ward-1(1), New Delhi

(ASSESSEE)

(RESPONDENT)

Revenue by: Sh. R.S. Singhvi, Adv
Sh. Satyajit Goel, Adv
Assessee by: Sh. Prakash Duby, Sr. DR

ORDER

PER H.S. SIDHU, JM

Assessee has filed the present appeal against the impugned order dated 15.01.2019 passed by the learned Commissioner of Income Tax (Appeals)-1 New Delhi relating to Assessment Year 2010-11 on the following grounds:-

- 1. The order passed by the Learned Commissioner of Income Tax (Appeals)-1 ("Ld. CIT(A)") under Section 250 of the Act is bad in law and on the facts and circumstances of the case.*
- 2. That Ld. CIT(A) has erred in law and on the facts and circumstances of the case in upholding the order passed by the Ld. Assessing Officer ("Ld. AO") which is barred by limitation.*
- 3. The Ld. CIT(A) has erred in law and on the facts and circumstances of the case in upholding the order passed by the Ld. Assessing Officer ("Ld. AO") which is premised on lack of jurisdiction.*

4. *The Ld. CIT(A) has erred in law and on the facts and circumstances of the case in upholding the order passed by the Ld. Assessing Officer ("Ld. AO") thereby making addition of Rs. 45,00,000/- under Section 68 of the Act.*
5. *The Ld. CIT(A) has erred in law and on the facts and circumstances of the case in upholding the order passed by the Ld. Assessing Officer ("Ld. AO") thereby making addition of Rs. 90,000/- under Section 69C of the Act.*
6. *The above grounds of appeal are independent and without prejudice to one another.*
7. *The appellant may be allowed to add / withdraw or amend any ground of appeal at the time of hearing.*

Later on, the assessee has also filed an additional ground which is also reproduced as under:-

1(i). That on facts and circumstances of the case, the Ld. CIT(A) has erred in upholding validity of notice u/s 148 and consequential reassessment proceedings u/s 147 even though the same are without recording proper reasons in terms of provisions of section 147 of the Income tax Act, 1961.

ii. That the reasons are merely on the basis of information from Revenue Authorities, Mumbai and in absence of independent application of mind or investigation, the re-opening u/s 148 is wholly on the basis of borrowed satisfaction.

iii. That addition made on the basis of information from department per se does not constitute tangible material and in absence of any adverse material on record, the re-assessment proceedings u/s 148 is illegal and not sustainable for want of tangible material.

iv. That in absence of proper approval in terms of provisions of section 151 of the Act, the notice u/s 148 is illegal and without jurisdiction.

vi. That even otherwise, the addition of Rs. 45,90,000/- made by the Assessing Officer is wholly based on statement recorded u/s 132(4) and the same being not available with the AO for recording reasons before initiating the reassessment proceedings, the reopening is merely on surmises and presumption."

2. The facts relating to the issue in dispute are that the assessee filed its return of income on 23.09.2010 declaring income of Rs. 7,31,496/-. Department received information that the assessee has received

accommodation entry to the extent of Rs. 45 Lac during the financial year 2009-10 relevant to the assessment year 2010-11 from the dummy/paper company managed and controlled by Shri Shirish C. Shah group who was engaged in the business of providing accommodation entries. The case of the assessee was reopened under section 147 of Income Tax Act, 1961 (hereinafter called 'the Act') and notice under section 148 of the Act dated 23.03.2017 was issued after obtaining necessary sanction under section 151 of the Act from the competent authority which was duly served upon the assessee. In response to the same, authorized representative of the assessee was appeared and filed letter dated 25.01.2017 stating that return filed on 23.09.2010 be treated as true return of income in compliance to notice under section 148 of the Act. A search and seizure action under section 132/133A of the Act was carried out at the business and residential premises of Shri Shirish C. Shah entry operator during the course of post search / survey investigation, it has been evidently established that Shri. Shirish C. Shah is known entry provider and is involved in providing accommodation entries to the various beneficiaries companies / entities / persons through cheques through a number of paper / dummy companies in lieu of cash. On perusal of the assessment order of M/s Prraneta Industries Ltd (Known as M/s Aadhar Venture India Ltd) for A.Y. 2010-11, it has been seen that statement of Shri Om Prakash Khandelwal, Promoter of the company was recorded, where he was operating small accommodation entry business using his company M/s Prraneta Industries Ltd., after deducting the

expenses commission at 2% for providing one time accommodation entries of share capital introduction.

3. From the verification of documents seized from the residents of Shri. Shirish C. Shah, the Assessing Officer is of the view that assessee company had obtained accommodation entries from his various paper companies in lieu of cash during the financial year 2009-10 relevant to the assessment year 2010-11 for an amount of Rs. 45 Lac. Assessing Officer also examined the return of income of the assessee in the light of information received. Objection filed by the assessee has also been disposed of by the Assessing Officer vide order dated 10.08.2017. After examining the documentary evidence filed by the assessee as well as the record, the Assessing Officer is of the view that assessee has not discharged its onus as required under section 68 of the Income Tax Act and has also not proved the genuineness, identity and creditworthiness of the transaction in dispute as required under section 68 of the Income Tax Act and finally is of the view that under the provisions of section 68 of the Act, where any sum is found credited in the books of the assessee, maintained for previous year and the assessee offers no explanation about the entry and source thereof or the explanation offered by is not in the opinion of the Assessing Officer satisfactory. The sum so credited may be charged to income as the income of the assessee of that previous year's and he is finally of the view that assessee has not discharged the onus of the transaction and finally he added Rs. 45 Lac to the income of

the assessee under section 68 of the Income Tax Act, 1961 and commission @ 2% for raising the bogus transaction worked out at Rs. 90,000/- assessed as income of the assessee on account of undisclosed expenditure under section 69 of the Income Tax Act, 1961 and completed the assessment under section 147/143(3) of the Income Tax Act, 1961 dated 27.10.2017.

4. Aggrieved by the order dated 27.10.2017 passed by the Assessing Officer under section 147/143(3) of the I.T. Act assessee filed an appeal before the learned First Appellate Authority who vide order dated 15.01.2019 dismissed the appeal filed by the assessee.

5. Now the assessee has filed the present appeal before the Tribunal against the impugned order dated 15.01.2019 passed by the CIT(A)-1, New Delhi.

6. At the time of hearing, learned counsel for the assessee narrated the facts of the case and contents of the assessment order as well as the learned CIT(A) order. Mainly he argued regarding the validity of the reassessment proceedings and the addition of bogus share capital and premium received by the assessee company M/s Prraneta Industries Limited now known as Aadhar Venture Limited to the extent of Rs. 45 Lac. In this regard, he has also filed a synopsis and the case law to support the case of the assessee and requesting for the deletion of addition in dispute. He submitted that search and seizure action under section 132 was conducted at the residence and various premises of Shri.

Shirish C. Shah who was alleged to be the main person involved in controlling various entities which were engaged in providing bogus accommodation entries. The Assessing Officer merely on the basis of information received from the department has initiated the reassessment proceedings against the assessee company without carrying any independent enquiry or investigation in respect of the statements of Shirish C. Shah and Om Prakash Khandelwal. At the time of recording the reasons, the statements were not available with the AO and even these statements having been subsequently retracted have no evidentiary value. Learned counsel for the assessee further submitted that assessee company has raised objection in respect of the proceedings under section 147/148 of the Act and requested the Assessing Officer to provide the copies of statement of Shri. Shirish C. Shah, copy of assessment order of M/s Prraneta Industries Limited for Assessment Year 2010-11 and copy of bank statement of M/s Prraneta Industries Limited and any other information or material on the basis of which was recorded which was not provided by the Assessing Officer to the assessee which clearly established that no documentary evidence was available with the Assessing Officer at the time of recording the reasons even otherwise. This is a case of borrowed satisfaction and is not sustainable in the eyes of law. Learned counsel for the further stated that the opportunity of cross examination of Shri. Shirish C. Shah was not provided to the assessee by the Assessing Officer which is also contrary to the various decision rendered by the Hon'ble High Courts and Hon'ble Apex Court and

the assessment framed by the Assessing Officer is liable to be cancelled. To support these argument learned counsel for the assessee cited various citations which includes Pr. CIT vs. RMG Polyvinyl Ltd. [2017] 396 ITR 5 (Delhi); SABH Infrastructure Ltd. vs. ACIT [2017] 398 ITR 198 (Delhi HC); Orient Craft Ltd. vs. CIT [2013] 354 ITR 536 (Del. HC). Learned counsel for the assessee has also argued on merit in detail also.

7. Learned DR relied upon the order passed by the learned First Appellate Authority. He submitted that the notice under section 147 of the Act was issued by the Assessing Officer on the basis of specific information regarding the accommodation entry and on the basis of various search and seizure document as mentioned in the assessment order therefore the reopening of the assessee has rightly been completed by the Assessing Officer and learned First Appellate Authority has rightly been upheld the impugned order therefore the appeal filed by the assessee may be dismissed.

8. We have heard both the parties and perused the orders passed by the Revenue Authorities and we are of the view that in this case, information was received from the investigation wing regarding the assessee was beneficiary of the accommodation entry. We have perused the order passed by the Revenue Authority especially assessment order and we are of the view that no doubt there is information from the investigation wing. But in this case no enquiry has been conducted by the Assessing Officer and the said information could not be said to be the

tangible material. Therefore, on this ground reassessment was not justified. This finding is supported by the judgment of Hon'ble Delhi High Court passed in the case of Pr. CIT vs. RMG Polyvinyl Ltd. [2017] 396 ITR 5 (Delhi) which is reproduced as under:-

"Section 68, read with section 147, of the Income-tax Act, 1961- Cash credit (Accommodation entry) – Assessment year 2008-09 – Information was received from investigation wing that assessee-company was a beneficiary of accommodation entries received from certain established entry operators - During investigation, it was found that entry operators were engaged in money laundering business for beneficiaries - According to Assessing Officer, sources of transactions were not explained - Notice was issued by Assessing Officer to reopen assessment on aforesaid basis that income chargeable to tax to extent of accommodation entry had escaped assessment - Whether information received from investigation wing could not be said to be tangible material per se without a further inquiry being undertaken by Assessing Officer to establish link between 'tangible material' and formation of reason to believe that income had escaped assessment and consequently, reassessment was unjustified - Held, yes"

9. In the case of Pr. CIT vs. G & G Pharma Ltd [2015] 384 ITR 147 (Del HC), relevant portion is reproduced as under:-

In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February, 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under

Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

10. For the sake of convenience, the relevant portion of the judgment of Hon'ble Delhi High Court passed in the case of Signature Hotels P. Ltd. vs. Income-tax Officer [2011] 338 ITR 51 (Del) is reproduced below:-

"Held, allowing the petition, 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."

11. Keeping in view of the facts and circumstances explained above alongwith judgment rendered by the Hon'ble Delhi High Court passed in the various cases including the aforementioned cases, we are of the view

that the case of the assessee was reopened on the basis of information received from the Investigation wing but the Assessing Officer has not made any enquiry on this information and reopened the case of the assessee and made the addition in dispute and completed the assessment. Similarly learned First Appellate Authority has also upheld the assessment order. In our view it is contrary to the various decision rendered by the Hon'ble Delhi High Court. Therefore, the reassessment on the basis of said information is not justified and legally valid, we quash the assessment order and as well as the impugned order by deleting the addition in dispute and accepting the appeal filed by the assessee. Since we have quashed the assessment order which is on basis of illegal and wrong footing then there is no need to adjudicate the other issues involved in this appeal although the same is argued in detail by the learned AR of the assessee which become academic only. In the result, the appeal filed by the assessee is allowed by declaring notice under section 148 of the Act illegal and reassessment made upon which is also cancelled alongwith impugned order passed by the CIT(A).

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

Order pronounced on 30/12/2020.

Sd/-

[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Date: 30/12/2020
SH

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
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By Order,

Assistant Registrar, ITAT, Delhi Benches