IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 2609/Kol/2019
Assessment Year: 2011-12

Bajaj Parivahan Private Limited...Appellant
[PAN: AABCB 1031 C]

Vs.

ITO, Ward-13(1), Kolkata………………………………………………………………Respondent

Appearances by:

Sh. S.K. Kandoi &
Sh. Nikhil Kandoi, FCA, appeared on behalf of the Assessee.

Sh. Jayanta Khanra, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : February 10th, 2020
Date of pronouncing the order : May 29th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-5, Kolkata ['CIT(A)' for short] dated 22.10.2019 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2011-12.

2. The assessee is a company engaged in the business of transportation of tea leaves. It filed its return of income on 30.09.2011 declaring total income of ₹18,43,380/. The assessment was completed u/s 143(3) of the Act on 26.03.2014. The assessment was re-opened on u/s 147 of the Act by issue of a notice dated 29.03.2018 u/s 148 of the Act. The assessee was given the reasons of re-opening. In response, the assessee filed a letter dated 31.05.2018 requesting the AO to treat the original return filed by it as return filed in response to the notice u/s 148 of the Act. In this letter dated 31.05.2018 the assessee raised various objections to the re-opening of the assessment. On merits, the assessee explained that the amount of ₹10 lakhs was taken as loan from M/s. Rexnox Trexim Pvt. Ltd. on 09.08.2010 and that the same was repaid on 29.12.2010. He further submitted that interest of ₹39,722/- was paid and tax was deducted at source u/s 194A of the Act of ₹39,722/-. The AO completed assessment u/s

144 r.w.s. 147 of the Act on 11.12.2018 determining the total income of the assessee at ₹28,43,380/- inter alia making an addition of ₹10 lakhs.

3. Aggrieved, the assessee carried the matter in appeal without success. Further aggrieved, the assessee is in appeal before me.

4. The ld. Counsel for the assessee disputed both the re-opening of assessment as well as the quantum addition of ₹10 lakhs. On the issue of re-opening, he submitted that it is factually incorrect to say that there was failure on the part of the assessee to truly and fully disclose material facts necessary for assessment and hence, the re-opening beyond a period of 4 years from the end of the AY where the original assessment was completed u/s 143(3) of the Act is bad in law.

5. That the information received from the Investigation Wing was vague and the AO simply relying on this information, without application of mind has re-opened the assessment. That no fresh tangible material has come into the possession of the AO warranting re-opening of assessment u/s 147 of the Act. The assessee relied on a number of case law in support of his arguments. I would be referring them as and when necessary.

6. On merits, it was submitted that the amount taken as loan was repaid and the cash credit was explained and evidences furnished to prove the identity and creditworthiness of the creditor as well as the genuineness of the transaction.

7. The ld. DR on the other hand opposed the contentions and submitted that the assessee is part of the chain of jama-kharchi companies and had no real business. He submitted that the re-opening was based on the information received from the Investigation Wing of the Department. He took this Bench to the reasons and submitted that the AO has sufficient material to come to a conclusion that income subject to tax might have escaped assessment. He relied on the order of the AO as well as the ld. CIT(A). On merits, he submitted that the cash credits of ₹10 lakhs was not explained.

8. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, I hold as follows.

9. The reasons recorded for re-opening are as follows:

"2. Information and materials were received from the Office of DDIT(lnv),Unit-4(2), Kolkata vide letter No.DDIT (lnv.)/U-4(2)/Kol/SurendraAgarwal/2017-18/ dated 15.03.2018.The gist of the findings and observation of the Inv. Wing is as under:

3. A credible information was received in the case of Sri Surendra Agarwal (PAN: ADCPA8851E) of 10A, 7th floor, Madan Chatterjee Lane, Kolkata-7, West Bengal. The said information is reproduced as under:

"Credits followed by equivalent transfer debits are observed in the account. The value frequency of such transactions is very high hinting that the account is being probably used for rotation of funds. Frequent low value cash withdrawals are also observed. Although the declared business of the company is share trading and investments, the rationale behind routing such transactions is not known. The origin of funds and whether these are actual business transactions cannot be ascertained. More so, account transactions do not reflect any administrative or routine business related expenses. The account seems to have been opened primarily for routing of high value funds" To investigate the matter, statements of bank accounts mentioned in the information & respective KYCs were obtained from the bank concerned and the same were examined and analysed. On analysis of bank statements of the concern named in the information also the bank account statements intermediary/beneficiary concerns maintained with various bank, 13 cash/fund deposit bank account was identified. From the analysis of MCA data and verification of ITD Module, it is gathered that these companies are paper/shell companies having no real existence & business activities and involved in providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCL.& unsecured loans etc. to various beneficiaries/parties in lieu of commission in cash. It is also observed from the data base of the department that some of the concerns mentioned in the information are interlinked and existing merely on paper having no real existence & business activities and are controlled &. managed by Dinesh Dhandhania, Pankaj Agarwal, Vijay Kumar Gupta, Anand Singhania and Bhagwan Das Agarwal well known entry operators of Kolkata for the purpose of providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bouts LTCG/LTCL & unsecured loans etc. to various beneficiaries/parities in lieu of commission in cash. On examination of the bank statement of the above mentioned concern and the concern mentioned in the information, it is observed that these account have frequently been used for depositing of unaccounted cash which were layered through the several bank accounts of jamakharachi/shell companies including the concerns named in the information and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the beneficiary. In this way the following beneficiary companies have brought back their unaccounted income into their regular books of accounts in the guise of bogus share/share premium, prearranged bogus LTCG/STCL, unsecured loans etc. There was no other financial rationale behind such transactions. Movement of unaccounted/fund of Rs. 22.36 crores through the above 13 bank accounts have been made and 52 ultimate beneficiaries have been identified.

4. As per the information received from Investigation Wing it is seen that the assessee company M/s. Bajaj Parivahan Pvt. Ltd. had received Rs. 10,00,000/- from M/s. Rexnox Trexim Pvt. Ltd. The bank statement of M/s Rexnox Trexim Pvt. Ltd from Axis Bank bearing A/c No. 017010200031329 sent by Inv. Wing revealed that on 09.08.2010Rs. 10,00,000/- was debited from this account to make payment to M/s Bajaj Parivahan Pvt. Ltd.

5. The case of the assessee for the A.Y. 2010-11 was completed on 26.03.2014 determining income of Rs. 2461160/- as against returned income of Rs. 1843380/-During the course of assessment the transaction as detected by Investigation Wing was not looked into.

6. So considering the above financial affairs of the assessee as revealed from the returns of income and the other materials gathered, the credit of Rs. 45,00,000/- prima facie represents undisclosed income of the assessee.

> *7. By the reason of the failure on the part of the assessee to disclose fully and truly all materials facts necessary for assessment and from this material on record, there is enough reason to believe that income has escaped assessment in the hands of M/s Bajaj Parivahan Pvt. Ltd. amounting to Rs. 10,00,000/- for the A.Y. 2011-12 as per provision of Sec. 147 of the I.T.Act, 1961.*
>
> *8. It is also pertinent to mention that four year have already elapsed from the end of the relevant A.Y. 2011-12 and income chargeable to tax which has escaped assessment amounts to more that Rs. 1,00,000/-.Therefore necessary approval u/s 151 of the I.T.Act, 1961 may kindly be accorded by PCIT-5, Kolkata for issue of notice u/s 148 for the A.Y. 2011-12."*

10. The perusal of the same demonstrates that they are vague and general in nature. The original assessment in this case was completed u/s 143(3) of the Act order dated 26.03.2014. The assessment was re-opened on 21.03.2018 i.e. beyond a period of 4 years. Under these circumstances, the proviso to Section 147 of the Act comes into play.

11. In this case, the assessee has disclosed during the course of original assessment proceedings details of all the loan creditors. The assessee has filed before us a copy of the notice issued u/s 142(1) of the Act dated 12.11.2013 along with the annexure and replies. He has also filed a copy of the unsecured loan account which contains the account of M/s. Rexnox Trexim Pvt. Ltd. The assessee has paid interest on this loan and deducted tax at source. The loan has been repaid within the same year. On these facts, it is wrong on the part of the AO to record at para 7 of his reasons that the assessee has failed to disclose fully and truly all material facts necessary for assessment. Merely alleging that there is failure to disclose, would not serve the purpose. In this case, a factually wrong allegation has been made that the amount of ₹10 lakhs has not been fully and truly disclosed. Re-opening of assessment on such wrong reasons cannot be upheld.

12. The Hon'ble Delhi High Court in the case of *Haryana Acrylic Manufacturing Co. vs. CIT and another (2009) 308 ITR 38 (Del)* held as follows:

> *"Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the asses see to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken."*

13. Similar view has been taken by the Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd. vs. ACIT (2004) 268 ITR 332 (Bom.), ICICI Bank Ltd. vs DCIT (2004) 268 ITR 203 (Bom.)*.

14. I also find that no fresh tangible material has come into the possession of the AO, which could trigger re-opening in this case. The transaction with M/s. Rexnox Trexim Pvt. Ltd. was fully disclosed and it is not fresh material. All the other sentences in the reasons recorded are general and vague and it is not known how these observations are relevant to the assessee company.

15. Thus, the re-opening of assessment is bad in law on this ground also.

16. Coming to the merits of the case, the assessee had received ₹10 lakhs in cash through banking channels and he has repaid the same along with interest after deducting tax at source. The details of the company from which the amount was received were filed. Under these circumstances, the question is whether the addition can be made u/s 68 of the Act.

“The Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360 (Guj) held as under:-

> *"It has also proved the capacity of the creditors by showing that the amounts were received by the asses see by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the source of the credits in its books cf account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd, vs. CIT [19631 49 ITR 72317.. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assesse to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

17. Applying the propositions of law laid down in the case laws to the facts of the case and as the assessee has explained the credit in question and as the amount has also been repaid along with interest, the addition in question made u/s 68 of the Act is bad in law. Hence we delete the same.

18. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.

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

Kolkata, the 29th May, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 29.05.2020
Bidhan

Copy of the order forwarded to:

1. ***Bajaj Parivahan Private Limited, P-3, New CIT Road, 4th Floor, Kolkata-700 073.***
2. ***ITO, Ward-13(1), Kolkata.***
3. CIT(A)-5, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches