

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1116/Del/2011
Assessment Year : 2001-02

Income Tax Officer,
Ward-13(4),
New Delhi.

(Appellant)

Vs. M/s On Exim Pvt.Ltd.,
7-Mathura Road, Jangpura,
New Delhi.
PAN : AAACO1504E.
(Respondent)

Cross Objection No.112/Del/2011
Assessment Year : 2001-02

M/s On Exim Pvt.Ltd.,
C/o Shri Ravi Gupta,
Advocate,
D-10, Kailash Colony,
New Delhi – 110 048.
PAN : AAACO1504E.

(Appellant)

Vs. Income Tax Officer,
Ward-13(4),
New Delhi.

(Respondent)

Revenue by : Shri Sameer Sharma, Sr.DR.
Assessee by : Shri Ravi Gupta, Advocate.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-XVIII, New Delhi dated 23rd November, 2010 for the AY 2001-02. The assessee has also filed the cross-objection.

2. In the cross-objection, the assessee has raised the issue against the validity of reopening of assessment under Section 148 read with Section 149 of the Income-tax Act, 1961. Therefore, it was requested by the assessee's counsel that since the issue raised in the cross-

objection goes to the root of the matter, it should be adjudicated first. The learned DR has no objection. Therefore, we proceed to hear the cross-objection.

3. The learned counsel for the assessee argued at length challenging the validity of the notice issued under Section 148. The same can be summarized in three basic issues:-

- (i) The notice issued is barred by limitation because the assessment year involved is 2001-02 and the notice under Section 148 is handed over to the postal authorities on 1st April, 2008. Thus, it is after more than six years from the end of the relevant assessment year. In support of this contention, he relied upon the decision of Hon'ble Gujarat High Court in the case of Kanubhai M.Patel (HUF) Vs. Hiren Bhatt Or His Successors To Office and Others – [2011] 334 ITR 25 (Guj).
- (ii) The notice is issued at the wrong address. That the address of the assessee is M/s On Exim Pvt.Ltd., 7, Mathura Road, Jangpura, New Delhi. The same address is given in the assessment order and in the appeal filed by the department before the ITAT. However, notice under Section 148 has been issued at the address M/s On Exim Pvt.Ltd., 550, Kucha Pati Ram, Bazar Sita Ram, Delhi. The said notice was never received by the assessee.
- (iii) The reasons given for reopening of assessment are vague and do not indicate any application of mind by the Assessing Officer. He issued the notice simply on the basis of certain information received from the Investigation Wing, Agra. That in the reasons recorded, it is alleged that one party, viz., M/s Aayushi Stock Brokers (P) Limited is

providing bogus accommodation entries of bogus share transactions, bogus share capital etc. But, it is not specified what was the exact transaction between the assessee and M/s Aayushi Stock Brokers (P) Limited. In the reasons recorded, only the name of the bank, ledger account number and the amount is given. Therefore, this only indicates some transactions between the assessee and M/s Aayushi Stock Brokers (P) Limited but, the same is not sufficient to form the belief of escapement of income. He clarified that the assessee has only sold the shares through M/s Aayushi Stock Brokers (P) Limited and the sale proceed has already been considered while computing the income of the assessee for AY 2001-02. He, therefore, stated that the notice issued under Section 148 is liable to be quashed. In support of this contention, he relied upon the following decisions:-

- (a) Signature Hotels P.Ltd. Vs. ITO And Another – [2011] 338 ITR 51 (Delhi).
- (b) CIT Vs. SFIL Stock Broking Ltd. – [2010] 325 ITR 285 (Delhi).
- (c) Sarthak Securities Co.P.Ltd. Vs. ITO – [2010] 329 ITR 110 (Delhi).

4. Learned DR, on the other hand, relied upon the order of learned CIT(A) and stated that in this case, notice under Section 148 was duly signed on 31st March, 2008 and given for dispatch. That in the government, there is a procedure for dispatch of any notice etc. It goes to the dispatch section and then only to the postal authorities. That merely because the envelope was actually posted on 1st April, 2008, it cannot be said that the notice was not issued on 31st March, 2008. In fact, the notice was put in the process of service on 31st

March, 2008 itself. With regard to address in the notice, he stated that the Assessing Officer issued the notice at the address given by the Investigation Wing which was the correct address of the assessee. He further stated that even the notice of hearing issued at the above address was duly responded by the assessee because the assessee appeared on the date of hearing. Therefore, the notice was issued at the correct address. With regard to reasons recorded, it is stated by the learned DR that definite information was received from the Investigation Wing of the Income-tax Department that the assessee was the beneficiary of the accommodation entries provided by M/s Aayushi Stock Brokers (P) Limited. That the Investigation Wing of the IT Department has no animosity with the assessee so as to send any incorrect information. The Assessing Officer formed the opinion of escapement of income on the basis of the information from the Investigation Wing of the IT Department who are responsible officers. Therefore, the Assessing Officer had sufficient material to form the opinion of escapement of income. He, therefore, submitted that the order of learned CIT(A) on this point should be sustained and the cross-objection of the assessee be dismissed.

5. In the rejoinder, it is stated by the learned counsel that neither the notice under Section 148 nor the notice of hearing issued to the assessee company was served upon the assessee. The assessee appeared on one date of hearing before the Assessing Officer because apart from issuing notice to the company, the Assessing Officer had issued notice to the director at the residential address which was served upon director. He, therefore, submitted that the notice under Section 148 was issued at the wrong address.

6. We have carefully considered the submissions of both the sides and perused the material placed before us. The undisputed facts are

that the assessment year under consideration is 2001-02 and six years from the relevant assessment year ended on 31st March, 2008. The reasons recorded as well as notice under Section 148 were signed on 31st March, 2008 but the same were handed over to the postal authorities on 1st April, 2008. The notice was issued at the following address:-

“M/s On Exim (P) Ltd.,
550, Kucha Pati Ram Bazar Sita Ram,
Delhi.”

7. The address given in the original assessment order was as under:-

“U-112, LGF, Vidhata House,
Vikas Marg, Shakarpur, Delhi.”

In the assessment order passed in pursuance to notice under Section 147, address is as under:-

“M/s On Exim Pvt.Ltd.,
7, Mathura Road, Jung Pura, New Delhi.”

8. Even in the appeal memo in the appeal filed by the Revenue before the ITAT, the address of respondent is the same as given in the assessment order passed under Section 147. It is admitted by the Revenue itself that the notice under Section 148 is issued at the address given in the communication from the Investigation Wing. That the Hon'ble Gujarat High Court in the case of Kanubhai M.Patel (HUF) Vs. Hiren Bhatt Or His Successors To Office and Others (supra) at page 32 of 334 ITR held as under:-

“Thus, the expression “to issue” in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression “shall” be issued as used in section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on March 31, 2010, whereas the same were sent to the speed post centre for booking only on April 7, 2010. Considering the definition of the word “issue”, it is apparent that merely signing the notices on March 31, 2010, cannot be equated with issuance of notice as contemplated under section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the speed post centre only on April 7, 2010, the date of issue of the said notices would be April 7, 2010 and not March 31, 2010, as contended on behalf of the Revenue. In the circumstances, the impugned notices under section 148 in relation to the assessment year 2003-04, having been issued on April 7, 2010 which is clearly beyond the period of six years from the end of the relevant assessment year, are clearly barred by limitation and as such, cannot be sustained.”

(emphasis by underlining supplied by us)

9. From the above, it is evident that Hon'ble Gujarat High Court has examined the expression “to issue” in the context of Section 149 and have come to the conclusion that the date of issue would be the date on which the same were handed over for service to the proper officer which, in the facts of the present case, were postal authorities. Admittedly, in the case of the assessee also, the notice was handed over to the postal authorities on 1st April, 2008 which was beyond the

period of limitation of six years provided in Section 149. Moreover, the notice was not correctly addressed. The notice has to be sent at the address of the assessee given in its record with the Income-tax Department and not with some other address which might have been given by the Investigation Wing. The notice was issued in March, 2008 and the assessment was completed in December, 2008 and, in the assessment order, the Assessing Officer himself has given a different address than what was given in the notice under Section 148. Therefore, we have no hesitation to hold that the notice was issued at the incorrect address and the same cannot be said to be valid issue of notice if the same is wrongly addressed.

10. The learned counsel for the assessee has also relied upon the various decisions of Hon'ble Jurisdictional High Court in support of his contention that the notice has been issued on the basis of vague information alleged to have been received from the Investigation Wing. We find that Hon'ble Jurisdictional High Court in the case of Signature Hotels P.Ltd. (supra) held as under:-

“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. Similar view is taken in the case of Sarthak Securities Co.P.Ltd. (supra), wherein their Lordships held as under:-

"allowing the petition, that the formation of belief was a condition precedent as regards the escapement of the tax pertaining to the assessment year by the Assessing Officer. The Assessing Officer was required to form an opinion before he proceeded to issue a notice. The validity of reasons, which were supposed to sustain the formation of an opinion, was challengeable. The reasons to believe were required to be recorded by the Assessing Officer. Once the ingredients of section 147 were fulfilled, the Assessing Officer was competent in law to initiate the proceedings under section 147. The Assessing Officer was aware of the existence of the four companies with whom the assessee had entered into transaction. Both the orders showed that the Assessing Officer was made aware of the situation by the investigation wing and there was no mention that these companies were fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicated independent application of mind. Though conclusive proof was not germane at this stage the formation of belief must be on the base or foundation or platform of prudence which a reasonable person was required to apply. From the perusal of the reasons recorded and the order of rejection of objections, the names of the companies were available with the authority and their existence was not disputed. The assessee in its objections had stated that the companies had bank accounts and payments were made to the assessee through banking channel. The identity of the companies was not disputed. Under these circumstances, the initiation of proceedings under section 147 and issuance of notice under section 148 of the Act were to be quashed."

12. When we examine the reasons recorded in the light of above decisions of Hon'ble Jurisdictional High Court, we are of the opinion that the ratio of the above decisions would operate in favour of the assessee because in the appeal before us also, the only information received by the Assessing Officer was that M/s Aayushi Stock Brokers (P) Limited is found to be providing accommodation entries in the form of bogus share transactions, bogus share capital etc. Then, there is a mention that the assessee has received bogus accommodation entries from such party, detail of which is as under:-

S.No.	Date	Name & Nature of A/c	Ledger No.	Amt.
1	13/03/01	Federal Bank	-/502	500000/-
2	21/03/01	"	694205/550	10,00,000/-
3	24/03/01	"	694235/562	10,00,000/-
4	28/03/01	"	694238/605	450000/-

13. However, the detail given is only with regard to name of the bank, ledger account number and amount. Even the nature of transactions is not given, much less to establish that the above transactions are in the nature of accommodation entries. It has been stated by the learned counsel at the time of hearing before us that the assessee has only sold the shares through M/s Aayushi Stock Brokers (P) Limited and the sale proceed has duly been considered while computing the income of the assessee for the assessment year under consideration. In view of the above, in our opinion, the ratio of the above decisions of Hon'ble Jurisdictional High Court would be squarely applicable and, respectfully following the same, we hold that the reasons did not satisfy the requirement of Section 147.

14. In view of the totality of above factual as well as legal position, we hold that the notice issued under Section 148 was not valid. The

same is quashed. Once the notice issued under Section 148 is quashed, the assessment order passed in pursuance thereto is also quashed.

15. Since we have already quashed the assessment order, the appeal of the Revenue does not survive for adjudication on merits. The same is deemed to be dismissed.

16. In the result, the cross-objection of the assessee is allowed and the appeal of the Revenue is deemed to be dismissed.

Decision pronounced in the open Court on 27th August, 2013.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 27.08.2013

VK.

Copy forwarded to: -

1. Revenue : Income Tax Officer,
Ward-13(4), New Delhi.
2. Assessee : M/s On Exim Pvt.Ltd.,
C/o Shri Ravi Gupta, Advocate,
D-10, Kailash Colony, New Delhi – 110 048.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar