

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

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D. JAIN, JUDICIAL MEMBER

ITA No.3435/Del/2013
Assessment Year : 2003-04

Income Tax Officer,
Ward-25(1),
New Delhi.

(Appellant)

Vs. Mrs. Maya Gupta,
B-325, Saraswati Vihar,
Pitampura,
Delhi – 110 034.
PAN : AFKPG1760L.
(Respondent)

Appellant by : Shri Keyur Patel, Sr.DR.
Respondent by : Shri R.S. Singhvi, CA.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-XXIV, New Delhi dated 22nd March, 2013 for the AY 2003-04.

2. The Revenue has raised the following grounds of appeal:-

“On the facts and circumstances of the case and in law CIT(A) erred in-

1. Invalidating the reopening of the assessment and assumption of jurisdiction by the AO U/s 147/148 of the IT Act in the case by treating the same as bad in law.

2. Quashing the assessment order passed by AO wherein an addition of Rs.35,77,293/- on account of income from unexplained sources u/s 68 of the Income Tax Act.

3. *The appellant craves the right to add, alter or amend any ground of appeal.”*

3. We have heard both the sides and perused the material placed before us with regard to ground No.1 of the Revenue’s appeal. The reasons for reopening of assessment are reproduced by the Assessing Officer at pages 1 & 2 of his order. The same is reproduced below for ready reference:-

“The Investigation Wing, Delhi conducted large scale investigation to unearth a huge racket involving accommodation entry providers. Such entry providers were found to be involved in giving accommodation entries in form of bogus gifts/loans/share application money/capital gain etc. by cheques/DDs in lieu of cash received from intending beneficiaries. The entry providers operated large number of bank accounts in their own names and also in fictitious names. The list of beneficiaries who had taken accommodation entry from such persons/firms included the name of Bimla Devi.

The detail of accommodation entries taken by the assessee and particulars of entry providers is as under:-

Beneficiary Bank Name	Beneficiary Bank Branch	Account No. of Beneficiary	Value of Entry Taken	Instrument No. by which entry taken	Date on which entry taken	Name of account holder of entry giving account	Bank from which entry given	Branch of entry giving bank	A/c No.
Lord Krishna Bank	Kohat Enclave Pitampura		250000		15-Feb-03	Bimla Devi	SBBJ	NRR	15487

In view of the precise information, as discussed above, I have reasons to believe that assessee had obtained accommodation entries worth Rs.2,50,000/- from the above mentioned person(s) who is/are involved in the business of providing accommodation entries. Such amount represents undisclosed income of the assessee, which has escaped assessment.

A letter was issued to the assessee on 11.03.2010 to find out if return for A.Y. 2003-04 was filed and whether the same was scrutinized u/s 143(3). Such letter was served upon the assessee, but assessee failed to respond. Therefore, it is being assumed that return for A.Y. 2003-04 has not been scrutinized. There is no information regarding return filed by such assessee, on the AST software. Jurisdiction is being assumed on the basis of address available in the database.

Keeping in view the above facts, it is requested that necessary approval u/s 151(2) may kindly be accorded for initiating proceedings u/s 148 of the I.T. Act in order to book income which had escaped assessment.”

4. Learned CIT(A) has held the reopening of assessment to be invalid following the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Supreme Polypropylene (P) Ltd. – ITA No.266/2011 dated 30th October, 2012.

5. The learned DR, at the time of hearing before us, has relied upon the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Nova Promoters & Finlease (P) Ltd. – [2012] 342 ITR 169 (Delhi).

6. Therefore, now the question remains is, that on the facts of the assessee's case, which decision of Hon'ble Jurisdictional High Court is applicable. In the case of Signature Hotels P.Ltd. Vs. ITO – [2011] 338 ITR 0051, Hon'ble Jurisdictional High Court held as under:-

“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 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.”

7. Similar view is reiterated by the Hon'ble Jurisdictional High Court in the subsequent decision in the case of CIT Vs. Insecticides (India) Ltd. – [2013] 357 ITR 330 (Delhi), wherein their Lordships held as under:-

“The information on the basis of which the Assessing Officer had initiated proceedings under section 147 of the Income-tax Act, 1961, was vague and uncertain and could not be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. The notice of reassessment was not valid and was liable to be quashed.”

8. That in the case of Nova Promoters & Finlease (P) Ltd. (supra), the issue of reopening of assessment was not before the Hon'ble Jurisdictional High Court. In fact, in that case, the CIT(A) as well as ITAT both have upheld the reopening of assessment but had deleted the addition made under Section 68 of the Income-tax Act. Only the Revenue was in appeal before the Hon'ble Jurisdictional High Court which would be evident from the following substantial questions of law which arose in this appeal :-

“(1) Whether the Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) deleting the additions of Rs.1,18,50,000 and Rs.2,96,250 both made under section 68 of the Act, on the ground that the identity and creditworthiness of the share applicants as well as the genuineness of the transactions were proved?”

“(2) Whether the order of the Tribunal confirming the deletion of the addition of the aforesaid two amounts was perverse having regard to the evidence and the material on record?”

9. Now reverting to the reasons recorded, we find that the Investigation Wing informed the Assessing Officer of the assessee that they have carried out large scale investigation to unearth a huge racket including accommodation entry providers. Such entry providers found to be involved in giving accommodation entries in the form of bogus gifts/loans/share capital money etc. by cheques/DDs in lieu of cash received from the beneficiaries. The list of beneficiaries who have taken accommodation entries from such person/firm including the name of Bimla Devi. Now, the present assessee is Maya Gupta and not Bimla Devi. Then, in the chart, only the value of entry taken is mentioned but the nature of entry whether it is a bogus gift, loan or share capital money is not mentioned. Moreover, on what basis the above presumption is drawn that the assessee has taken any accommodation entry is also not mentioned. No reference is made to any statement given by any accommodation entry provider or any documentary evidence found from their premises which indicated any accommodation entry being taken by the assessee. Therefore, on these facts, in our opinion, the decision of Hon'ble Jurisdictional High Court in the case of Signature Hotels P.Ltd. (supra) and Insecticides (India) Ltd. (supra) would be squarely applicable because the information on the basis of which the Assessing Officer had initiated

proceedings under Section 147 was vague and uncertain. Therefore, we are of the opinion that the learned CIT(A) rightly held that the reopening of assessment was not valid. Accordingly, the Revenue's appeal is dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 13th December, 2013.

Sd/-

(A.D. JAIN)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 13.12.2013
VK.

Copy forwarded to: -

1. Appellant : **Income Tax Officer,**
Ward-25(1),
New Delhi.
2. Respondent : **Mrs. Maya Gupta,**
B-325, Saraswati Vihar,
Pitampura, Delhi – 110 034.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar