IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "E" NEW DELHI

BEFORE SMT. DIVA SINGH, J.M. AND
SHRI J.SUDHAKAR REDDY, A.M.

ITA no.2499/Del/2011
Assessment Year : 2000-01

ITO, Ward 6(1) Room no.418 A C.R.bldg. IP Estate New Delhi	vs.	M.B.Jewellers P.Ltd. 5, 43 & 44, Rani Jhansi Market Karol Bagh New Delhi 110 005 PAN: AAACM 0024 H

C.O.No. 228/Del/2011
(In ITA 2499/Del/2011)
AY: 2000-01

MB Jewellers P.Ltd. New Delhi	vs.	ITO, New Delhi
(Appellant)		**(Respondent)**

Assessee by:- Shri Rakesh Kumar Khiwani, C.A.
Department by:- Shri Sunil Kumar Sharma, Sr.D.R.

O R D E R

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue and is directed against the order of the Ld.CIT(Appeals)-IX, New Delhi dt. 14.1.2011 pertaining to the AY 2000-2001 on the following grounds.

"1. The order of the Ld.CIT(A) is erroneous and contrary to facts and law.

2. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.59,82,702/- made by AO u/s 68 of the Act being the unexplained share application money and unsecured loans.

2.1. The Ld.CIT(A) ignored the finding recorded by the AO and the fact that the assessee did not discharge the onus of proving the credit worthiness of the creditors and genuineness of the transactions.

3. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.30,738/- made u/s 69C of the Act being the uncounted cash paid for obtaining the accommodation entries.

3.1. The Ld.CIT(A) ignored the finding recorded by the AO and the fact that the assessee is involved in the business of obtaining accommodation entries.

4. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.17,72,395/- made by AO disallowing the expenses.

4.1. The Ld.CIT(A) ignored the finding recorded by the AO and the fact that the assessee did not file any necessary details to substantiate its claim.

5. The Ld.CIT(A) erred in accepting the additional evidences without following the procedure laid down by law.

6. The appellant craves leave to add, alter, or amend any grounds of appeal raised above at the time of hearing."

2. The assessee has filed Cross Objection on the following grounds.

"1. That the grounds of appeal raised by the AO are misconceived and incorrect.

2. That the Ld.CIT(A) has erred in holding the best judgement assessment u/s 144 as valid despite observing that the assessee has made full compliance to all the notices and hearings. The Ld.CIT(A) ought to have annulled the assessment order.

3. That the Ld.CIT(A) has legally erred in upholding the assessment order by holding the validity of initiation of proceedings u/s 148 which is bad in law on the following counts:

a. That there is no material leave alone fresh material or even the circular in record on the basis of which the reasons to believe have been formed to initiate the reassessment proceedings despite a clear finding given by the Ld.CIT(A).

b. That the AO has wrongly assumed jurisdiction u/s 148 on the basis of 'reasons to believe' which are (1) vague, (2) based on the general circular (3) unsupported with any evidence, (4) to make roving and fishing inquiries, thus the initiation of proceedings is bad in law.

c. Non specification of purpose of issuing the notice to assess/reassess/compute the income/loss/depreciation (1) renders the notice bad with an incurable defect, further (2) shows non-clarity in recording the

reasons to believe, and thus the assessment framed on such illegal notice is void ab initio.

4. That the Ld.CIT(A) has erred in holding the assessment valid despite giving a clear finding that the assessment has been framed by not confronting the information material or any statement to the assessee, thus violating the fundamental principles of natural justice, as also the provisions of s.142(3), which is fatal and hence the assessment so framed in violation needs to be annulled.

5. That the appellant craves leave to add, alter, amend any grounds raised above, at the time of hearing."

3. Facts in brief:- The assessee is a company and it filed its original return of income on 29.11.2000 vide acknowledge no.814 dt. 29.11.2000. The AO issued a notice u/s 148 of the Act on 28.3.2007 for reopening of the assessments.

3.1. Thereafter there was a lot of correspondence between and the assessee and the AO, the details of which were brought out both in the assessment order as well as in the remand report and the order of the Ld.CIT(A). We do not feel it necessary to refer to this correspondence as in our view it is not necessary for adjudication of the issue on hand.

4. We first take up the C.O. filed by the assessee, as the jurisdiction of the AO in reopening the assessment is challenged therein.

5. We have heard Shri Rakesh Kumar Khiwani, the Ld.Counsel for the assessee and Shri Sunil Kumar Sharma, the Ld.Sr.D.R. on behalf of the Revenue.

6. On a careful consideration of the facts and circumstances of the case, on perusal of orders of lower authorities, material on record and case laws cited, we hold as follows.

7. Ground no.1 is general in nature. Ground nos. 2 and 3(c) are not pressed. Ground no.5 is general in nature.

7.1. This leaves us with ground no.3(a), 3(b) and 4.

7.2. Ground nos. 3(a) and 3(b) challenge the reopening of the assessment.

The reasons of reopening are extracted for ready reference.

"M/s MB Jewellers P.Ltd. AY 2000-2001

In this case, information has been received from the CIT, Delhi II, New Delhi vide endorsement no.CIT II/06-07/687 dt. 18.7.2006 to CCIT, Delhi II's letter no. CCIT-II/ITO(Hqrs)/2005-06/158 dt. 20.6.2006 that the assessee received the following amounts in its account with Central Bank of India, Karol Bagh, New Delhi from persons mentioned hereunder which were in the nature of accommodation entries that it these were not genuine business transactions. Rather, the amounts were received in lieu of cash paid by the assessee out of unaccounted money.

Value of entry taken	Instrument 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	Account no. Of entry giving bank
Rs.50,000	178565	13.1.2000	Vijay Aggarwal	Corp.Bank	Kamla Nagar	11808
Rs.50,000	181755	13.1.2000	Bhagwan Swaroop Jain	Corp.bank	Kamla Nagar	14569

As per the information received, the assessee paid cash of Rs.1,00,000/- to receive cheque of the same amount plus some more money ranging from 0.5% to 1% to receive this accommodation entry. Since the cash has been paid out of unaccounted money, I have reason to believe that income amounting to Rs.1,00,750/- (Rs.1,00,000 + commission Rs.4,750 estimated at 0.75%) has escaped assessment.

Sd/- (Rajesh Dhingra) ITO Ward 6(1), New Delhi"

7.3. In response to the letter addressed by the Income Tax Officer, Ward-6(1), New Delhi, the ACIT, Range 6, New Delhi replied as follows.

" ACIT/R 6/06-07 Office of the ACIT, Range 6, New Delhi 110 002
Dt. 28.3.2007
To: The ITO, Ward 6(1), New Delhi
Sub: Proposal for issuing notice u/s 148 of the Act in the case of M/s MB Jewellers Pvt.Ltd. – reg.
Your proposal for issuance of notice u/s 148 of the Act in the case of M/s MB Jewellers P.Ltd. for the AY 2000-2001 is hereby approved.
Sd/- (Pirthi Lal) ACIT, Range 6, New Delhi"

7.4. A perusal of the above demonstrates that the AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that the income has escaped assessment during the year. A mere reference is made to certain information received from the CIT, Delhi II vide an endorsement. What material was received is not part of the record. The reasons are vague and in our view, are not based on any tangible material.

7.5. A perusal of the above reasons demonstrate that the reasons recorded by the AO are not reasons acceptable to law. There is no independent application of mind. The AO had mechanically issued notices u/s 148 of the Act, on the basis of information allegedly received by him from the CIT, New Delhi 2. From the proforma for approval of notice, which is extracted above, it is clear that the AO was also not aware that the assessee had filed a return of income for the said AY. The ACIT has also not applied his mind. No satisfaction has been recorded by the Ld.ACIT. Only an approval is given. Thus in our view the reopening is bad in law.

7.6. (a) In coming to this conclusion we draw strength from the judgement of the Hon'ble Delhi High Court in the case of Signature Hotels (P) Ltd. Vs. ITO and another, reported in 338 ITR 51 (Delhi) has under similar circumstances held as follows.

"For the A.Y. 2003-04, the return of income of the assessee company was accepted u/s.143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently, the Assessing Officer issued notice u/s.148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.

The Delhi High Court allowed the writ petition and held as under:
"(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have 'reason to believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.
(ii) A notice u/s.148 can be quashed if the 'belief' is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reasons. There should be a

link between the reasons and the evidence/material available with the Assessing Officer.

(iii) 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 F.Y. 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.

(iv) 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 the quashed."

(b). In the case of CIT vs. Atul Jain reported in 299 ITR 383 it has been held as follows.

"Held, dismissing the appeals, that the only information was that the assessee had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque for that amount. The information did not indicate the source of the capital gains which in this case were shares. There was no information which shares had been transferred and with whom the transaction had taken place. The AO did not verify the correctness of information received by him but merely accepted the truth of the vague information in a mechanical manner. The AO had not even recorded his satisfaction about the correctness or otherwise of the information for issuing a notice u/s 148. What had been recorded by the AO as his "reasons to believe"was nothing more than a report given by him to the Commissioner. The submission of the report was not the same as recording of reasons to believe for issuing a notice. The AO had clearly substituted form for substance and therefore the action of the AO was not sustainable."

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7.7. Applying the propositions laid down in the above cited judgements to the facts of the case, we have to necessarily quash the reopening of the assessment as bad in law.

7.7.1. Even otherwise, the ACIT in the case on hand has not recorded his satisfaction as required under the provisions of S.151 of the Act. He has simply recorded that he has granted approval. Under such circumstances the reopening is held to be bad in law.

7.7.2. For this proposition we rely on the judgement of the Mumbai 'E' Bench of the Tribunal in ITA 611/Mum/2004 in the case of Amarlal Bajaj vs. ACIT reported in 333 ITR 237 (Del) vide order dt. 24.7.2013 has considered the legal position and held as follows.

"5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first consider the relevant part of the provisions of Sec. 151 of the Act.

151. (1) In a case where an assessment under sub-section (3) of section 143or section 147has been made for the relevant assessment year, no notice shall be issued under section 148[by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner}, unless the [Joint} Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice} :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.
(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148by an Assessing Officer, who is below the rank of [Joint} Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint} Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.}
[Explanation.-For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about

fitness of a case for the issue of notice under section 148,need not issue such notice himself.} "

6. A simple reading of the provisions of Sec. 151(1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO technical. Nowhere the CIT has recorded his satisfaction. In the case before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner IS satisfied that it is a fit case for the issue of notice under section 148 merely noted 11 Yes 11 and affixed his signature there under. On these facts, the Hon'bIe Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO.

"Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitin 1. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Nitin 1. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary Shri Nitin 1. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission ad bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The assessment was completed u/s. 143(3) of the 1. T. Act on 3Ft March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."

7. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the perusal of the order sheet which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction

7.8. Applying the propositions laid down in the above case to the facts of the case on hand, we uphold the contentions of the assessee that the reopening is bad in law.

7.9. Ground nos. 3(a) and 3(b) are allowed.

8. As we have quashed the assessment on the ground that the reopening is bad in law, we need not adjudicate ground no.4 raised by the assessee in the Cross Objection, as it would be an academic exercise.

9. In the result assessee's C.O. is allowed.

9.1. Since we have allowed the C.O. of the assessee, the appeal by the Revenue has become infructuous and is dismissed as such.

10. In the result assessee's C.O. is allowed and Revenue's appeal stands dismissed.

Order pronounced in the Open Court on 14th November, 2014.

Sd/- Sd/-

(DIVA SINGH) **(J. SUDHAKAR REDDY)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Dated: the 14th November, 2014

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Copy of the Order forwarded to:
1.Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5.DR;
6.Guard File

By Order

Asst. Registrar