**IN THE INCOME TAX APPELLATE TRIBUNAL**

**DELHI BENCH 'C' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**
**AND**
**SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.5780/Del/2014**
**Assessment Year: 2004-05**

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| Meta Plast Engineering P. Ltd.<br>B-217, Yojna Vihar, Delhi. | vs | Income-tax Officer<br>Ward 6(4), New Delhi. |

**(PAN:AADCM7538B)**

(Appellant) (Respondent)

Appellant by: Shri P.C. Yadav
Respondent by: Shri S.R. Senapati, Sr. DR

Date of hearing: 28.03.2018
Date of Pronouncement: 06 .04.2018

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order of the learned Commissioner of Income-tax (Appeals)-IX, New Delhi (for short hereinafter called as "the learned CIT (A)') in Appeal No.119 of 2011-12 dated 13.08.2014, assessee preferred this appeal.

2. Brief facts of the case are that on receiving information from the Investigation Wing , New Delhi that certain persons called 'beneficiaries' have

resorted to money laundering by giving unaccounted cash to entry operators and in turn taking from them cheques/DDs in the garb of share application money or sale proceeds of non existent goods thereby ploughing back to undeclared cash into the accounts or business, learned AO rejected the reasons and issued notice u/s 148 of the Income-tax Act, 1961 ("the Act") proposing to re-open the proceedings stating that he has reason to believe that an income of Rs.15 lacs plus commission @ 2% thereon amounting to Rs.30,000/- totaling to Rs.15,30,000/- has escaped assessment during the assessment year. Learned AO heard the assessee and disposed of the objections by order dated 22.11.2011 and passed the final order on 19.12.2011 making an addition of Rs.2.15 crores on the increased share application money.

3. Challenging the assessment order, the appeal was preferred and by way of impugned order, learned CIT(A) dismissed the same. Hence, the assessee is before us in appeal.

4. It is the argument on behalf of the assessee that in this matter there is no independent application of mind by the learned AO to the report of the Investigation wing to form the basis for reason to believe that income has escaped assessment inasmuch as the information per se does not amount to any tangible material incriminating the assessee. Nextly, it is contended that when the reason to believe speak only about Rs.15 lacs, learned AO proceeded to make an addition of Rs.2.15 crores which shows the non application of amount on the part of the ld AO. Lastly, it is submitted that while placing reliance on the decision reported in the case of Bharat Jayant Patel vs UOI (2015) 378 ITR 596 (Bom), it is submitted that the AO should have allowed reasonable opportunity to the

assessee to pursue their legal remedies after rejection of the objections filed by the assessee. He placed reliance on a decision of a coordinate bench of this Tribunal in MRY Auto Components Ltd. vs ITO (2017) ITA No.2418/Del/2014 stating that the reasons recorded in such case as well as the case in hand are identical basing on which the Tribunal held that addition cannot be sustained.

5. Ld. DR submitted that the information received from investigation wing is also valid information, constituting a valid source of information and it cannot be brushed aside simply because it is from a source other than the own knowledge of the Ld. AO. Further, so far as merits are concerned, He submitted that sufficiency of the material is not a consideration to quash the reopening proceedings. Since the identity of the parties was not established, genuineness of the transaction or the creditworthiness of the party could not be tested. He placed reliance on the order of the ld. CIT(A).

6. In reply, learned AR submitted that all the documents are submitted before the learned CIT(A) and such facts find a place in the impugned order. He further submitted that shares were duly allotted on 24.3.2000 and form No.2 was filed before the Registrar of the Companies. In view of furnishing of the details and documents, the initial onus was discharged by the assessee.

7. We have perused the material placed on record in the light of the submissions on either side. The reasons recorded by the learned AO are as follows:

> *"The* investigating wing of the income Tax Department had unearthed a huge money laundering mechanism wherein it was established that bogus accommodation entries were provided/taken these accommodation entries received in lieu of payment of cash of equivalent amount plus commission thereon

to the entry operators. For obvious reasons, these cash transactions are not routed through the books of account of the assessee. in this case, information has been received from the Directorate of Income Tax, (Investigation), New Delhi that during the relevant assessment year, this assessee had received the following cheque amount(s) in nature of accommodation entry:

| *Value of entry taken* | *nstrument no. which entry take* | *Date on wh entry taken* | *Name of accou holder of entry giv account* | *Bank from wh entry given* | *BRANCH OF ENT GIVEING BANK* | *a/c NO. OF ENT GIVING A/C* |
|---|---|---|---|---|---|---|
| *1500000* | *236800* | *9.12.2003* | *Rubik Exports* | *Corpn. Bank* | *Paschim vihar* | *52199* |

*Therefore, I have reason to believe that an income of Rs15,00,000/- plus commission @ 2% thereon amounting to Rs.*30.000/- . *totaling to Rs.15.30,000/- has escaped assessment* during the assessment year. On the *basis of this information, I have reason to believe that the incomes described above have escaped assessment and the case is fit for issuing notice u/s 148 of the Income* Tax *Act,* 1961."

8. In the case of MRY Auto components Ltd. (supra) also the contents and language of the reasons are identical. A coordinate bench of this Tribunal referred to the above reasons held in MRY Auto Components Ltd. as follows:

"The *investigating wing of the income Tax Department had unearthed a huge money laundering mechanism wherein it was established that bogus accommodation entries were provided/taken. These accommodation entries received in lieu of payment of cash of equivalent amount plus commission thereon to the entry operators. For obvious reasons, these cash transactions are not routed through the books of account of the assessee. In this case, information has been received from the Directorate of Income Tax, (Investigation), New Delhi that during the relevant assessment year, this assessee had received the following cheque amount(s) in nature of accommodation entry:*

| *Value of entry taken* | *Date on wh entry taken* | *Name of accou holder of entry giv account* | *Bank from wh entry given* | *BRANCH OF ENT GIVEING BANK* | *a/c NO. OF ENT GIVING A/C* |
|---|---|---|---|---|---|
| *300375* | *13.3.2003* | *Rahul Finlease* | *SB,Patiala* | *Daryaganj* | *50082* |
| *300315* | *26.3.2003* | *Kuldeep Textile* | *SBBJ* | *NRR* | *24624* |
| *400415* | *27.3.2003* | *Division Trading* | *SBBJ* | *NRR* | *24620* |

*Therefore, I have reason to believe that an income of Rs10,01,105/- plus commission @ 2% thereon amounting to Rs.*20.022/- . *totaling to Rs.10.21,127/- has escaped assessment* during the assessment year. On the *basis of this information, I have reason to believe that the incomes*

*described above have escaped assessment and the case is fit for issuing notice u/s 148 of the Income* Tax *Act,* 1961."

9. Further, in view of the decision of the Hon'ble Bombay High Court in the case of Bharat Jayant Patel (supra) , learned AO held should have allowed four weeks' time to the assessee to seek their legal remedies after rejection of the objections of the assessee. In view of the fact that the AO has disposed of the objections of the assessee on 22.11.11 and passed the assessment order on 19.12.2011, it is clear that no such time was granted to the assessee. Further, the reasons recorded at the time of assumption of jurisdiction by the AO that the assessee has received an accommodation entry of Rs.15 lacs whereas at the time of framing of assessment, the assessee was assessed the share application money to the tune of Rs.2.15 crores. We find reason in the submission of learned AR that in view of the decision in PCIT vs. RMG Polyvinyl (I) Ltd.386 ITR 5 (Bom), such an error indicates non application of mind by the learned AO.

10. Above all as submitted by the learned AR, the reasons recorded by the learned AO do not suggest whether the assessee has received or provided the accommodation entries inasmuch as the reasons read that "bogus accommodation entries were provided/taken". This assumes importance in view of the submission of the learned AO in the remand report, which is to be found at page 30 of the paper books, which reads as follows:

*" Although in S.K. Jain and V.K. Jain group search and survey operations u/s 132/133A were carried out on 14.9.2010 and the report of the investigation wing was circulated vide their letter dated 12.3.2013 and the Investigation Wing in their report covered the period of assessment year 2005-06 to 2011-12 although this group was involved in providing accommodation entries nprior to asstt. Year 2001-02. The time limit of taking action u/s 147 for asstt. Years 2004-05 was 31.3.2011. Hence, the*

*Investigation Wing had not analyzed the transaction of accommodation entries prior to asstt. Year 2005-06."*

11. This clearly shows that the Investigation Wing had not analyzed the transaction of the accommodation entries prior to the Asstt. Year 2005-06 whereas the present case pertains to the Assessment Year 2004-05. Even the order of the learned AO does not reveal that he had undertaken any such exercise before the recording of the reasons. The reasons recorded do not specify the other party, who either received or provided the accommodation entries and they also do not establish the involvement of the assessee in the information unearthed by the Income-tax Department in respect of the huge money laundering mechanism.

12. All these things, according to us, do not inspire any confidence in our mind to hold that the learned AO has reached any conscious decision that any income of the assessee has escaped assessment and the modus operandi thereof. We, therefore, while respectfully following the decision of the coordinate bench of the Tribunal in MRY Auto Components Ltd. (supra) hold that the satisfaction of the learned AO is not based on any sound reasoning and on that ground, we hold that the reopening of assessment is bad. Since we reached a conclusion that the reopening proceedings are bad in law and on facts, we do not propose to delve deeper into the merits of the case, suffice it to say that the assessment order dated 19.12.2011 is not legal or binding. On this premise, we allow the appeal of the assessee.

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

**Order pronounced in the Open Court on 6th April, 2018.**

**Sd/-** **sd/-**

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 6th April, 2018
'VJ'

Copy forwarded to:

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

By order

Asstt. Registrar, ITAT