

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM**

I.T.A. No.6098/Mum/2016  
(Assessment Year: 2007-08)

Income Tax Officer-12(3)(4), Room No. 147A, 1 <sup>st</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Mohanraj Trading & Exchange Pvt. Ltd. 120, Bazar Road, Bandra (West), Mumbai-400 050
PAN/GIR No. AABCM 4628 C		
<b>(Revenue)</b>	:	<b>(Assessee)</b>

C.O. No.63/Mum/2018  
(Arising out of ITA No. 6098/Mum/2016)  
(Assessment Year: 2007-08)

M/s. Mohanraj Trading & Exchange Pvt. Ltd. 120, Bazar Road, Bandra (West), Mumbai-400 050	Vs.	Income Tax Officer-12(3)(4), Room No. 147A, 1 <sup>st</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AABCM 4628 C		
<b>(Assessee)</b>	:	<b>(Revenue)</b>

<b>Revenue by</b>	:	Dr. K. Shivaram & Ms. Neelam C. Jadhav
<b>Assessee by</b>	:	Shri V. Vidhyadhar

<b>Date of Hearing</b>	:	07.06.2018
<b>Date of Pronouncement</b>	:	02.07.2018

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue and cross objection by the assessee arise out of the order of the Id. Commissioner of Income Tax (Appeals) dated 16.02.2016 and pertains to assessment year 2006 -07.

2. The grounds of appeal raised in Revenue's appeal read as under:

1. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting addition of Rs.1,20,00,000/- made by Assessing Officer u/s.68 of I.T. Act in respect of the bogus share capital received from companies controlled and managed by Praveen Kumar Jain.
  2. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred by not appreciating peculiar facts of the case that
    - (I) There was a specific information from Investigation Wing that the investor companies belonged to Praveen Kumar Jain, who had admitted in a statement on oath that he was involved in providing accommodation entries and therefore, this aspect constituted a relevant material.
    - (II) The assessee failed to produce bank statements of investors, copy of ROI of investors and also failed to produce the investors before the Assessing Officer for cross examination when specifically ask to do, and thus failed to prove genuineness of the transactions.
    - (III) During the remand proceedings, request made by the assessing officer to Ld.CIT(A) to direct the assessee to produce the investor parties for cross examination before him was not acted upon. At the same time the assessee neither expressed inability to produce the parties / investors nor requested the Assessing Officer to summon them directly.
  3. On the facts and circumstances of the case and in law, Ld.CIT(A) failed to appreciate that the ratio of decisions relied upon by him were not applicable to the case of assessee company due to distinguishable fact and instead the ratio of decision of Hon'ble Delhi High Court in the case of Nova Promoters and Finlease (P) Ltd. will be applicable to the case of assessee.
  4. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O. be restored.
3. The grounds raised by the assessee in cross objection read as under:
1. The learned CIT(A) erred in not adjudicating the Additional Ground raised by the assessee during the appellate proceeding vide letter dt. 31/12/2015 for reopening of assessment as the same was without jurisdiction. Hence, the order passed by the CIT(A) is not as per the law.
  2. The learned CIT(A) erred in confirming the reopening of assessment u/s.147 without appreciating that the notice issued u/s.148 dt.25/03/2014 which is beyond the period of four years from the end of relevant assessment year in which the assessment u/s.143(3) was passed dtd.23/10/2009. Thus, Reopening is bad in law.
  3. The Learned CIT(A) failed to appreciate that reopening is bad in law as the notice u/s.148 dt.25/03/2014 has been issued without obtaining prior approval / sanction / satisfaction as required u/s. 151 of the Income tax Act. Hence, the reopening is bad in law.

4. The Learned CIT(A) failed to appreciate that the notice u/s.148 dtd.25/03/2014 was issued on the basis of Information received from DGIT(Invt), thus there was no independent application of mind by the A.O. It is simply based on borrowed satisfaction of some other authority; hence the reopening is bad in law and is liable to be quashed.
4. The assessee has also filed grounds under rule 27 of the Income Tax Appellate Tribunal Rules, 1963 submitting that the Id. Commissioner of Income Tax (Appeals) has erred in not adjudicating the issue raised in the additional ground regarding the validity of reopening.
5. At the outset, it is noted that there is a delay of 22 days in filing the cross objection. It has been pleaded that delay is attributed due to the mistake on the part of assessee's Chartered Accountant. Similar grounds as here have also been raised by the assessee under rule 27 of the ITAT Rules. Upon careful considering of the reasonable cause for the delay we condone the same.
6. We first take up on assessee's grounds raised in cross objection and under rule 27 of ITAT:

Here the assessee's plea is that in this case the Id. Commissioner of Income Tax (Appeals) has erred in not dealing the issue pertaining to validity of reopening, however, he decided the issue upon merits in favour of the assessee. We note that the Id. Commissioner of Income Tax (Appeals) has not observed anything about the validity of reopening. In this regard, the Id. Counsel of the assessee has referred to paper book page no. 122 where the assessee has raised ground relating to validity of reopening by way of additional ground. Now by way of this application under rule 27 of the ITAT Rules and

cross objection, the assessee is aggrieved that the Id. Commissioner of Income Tax (Appeals) has not adjudicated the other limbs of its challenge before the Id. Commissioner of Income Tax (Appeals) regarding the validity of reopening. The assessee has duly raised the ground before the Id. Commissioner of Income Tax (Appeals) regarding the validity of reopening by way of additional ground. However, the Id. Commissioner of Income Tax (Appeals) did not adjudicate those issues.

7. Upon hearing both the counsel and perusing the records, we are of the opinion that if a decision is challenged before the first appellate authority both on the issue of validity of jurisdiction as well as merits of the case, the adjudication on validity of reopening can by no stretch of imagination be liable for rejection on the ground that the assessment has been decided in favour of the assessee on merits. We also note that adjudication of issue raised on validity of reopening need reference to factual records which are not available before us.

8. Now the assessee is aggrieved by such an action of the Id. Commissioner of Income Tax (Appeals) and has raised the cross objection as well as the objection under rule 27 before the ITAT.

9. We find that the Hon'ble Madras High Court in the case of *CIT vs Ramdas Pharmacy* [1970] 77 ITR 276 (Mad) had expounded that an appellate authority cannot decide only one issue arising out of many issues and decline to go into the other issues raised before it on the ground that further issues will not arise in view of the finding on

the issue decided by it. It was expounded that if the appellate authority declines to consider and decide the other issues, it could only protract and delay the proceedings for the assessee has to get the decision of the appellate authority on the initial point set aside by approaching a higher appellate authority and thereafter again go before the appellate authority for the decision on the other issues left undecided by it earlier. It was held that this will amount to multiplication of proceedings under the Act. It was further expounded that the subordinate courts and tribunal's should as far as possible give their views on all the points raised before them so that the higher courts will have the benefit of the decision on other points also, if the necessity arises.

10. Examining the present case on the touchstone of above said case law, we find that the order of the Id. CIT(A) here directly falls under the ambit of Hon'ble High Court's order as above. The Id. CIT(A) has decided one issue and has left undecided another issues duly raised before him. Hence, we are of the considered opinion that these issues relating to validity of reopening were duly raised, which have been left undecided by the Id. CIT(A) and need to be remitted to the file of the Id. CIT(A). The Id. CIT(A) is directed to complete his appellate order by deciding on these issues regarding the validity of reopening which were duly raised before him by the assessee. Needless to add the Id. CIT(A) in his order shall also refer to the earlier adjudication by the Id. CIT(A), which we have not adjudicated in view of our remand here. After the order of the Id. CIT(A) is complete, upon adjudication of these issues, both the parties will be at liberty to file necessary appeals as and if necessary.

11. Accordingly, the issues not adjudicated by the Id. Commissioner of Income Tax (Appeals) as raised in the cross objection hereinabove are remitted to the file of the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) shall decide the same afresh after giving the assessee proper opportunity of being heard. In view of our order remitting the aforesaid issues to the file of the Id. Commissioner of Income Tax (Appeals) so as to complete his order, the other issues raised in these appeals are not being adjudicated.

12. Both the counsel fairly agreed to the above proposition.

13. In the result, the Revenue's appeal and the assessee's cross objection are allowed for statistical purposes.

*Order pronounced in the open court on 02.07.2018*

Sd/-

(Sandeep Gosain)  
Judicial Member

Mumbai; Dated : 02.07.2018

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Shamim Yahya)  
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai