

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.89/Del./2012
(ASSESSMENT YEAR : 2005-06)**

ITO, Ward 17 (4), vs. M/s. Virat Credit & Holdings Pvt.Ltd.,
New Delhi. 208, Wadhwa Complex,
D – 288/289, Laxmi Nagar,
Delhi.

(PAN : AAACV3010G)

**CO No.57/Del/2012
(in ITA No.89/Del./2012)
(ASSESSMENT YEAR : 2005-06)**

M/s. Virat Credit & Holdings Pvt.Ltd., vs. ITO, Ward 17 (4),
208, Wadhwa Complex, New Delhi.
D – 288/289, Laxmi Nagar,
Delhi.

(PAN : AAACV3010G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashwani Taneja, Advocate
Shri Shantanu Jain, Advocate
REVENUE BY : Shri Vijay Verma, CIT DR
Shri Amit Jain, Senior DR

Date of Hearing : 05.12.2017
Date of Order : 09.02.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The aforesaid appeal filed by the Revenue and cross objections filed by the assessee are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The Appellant, Income-tax Officer, Ward 17 (4), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 31.10.2011 passed by the Commissioner of Income-tax (Appeals)-XIX, New Delhi qua the assessment year 2005-06 on the grounds inter alia that :-

“1. On the facts and circumstances of the case and in law the learned CIT (A) as erred in deleting the addition of Rs.1,04,50,000/- made u/s 68 of the Income Tax Act, 1961 treating the credit in the books of the assessee as unexplained shown as receipt of share application money.

2. On the facts and circumstances of the case and in law the learned CIT (A) has erred in appreciating that the assessee company had not discharged its onus of proving the creditability of the applicants from whom the money was alleged to have been received.

3. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition made u/s 69C of Rs.1,04,500/- on account of commission paid for obtaining the accommodation entries.”

3. The Objector, M/s. Virat Credit & Holdings Pvt. Ltd., by filing the present cross objections challenged the assessment order

dated 30.12.2010 passed by the Assessing Officer qua the assessment year 2005-06 on the grounds inter alia that :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in quashing the impugned assessment order passed by Ld. AO without complying with the mandatory requirements of section 147 to 151 of the Income tax Act, 1961 and without recording valid approval as per law and passing the impugned order that too without independent application of mind.

2. That in any case and in any view of the matter action of Ld. CIT (A) in not quashing the assessment order is bad in law and against the facts and circumstances of the case.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : on receipt of information from Additional CIT, Range-1, New Delhi vide letter dated 11/14.01.2008 that assessee company has provided accommodation entries to different persons, the Assessing officer reopened the assessment by initiating the proceedings u/s 148 of the Income-tax Act, 1961 (for short ‘the Act’) by issuance of notice dated 25.03.2010 and completed the assessment u/s 143 (3) and thereby made an addition of Rs.1,04,50,000/- on account of obtaining accommodation entries under the garb of share application money from different persons as unexplained cash credit u/s 68 of the Act and made further addition of Rs.1,04,500/- as unexplained expenditure u/s 69C of the Act.

5. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the addition of Rs.1,04,50,000/- and Rs.1,04,500/- by partly allowing the appeal. However, the Id. CIT (A) has not decided the legal issue of reopening of the assessment challenged by the assessee company. Feeling aggrieved, the Revenue has come up before the Tribunal by filing the appeal challenging the deletion of additions made by the AO and the assessee company filed cross objection challenging the reopening of the assessment by the AO.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the assessment of the assessee for AY 2005-06 was framed u/s 143 (3) vide order dated 04.12.2007. It is also not in dispute that Id. CIT (A) has given a relief to the assessee company on merits without deciding the legal issue of reopening. The AO on receipt of information from Addl.CIT, Range-1, New Delhi reopened the assessment by issuing a notice dated 25.03.2010 u/s 148 of the Act by recording following reasons :-

“Reasons recorded under section 147 for issue of notice under section 148 of the IT Act in the case of M/s Virat Holding & Credit Pvt Limited (AAACV3010G)

for Assessment Year 2005-06

The assessee filed Return of income on 31/3/2006 vide receipt No 3122 declaring income of Rs.31490/-. During the year the assessee company has raised share application money amounting to Rs.12261500/-. The assessment was completed under section 143(3) of the IT Act vide order dated 4/12/2007 at returned income of Rs.31490/-.

Later on information received from office of the Addl CIT Range-1 New Delhi that during the assessment proceedings of M/s Aanchal Net Technologies Pvt Ltd, the ITO Ward 1 (1), New Delhi, came across the 7 cases of following companies, which were involved in providing bogus entries:

- i) M.s Aanchal Net Technologies Pvt Ltd*
- ii) M/s Aanchal Buildcon Pvt Ltd*
- iii) M/s Aanchal Contractors Pvt Ltd*
- iv) M/s Aanchal Township Pvt Ltd*
- v) M/s Aanchal Info System Pvt Ltd*
- vi) M/s Aanchal Projects Pvt. Ltd.*
- vii) M/s Aanchal Infrastruals Pvt. Ltd.*

The above companies were having their office addresses either as "88, Baldev Park, Parwana Road, Khureji Khas Delhi" or as "Plot No 55, Patpargang Industrial Area, Delhi". It was found that one Sh P K Jindal was running a racket of providing accommodation entries. Besides the above 7 companies, he was also utilizing many more companies. He controlled most of the companies. In some of the companies he himself was the Director. In other companies there were dummy Directors and Sh Jindal was actually controlling the affairs of those companies. Sh PK Jindal furnished a list of companies, which were not doing any real business activities but were engaged in providing accommodation entries. Sh Jindal also furnished a list of beneficiaries, who got the accommodation entries in form of share application money after making cash payment to the companies (or their dummy Directors) engaged in providing accommodation entries.

Perusal of assessment records of the assessee company revealed that its name was appearing in the list of beneficiaries. It was further noticed that the assessee company has received share application money amounting to Rs.10450000/- during the year under consideration from the following companies appearing in the list of companies engaged in providing accommodation entries:

| | | |
|----------|----------|----------|
| <i>1</i> | <i>2</i> | <i>3</i> |
|----------|----------|----------|

| <i>Sl.No</i> | <i>Name of the company providing accommodation entries</i> | <i>Amount of share application money received through accommodation entry (Rs)</i> |
|--------------|--|--|
| <i>1.</i> | <i>Instant Traveling and Tours Pvt. Ltd.</i> | <i>9 lac</i> |
| <i>2.</i> | <i>Luster Finlease Investment Pvt. Ltd.</i> | <i>5 lac</i> |
| <i>3.</i> | <i>Junnon Capital services Pvt. Ltd.</i> | <i>10 lac</i> |
| <i>4.</i> | <i>Aanchal Buildcon Pvt. Ltd.</i> | <i>27.50 lac</i> |
| <i>5.</i> | <i>Juneja Nagpal Construction Pvt. Ltd.</i> | <i>8 lac</i> |
| <i>6.</i> | <i>Prasandi Leasing & Finance Pvt. Ltd.</i> | <i>5 lac</i> |
| <i>7.</i> | <i>Dume Footwear Pvt. Ltd.</i> | <i>25lac</i> |
| <i>8.</i> | <i>Akik Education Centre Pvt. Ltd.</i> | <i>5 Lac</i> |
| <i>9.</i> | <i>Gaurav Holding Pvt. Ltd.</i> | <i>10 lac</i> |
| | <i>Total</i> | <i>104.50 lac</i> |

It may be mentioned that as per information received, the assessee company is beneficiary for Rs.27.50 Lac received through accommodation entry from Aanchal Buildcon Pvt Ltd. However as per details given above, the assessee has received Rs.104.50 Lac in the grab of share application money through accommodation entries, which is apparently assessee's own unaccounted money introduced in its books of accounts through intermediaries i.e. Accommodation Entry providers.

In view of the above facts I have reasons to believe that assessee income amounting to Rs.104.50 Lac chargeable to tax has escaped assessment for the assessment year 2005-06.

Submitted to the Addl Commissioner Range-17 for her perusal and sanction under section 151 for issue of notice under section 148 of the IT Act."

8. The ld. AR for the assessee challenging the reopening contended that Addl.CIT has accorded sanction without applying judicial mind which is not sustainable; that AO has not applied his independent judicial mind while recording reasons to reopen the

assessment rather reasons are based upon the alleged admission of one Shri P.K. Jindal; that the AO has not disposed of all the preliminary objections raised by the assessee company for reopening; that the entire enquiry / investigation has been made by the AO at the back of the assessee company; that Juneja Nagpal Construction Pvt. Ltd. was not doing any business.

9. However, on the other hand, the ld. DR to repel the arguments addressed by the ld. AR for the assessee company contended that only prima facie material is to be seen for the purpose of reopening; that sanction has been accorded by Addl. CIT for reopening after duly applying his mind.

10. First of all, ld. AR for the assessee company drew our attention towards sanction accorded by the Addl.CIT for reopening of the assessment obtained by moving an application under Right to Information Act, 2005, available on file as Annexure 'A'. Perusal of the sanction accorded by Addl. CIT in the prescribed proforma shows that there is a question no.13 viz. :

“13. Whether the Addl. CIT is satisfied on the reasons recorded under section 147 that it is a fit case for issue of notice under section 148 of the IT Act.

11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written “*Yes. I am satisfied.*” No doubt, columns of reasons recorded was there and it is also mentioned in column no.12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.

12. Apparently, from the approval recorded and words used that “*Yes. I am satisfied.*”, it has proved on record that the sanction is merely mechanical and Addl.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act.

13. Even AO while recording the reasons for initiating the reopening of assessment has not applied his mind independently. When we peruse the reasons recorded, available at pages 31-32 of the paper book, the entire reasons have been based on the statement of one Shri P.K. Jindal, who has furnished the list of companies stated to be not doing any business activities but engaged in providing accommodation entries. Before issuing the notice AO appeared to have not examined the profile of the said companies to arrive at a logical conclusion so as to issue the notice u/s 148 of the

Act. When this fact is examined in the light of the completed assessment of the assessee u/s 143 (3), all the documents concerning share application money, now available at pages 1 to 30 of the paper book, were supplied to the AO. This fact has not been taken into consideration by the AO before initiating the proceedings u/s 147/148 of the Act. However, since reopening of assessment in this case is otherwise not sustainable, we are not entering into any merits.

14. Hon'ble Supreme Court in case cited as *CIT vs. S. Goyanka Lime & Chemical Ltd. – (2015) 64 taxmann.com 313 (SC)* examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording “Yes. I am satisfied.” And held that reopening on the basis of mechanical sanction is invalid by returning following findings :-

“ Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under. section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

Search and Seizure-Procedure for block Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and

147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'-Action for sanction was alleged to be without application of mind and to be done in mechanical manner-Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such consideration, both Appellate authorities interfered into matter-No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."

15. The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings :-

" Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion-Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of

given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed.”

16. Furthermore, perusal of the noting sheet dated 09.03.2010 to 30.12.2010 made available to the Bench for perusal shows that only AO has recorded that Addl.CIT has considered the reasons recorded before according the sanction, however even no prima facie material is there, if Addl.CIT has applied his mind by considering the reasons recorded before according the sanction. We are of the considered view that the AO who has recorded the reasons cannot enter into the mind of the sanctioning authority (Addl.CIT) discharging the quasi-judicial function for according valid sanction for reopening the assessment.

17. Moreover, according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Addl.CIT as required u/s 151 of the Act. When the Revenue Department is manned by highly qualified officers they are to evolve legally sustainable standard operating procedure for discharging quasi-judicial function.

16. Hon'ble High Court of Delhi in case cited as ***SABH Infrastructure Ltd. vs. ACIT in WP (C) 1357/2016 order dated 25.09.2017*** has issued guidelines to the Revenue authorities while

deciding the issue of reopening u/s 147/148 of the Act. Operative part of which is reproduced as under:-

“19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for reopening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for

reopening of the assessment beyond what has already been disclosed.”

17. In view of what has been discussed above, reassessment opened by the AO in this case is not sustainable in the eyes of law, hence hereby quashed. Consequently, cross objection filed by the assessee company stands allowed and the appeal filed by the Revenue has become infructuous.

Order pronounced in open court on this 9th day of February, 2018.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 9th day of February, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XIX, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**