

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 29.08.2022

DELIVERED ON: 13.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/175/2021

(IA NO: GA/02/2021)

PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA

VERSUS

ARSHIA GLOBAL TRADECOM PRIVATE LIMITED

Appearance:-

Mr. Prithu Dudhoria, Adv.

.....For the Appellant.

Mr. Avratosh Majumder, Sr. Adv.

Mr. Avra Mazumder, Adv.

Mr. Binayak Gupta, Adv.

Sk. Md. Bilwal Hossain, Adv.

Mr. K. Ray, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18.11.2020 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata, (Tribunal), in ITA No. 2042/Kol/2019 for the assessment year 2011-2012.

2. The revenue has raised the following substantial question of law for consideration:

Whether on the facts and in the circumstances of the case the ITAT erred in law in quashing the proceedings under Section 147 of the Income Tax Act, 1961 by not appreciating the facts of the issue?

3. We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant and Mr. Avratosh Majumdar, learned Senior advocate assisted by Mr. Avra Majumder, Mr. Binayak Gupta, Sk. Md. Bilmal Hossain and Mr. K. Ray advocates for the respondent assessee.

4. The assessee filed their return of income for the assessment year under consideration, A.Y. 2011-2012, on 30.09.2011 declaring a total income of Rs. 34,66,719/-. The assessment was completed under Section 143(3) on 27.03.2014 with the total income of Rs. 1,87,52,820/-. The assessment was reopened under Section 147 of the Act on the ground that the department was in receipt of information that in the assessee's current account since the year 2010 large value of non-cash transactions have occurred amounting to around Rs. 28,56,66,139/-. Thus, the allegation was that the assessee routed its own funds through paper/shell companies which also

indicates bogus billings. Further during the financial year 2010-2011, a sum of Rs. 3.41 crores was deposited on different dates in the assessee's bank account which needs verification. Further it was stated that on perusal of the assessee's bank statement, it was observed that the funds transferred to the assessee's account was immediately transferred to other entities followed by the cash withdrawal from the account. In response to the notice under Section 148 dated 24.03.2018, the assessee filed its return of income declaring total income of Rs. 38,02,680/-. Subsequently, notices under Section 143(2) and 142(1) were issued and the case was discussed with the authorised representative of the assessee, written objections were also filed by the assessee. After perusal of the reply given by the assessee to the show cause notice issued on 11.12.2018, the assessing officer completed the assessment by order dated 31.12.2018. The assessing officer pointed out that the assessee has failed to substantiate the transactions made in its account maintained with ICICI Bank, VK Road Branch, Kolkata. Further with regard to the claim made by the assessee that they had effected purchase transactions with 10 entities to the tune of Rs. 68,58,39,462/- and Rs. 8,70,81,602/-, the assessing officer held the transactions to be not genuine as the assessee failed to produce the parties related to those transactions and the summons issued to them were also not complied with. Further the assessing officer pointed out that in the scrutiny assessment made under Section 143(3) dated 27.03.2014, the assessing officer held that the assessee is habitual in taking accommodation entries from different shell companies and an addition was made under Section 68 of the Act to the tune of Rs. 1,50,00,000/-. The assessing officer noted the decision of the

Hon'ble Supreme Court in ***CIT Versus Durga Prasad More ¹; Sumati Dayal Versus CIT ²*** and ***Mc. Dowell & Company Limited ³*** and held that it is evident that the assessee has made bogus transactions of sales and purchase with various parties and the claim of the assessee that those transactions were genuine was not acceptable. After analysing the sales figures, the assessing officer held that nearly 50% of the total purchases of the assessee during the year have been made with bogus parties/shell companies. Further the assessee failed to substantiate its transactions during the year and large cash deposits were found in its bank account, to the tune of Rs. 3,79,25,000/-. That the assessee failed to produce original cash memos and bills to substantiate the cash deposits into its bank account and also failed to produce the stock register to substantiate its claim. Pointing out the defects and discrepancies in the Books of Accounts, Profit and Loss Account and the Balance Sheet, the same were rejected by the assessing officer by invoking the provisions of Section 145(3) of the Act and proceeded to pass an assessment under Section 149 of the Act.

5. Aggrieved by the order of assessment, the assessee preferred appeal to the Commissioner of Income Tax (Appeals 3), Kolkata, [CIT(A)] contending that the reassessment is invalid as it is a case of change of opinion on the same set of facts and that the assessing officer erred in rejecting the books of accounts and wrongly invoked the provisions of Section 145(3) of the Act. The CIT(A) in its order dated 31.01.2019 first took up for consideration as regards the validity of the reopening of the assessment. On perusal of the

¹ 82 ITR 540

² (1995) 214 ITR 801 (SC)

³ 154 ITR 148 (SC)

cash trail which was discussed by the CIT, he opined that those facts were not before the assessing officer when the scrutiny assessment order was passed on 27.03.2014. Further it was noted that sufficient material evidence has been passed on to the assessing officer by the investigation wing and reassessment having been done on new facts does not amount to change of opinion. Further it was pointed out that the assessing officer while finalising the scrutiny assessment did not have any knowledge of the assessee having transaction with various paper companies. The CIT(A) placed reliance on the decision in **Avirat Star Homes Venture Private Limited** ⁴ for the proposition that where information was received from investigation wing about certain companies that they were involved in giving accommodation entries to several beneficiaries and the assessee being one of them, information supplied by the investigation wing to the assessing officer, thus, formed a prima facie basis to enable the assessing officer to form a belief of income chargeable to tax having escaped assessment. Reliance was also placed on the decision of the High Court of Gujarat in **Peass Industrial Engineers Private Limited Versus Deputy Commissioner of Income Tax** ⁵ wherein it was held that after scrutiny assessment, the assessing officer received information from investigation wing that entry operators provide bogus entries to various beneficiaries and the assessee therein was one such beneficiary and therefore, the assessing officer was justified in reopening the assessment. With regard to the cash deposit, the CIT(A) referred to the remand report submitted by the assessing officer and held that the claim of

⁴ 102 Taxman.com 60 (Bombay)

⁵ (2016) 73 Taxmann.com 185 (Gujarat)

the appellants that they had sufficient cash balance in its books was held to be not acceptable, more particularly, when the party to whom the alleged sales of Rs. 8,70,81,602/- was claimed to have been made has not been found to be existing. Accordingly, the CIT(A) held the assessment to be valid and proper and the appeal was rejected.

6. Aggrieved by the order passed by the CIT(A), the assessee filed appeal before the tribunal which was allowed by order dated 18.11.2021 impugned in this appeal. The tribunal opined that there is no allegation made by the revenue that the assessee failed to disclose fully and truly all material facts for the assessment and therefore there was no justification for reopening assessment after expiry of four years from the end of the relevant assessment year. The decision in **Avirat Star Homes** was distinguished by stating that in the said case the original assessment was under Section 143(1) of the Act and not under Section 143(3) of the Act. The decision in **Peass Industrial Engineers Private Limited** was distinguished by stating that it was a case where the assessment was reopened within four years. Ultimately, the tribunal held the reopening of the assessment was bad in law since no allegation of failure on the part of the assessee to fully and truly disclose material facts has been brought out in the reasons recorded for reopening and the appeals was allowed.

7. The reopening of the assessment was based upon investigation done, during the course of which the transactions of the assessee in their bank account was examined and scrutinised. The total non-cash credit in the assessee's account from 28.09.2010 till 12.03.2011 was around Rs. 28,56,66,139/- and non-cash flow including transfers to the linked

accounts was around Rs. 31,68,76,920/-. During the investigation, it came to light that from several bank accounts funds were credited into bank account of the assessee and those accounts were operated by companies, partnership firms, and proprietorship. Further on analysis, it was found that the companies which had transferred funds to the bank account of the assessee were shell companies operated by well-known entry operators in Kolkata. Statement was recorded from the entry operators who have admitted that the companies are shell/paper companies which are controlled and managed by them and they also provide accommodation entries in the form of bogus billings/share capital/unsecured loans etc. to various beneficiaries through those shell/paper companies. Further, the funds which were transferred to bank account of the assessee was immediately transferred to other entities and at times followed by cash withdrawals from the said accounts. The above is the reasons set out for reopening the assessment.

8. The question would be as to what is the expected of an assessing officer to do if he receives information from the investigation wing with regard to the huge cash transactions done by the assessee in its bank account and the cash stood deposited in the assessee's bank account by shell/paper companies. More or less an identical factual scenario was in the case of **Peass Industrial Engineers Private Limited**. In the said case, the assessee was engaged in the business of the manufacturing textile machinery and spare parts. The DGIT (Investigation), Ahmedabad submitted a report stating that two persons are well known entry operators of Kolkata and have been giving entries of bogus share capital bank, bogus bills of

expenses and bogus long terms capital gains to various beneficiaries throughout the country and the assessee therein was also a beneficiary to the tune of Rs. 201.43 lakhs. As was argued before us by Mr. Majumder, the assessee therein contended that the scrutiny assessment has already taken place and therefore the assessment cannot be reopened. The Court pointed out that the earlier scrutiny assessment was not based upon such information which has been received by the DGIT (Investigation Branch) and therefore there was no occasion for the assessing officer to examine the nexus between the entry operators and the assessee and specific information has come to the effect that the assessee therein is the beneficiary of the said entry operators to the tune of Rs. 210.43 lakhs and therefore held that the discretion has been rightly exercised by the authorities. The Court took note of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner of Income Tax Versus Rajesh Jhaveri Stock Markets Private Limited*** ⁶ wherein it was pointed out that Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax, if he has reason to believe that income for any assessment year has escaped assessment. It was further pointed out that the word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the assessing officer should finally ascertain the fact by legal evidence or conclusion. It was further pointed out that at that stage,

⁶ (2007) 291 ITR 500 (SC)

the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is the reason to believe, but not the established fact of a statement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. With regard to the effect of the information furnished by the investigation wing, the Court held that the assessee therein being a beneficiary of the entry operators who were well known across the country, it cannot be said in any way that even if four years have been passed it is not open to the authority to reopen the assessment. The relevant portion of the decision is quoted herein below:

On the basis of aforesaid proposition laid by series of decisions, we are of the opinion that when the Authority is armed with the tangible material in the form of specific information received by the Investigation Wing, Ahmedabad is thoroughly justified in issuing a notice for reassessment. It is revealed from the said additional material available on hand a reasonable belief is formed by the Assessing Authority that income of the petitioner has escaped assessment and therefore, once the reasonable belief is formulated by the Authority on the basis of cogent tangible material, the Authority is not expected to conclude at this stage the issue finally or to ascertain the fact by evidence or conclusion, we are of the opinion that function of the assessing authority at this stage is to administer the statute and what is required at this stage is a reason to believe and not establish fact of escapement of income and therefore, looking to the scope of Section 147 as also Sections 148 to 152 of the Act, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the petitioner has escaped assessment, it is always open for the assessing

authority to reopen assessment. From the reason which are recorded, it clearly emerges that the petitioner is the beneficiary of those entries by Kayan brothers, who are well known entry operators across the country and this fact has been unearthed on account of the information received by DGIT Investigation Branch and therefore, it cannot be said in any way that even if four years have been passed, it is not open for the Authority to reopen the assessment. In the present case, there was independent application of mind on behalf of the assessing authority in arriving at the conclusion that income had escaped assessment and therefore, the contentions raised by the petitioner are devoid of merits. Dealing with the contentions of the petitioner that the information received from DGIT, Investigation Branch, Ahmedabad, can never be said to be additional information. We are of the opinion that the information which has been received is on 26.03.2015 from the DGIT, Investigation Branch, Ahmedabad, whereby it has been revealed that present petitioner is also the beneficiaries of those Kayan brothers who are in the activity of entry operation throughout the country and therefore, it cannot be said that this is not justifiable material to form a reason to belief by the Authority and therefore, this being a case, the Authority is justified in issuing notice under Section 148 of the Act to reopen the assessment and therefore, the challenge contained in the petition being devoid of merits, same deserves to be dismissed.

9. The learned tribunal had distinguished the decision solely on the ground that the assessment in the said case was reopened within 4 years. Unfortunately, the tribunal failed to take note of the ratio disidendi laid down in the said decision upholding the reopening of the assessment after completion of the scrutiny assessment upon information being received from the investigation wing that the assessee therein was a beneficiary of

bogus entries. Therefore, we do not agree with the tribunal on the said aspect and we hold that the decision in the case of **Peass Industrial Engineers** will come to the aid and assistance of the revenue in this appeal. Similar was the view taken in **Aaspas Multimedia Limited Versus Dy. CIT** ⁷ wherein it was held as follows:

“.....In the present case the reassessment proceedings have been initiated by the Assessing Officer on the basis of material provided by the Principal Director (Investigation). It is also required to be noted that the genuineness of the various companies who made share applications are doubted. The assessee is alleged to have been engaged in bogus share applications from various bogus concerns operated by PKJ. The assessee is the beneficiary of the said transactions of share application by those bogus concerns. In the wake of information received by the Assessing Officer, when the Assessing Officer formed a belief that the investment made from the funding of such companies which are bogus, the Assessing Officer has rightly assumed jurisdiction of initiating the reassessment proceedings. The Assessing Officer, on the basis of information subsequently having come to his knowledge, recognized untruthfulness of the facts furnished earlier. In the present case, since both the necessary conditions to reopen the assessment have been duly fulfilled, sufficiency of the reasons is not to be gone into by this Court. Information furnished at the time of original assessment, when by subsequent information received from the Principal Director (Investigation), itself found to be controverted, the objection to the notice of reassessment under Section 147 must fail.”

10. The learned tribunal has also failed to take note of the legal principle that at the time of recording the reasons for satisfaction of the assessing officer there should be prima facie material on the basis of which the

⁷ (2017) 83 Taxmann.com 82 (Guj)

assessing officer could reopen the case and it is not required to consider the correctness or sufficiency of the information at that stage. In this regard, it is beneficial to refer to the decision of the Hon'ble Supreme Court in **Raymond Woollen Mills Limited Versus ITO**.⁸ The abovementioned decisions have been referred to in **Priya Blue Industries Private Limited Versus Assistant Commissioner of Income Tax**⁹. We may also refer to the decision of the Hon'ble Supreme Court in **Central Provinces Manganese Ore Company Limited Versus ITO**¹⁰ wherein it was held:

.....for initiation of action under Section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential; at that stage, the final outcome of the proceeding is not relevant; in other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income; at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief; whether the materials would conclusively prove the escapement is not the concern at that stage.

11. The special leave petition filed against the decision of the Gujarat High Court in **Priya Blue Industries** was dismissed by the Hon'ble Supreme Court as reported in **2022 138 taxman.com 69 (SC)**.
12. Mr. Majumder placed reliance on the decision in **Sarvana Stocks Investments Private Limited Versus Deputy Commissioner of Income Tax**¹¹ the said decision is wholly distinguishable on facts as the core issue

⁸ (1999) 236 ITR 34 (SC)

⁹ (2021) 130 Taxmann.com 492 (Gujarat)

¹⁰ (1991) 191 ITR 662

¹¹ (2021) 133 Taxmann.com 315 (Madras)

was whether reopening of the assessment on the ground that there was no investment in shares by the assessee therein and the income earned by it from sale of shares had to be treated as business income and not as capital gains and while considering the said issue, the Court also examined as to the validity of the reopening. Furthermore, it was not the case where the assessing officer received information from the investigation wing of the department.

13. In the case on hand the reassessment proceedings, the assessee was unable to justify the genuineness of the transactions. The assessee failed to produce original cash memos and bills for the sales alleged to have been effected and to substantiate the cash deposit into their bank accounts. During the scrutiny assessment based on the information received from the investigation wing, notice under Section 142(1) was issued to the assessee requiring the assessee to provide details and produce the entities involved in the transaction mentioned in the reasons for reopening along with the details of the transactions. The assessing officer notes that the assessee submitted details and documents but failed to produce the Directors of those entities. The summons issued under Section 131 of the Act to the various entities for whom the assessee had transactions were not complied with as none appeared in response to such summons. Three entities appear to have submitted certain replies. Summons sent to five other entities were returned unanswered. The directors of the Companies did not appear and therefore the assessing officer concluded that the entities are mere paper/shell companies. Thereafter another show cause notice dated 11.12.2018 was issued to the assessee stating that in the current account of

the assessee, total non-cash credit from 28.09.2010 till 12.03.2011 is around Rs. 28,56,66,139/- and non-cash out flow is around Rs. 31,68,76,920/- and cash deposit of Rs. 3.41 crores was found. Therefore, the assessee was informed that as per notice dated 25.10.2018 issued under Section 142(1) of the Act, the Directors of those entities were to be personally present but however they failed to respond to the said notices. Further, the assessing officer on deeper examination of the facts found that the source of funds of the assessee is from entities who have either not filed their return of income or shown very negligible net profit out of huge turn over. Further, the nature of transaction done by the assessee was examined and it was pointed out that funds which come through those paper entities to the assessee are immediately transferred to other paper entities and ultimately withdrawal of cash from their bank accounts. Therefore, the assessing officer concluded that the assessee has routed its own funds through the shell companies which would clearly indicate bogus billings. Therefore, the assessee was directed to show cause as to why the transactions should not be considered as unexplained cash credit in their hands. The assessee submitted their reply on 14.12.2018. The reply was considered and the assessing officer found that the assessee failed to substantiate the transactions in their ICICI Bank account. The genuineness of the transactions were not established by the assessee and the summons which were issued to those entities were also non complied with. These facts which were brought on record during the reassessment proceedings was re-examined by the CIT(A) who has also recorded its independent findings while upholding the order passed by the assessing officer. The CIT (A) not

only considered the findings of the assessing officer but also examined the remand report and held that it has been established by detailed enquiry that the fund transferred into the account of the assessee were mostly from entry operators based companies who are only giving accommodation entries and similarly funds have been transferred from the assessee to the operators based companies who are also engaged in the business of providing accommodation entries and bogus billings. The CIT(A) also noted that during the scrutiny proceedings and remand proceedings none other directors of the said company appeared before the assessing officer and the assessing officer rightly identified nine shell companies who are providing bogus purchase bills and accordingly held that the assessee has deposited its own unaccounted cash in the bank account and confirmed the findings of the assessing officer. Unfortunately, the tribunal failed to examine any of the factual details which have been brought out by the assessing officer as well as the CIT(A) but merely went on the basis as to what are the conditions to be fulfilled in order to reopen the assessment. As pointed out earlier, reasons given by the learned tribunal to distinguish the decision in **Peass Industrial Engineers** is not tenable.

14. Thus, we are of the view that the order passed by the tribunal has ignored the crucial aspects of the matter which are relevant to the reopening of the assessment. Thus, we are of view that the order impugned calls for interference.

15. In the result, the appeal filed by the revenue is allowed. The order passed by the learned tribunal is set aside and the order passed by the

Commissioner of Income Tax (Appeals) is restored. Consequently, the substantial question of law is answered in favour of the revenue. No costs.

(T.S. SIVAGNAM, J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)



(P.A. - SACHIN)