

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2912/Del./2013
(ASSESSMENT YEAR : 2004-05)**

M/s. Lavitra Technologies Pvt. Ltd., vs. ITO, Ward 15 (4),
(amalgamated company for New Delhi.
M/s. Roopali Marketing Pvt. Ltd.
(amalgamating Company),
62, G – 11, Sector 15, Rohini,
New Delhi – 110 085.

(PAN : AACCL0164F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Deepak Ostwal, CA and
Shri Rishabh Ostwal, Advocate
REVENUE BY : Shri Shravan Gotru, Senior DR

Date of Hearing : 12.07.2016

Date of Order : 14.07.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Lavitra Technologies Pvt. Ltd. (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 14.03.2013 passed by the Commissioner of Income-tax (Appeals)-XVIII, New Delhi qua the assessment year 2004-05 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case, the CIT (A)-XVIII, New Delhi has erred both on facts and in law, in upholding the illegal order passed by the Respondent without jurisdiction, violative of natural justice, without application of fair and , objective mind to facts of the case and the law applicable and without guided by the binding decisions of the courts and tribunals and hence liable to be set aside and quashed and declared non-est in law.

2. On the facts and in the circumstances of the case, the CIT (A)-XVIII, New Delhi has erred both on facts and n law, in upholding the illegal action of re-assessment and assumption of jurisdiction illegally by the Respondent that too without issue/ served notice u/s 148 and the entire proceedings of reassessment is void ab initio, illeg.al and unauthorized by law.

3. On the facts and in the circumstances of the case, the CIT (A)-XVIII, New Delhi has erred both on facts and In !aw, in upholding assumption of jurisdiction in spite of the fact that the case is of after four year and the AO not recorded any satisfaction that there was escapement of any income by reason of failure on the part of the assessee that too without issue/ served notice u/s 148 is void-ab-initio, illegal and unauthorised by low.

4. The respondent has erred in law as the statutory requirement of section 147 to 153 of the Income Tax Act and the impugned order ought to have been set aside by the CIT(A) and failure to do so has vitiated the impugned order.

5. The order of Re-assessment having been passed in violation of natural justice and hastily by obtaining behind the back of the appellant on the basis of some alleged statements/information none of which had been made available to the appellant nor any opportunity provided to rebut the same and without providing opportunity of cross-examination of different persons specifically asked by the appellant and there was not even a show cause notice specifically proposing to make the additions nor any effective opportunity of personal

hearing was giving hence, the impugned order ought to have been set aside by the CIT (A) and failure to do so have vitiated the impugned order.

6. That under the facts and circumstances of the case and in law, the respondent has not discharged its onus of proof in any manner and has chosen to make illegal addition perversely and all the additions therefore ought to be set aside by Ld. CIT(A) and failure to do so has vitiated the impugned order.

7. The Respondent has not replied to the objection specifically raised by the assessee during the course of proceeding by passing the speaking order in terms of law therefore impugned order passed ought to have been set aside by Ld. CIT (A) and failure to do so have vitiated the impugned order.

8. Ld. CIT (A) erred in making the illegal additions of Rs.30,00,000/- in place of deleting the additions of Rs.22,00,000/- made by Respondent without any basis and legs u/s. 68 by treating the sale proceed of stock/shares as unexplained income ignoring the records and documents already filed before the ITO which were properly verified and accepted by him. Hence the order may be vacated and demand may be deleted.

9. The authorities below have erred in not following the binding decisions of Courts and Tribunals relied upon by the appellant for the fact that nothing was added out of reasons recorded and impugned orders cannot, therefore, be sustained both on facts and in law.

10. Ld. CIT (A) has also erred in upholding the illegal additions and disallowances and consequent demands of Income Tax, Interest and penalties illegally raised by the Respondent and hence the impugned order sustaining the additions and demand would require be setting aside and quashing to that extent.

11. The appellant craves leave to raise further/additional grounds and documents and file paper

book before the hearing of the appeal and prays for the appeal to be allowed after hearing both side.”

2. Briefly stated the facts of this case are : assessee filed return declaring income of Rs.12,790/- on 30.10.2004, processed under section 143 (1) of the Income-tax Act, 1961 (for short ‘the Act’) on 04.01.2005. However, on receiving information from the Investigation Wing, New Delhi that assessee is one of the beneficiaries of the bogus accommodation entries amounting to Rs.75,00,000/-, proceedings u/s 147/148 of the Act were initiated.

3. In response to the notice issued u/s 148 of the Act, assessee has neither filed any return of income nor opted to treat his return filed u/s 139(1) as reply to the notice. AO in the reasons recorded stated that there was some clerical mistake as certain single transactions were appearing in multiple resulting in working of the escaped income to the extent of Rs.75,00,000/- which stands corrected for the purpose of completion of the proceedings. Statement of one Shri Deepak Gupta, entry operator from whom the assessee has received bogus accommodation entries, was recorded by Addl. Director of Income Tax (investigation), Unit-I, New Delhi. Assessee filed copy of ITR, PAN, balance sheet and confirmation but failed to furnish any bank statement but the same was called u/s 133(6) of the Act. AO from the bank statement

noticed that there are credit entries of approximately equivalent amount in cash or transferred prior to clearance of cheques issued to the assessee company and in none of the accounts, there was sufficient balance on any day but the cheques have been honoured by way of cash deposit or transfer entry. There were regular cash deposits or transfer entries of equivalent amount before the clearance of cheques issued by them which is not possible in a natural course of business to have debit or credit transactions in lakhs of rupees on daily basis. These transactions are carried out by the entry operator only. The onus lies on the Director of the private limited companies from where funds were arranged to prove the identity, genuineness and creditworthiness of the funds of such provider u/s 68 of the Act. Assessee has failed to produce such persons for cross-examination nor furnished any document. It is established by Investigation Wing that the parties with whom the assessee had transactions operate through paper companies and have no real identity. So, the amount of Rs.22,00,000/- received by the assessee from the entry operators is treated as assessee's income from undisclosed sources and consequently, AO made an addition of Rs.22,00,000/- to the total income of the assessee.

4. Assessee carried the matter before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. 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.

6. Undisputedly, the AO received information from the Investigation Wing, New Delhi that the assessee had received bogus accommodation entries to the following effect :-

i.	M/s. RSG Marketing P. Ltd.	Rs.10,00,000
ii.	M/s. Maple Sales Pvt.Ltd.	Rs. 5,00,000
iii.	M/s. Milansaar Impex & Traders Pvt. Ltd.	Rs. 5,00,000
iv.	M/s. Acoot India P.Ltd.	Rs. 5,00,000

7. Ld. AR for the assessee contended that the AO without applying his mind and without being satisfied himself as required u/s 147 of the Act proceeded to reopen the proceedings which are bad in law and relied upon the decision rendered by **Hon'ble jurisdictional High Court in Pr. Commissioner of Income Tax-4 vs. G & G Pharma Limited in ITA 545/2015 order dated 08.10.2015 and ITAT, Delhi Bench 'H', New Delhi in case of USG Buildwell Pvt. Ltd. vs. ACIT, Central Circle 23, New**

Delhi order dated 15.02.2016 and order passed in assessee's own case cited as **ITO vs. M/s. Roopali Marketing Ltd. by ITAT, Delhi Bench 'F', New Delhi in ITA No.2813/Del/2011 vide order dated 27.11.2015**. However, on the other hand, the ld. DR for the revenue relied upon the order passed by the AO as well as the ld. CIT (A).

8. Undisputedly, it is settled principle of law that the AO is required to reach at an independent conclusion by applying his own mind that he has reason to believe that the income of the assessee has escaped assessment to assume the jurisdiction for reopening of the assessment u/s 147 / 148 of the Act.

9. Perusal of the assessment order as well as impugned order passed by the ld. CIT (A) apparently go to prove that detailed reasons alleged to have been recorded by the AO so as to reach at an independent conclusion by applying his mind that he has reason to believe that the income of the assessee has escaped assessment to assume jurisdiction for reopening have not seen the light of the day. However, from the assessment order as well as impugned order passed by the ld. CIT (A), it is gathered that the AO by merely acting upon an information received from the Investigation Wing, New Delhi recorded the reasons for reopening that, "*the assessee is amongst the beneficiaries of bogus accommodation*

entries totaling to Rs.75,00,000/-.” This fact further got strengthened from para 3.2 of the assessment order wherein the AO has merely reproduced the statements of the entry operators recorded by Addl. Director of Income-tax (Inv.), Unit-1, New Delhi and as such, he had no occasion to apply his independent mind to assume the jurisdiction for reopening of assessment u/s 147/148 of the Act.

10. Now, the sole question arises for determination in this case is:-

“as to whether the AO can initiate proceedings u/s 147/148 of the Act on the basis of certain communication received from his superior revenue authorities, namely, Addl. Director of Income-tax (Inv.), Unit-1, New Delhi showing that the assessee has been provided with accommodation entry to the tune of Rs.75,00,000/- (actual amount if Rs.22,00,000/-), a shell company/concern floated by Deepak Gupta?.

11. Identical issue has come up before the Hon’ble Supreme Court in judgment cited as **Chhugamal Rajpal vs. S.P. Chaliha – (1971) 79 ITR 603**, wherein it is held as under :-

“The Supreme Court was dealing with a case where the AO had received certain communications from the Commissioner of Income Tax showing that the alleged creditors of the Assessee were “name-lenders and the transactions are bogus.” The AO came to the conclusion that there were reasons to believe that income of the Assessee had escaped assessment. The Supreme Court disagreed and observed that the AO “had not even come to a prima facie conclusion that the transactions to which he referred were not genuine transactions. He appeared to have had only a vague felling

that they may be “bogus transactions.” It was further explained by the Supreme Court that :

“Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a) or cl. (b) of S. 147 are satisfied, the ITO has no jurisdiction to issue a notice under S. 148.”

The Supreme Court concluded that it was not satisfied that the ITO had any material before him which could satisfy the requirements under Section 147 and therefore could not have issued notice under Section 148.”

12. Identical issue has also come up before Hon’ble jurisdictional High Court in judgment cited as **G & G Pharma India Ltd.** (supra) wherein Hon’ble High Court, by following the judgment delivered by Hon’ble Supreme Court, entitled **Chhugamal Rajpal vs. S.P. Chaliha** (supra) held as under :-

“12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: “I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries.” The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been

difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case."

13. Furthermore, similar issue has cropped up before the **ITAT, Delhi Bench 'H' in M/s. USG Buildwell Pvt. Ltd.** (supra), wherein addition of Rs.20,00,000/- was made by the AO on the basis of similar intimation sent by ACIT, Central Circle 19, New Delhi on the basis of survey operation conducted in S.K. Gupta Group cases on 20.11.2007 and the coordinate Bench came to the conclusion that the AO has not applied his mind on the information received from ACIT as required u/s 147 of the Act and as such, assessment framed u/s 147 read with section 143(3) is not sustainable.

14. Now, adverting to the case at hand, we are of the considered view inter alia that :

- (i) AO has merely acted in mechanical manner on receipt of information from Addl. Director of Income-tax

(Inv.), Unit-1, New Delhi that he has reason to believe that income of Rs.22,00,000/- has escaped assessment for the year 2004-05 due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment;

- (ii) forming an opinion merely on the basis of information supplied to the AO by Addl. Director of Income-tax (Inv.), Unit-1, New Delhi that Deepak Gupta has provided accommodation entries to the assessee to the tune of Rs.22,00,000/- does not amount to satisfaction of the AO to reopen the case u/s 147 of the Act;
- (iii) before initiating the proceedings u/s 147/148, the AO has not preferred to examine Deepak Gupta even on whose alleged statement, Addl. Director Income-tax (Inv.) sent intimation rather taken his statement as gospel truth.
- (iv) AO has candidly incorporated in assessment order that, *“it is established by Investigation Wing that the parties with whom the assessee had transactions operate through paper companies and have no real identity.”* and this fact goes to prove that he has not

preferred to investigate the matter himself to reopen the case.

- (v) in view of the law laid down by the Hon'ble Supreme Court and Hon'ble jurisdictional High Court in the judgment cited as Chhugamal Rajpal vs. S.P. Chaliha and G & G Pharma India Ltd.(supra) respectively, the initiation of proceedings u/s 147 of the Act is itself bad in law and consequent assessment framed u/s 143(3)/147 of the Act is not sustainable, hence hereby quashed.

15. In view of what has been discussed above, since the very initiation of the proceedings u/s 147 of the Act for reopening and consequent assessment framed u/s 143(3)/ 147 have held to be not sustainable in the eyes of law, remaining grounds raised by the assessee challenging the addition of Rs.22,00,000/- made by the AO and confirmed by the ld. CIT (A) u/s 68 of the Act have become infructuous. Resultantly, present appeal filed by the assessee is hereby allowed and reassessment order stands quashed.

Order pronounced in open court on this 14th day of July, 2016.

Sd/-

sd/-

**(N.K. SAINI)
ACCOUNTANT MEMBER**

**(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the day of July, 2016/TS

Copy forwarded to:

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

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