

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. N. K. BILLAIYA , ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 2405/Del/2015
(Assessment Year: 2005-06)**

Motherson Air Travel Agencies Ltd., 2 nd Floor, F-7, Block B-1, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi PAN : AAACM1993R	Vs.	DCIT Circle 5(1), New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. Y.K.Sharma, CA
Revenue by : Sh. S.R Senapati, Sr. DR
Date of hearing : 06.08.2018
Date of pronouncement : 08.08.2018

ORDER

PER BEENA A. PILLAI J.M :

Present appeal has been filed by assessee against order dated 27/02/15 passed by Ld. CIT (A)-6, New Delhi for assessment year 2005-06 on the following grounds of appeal:

"1) That on the facts and in the circumstances of the case and under the provisions of law, the Commissioner has erred in upholding the action of the Assessing Officer to initiate proceedings u/s 147 of the I.T.Act.

2) That on the facts & circumstances of the case and under the provisions of law, the Commissioner has erred in uphold the disallowance of expenses laid out wholly and exclusively for the business aggregating to Rs. 19,87,460/-. He has further erred in adding an amount of Rs. 49,687/- as alleged commission on the disallowed purchases.”

2. Brief facts of the case are as under :

Assessee filed its return of income on 31/10/05 declaring total income of Rs.60,41,680/-. The return was processed under section 143 (1) of the Act. Subsequently a search was conducted in Sh. S.K. Gupta group of cases, by investigating wing on 12/12/06. During search operation, it was gathered that this group was engaged in providing accommodation sales/expenses bills to beneficiary companies, providing accommodation investment entries in the form of share capital and/or loans to beneficiary companies. This fact was confirmed in scrutiny assessment of group concerns. During scrutiny assessment of group concerns, it was revealed that assessee has taken accommodation entries from SK Gupta group of cases in the shape of bogus bills of expenditure of printing and stationery. Details gathered during search formed the basis for reopening of assessment for year under consideration in case of assessee. A show cause notice was issued requiring assessee to explain why an amount of Rs.68,87,460/- should not be considered as bogus expenses.

3. After considering submissions of assessee, Ld.AO examined repetition of certain bills that was alleged by assessee and after removing repetitive entries, details of bills actually procured from 2 concerns of S.K.Gupta group amounted to Rs.30,87,460/-, which was treated as bogus expenditure booked in assessee's profit and loss account.

4. Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT (A) challenging validity of initiation of reopening of assessment, as well as addition made in the hands of assessee as bogus expenditure disallowed.

5. On the issue of reopening of assessment Ld.CIT (A) held as under:

“On perusal of reasons recorded by the A.O. it is evident that the proceedings u/s 147 was initiated on the basis of report received from the ACIT, Central Circle-9, New Delhi that the assessee is a beneficiary of accommodation entries received from certain established entry operators during the period relevant to A.Y. 2005-06. As per the report the assessee is the beneficiary of accommodation entry from such entry operators as per transaction totaling a sum of Rs. 58,87,460/- in the garb of bogus expenditure under the head printing & stationary in the names of the concerns of entry operators. The A.O. also recorded that no scrutiny assessment was completed in the case and the return filed by the assessee was simply processed u/s 143(1).

4.1.2 *There was information in respect of the assessee as a beneficiary of bogus accommodation entries which represented undisclosed income of the assessee. The Assessing Officer considered this information and made a reasonable believe that due to these accommodation entries in the garb of bogus claim of expenditures, the income has escaped assessment within the meaning of section 147 of the Act. Notice u/s 148 was issued after recording proper reasons as per requirement of law. Therefore, reopening was based on a reasonable belief. The information was specific to the extent that it contained the name of the assessee as a beneficiary, name of entry providers, bill., date & amount. Any reasonable person shall make a belief that income has escaped assessment. Therefore, there was sufficient material which is sufficient to make reason to believe for initiating the provisions u/s 147. There was a rational connection between the information received and escapement of the income. There is a live link between the material that came to the notice of the Assessing Officer and the formation of believe that income has escaped from assessment. Further no assessment u/s 143(3) was made earlier in this case and the return of income was simply processed u/s 143(1). For the purpose of initiation of proceedings u/s 147, mere existence of prime facie belief that income chargeable to tax had escaped assessment, is sufficient.*

4.1.3 Further, sufficiency of reasons for forming the belief is not a requirement. Hon'ble Supreme Court in the case of *ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd.* reported in 291 ITR 500 has held when the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, the law does not require that Assessing Officer should have finally ascertained the fact of legal evidence or conclusion. The material required for conclusively proving the escapement of income is not concerned at the stage of reopening. Hon'ble Delhi High Court in the case of *A.G.Holdings (P) Ltd. vs. ITO in W.P.(C) 8031/2011* and in the case of *CIT vs. Nova Promoters & Finlease (P) Ltd.* (2012) 18 Taxmann.com 217 (Delhi) has held that at the time of issuing the notice to reopen the assessment, the Assessing Officer is only expected to form a prima facie or tentative belief that income chargeable to tax had escaped assessment. Whether the addition has to be made or not is a matter to be decided on merits in the course of the reassessment proceedings. The information received from the investigation wing was specific. The information was sufficient for making a belief that income amounting to Rs. 58,87,460/- chargeable to tax has escaped assessment within the meaning of section 147 of the Act and the Assessing Officer was justified in initiating the proceedings for reassessment by issuing notice u/s 148 after recording the reasons as required by law. In view of the above as the proceedings u/s 147 have been initiated and assessment was

made u/s 147/143(3) as per the provision of the I.T.Act, therefore, no infirmity have been caused by the A.O. Therefore, appeal fails in ground no. 1 of appeal.”

6. On the issue of addition made by Ld.A.O. by holding expenses to the tune of Rs.30,87,460/- as bogus, Ld.CIT(A) deleted addition to an extent of Rs.11 lakhs as he observed that assessee had never claimed these expenses. It was observed by Ld.CIT(A) that assessee had claimed emaining bills as folders charges under the head, business promotion expenses and pamphlets and banners printing under the head advertisement expenses. However Ld.CIT(A) further made addition of 2% amounting to be commission charges. Total addition thus made by Ld.CIT (A) was Rs.19,87,460/- + 2% of Rs.19,87,460/-, being commission charges.

7. Aggrieved by addition made by Ld.CIT (A) assessee is in appeal before us now.

8. Ground No.1: Assessee challenges validity of initiation of reassessment proceedings on the ground that reasons to believe are mere suspicion and based on ambiguous information. Ld.AR submitted that there has been no information of belief and proceedings have been initiated in a routine and casual manner. It was submitted by Ld. AR that Assessing Officer issued notice under section 147 without verifying information forwarded to it by investigating wing.

9. On the contrary Ld.Sr.DR submitted that, as per report of Investigating wing, assessee is one of the beneficiary of

accommodation entry from concerns of S.K. Gupta group. As no scrutiny assessment was completed in assessee's case, Ld.AO based upon information, made a 'reasonable belief' that due to these accommodation entries in the garb of bogus claim of expenditure incurred income has escaped assessment, within the meaning of section 147 of the Act. He submitted that information was very specific to the extent that it contained the name of assessee as a beneficiary, name of entry provider, Bill number, date and amount. Ld.Sr.DR, thus, submitted that these were sufficient materials to make 'reason to believe' for initiating provisions under section 147. He submitted that there is also a live link between material that came to the notice of Ld.AO, and information of belief that income has escaped assessment since there was no assessment under section 143 (3) for the year under consideration. The Ld.Sr.DR submitted that initiation of proceedings under section 147 on existence of a prima facie belief, based upon specific information regarding assessee is sufficient.

10. We have perused the submissions advanced by both the sides and the light of the records placed before us. We have also perused reasons recorded for reopening the assessments, wherein there is specific information regarding assessee before us, of having accepted accommodation entry bills, which could not have been verified without calling for necessary details. Further in order to verify the information received by Ld.AO issued notice under section

147 which was necessary to ascertain, if there has been any escapement of income.

11. Thus, in our considered opinion, we do not find any infirmity in the reasoning and observations of Ld.CIT (A) in dismissing the ground of assessee and upholding reopening of assessment by Ld. AO.

Accordingly this ground raised by assessee stands dismissed.

Ground No. 2

12. This ground has been raised by assessee, challenging addition made by Ld.AO of Rs.30,87,460/-, as bogus expenditures. Assessee submitted that it had admittedly made purchases of folders and banners printed pamphlets from 2 group concerns of S.K. Gupta group to extent of Rs.19,87,460/-. He also submitted that out of these expenses assessee had submitted that an amount of Rs.11 Lacs was never claimed or debited to P&L account. Ld.AR, thus, submitted that entire addition made by Ld.AO deserves to be deleted.

13. On the contrary Ld.Sr.DR submitted that very fact that accommodation entries were being provided by S.K. Gupta group was unearthed during search operation carried out by investigating wing, wherein assessee was also held to have taken accommodation entries in the nature of sales/expenses bills. These entities being group concern of escape group, group who has provided bogus bills to assessee has not been maintaining proper books of accounts,

sales and purchases, expense vouchers etc., and therefore their books were rejected under section 145 (3) of the Act. Ld.Sr.DR submitted that they have also failed to establish genuine business being carried out other than accommodation entry business. He thus submitted that under such circumstances assessee having failed to have established the transaction to be genuine in nature assessing officer was right in making addition.

14. We have perused submissions advanced by both the sides and the light of records placed before us. On perusal of reasoning given by Ld.CIT (A), it is observed that upon proper verification of profit and loss account and Ledger account of expenses under the head, advertisement expenses and business promotion expenses Ld.CIT (A) was satisfied regarding a sum of Rs.11 lakh having not been claimed as expenses by assessee. It is observed that Ld.CIT (A) thus restricted the addition to Rs. 19,87,460/-(30,87,460 – 11,00,000).

15. We do not find any infirmity in the observations of Ld. CIT (A) in restricting addition at Rs.19,87,460/-, and the same is upheld.

16. However in the concluding paragraph, Ld.CIT (A) has in a way enhanced addition by charging 2% commission for providing accommodation entries to assessee. He has thus made addition of Rs.49,686/-. It is observed that assessee was not given any notice of enhancement by Ld.CIT (A), thereby not following due process of law, as per section 251 of the Act.

We are therefore inclined to delete addition made by Ld.CIT (A) to of 2% as commission for providing accommodation entry to assessee.

Accordingly, this ground raised by assessee stands partly allowed.

In the result appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 8th August, 2018.

Sd/-

(N. K. BILLAIYA)

ACCOUNTANT MEMBER

Date: 08.08.2018

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Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The CIT;
- 4) The CIT(A) , New Delhi;
- 5) The DR I.T.A.T., New Delhi;

True Copy

Sd/-

(BEENA A. PILLAI)

JUDICIAL MEMBER

By Order

ITAT, New Delhi

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