

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No. 634/Kol/2017

Assessment Year : 2012-13

Sanju Jalan  
Kolkata  
[PAN : ADNPJ 8570 C]  
(Appellant)

-vs.-

I.T.O., Ward-36 (2),  
Kolkata

(Respondent)

For the Appellant : Shri S.M.Surana, Advocate  
For the Respondent : Shri Nicolas Murmu, Addl. CIT,Sr.DR

Date of Hearing : 04.01.2018.

Date of Pronouncement : 10.01.2018.

**ORDER**

**Per N.V.Vasudevan, JM**

This is an appeal by the Assessee against the order dated 25.03.2015 of C.I.T.(A)-3, Kolkata relating to A.Y.2009-10.

2. The Assessee is an individual. His source of income is income under the head salaries, other sources and capital gains. For A.Y.2012-13 the assessee filed return of income on 17.02.2013 showing a total income of Rs.3,55,512/-. The said return was accepted and an intimation u/s 143(1) of the Income Tax Act, 1961 (Act) was issued. Subsequently the assessment was reopened by a notice issued u/s 148 of the Act dated 27.03.2015 for making a re-assessment u/s 147 of the Act. The reasons recorded by the AO before issuing a notice u/s 148 of the Act reads as follows :-

"23/03/2015 It appears from the record that the assessee filed his return of income for the Assessment Year 2012-13 on 17/02/2013 declaring total income at Rs. 3,55,512/-. The return of the assessee was processed on 21/03/2013.

Information has been received from DIT (Inv.)-II, Mumbai that the assessee during the financial year 2011-12 had availed of entries of bogus purchases amounting to Rs. 14,55,472/- from a concern M/s. Nice Diamonds of Mumbai.

The above information has been received consequent to the search & seizure operation conducted in the case of Bhanwarlal Jain group of cases. A search & Seizure operation on the above mentioned group was conducted on 03.10.2013. As a result of the said search and follow - up investigation, it came to the light that Bhawarlal Jain Group is a leading entry provider of Mumbai. The group provides accommodation entries of bogus purchases through various benami concern operated and managed by Bhanwarlal Jain and his son. The search revealed various incriminating documentary evidences indicating the same. Statements of various persons ( who assists Bhanwarlal Jain in providing bogus purchases through benami concern to the beneficiaries) were recorded. It is further mentioned in the said report that the entire bogus nature of the transactions has also been admitted by Bhawarlal Jain in his statement recorded u/s. 132(4) of the I.T.Act,1961. On the basis of detailed report, it is summarized that the group indulged in providing bogus purchase bills and returning the amount in cash after deducting commission and this modus operandi was also followed in the assessee's case.

Based on the above information, I have the reason to believe that the assessee entered into bogus purchases through accommodation entries without actual delivery of goods and payments as detailed above being the modus operandi of seller group and so taxable Income to the extent of Rs. 14,55,472/- has escaped assessment within the meaning of section 147 of the I.T.Act,1961.

3. The assessee objected to the validity of initiation of re-assessment proceedings but the same was rejected by the revenue authorities.
4. It can be seen from the reasons recorded by the AO for initiating proceedings for reassessment that the AO wanted to examine the genuineness of purchase of Diamonds by the assessee during the previous year of the value of Rs.4,55,472/- from M/s. Nice Diamonds, Mumbai. As far as the question whether purchase of diamond was bogus the assessee had submitted before the AO that the purchases were genuine and furnished documentary evidence like invoice dated 17.03.2012 issued by Nice Diamonds, bank statement maintained with Union Bank of India evidencing payment to Nice Diamonds through cheques dated 27.03.2012 for Rs.10,02,472/- and cheque dated

28.03.2012 for Rs.4,53,000/-. As per the invoice diamonds were sold at Surat. The AO insisted on proof of delivery of diamonds at Surat. The assessee also wanted right of cross examination of Shri Bhawarlal Jain who the revenue claims to have given a confession that they are engaged in providing bogus purchases. Such opportunity of cross examination was not provided and the AO proceeded to rely on the statement recorded by D.I.T. (Investigation),-II, Mumbai.

5. In the course of search of Bhanwarlal Jain the AO was of the view that since investment in diamonds was shown in the balance sheet and the same must have been acquired from some other parties and since the details of such purchases were not furnished the investment should be treated as unexplained and added to the total income of the assessee. The AO accordingly made addition of Rs.14,55,472/- on account of unexplained purchase from Nice Diamonds

6. Apart from the above the AO also treated the long term capital gain which were declared by the assessee in the return of income on account of sale of shares as bogus and ultimately determined the total income of the assessee as follows :-

	Rs.	Rs.
Returned Income		3,55,512
Add : Purchase from unaccounted source [as discussed]		14,55,472
Add: Unexplained cash credit [as discussed]		41,38,799
Total Income		59,49,783

7. It may be seen from the above additions made by the AO that the long term capital gain which was treated as bogus viz. Rs.41,38,799/- was not the reason for which the assessment proceedings were initiated by the AO u/s 147 of the Act as recorded in the reasons for initiating reassessment proceedings which we have extracted in paragraph 2 of this order.

8. On appeal by the assessee the CIT(A) confirmed the order of the AO. The conclusion of the CIT(A) on the issue of bogus purchase of diamonds were as follows :

“a. The assessee has been unable to prove the actual transport and receipt of the diamond in her hands, despite being repeatedly asked in the matter by the Ld. AO.

b. The two cheques were paid by the assessee after a hiatus of 10 days to the alleged supplier, quite an impossibility in the jewellery trade, more so in the diamond trade.

c. It is quite impossible for any jeweller not to demand and accept money on handing over the "diamond" to the buyer, more so an unknown buyer with a single transaction.

d. In the jewellery business purchase and payment are simultaneous and not successive, especially for a new and one-time buyer

e. The receipt of the purchase therefore is a doubtful document, when viewed in the surrounding circumstances of the case

f. No diamonds were found during the search and seizure operations carried out in the premises of the Bhanwarlal Jain Group, who were alleged to be accommodation entry givers.

g. There is no merit in the contention of the assessee that she ought to be provided an opportunity for cross-examination, as the Seller has already denied the transaction.

h. Therefore, once the information had been provided by the Ld AO to the assessee, the onus was cast on the assessee to controvert the information, and this has clearly not been done.”

9. The other additions of bogus long term capital gain was also confirmed by the CIT(A). Aggrieved by the order of CIT(A), the assessee has preferred the present appeal before the tribunal raising the following grounds of appeal :

*“1.For that the order of the Ld. CIT (A) is arbitrary, illegal and bad in law.*

*2. For that the Ld. C.I.T (A) erred in confirming the initiation of proceedings u/s. 147 by the AO who merely relied on the information from DGIT(Inv), Mumbai without applying his own mind when there was no material on record to form a*

*reasonable belief that any income has escaped assessment and the proceedings is bad in law .*

*3. For that the Ld. CLT(A) erred in confirming the initiation of proceedings u/s. 147 when the AO did not apply his own mind and examined the records of the assessee since the assessee never claimed the sum of Rs.14,55,472/- as deduction in any manner while computing the total income and as such there was no escapement of income.*

*4. For that the Ld. CLT(A) erred in confirming the initiation of proceedings u/s.147 which were bad in law since it was not the case of the AO that the purchase was not disclosed in the books or that the payment made for such purchase was not explained and thus there was no question of any income or escapement of income.*

*5. For that the Ld. CIT (A) erred in confirming the addition of Rs. 14,55,472/- as purchased from unaccounted sources when payment for such purchases was made by account payee cheque for which bank statement was produced, there was no evidence of any other payment and no deduction was claimed as the source of the purchase was duly proved and here was no evidence that the assessee earlier purchased the diamonds by paying cash money.*

*6. For that the Ld. C.I.T(A) erred in confirming the addition of Rs. 41,17,365/- as unexplained cash credit under section 68 when there is nothing on record to treat the said sum as concealed income which had come to his notice of the AO in the course of assessment proceedings,*

*7. For that the Ld. C.I.T(A) erred in adding back Rs. 41,17,365/- as unexplained cash credit when all the evidences with regard to the earning of the said capital gain were filed and the Ld. AO failed to bring on record any evidence to prove the contrary except relying on the mere communication forwarded by the DGIT(Inv).*

*8. For that the Ld. C.I.T(A) erred in confirming the estimate and making addition of Rs. 21,434/- as payment made for arranging the capital gain when there was no such payment nor any evidence was brought on record to prove the same.*

*9. For that the reopening of the assessment for the reasons recorded was not maintainable since the source of the payment for purchase from Bhawarlal Jain group was explained and therefore no other addition on any other issue was called for.*

*10. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.*

10. First we will take up for consideration ground no.5 with regard to the addition on account of bogus purchases of diamonds. On the above issue the Id. Counsel for the assessee reiterated the submissions as were made before the revenue authorities. The Id DR relied on the order of the revenue authorities.

11. The undisputed facts of the case are that the assessee purchased jewellery worth Rs.14,55,472/- from Nice Diamonds, Mumbai on 17.3.2012. The Assessee paid Nice Diamonds the purchase value of the jewellery by two cheques for Rs.10,02,472 and Rs.4,53,000 respectively dated 27.3.2012 and 28.3.2012 respectively. In the Balance Sheet as on 31.3.2013 the Assessee has shown the value of the jewellery as addition to his capital. The documentary evidence like bills, invoices, bank statements etc., were furnished by the Assessee and there is no dispute on this aspect.

12. The return of income filed by the Assessee for AY 2012-13 was accepted and an intimation was issued u/s.143(1) of the Act.

13. It appears that there was information received by the AO of the Assessee from D.I.T. (Investigation)-II, Mumbai. The information received was that there was a search and seizure operation conducted in the case of Bhawarlal Jain Group of cases on 03.10.2013. Consequent to the said search and investigation conducted, it came to light that Bhawarlal Jain group was providing bogus/accommodation entries to several persons and entities and these entries were bogus entries. Nice Diamonds is one of the entities belonging to Bhawarlal Jain Group of cases. Since the assessee claimed to have made purchases from Nice Diamonds, the assessment in the case the assessee was reopened u/s 147 of the Income Tax Act, 1961 (Act.).

14. In the assessments concluded, the AO after making reference to all the evidences filed by the assessee to prove the source of funds as well as evidence of payments and came to the conclusion that the purchases in question were not genuine. Ultimately the AO made an addition in the case of the Assessee by observing that since the assessee in the balance sheet has shown increase in jewelry there is no evidence on record to doubt that he didn't make any purchase in the FY-2011-12 but the purchases were made by the Assessee from some other party in earlier year but the assessee has not furnished the details of the same. Accordingly, expenditure incurred towards purchase of diamonds shown as jewelery in the Balance Sheet is considered as unexplained investment u/s 69 of the Act and deemed to be the income of the assessee for the financial year 2009-10. On appeal by the assessee the CIT(A) confirmed the orders of the AO.

15. We have heard the submissions of the ld. Counsel for the assessee and the ld. DR. The ld. Counsel for the assessee pointed out that the jewellery in question has been purchased by the assessee which was confirmed by Nice Diamonds and the payment has been made by cheques. More important it was pointed out that the investments has been shown in the books of accounts and the source had been duly explained as from the disclosed bank accounts of the assessee. It was submitted that in the circumstances the addition made u/s 69 of the Act cannot be sustained. The ld. DR relied on the orders of CIT(A).

16. We have given a very careful consideration to the rival submissions. It is an undisputed position that addition in case of the assessee has been made u/s 69 of the Act. Section 69 of the Act reads as follows :-

**Unexplained investments**

“ 69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the

value of the investments may be deemed to be the income of the assessee of such financial year.”

17. In the present case investments of jewellery is duly reflected in the books of accounts of the assessee. Therefore there is no scope of applying the provision of section 69 of the Act. Apart from the above source of funds is evidenced by the payments from disclosed bank accounts. Therefore the source of investments is also properly and satisfactorily explained by the assessee. In the circumstances, We are of the view that the additions made by the AO and confirmed by CIT(A) cannot be sustained and the same is directed to be deleted. Ground No.5 raised by the assessee is accordingly allowed.

18. The Id. Counsel for the assessee submitted that on the other grounds of appeal vi., Gr.No.6 to 8, it is the plea of the assessee before us that when an assessment is reopened for one reason but no addition is made in the reassessment proceedings in respect of that reason or when the said addition is deleted, then, no further addition can be made in the reassessment proceedings. In this regard Id. Counsel for the assessee placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways India Ltd., 331 ITR 326 (Bom), wherein the Hon'ble Bombay High Court held that if AO does not assess income for which reasons were recorded u/s 147 of the Act, he cannot assess other income u/s 147 of the Act. The Hon'ble Court observed that (i) S. 147 provides that the AO may assess the income which has escaped assessment “**and also** any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section”. Explanation 3 to s. 147 inserted by F (No. 2) Act, 2009 w.r.e.f 1.4.1989 provides that the AO “may assess or reassess the income in respect of any issue ... notwithstanding the reasons for such issue have not been included in the reasons recorded ...”

(ii) The words “**and also**” indicate that reassessment must be with respect to the income for which the AO has formed an opinion and also in respect of any other income which comes to his notice subsequently. However, if the AO accepts the objection of the assessee and does not assess the income which was the basis of the notice, it is not open to him to assess income under some other issue independently;

(iii) Explanation 3 to s. 147 was inserted to supersede the judgments in **Vipin Khanna** 255 ITR 220 (P&H) & **Travancore Cements** 305 ITR 170 (Ker) where it was held that the AO could not assess income in respect of issues unconnected with the issue for which the notice was issued. However, Explanation 3 does not affect the judgments in **Shri. Ram Singh** 306 ITR 343 (Raj) & **Atlas Cycle Industries** 180 ITR 319 (P&H) where it was held that if the AO accepted that the reasons for which the notice was issued were not correct, he would cease to have jurisdiction to proceed with the reassessment;

(iv) Explanation 3 lifts the embargo inserted by judicial interpretation on the making of a s. 147 assessment in respect of items not referred to in the recorded reasons. However, it does not and cannot override the substantive part of s. 147 that the income for which the notice was issued must be assessable. The learned DR relied on the order of the CIT(A).

19. We have considered the submission of the learned counsel for the Assessee in the light of the judgment of the Hon’ble Bombay in the case of Jet Airways (I) Ltd. (Supra). We are of the view that on the facts and in the circumstances of the present case the ratio laid down by the Hon’ble Bombay High Court in the case of Jet Airways India Ltd. (supra) is squarely applicable. As we have already seen that the assessment was reopened for the reason that the jewellery purchased by the Assessee was from undisclosed sources and the purchases were bogus. That addition has not been sustained now. The Assessing Officer however, proceeded to make an addition on account of Long Term Capital Gain (LTCG) on sale of shares. This was clearly beyond

the scope of the proceedings under section 148 of the Act. The Assessing Officer, therefore, could not have proceeded to make the impugned addition of bogus LTCG. Similar view has been expressed by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories vs. CIT, ITA 148 of 2008 dated 3/6/2011. The Hon'ble Delhi High Court followed the decision of the Hon'ble Bombay High Court in the case of Jet Airways (supra). In that view of the matter we hold that the addition by treating the LTCG as bogus cannot be sustained as it was beyond the scope of the proceedings under section 147 of the Act. We therefore delete the said addition also and allow Ground No..6 to 8. .

20.. In view of the above conclusions we are of the view that the issue with regard to the validity of initiation of re-assessment proceedings u/s 147 of the Act does not require any consideration.

21. In the result, the appeal is allowed

**Order pronounced in the Court on 10.01.2018.**

Sd/-  
[M.Balaganesh]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 10.01.2018  
[RG Sr.PS]

Copy of the order forwarded to:

1. Sanju Jalan, 9, Lalbazar Street, 3<sup>rd</sup> Floor, Block-A, Kolkata-700001.
2. I.T.O., Ward-36(3), Kolkata.
3. CIT(A)-10, Kolkata
4. C.I.T.-12, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Senior Private Secretary  
Head Of Office/ D.D.O., ITAT Kolkata Benches

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