

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SH. ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA Nos. 3958 & 3959/Del/2015
Assessment Years: 2008-09 & 2008-09**

INCOME TAX OFFICER,
WARD 13(2),
ROOM NO. 324, C.R. BUILDING,
NEW DELHI

(APPELLANT)

VS. M/S JAIPUR GOLDEN
TEXMART PARK PVT. LTD.
21-A, KRISHNA KUNJ, PART-II
LAXMI NAGAR, DELHI-92
(PAN: AABCJ8538L)

(RESPONDENT)

Assessee by : None

Revenue by : Sh. Sridhar Dora Sr. Dr.

ORDER

PER H.S. SIDHU, JM

The revenue has filed these Appeals against the respective Orders both dated 22.4.2015 of the Ld. CIT(A)-5, New Delhi pertaining to assessment year 2008-09. Since the issues involved in these appeals are inter-connected, hence, the appeals were heard together and are now being consolidated and disposed of by this common order for the sake of convenience.

2. The grounds raised in ITA No. 3958/Del/2015 read as under:

1. That on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in quashing

the assessment proceedings u/s 144/147 on the ground that there was no valid service of notices u/s 143(2), 142(1) and u/s 148 on director Shri Raj Kr. Arora.

2. That while doing so the Ld. CIT(A) has erred in ignoring the fact that all these notices were duly served on the PAN address of the assessee which was the only available known address of the assessee and still exists in PAN database and the assessee did not change its address provided at the PAN database or in the records of the NSDL.

3. That while doing so the Ld. CIT(A) has disregarded this fact that all these notices were served at the same address which was mentioned by the assessee company in its appeal before the CIT(A) and in the court case before the Hon'ble Delhi High Court.

4. That even while adjudicating on merits, the Ld. CIT(A) has erred in not appreciating the fact that interest accrued on the amount of Rs. 2,20,57,673/- was liable to be taxed as income from other sources and since the AO has made the addition on this score u/s 68 for unexplained credit,

the AO had no occasion to tax the interest component.

5. That the Ld. CIT(A) has erred in mentioning in the appellate order that no remand report was received from the Assessing Officer though in pursuance of remand proceedings the Assessing Officer vide his letter dated 03.02.2015 has sought direction from the Ld. CIT(A) for proceeding ahead with the requisitions made in the remand report and this letter of the AO remained unanswered from the end of CIT(A).

6. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.

7. That the grounds of appeal are without prejudice to each other.

That the appellant carves leave to add, alter, amend or forego any ground(s) of appeal raised above at the time of hearing.

3. The grounds raised in ITA No. 3959/Del/2015 read as under:
 1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in cancelling the penalty imposed u/s. 271(1)(c) amounting to Rs. 54,57,980/-.

2. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.
3. That the grounds of appeal are without prejudice to each other.
4. That the appellant craves leave to add, alter, amend or forego any ground(s) of appeal raised above at the time of hearing.

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4. The brief facts of the case are that no return was filed by the assessee company for the assessment year 2008-09. In the meantime, the ITO (Inv.) UnitVI(2), New Delhi has sent certain information with regard to certain transactions entered into by M/s Jaipur Golden Texmart Park Pvt. Ltd. It is noted that on inquiries made in connection with a Tax Evasion Petition against the company, it has been found that the said assessee company, which was incorporated on 2.7.2007, had taken loan of Rs. 2,20,58,823/- (Rs. 30 lakhs NOK (3 million Norweigan Kroneer) from Sh. Ashok Sarin, an NRI. Part of the amount contributed by the said person was utilized for the purpose of advances to various parties against purchase of land for setting up a textile park in Jodhpur. However, the company has not filed its return of income for the AY 2008-09 during which the above transactions were undertaken by it. Accordingly, notice u/s. 148 of the Act dated 22.3.2012 was issued.

A letter dated 23.8.2012 requiring the assessee company to furnish the evidence of return electronically filed for the AY 2008-09 on 4.9.2012, which was uncomplied and another letter dated 1.2.2013 was issued to furnish the evidence of return electronically filed for the A Y 2008-09 on 8.2.2013 was issued, but again no compliance. A final opportunity of was also issued and served by hand to the assessee. In response to this letter, vide letter dated 7.2.2013, assessee submitted that owing to pending of court case under CBT section of Economic Offences Wing Crime Branch New Delhi, they are unable to submit E-Return as well as Audit Return, Balance sheet, Profit and loss account, bank statement etc. for the AY 2008-09 and 2009-10. But assessee failed to comply with the requirements of the notices, the AO proceeded to complete the assessment u/s. 144 of the Act. Thereafter, on perusal of the TEP dated 7.3.2011, AO observed that assessee company has also refunded an amount of Rs. 60,00,000/- to Sh. Ashok Kumar Sarin by RTGS as per assessee's letter dated 4.3.2011 and assessee company has not furnished any detail. Hence, the AO treated the amount of Rs. 1,60,57,673/- (2,20,57,673 - 60,00,000) as the unexplained credit as per the provisions of section 68 of the I.T. Act, 1961. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 22.4.2015 has allowed the appeal of the assessee by quashing the reassessment proceedings.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, I am deciding the present appeal *ex parte qua* assessee, after hearing the Ld. DR and perusing the records.

6. Ld. DR relied upon the orders of the authorities below and stated that the Assessee was not interested to prosecute the matter in dispute before the AO as well as before the this Tribunal, hence, not appeared and requested that the appeals of the Revenue may be allowed. In the alternative, he requested that the issue in dispute may be set aside to the file of the AO for verification of documentary evidence filed by the Assessee before the Ld. CIT(A), because the Ld. CIT(A) has not given any hearing to the AO nor has obtained any remand report from the AO.

7. After hearing Ld. DR and perusing the relevant records available with me, especially the impugned order. We find that Ld. CIT(A) vide his impugned order dated 22.4.2015 at page no. 3 to 6

has allowed the appeal of the assessee. For the sake of convenience, we are reproducing the same as under:-

"The AO had made assessment u/s. 144/147 of the I.T. Act, on the pretext that the appellant did not respond to his notices u/s. 143(2)/142(1)/148 of the I.T. Act. The AR of the appellant produces all evidences of disputes between two directors of the company i.e. Sh. Abhinav Jain and (Sh. Ashok Sarin, funding NRI from Norway) and Sh. Raj Kumar Arora, working director from India, who purchased land at Udaipur, Rajasthan to start textile park for export of garments in a big way. The NRI Director paid Rs. 2,20,58,823/- initially to Indian Director, but after 2 months or so, the dispute between them started Sh. Ashok Sarin took over control of company and filed complaints and FIRs against Indian Director Sh. Raj Kumar Arora, in Police Station and did not give notices of I.T. Department to Sh. Raj Kumar Arora, for compliance. Thus the A/R vehemently argued that since he is unaware of 144 proceedings from A.O. he had no other option, but to file this appeal. He came to know the assessment proceedings after 156 demand was raised. In the meantime, all the

additional evidences were sent to A.O. for remand report from this office on 07.01.2015, but A.O. did not sent remand report so far. Finally, on 10.4.2015, the AO and AR came to my office and the case was heard and discussed with them.

2. The Indian Director Sh. Raj Kumar Arora also appeared before us, and we discussed the matter thoroughly. The Delhi High Court on 05.3.2015, closed the FIR proceedings by imposing fine of Rs.50,000/- on directors and amicably settled the matter of disputes between them. The Indian Director also paid part of money borrowed from NRI, Sh. Ashok Sarin and they incurred losses on acquisition of lands too. The A.O. agreed to these facts and hence in the absence of remand report, the case is decided on merits also.

The comments of Delhi High Court on settlement of case between Raj Kumar Arora and state of NCT, Delhi and others - (Writ Petition (CRL)2027/2014) dated 05.3.2015 is produced below:-

"Present FIR No. 505/2010 under Sections 406/420/120-B IPC, Police Station Shakarpur was registered on the complaint of

respondent no. 2 against the petitioners and respondent no. 3. Petitioner no.1, respondent nos. 2 and 3 were have business relations. Respondent no. 2 alleged that petitioners induced him to invest in the real estate project in India through M/s Jaipur Golden Text Mart Park Pvt. Ltd. having registered office at 21A, Krishna unj Extn, Parts 11, Delhi-110092. Petitioners and respondent no. 3 represented that they were Directors of the said company. They induced the petitioners to invest NOK 3,00,000 (Three Million Norwegian Kroner) in the project. Memorandum of understanding was executed between the parties in the month of December, 2007. The said company transferred only Rs.10 lacs to the respondent no. 2 in the year 2008 and thereafter did not remit any amount even though initially respondent no.2 was promised huge profits, inasmuch as was ensured that his investment will be doubled within a period of three years.

Investigations are at the preliminary stage. Petitioners and respondent no.2 have resolved their differences amicably. Petitioners have refunded entire amount to the respondent no. 2, which fact has been admitted by the respondent no. 2, who is present in court. Respondent no. 2 submits that he has no objection in case FIR in question is quashed since he desires to maintain harmonious relations with the petitioners. It is prayed that FIR in question may be quashed. Keeping in mind overall facts and circumstances of the case, FIR No. 505/2010 under Sections 406/420/J20-B IPC, Police Station Shakarpur and the consequent proceedings emanating therefrom are quashed, subject to, however, deposit of 50,000/- by each petitioner with the Delhi High Court Mediation and Conciliation Centre within four weeks. Receipts be filed in the Registry and copies thereof be given to Investigation Officer. "

Legal Issue:-

Since no valid notice u/s 143(2)/142(1)/148 was served on Director Raj Kumar Arora, the 144/147 proceedings is invalid one. Therefore, I quash the 144/147 order passed by A.O. on care in future to see to it that all the notices u/s 148/143(2)/142(1) are served on the assessee in time and properly. Otherwise, send the Inspector to business premises and make enquiry and get a report from him. Summon the Directors before making any assessments u/s 143(3)/144 of I.T. Act. Hence the demand created u/s 144/147 is illegal, invalid and may not stand the test of appeal. This ground of appeal no.1, 2, 3 is allowed.

Ground No.4, 5, 6

All the receipts of money are not income of the company. In this case, the receipt of money of Rs.4,60,01,150/- as per MOU dated 01.12.2007 from NRI Sh. Ashok Sarin to start business is a capital receipt, and it comes to balance sheet. As dispute grew, they could not do anything in business, then the other director Raj Kumar Arora returned back money of Rs. 1,69,00,000/- through SBI of Patiala, and settled the case

through Delhi High Court, the police case is closed now. So also the business venture of appellant company. In these facts and circumstances, the proceedings u/s 144/147 by A.O. dated 25.3.2013 is not a valid proceedings, hence I quash the proceedings u/s 144/147. The demand is reduced to NIL. These grounds of appeals 4,5,6 are allowed.

Ground No.7: Is consequently and invalid now, as the assessment order is quashed. The demand raised by A.O. is illegal, invalid and devoid of merits.

Ground No.8: is general in nature

The appellant's appeal is allowed."

7.1 We have perused the orders passed by the revenue authorities especially the order of the Ld First Appellate Authority reproduced above, we are of the considered view that assessee has received Rs. 4,60,01,150/- as per MOU dated 1.12.2007 from NRI Ashok Sarin to start business. In our view the MOU dated 1.12.2007 has not been filed before the AO for verification and was only filed before the Ld. CIT(A). After perusing the finding of the Ld. CIT(A), we are of the view that Ld. CIT(A) has quashed the assessment and reduced the demand to NIL by passing a non-speaking order without verifying the assessment records. We are also of the view that this MOU dated 1.12.2007 which was filed before the Ld. CIT(A) has not been confronted to the AO for verification. As per the assessment record, assessee has also not appeared before the AO. Therefore, in the interest of justice, we are of the view that impugned order is not sustainable in the eyes of law and the issue involved in the present appeal requires readjudication at the level of the AO for verification

of the MOU dated 1.12.2007. Hence, we are directing the AO to verify the same and decide the issue in dispute afresh, under the law, after giving adequate opportunity of being heard to the assessee for substantiating the issue before the AO. In the result, the Appeal filed by the Revenue stands allowed for statistical purposes.

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8. Since in quantum proceedings, as aforesaid, the issues in dispute has already been set aside to the file of the AO by this Bench for fresh adjudication, after verification of the MOU dated 1.12.2007, therefore, the penalty in question is also set aside to the file of the AO to decide the same, afresh, as per law. In the result the appeal of the Revenue also stands allowed for statistical purposes.

9. In the result, both the appeals filed by the Revenue stand allowed for statistical purposes.

Order pronounced on 09-01-2019.

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dt. 09.01.2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches