

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER**

ITA No.1170/Del/2018
Assessment Year: 2009-10

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| Raakhi Agarwal 42, Janpath New Delhi -110001 PAN No.AJAPA8010B (APPELLANT) | Vs | Income Tax Officer Ward – 52 (1) New Delhi (RESPONDENT) |
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| Appellant by | Sh. R. M. Mehta, CA |
| Respondent by | Sh. Amit Jain, Sr DR |

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| Date of hearing: | 12/03/2019 |
| Date of Pronouncement: | 10/06/2019 |

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28.12.2017 of the CIT(A)-18, New Delhi relating to A. Y. 2009-10.

2. Facts of the case, in brief, are that the assessee is an individual and filed the return of income on 28.07.2009 showing total income of Rs. 2,59,100/-. The AO received an information that the assessee has invested a sum of Rs. 7,29,000/- in purchase of shares of M/s Blue Print Securities Ltd. The AO issued letter u/s 133(6) of the Act on 23.03.2016 asking the assessee as to whether she had purchased shares of M/s Blue

Print Securities Ltd. during the FY 2008-09 or any other year along with other details. In response to the same, the assessee submitted vide letter dated 28.03.2016 that she has not purchased the said shares during the FY 2008-09 or any other year. The AO thereafter issued notice u/s 148 of the Act on 31.03.2016 after recording reasons. The assessee vide letter dated 15.04.2016 requested the AO to treat the return of income already filed as the return filed in response to notice u/s. 148 and also requested for a copy of the reasons recorded for reopening of the case. The AO vide letter dated 25.05.2016 supplied the copy of the reasons recorded. The assessee raised objections to the reopening of the case vide letter dated 09.06.2016 and the same were disposed off by the AO by letter dated 07.12.2016. The AO thereafter issued a show cause notice on 16.12.2016 proposing to make addition of Rs.7,29,000/- as unexplained investment in shares u/s 69B of the Act. The assessee submitted the reply vide letter dated 23.12.2016 in which it was stated that the assessee has sold the said shares during the year for a sum of Rs.7,26,038.55 and denied having purchased the shares during the year under consideration or any other year. The Assessing Officer noted that the assessee had denied the purchase of shares during the year under consideration or any other year vide letter dated 28.03.2016 also. The AO observed that the assessee has failed to furnish the details regarding the purchase of these shares and has also not shown any income under the head capital gains in the return of

income filed by her. The AO further noted that the sum of Rs.7,29,000/- has been received in the bank account of the assessee and since the assessee has denied the purchase of shares and no sale of shares is reflected in the return of income, therefore, the source of Rs.7,29,000/- reflected in the bank account remains unexplained. Accordingly, the Assessing Officer made the addition of Rs.7,29,000/- as unexplained cash credit u/s. 68 of the Act.

3. Before the CIT(A) the assessee apart from challenging the addition on merit challenged the validity of the reassessment proceedings. It was argued that the Assessing Officer has reopened the assessment on the basis of the report of the DDIT (Investigation Wing), Kolkata and there was no independent application of mind or reference to any material. It was argued that the reasons recorded are vague, indefinite and contradictory. The assessee submitted that the Assessing Officer has made allegation that the assessee has invested a sum of Rs.7,29,000/- during the assessment year 2009-10 in scrips of Blue Print Securities Limited which is factually incorrect. The assessee in response to the notice u/s. 133 (6) had correctly stated that she had not invested a sum of Rs.7,29,000/- in the scrip of the company during the assessment year 2009-10 and no further query was raised by the Assessing Officer. The assessee submitted that there was no failure on the part of the assessee to disclose fully and truly all material facts as alleged by the Assessing Officer and the reopening was based on incorrect and

wrong facts. Relying on various decisions, it was argued that the reopening was not proper. So far as the merit of the case is concerned it was argued that the same is also not proper.

3. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. So far as the issue relating to the reopening of the case is concerned, he noted that before reopening the case and issuing notice u/s 148, the Assessing Officer had issued a letter u/s. 133(6) to the assessee on 23.03.2016, in which it was specifically asked whether the assessee has purchased the shares of Blue Print Securities Ltd. during FY 2008-09 or any other year. It was submitted by the assessee vide her letter dated 28.03.2016 that she has not purchased any such shares during FY 2008-09 or any other year. This according to the Ld. CIT(A) implies that the assessee had denied purchase of shares of Blue Print Securities Ltd., whereas the AO had received the information from the Investigation Wing that the assessee had entered into transaction related to purchase and sale of shares of this company which is nothing but a paper company to facilitate booking of bogus long-term capital gains in the form of an accommodation entry. The AO had analysed the information received with respect to the return of income filed by the assessee and it was noticed by him that the assessee has not shown any such transaction or income from capital gains in the return filed. In view of this, the AO had sufficient material to form the reasons to believe that income had

escaped assessment and accordingly, the AO had reopened the case u/s 147 of the Act.

5. Relying on the decision of Hon'ble Gujarat High Court in the case of Gujarat Ambuja Export Private Limited in SCA No.10745/16 order dated 11.09.2017 and the decision of Hon'ble Delhi High Court in the case of Paramount Communication Limited reported in 382 ITR 444, the Ld. CIT(A) upheld the action of the Assessing Officer in reopening the assessment.

6. So far as the merit of the case is concerned the CIT(A) also upheld the action of the Assessing Officer by observing as under :-

4.3 As far as the addition made by the AO in respect of the cash credit in the form of bank deposits amounting to Rs. 7,29,000/- is concerned, it is contended by the AR that the AO has made the addition without any basis. It is also submitted that the AO had issued a show cause notice in which the proposed addition was in respect of investment of Rs.7,29,000/ in the shares of Blue Print Securities Ltd. and the addition has been made in respect of bank deposits of the same amount. In this context, it is observed that the appellant had failed to furnish any information regarding the purchase of shares which she claimed having sold for Rs.7,29,000/-. As the appellant had denied the purchase of shares and it is not possible to sell shares without purchasing the same in first place, the AO has considered the amount of Rs. 7,29,000/- received in the bank account and claimed to be the sale proceeds of the shares, as unexplained cash credits in the bank account. I agree with the view taken by the AO as the appellant has failed to produce the details of purchase and sale of shares during the

course of assessment as well as appellate proceedings and by doing so, it is also to be noted that the appellant has not come in appeal with clean hands. In view of the: above facts, the AO had no other option but to treat the bank deposits as unexplained. Therefore, the addition made by the AO is confirmed and the grounds of appeal are dismissed.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

1. *That the CIT(A) has erred both on facts and in law in upholding the illegal action of the AO in reopening the assessment u/s 147/148 of the I.T. Act, 1961.*
2. *That the CIT(A) failed to appreciate that the reopening u/s 148 was not valid in law having been based on reasons which were contradictory, factually incorrect and which had undergone numerous changes during the course of assessment proceedings by replacement of one section by another.*
3. *Without prejudice to Grounds 1 & 2, the CIT(A) failed to appreciate that the order of the AO was passed in violation of the principles of natural justice since the final show cause proposed an addition u/s 69-B to which a detailed reply was filed and the ultimate addition was made u/s 68 without granting an opportunity of being heard.*
4. *That the CIT(A) in upholding the reopening by the AO acted arbitrarily in reproducing only in part the written submissions of the appellant without dealing with the contentions raised therein both on facts and in law and choosing not to refer to the numerous judgements relied upon including those of the jurisdictional High court which were binding on him.*
5. *Without prejudice to the earlier grounds the addition of Rs.7,29,000/- u/s 68 was not justified either on facts or in law since the AO after having accepted as a fact that sale of shares to this extent had taken place during assessment year 2009-10 could have at the most/only assuming but not admitting subjected the same to treatment under the head capital gains after reducing cost thereof.*
6. *That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any Ground(s) of Appeal on or before the date of hearing.*

8. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming the reassessment proceedings initiated by the Assessing Officer.

9. Referring to the decision of Hon'ble Bombay High court in the case of Ankita A. Chokasi Vs. ITO vide writ petition 3344/18, order dated 10.01.2019 and the decision of Hon'ble Delhi High Court in the case of PCIT Vs. M/s. SNG Developers Limited vide 92/17 order dated 12.07.2017 he submitted that initiation of reassessment proceedings based on wrong facts or incorrect facts is void-ab-initio.

10. So far as the merit of the case is concerned the Ld. Counsel for the assessee referring to the following decisions submitted that addition cannot be made u/s. 68 of the IT Act on the basis of entries made in the bank pass book since such pass book is not maintained by the assessee but issued to him by the bank :-

1. CIT Vs. Bhaichand N. Gandhi
2. Smt. Madhu Raitani Vs. ACIT
3. Amitabh Bansal Vs. Income Tax Officer
4. Anjul Bansal Vs. Income Tax Officer

He accordingly submitted that both legally and factually no addition is called for.

11. The Ld. DR on the other hand strongly supported the order of the CIT(A) in upholding the reassessment proceedings as well as the addition on merit. Referring to the decision of Hon'ble Supreme Court in the case of Raymond Woolen Mills Limited Vs.

ITO reported in 236 ITR 34, he submitted that the Hon'ble Supreme Court in the said decision has held that in determining whether commencement of reassessment proceedings was valid it has only to be seen as to whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. He accordingly submitted that when the Assessing officer had specific information that assessee had received accommodation entry in the form of sale and purchase of shares of Penny stock company and the assessee had denied to have under taken any such transaction without furnishing any evidence, therefore, such reassessment proceeding is valid.

12. So far as the merit of the case is concerned he submitted that assessee has failed to furnish any information regarding the purchase of shares which were claimed to have been sold for Rs.7,29,000/-. Since the assessee had denied the purchase of shares, therefore, it is not possible as to how the assessee could sell the shares. Therefore, the Ld. CIT(A) was fully justified in upholding the addition made by the Assessing Officer.

13. The Ld. Counsel for the assessee in his rejoinder submitted that you cannot keep on changing the information which were never confronted and action can be taken only in the year of purchase.

14. I have considered the rival arguments made by both the sides and perused the material available on record. I find the Assessing Officer on the basis of information received from the investigation wing that assessee had invested a sum sum of Rs.7,29,000/- against purchase of scrip of one paper company namely Blue Print Securities Limited, reopened the case by recording reasons and issued notice u/s. 148. Since the assessee, during the course of assessment proceedings, denied to have purchased or sold the share of M/s. Blue Prints Securities Limited, the Assessing Officer, invoking the provisions of section 68 of the IT Act made addition of Rs.7,29,000/-to the total income of the assessee. I find the Ld. CIT(A) upheld the reassessment proceedings as well as the addition made by the Assessing Officer u/s. 68 of the IT Act. It is the submission of the Ld. Counsel for the assessee that when the reopening is based on wrong facts or incorrect facts then such reassessment proceedings are void ab initio. It is also the argument of the Ld. Counsel for the assessee that based on the entries made in the bank pass book addition cannot be made in the hands of the assessee u/s. 68 of the IT Act, since such pass book is not maintained by the assessee but is supplied by the bank.

15. So far as the validity of the reassessment proceedings are concerned it is an admitted fact that the Assessing Officer, based on the specific information received that assessee has received accommodation entry in the form of sale and purchase of shares of a Penny stick company, reopened the assessment. During the

course of assessment proceedings as well as in the letter issued u/s. 133 (6) of the IT Act, the assessee has not come out with clean hands as to which shares she had sold so as to receive the amount of Rs.7,29,000/-. It is also not understood as to how assessee could sell the shares without purchase of the same. Therefore, without answering these vital questions the assessee cannot get away on the basis of technicalities that the reassessment proceedings are initiated on the basis of wrong facts or incorrect facts especially when assessee is not coming out with clean hands as to in which shares she had dealt with. The Hon'ble Supreme Court in the case of Raymond Woolen Mills (supra) while deciding the validity of reassessment proceedings has held that in determining whether there was prima facie some material on the basis of which the Department could reopen the case, the sufficiency or correctness of the material is not a thing to be considered at this stage.

16. In view of the above decision of Hon'ble Supreme Court cited (supra) and in absence of any definite answer given by the assessee in response to notice u/s. 133 (6) I hold that the reassessment proceedings initiated by the Assessing Officer and upheld by the CIT(A) are valid. The arguments of the L.d Counsel for the assessee that the reassessment proceedings are initiated on the basis of wrong facts or incorrect facts is not tenable in the eyes of law since the assessee could not prove that the same is on account of some other scrip and not on account of M/s. Blue

Print Securities Limited. Therefore, the ground relating to validity of reassessment proceedings are dismissed.

16. So far as the grounds relating to addition on merit is concerned, I find no information was furnished by the assessee regarding the purchase of shares which she claimed to have sold for Rs.7,29,000/-. It is the submission of the Ld. Counsel for the assessee that in response to the notice u/s. 133 (6), the assessee had stated that she had not invested a sum of Rs.7,29,000/- in the scrip of the company during assessment year 2009-10. However, no further query was raised by the Assessing Officer on this issue. It is the submission of the Ld. Counsel for the assessee that in the show cause notice dated 16.12.2016, the applicability of section 69B was raked up for the first time. The Assessing Officer has also not obtained any information from the bank regarding who signed the pay in slip alongwith cheque / demand draft that was deposited and information from the company who has issued cheque and necessity of issuing such cheque. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the nature of deposit in the bank account i.e. sale of which share that she had received the money, the year in which such shares were purchased and other information that the Assessing Officer may deem it proper for his verification. The Assessing Officer shall decide the issue as per fact and law after

giving due opportunity of being heard to the assessee. The grounds relating to the addition on merit are accordingly allowed for statistical purpose.

17. So far as the argument of the Ld. Counsel for the assessee that addition u/s. 68 cannot be made on the basis of entries in the bank pass book is concerned the Ld. AR himself admits in the written synopsis filed before the CIT(A) that the Assessing Officer had issued notice dated 16.12.2016 regarding the applicability of section 69B of the IT Act. Further the assessee had not come out with clean hands that the money so deposited does not belong to her and that she has not signed the pay in slip and that it was inadvertently deposited by the bank in her pass book. Therefore, the various decisions relied on by the Ld. Counsel for the assessee are not applicable to the facts of the present case. Therefore, this argument of the assessee is rejected

18. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 10.06.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 10.06.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | |
| Date on which the fair order comes back to the Sr. PS/ PS | |
| Date on which the final order is uploaded on the website of ITAT | 10.06.2019 |
| Date on which the file goes to the Bench Clerk | |
| Date on which file goes to the Head Clerk. | |
| The date on which file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |

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