

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R KUMAR, ACCOUNTANT MEMBER

ITA.No.1389/Del./2019
Assessment Year 2010-2011

M/s Savita Holdings Pvt. Ltd. B-1/14, Rana Pratap Bagh, Delhi. PAN No. AABCS3394P	vs.	ITO Ward 22(4) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Suresh Kumar Gupta, C.A.
For Revenue :	Shri Prakash Dubey, Sr. D.R.

Date of Hearing :	10.03.2021
Date of Pronouncement :	19.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-31, New Delhi dated 25.09.2018 for AY 2010-11, challenging the initiation of the reassessment proceedings u/s 147 of the I.T. Act and additions of Rs. 2,15,84,086/- u/s 68 of the Act holding the share application money of Rs. 50 lakhs and unsecured

loans of Rs. 1,65,84,086/- as unexplained cash credit u/s 69A of the Act and addition of Rs. 90,000/- on account of commission paid to the brokers.

2. We have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that assessee is a company which was incorporated on 22.01.1996 under the Companies Act having its two Directors namely Shri Vimal Bhageria and Aarti Sureka. The assessee company filed its return of income on 15.10.2010 for assessment year under appeal declaring income at Rs. 62,360/- which was processed u/s 143(1) of the Act on 17.02.2012. The AO received information from DIT(Inv.) dated 12.03.2013 mentioning therein that a search operation was carried out in the case of Shri S.K. Jain group of cases, wherein after intensive and extensive enquiry and examination of the documents seized during the course of search, it has been noticed that the said group is involved in providing accommodation entries and the name of the assessee company also figures in the list as one of the beneficiaries of

the accommodation entries. The AO recorded reasons for reopening of the assessment and issue a notice u/s 148 of the Act. The assessee in response to the same submitted before AO that return of income filed originally may be treated as return having been filed in response to notice u/s 148 of the Act. The AO noted that the return of income filed by the assessee shows that assessee has received share capital of Rs. 50 lakhs and unsecured loans of Rs. 2,10,84,386/- in assessment year under appeal. The AO referred to Annexure B in the assessment order which was recovered from Jain Brothers to show that on 04.05.2009 assessee company has received share capital of Rs. 25 lakhs each from two companies namely Euro Asia Mercantile Pvt. Ltd. and AD Fin Capital Services P. Ltd. through account payee cheques. The AO noted that on the basis of the seized document it was noticed that Jain Brothers have received Rs. 50 lakhs in cash from intermediary Sh. Vimal Bhageria for getting the said entry. The AO also referred to Annexure D which was also found from Jain Brothers which is extract from cash book forming part of seized material to

show that cash receipt by the accommodation intermediary (Sh. Vimal Bhageria) of Rs. 50 lakhs from 01.05.2009 to 30.05.2009. The AO referred to *modus operandi* of Jain Brothers to provide accommodation entry in the assessment order and referred to order of the Ld. CIT(A) in their case the AO issued show cause notice to the assessee to explain the above share capital money received.

3.1 The assessee filed a reply before AO which is reproduced in the assessment order in which assessee has briefly explained that it has not paid any cash to any such person. The assessee submitted copy of the ITR, computation, bank statements, master data from ROC, board resolution and balance sheet of the above mentioned investors to show that assessee has received genuine share capital money from these two companies. The evidences filed by the assessee have not been controverted. The AO, however, did not accept the contention of the assessee and made addition of Rs. 50 lakhs on account of unexplained share capital received from the above two companies. The AO also noted that in assessment year under appeal

assessee has also received other credits on account of unsecured loans of Rs. 2.10 crores the assessee company in support of the same filed their confirmation, ITR, bank statements. The AO, however, noted that assessee has received loan of Rs. 1,65,84,086/- from three companies namely M/s Transnational Growth Fund Ltd., M/s Solomon Holdings P. Ltd. and M/s RKG Finvest Ltd. which are the companies controlled by Jain Brothers. The AO, therefore, treated the sum of Rs. 1,65,84,086/- as unexplained cash credit u/s 68 of the Act and made the addition accordingly. The AO also made addition of Rs. 90,000/- on account of commission paid for procuring the accommodation entries.

4. The assessee challenged the reopening of the assessment as well as above additions before Ld. CIT(A). Detailed submission of the assessee is reproduced in the appellate order, however, Ld. CIT(A) dismiss the appeal of the assessee.

5. Ld. Counsel for assessee referred to PB 34 which is copy of the reasons recorded for initiation of the reassessment proceedings. The same reads as under:

“Name of the assessee: M/s Savita Holdings P. Ltd. AY 2010-11

PAN: AABCS3394P

ASSESSMENT YEAR: 2010-11

REASONS FOR ISSUE OF NOTICE U/S 148 OF THE INCOME TAX ACT, 1961

The return of income for the AY 2009-10 has been filed by the assessee company on 15.10.2010 declaring total income amounting to Rs. 62,360/-. The same was processed u/s 143(1) on 03.11.2010. No assessment u/s 143(3) for the AY 2010-11 has been made in this case.

In this case information has been shared by DIT (Investigation)-II (letter flagged as Annexure A) on the basis of search in the case of Sh. Surendra Kr. Jain group of cases (entry operator) New Delhi that during the FY 2009-10. It is informed that the aforementioned assessee has introduced its own money by way of taking bogus accommodation entries provided by Sh. S.K. Jain group of cases (entry operator) the details of accommodation entry amount received as beneficiary is given as under as provided by investigation wing:

<i>S.No.</i>	<i>Beneficiaries</i>	<i>Name of the Entry Provider</i>	<i>Amount</i>	<i>Total Amount</i>
<i>1.</i>	<i>M/s Savita Holding P. Ltd.</i>	<i>Sh. Surendra Kumar Jain Group</i>	<i>50,00,000/-</i>	<i>50,00,000/-</i>

I have perused the balance sheet of the assessee for the year ending 31.03.2010 and 31.03.2009 it is revealed therein that issued subscribed and paid up capital has increased by Rs. 50 lacs.

In this regard I have also tallied the above with information details of the cheques/PO received by the above company, the amount the issuing company, the receipt company, middleman bank etc. as tabulated/reproduced below which are found totally with fresh share capital received as detailed below to.

S.No.	From company name	To Company name	Name of the issuing bank	Chq./RT GS/PO	Ch./Date	Amount	Name of the Middlemen
1.	Euro Asia Mercantile P. Ltd.	Savita Holding P. Ltd.	Axis	Ch. No. 192357	04.05.09	2500000/-	Vimal Bhageria
2.	AD Fin Capital Services P. Ltd.	Savita Holding P. Ltd.	Axis	Ch. No. 0125	04.05.09	2500000/-	Vimal Bhageria

Then again it is seen that the two companies from whom the amount were received are listed as paper companies controlled by Sh. S.K. Jain group.

Thus, in view of above, I have reason to believe that the income pertaining to the AY 2010-11 has escaped assessment to the extent of Rs. 50,00,000/-. The escapement of income has been clearly on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment. The assessment is proposed to be made for the time and case has not been completed u/s 143(3) earlier. Thus, it is a fit case for initiation of proceeding u/s 147 of the Income Tax Act.”

6. Ld. Counsel for assessee submitted that the conclusion of the AO is the conclusion drawn by the Investigation Wing. But the AO in absence of any application of mind to the relevant information was in no position to reach a belief himself that the income has escaped assessment, independent of the conclusion of Investigation Wing. The AO does not discuss how the *prima facie* belief of accommodation entry is reached when no evidence/material regarding the payment of cash in lieu of

cheques to the search group is discussed. The role of middleman is not discussed and nor is there any indication that he was examined by the Investigation Wing or the AO. The conclusion of the AO is not supported by any evidence or material on record. The reasons recorded do not refer evidence or any confessional statement of any entry provider, cash payment by assessee/payment of commission etc. Non disclosure of specific material in the process of formation of *prima facie* belief shows that either the material referred in the information of Investigation Wing was not available to the AO or if it was there, the same have not been considered by the AO. He has relied upon judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Meenakshi Overseas Pvt. Ltd. 395 ITR 677 (Del.), wherein it was held that "reproduction of information without showing how the material referred therein does not show application of mind by the AO in absence of any specific discussion on the material on the basis of which independent *prima facie* belief is reached that income has escaped assessment". Ld. Counsel for the assessee in

support of the proposition of law regarding non-application of the mind by the AO on the reasons recorded relied upon the judgment of Delhi High Court in the cases of M/s RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (Del.), M/s G & G Pharma India Ltd., 384 ITR 147 (Del.), M/s Signature Hotels P. Ltd., 338 ITR 0051 (Del.) and M/s SFIL Stock Broking Ltd., 325 ITR 285.

6.1 Ld. Counsel for assessee submitted that it is settled position of law that the reasons for reopening of the assessment must be complete and a self explanatory demonstration the application of mind by the AO of the relevant material in his possession. In support of his contention, he has relied upon the judgment of Delhi High Court in the case of Sabh Infrastructure vs. ACIT 398 ITR 198 (Del.). Lack of independent application of mind at the stage of recording reasons is also evidence from the fact that AO himself has tried during reassessment proceedings to support the conclusion of accommodation entries by relying upon various additional seized material in the show-cause notice. The additional materials are handwritten cash book,

where cash transactions are recorded but the same are not found recorded in the regular books of the account of the searched persons. There was no supporting material to any of the seized paper. The AO in order to improve the reasons relied upon additional materials later on which are not part of the reasons recorded. He has submitted that if the reopening is based on some information or material, same should have the reference in the reasons recorded which will have to be the basis for reopening of the assessment. He has relied upon the judgment of Delhi High Court in the case of Sabharwal Properties Industries Pvt. Ltd., 382 ITR 547, etc. Ld. Counsel for assessee further submitted that non-application of the mind by the AO can also be found from the fact that in para 20 at page 51 of the show-cause notice the AO alleged that the amount of Rs. 50 lakhs was received by S.K. Jain group from the middleman Shri Vimal Bhageria in lieu of cheques of Rs. 50 lakhs accepted by the assessee company as accommodation entry. The allegation was found supported by annexure D (PB 69-70). On annexure D (PB 70) is the cash book marked A-23 and the

perusal of this reveals that contrary to what the AO stated, there is a payment of Rs. 50 lakhs shown to have been made as per the same document by S.K. Jain group to Sh. Vimal Bhageria during the period 01.05.2009 to 30.05.2009. Therefore, the ground taken by the AO in the reasons that cash is paid by middleman of assessee to Sh. S.K. Jain is not supported by the seized material. The AO recorded incorrect facts in the reasons for giving cash to S.K. Jain group of cases for taking accommodation entry. He has submitted that even the name of middleman is incorrectly recorded because Sh. Vimal Bhageria is one of the Director of the assessee company. Ld. Counsel for assessee, therefore, submitted that since incorrect and wrong facts are recorded in the reopening of the assessment, therefore, it is invalid and bad in law. In support of his contention, he has relied upon the judgment of Delhi High Court in the case of M/s SNG Developers Ltd., 404 ITR 312 (Del.) in which departmental SLP has been dismissed by the Supreme Court vide order dated 09.02.2018. He has also relied upon the judgment of Delhi

High Court in the case of Shamshad Khan 395 ITR 265 (Del.), judgment of (P&H) in the case of Atlas Cycle Industries 180 ITR 319 and judgment of Bombay High Court in the case of Siemens Information System Ltd. 293 ITR 548. None of the annexure referred by the AO in the assessment order have any reference in the reasons for reopening of the assessment. The AO in the show-cause notice dated 23.02.2016 (PB 55) has stated that as per annexure A seized from S.K. Jain group shows that name of the assessee appears on this document having taken accommodation entry amounting to Rs. 17.05 crores from searched group. If such amount is correct, there were no reasons for the AO to mention only Rs. 50 lakhs in the reasons. Thus, the AO did not apply his independent mind to the information received from the Investigation Wing which has resulted into that sanction u/s 151 is also invalid. The AO did not take any action on the information received from Investigation Wing for about 2 years and did not verify the same and just repeated the same for the purpose of reopening of the assessment. He has relied upon

the judgment of Hon'ble Delhi High Court in the case of Shri Rajiv Agarwal vs. ACIT 395 ITR 255 in which it was held that "even in cases, where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and, if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the assessee has escaped assessment. There is non-application of mind by the AO could not be said to have reason to believe as to justify reopening of the assessment". The AO could have made enquiries prior to recording the reasons by undertaking enquiries u/s 131/133(6)/142 of the Act. But the AO merely acted on wrong and incorrect information. Ld. Counsel for assessee, therefore, submitted that reopening of the assessment is invalid and bad in law. He has further submitted that the AO relied upon material collected during the course of search in the case of S.K. Jain group and Investigation Wing have recorded statement of some persons in their search by confronting the incriminating material found during the course of search.

The AO, however, did not provide copies of such material for confrontation of the assessee and no right of cross-examination have been provided to the assessee, therefore, such material collected at the back of the assessee cannot be used in evidence against the assessee. In support of his contention, he has relied upon the judgment of the Supreme Court in the case of Andaman Timber Industries 281 CTR 241 and Kishinchand Chellaram 125 ITR 713 (SC). Ld. Counsel for the assessee, therefore, submitted that reopening of the assessment is bad in law and is liable to be quashed.

7. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that sufficiency of the reasons are not to be looked into at the stage of reopening of the assessment. The AO recorded reasons for reopening of the assessment based on information received from Investigation Wing and has applied his mind to such information. Therefore, reopening of the assessment is justified.

8. We have considered the rival submission. It is well settled law that validity of the reassessment proceedings is to be determined with reference to the reasons recorded for reopening of the assessment. The copy of the reasons recorded for reopening of the assessment is reproduced above. It is admitted fact that assessee filed original return of income which was processed u/s 143(1). The AO later on received information from Investigation Wing that search was carried out in the case of S.K. Jain group of cases, wherein after detailed enquiry and examination of document seized during the course of search, it was found that the said persons have given accommodation entries to the assessee as per the list in which assessee is shown as one of the beneficiaries. The AO referred to annexure B and D and other material in the assessment order for justifying reopening of the assessment in the matter. The AO as per seized material noted that assessee has received accommodation entry of Rs. 50 lakhs from two parties in which intermediary was Sh. Vimal Bhageria. The AO recorded incorrect fact that Sh. Vimal Bhageria was

intermediary because at the first page of the assessment order AO has mentioned that Sh. Vimal Bhageria is one of the Director of the assessee company. The AO also on the basis of the seized document found that Jain Brothers had received Rs. 50 lakhs in cash from Sh. Vimal Bhageria and referred to annexure D in the reassessment order, copy of which is also filed at page 69 and 70 of the Paper Book. Annexure D would reveal that cash is received by the accommodation intermediary (Sh. Vimal Bhageria). PB 70 is also annexure D page 1 according to which Rs. 50 lakhs shown to have been made by S.K. Jain group to Sh. Vimal Bhageria during period from 01.05.2009 to 30.05.2009. So the ground taken by the AO that assessee has paid cash in lieu of cheque of Rs. 50 lakhs accepted from Sh. S.K. Jain has not been supported by any material. Rather a contrary fact has been recorded in the seized annexure D (PB 69-70) that S.K. Jain group has paid cash to Sh. Vimal Bhageria. PB 59 to 64 is annexure A, PB 65 to 66 is annexure B and PB 67 to 68 is annexure C and PB 69 to 70 is annexure D which according to AO would support the allegation of

accommodation entry of Rs. 50 lakhs received by assessee from the companies controlled by Sh. S.K. Jain group. However, these entries found during the course of search in the case of S.K. Jain are not for any help to the AO or the Revenue Department to form a belief of escapement of income. These annexure will show that AO was not correct to form his belief on such annexure which are totally dumb documents and do not provide anything of providing accommodation entries. Annexure A is list of the companies and there is no supporting material to the same or it is controlled by somebody else. Annexure B is again details of cheque issued by various companies on 01.05.2009 to 11.05.2019 which is a routine list and nothing more. It would also not indicate that cheques have been issued in lieu of the cash. Annexure C is again details of transaction in the month of March 2010 and December 2009. These details do not pertain to the period of the month of May, 2009. It does not provide of any details for accommodation entries. Annexure D is differently as mentioned above in which it is mentioned that cash payment of Rs. 50 lakhs is

paid to middleman and not that middleman has paid any cash payment to S.K. Jain group of cases. The AO subsequently in the show-cause notice dated 23.02.2016 has mentioned that assessee has received accommodation entries of Rs. 17.05 crores from the searched group which fact is also incorrect. Shri Vimal Bhageria is not the middleman as mentioned in the reasons. He is one of the director of the assessee company. The AO in the assessment order has specifically mentioned that the return of income filed originally u/s 139(1) shows assessee has received share capital of Rs. 50 lakhs and unsecured loans of Rs. 2.10 crores in assessment year under appeal. Thus, there was no reason for the AO to mention in the reasons recorded for reopening of the assessment that there is an escapement of income on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. The above facts on record clearly show that during the course of search no specific material or evidence was found against the assessee for receiving any accommodation entry from S.K. Jain group of cases. The

AO did not refer to any material found during the course of search against the assessee in the reasons recorded for reopening of the assessment. The AO believed the information received from Investigation Wing that assessee has received accommodation entry but all the annexure seized during the course of search from S.K. Jain group of cases as discussed above did not implicate the assessee of receiving any accommodation entry. No material was found during the course of search as to how Sh. S.K. Jain group was controlling the investor companies or the companies provided loan to the assessee. Such fact is also not corroborated by any evidence or material, if found during the course of search. Thus, the AO recorded incorrect and wrong facts in the reasons recorded for reopening of the assessment. The AO independently did not apply his mind to the information received from Investigation Wing and merely believed the same to be correct for the purpose of reopening of the assessment despite no specific material was found during the course of search against the assessee company. Whatever material was recovered during the

course of search or any statement recorded during search in the case of S.K. Jain group of cases, such material was never supplied to assessee or confronted or given any right of cross examination to the assessee. Therefore, such material cannot be used against the assessee. Considering the above discussion, it is clear that AO has mentioned wrong and incorrect facts in the reasons recorded for reopening of the assessment and did not apply his mind to the information received from Investigation Wing. Thus, the reopening of the assessment is invalid and bad in law and is liable to be quashed. The decisions relied upon by Ld. Counsel for assessee support our findings. In this view of the matter, we set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly all additions stand deleted.

9. The Ld. Representatives of both the parties have also argued on merits in which Ld. Counsel for assessee argued that whatever documentary evidence was filed on record for the purpose of explaining the share application money and loans, no investigation has been made by the AO. Thus, in

principle addition is otherwise wholly unjustified. Since, we have quashed the reopening of the assessment, therefore, the issue of merit is left with academic discussion only and, as such, we do not propose to decide the same at the stage.

10. In view of the above, the appeal of assessee is allowed.

Order pronounced in the open Court on 19/03/2021

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi,
Dated 19th March, 2021

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.