

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.4281/Del/2010
Assessment Year : 2001-02

Income Tax Officer,
Ward-3(4),
New Delhi.

(Appellant)

Vs. M/s Comero Leasing & Financial
Pvt.Ltd.,
24, Sadhna Enclave,
Malviya Nagar,
New Delhi.
PAN : AAACC5698R.
(Respondent)

ITA No.4949/Del/2010
Assessment Year : 2001-02

Income Tax Officer,
Ward-3(2),
New Delhi.

(Appellant)

Vs. M/s Camboj Brothers Pvt.Ltd.,
B-217, Yojna Vihar,
Delhi – 110 092.
PAN : AAACC5649Q.
(Respondent)

Appellant by : Mrs. Ashima Neb, Sr.DR.
Respondents by : Shri V.P. Gupta and
Shri Anunav Kumar, Advocates.

ORDER

PER G.D. AGRAWAL, VP :

These appeals by the Revenue are directed against the order of learned CIT(A)-IV, New Delhi dated 29th July, 2010 and 7th September, 2010 for the AY 2001-02.

2. At the time of hearing before us, it is admitted by both the parties that the facts in both the cases are identical and therefore, if ITA No.4281/Del/2010 is considered and adjudicated upon, the same would be applicable to ITA No.4949/Del/2010. In view of the above, we shall first deal with ITA No.4281/Del/2010.

3. In this appeal by the Revenue, following grounds are raised:-

“1. On the facts and circumstances of the case and in law, the order of the Id.CIT(A) is wrong, perverse, illegal and against the provisions of law which is liable to be set aside.

2. The Id.CIT(A) has erred on facts and in law in holding that re-opening of the case u/s 147/148 was not valid in law, especially in view of decision of the jurisdictional High Court in Midland Fruit and Vegetables Products (India) Ltd vs. CIT (1994) 208 ITR 266.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

4. At the time of hearing before us, it is submitted by the learned DR that the Assessing Officer had received definite information from the Director of Income Tax (Investigation), New Delhi with regard to accommodation entries being provided by various entry operators. The assessee was the beneficiary of such accommodation entries. That during the course of investigation by the Investigation Wing, the so called creditors have accepted that they are only entry providers. That the Assessing Officer has reopened the assessment on the basis of specific information with regard to the accommodation entries taken by the assessee, the details of which are given in the reasons recorded which shows complete detail with regard to the date on which the entry is received, the account from which that entry is received, name and branch of the bank and the amount. She, therefore, submitted that the CIT(A) wrongly held that the reopening of assessment was bad in law. In support of her contention, she relied upon the following decisions of Hon'ble Jurisdictional High Court :-

- (i) CIT Vs. Nova Promoters and Finlease (P) Ltd. – [2012] 342 ITR 169 (Delhi).
- (ii) A.G. Holdings Pvt.Ltd. Vs. ITO – [2013] 352 ITR 364 (Delhi).

5. Learned counsel for the assessee, on the other hand, relied upon the order of the learned CIT(A) and he referred to the reasons recorded and pointed out that in the reasons recorded, the Assessing Officer simply reproduced certain details received from the Investigation Wing and, without any application of mind, issued notice under Section 148. He referred to the details and pointed out that on five occasions, the same entry has been mentioned in the chart twice and the Assessing Officer accepted the same at the face value. The Assessing Officer has not even referred to the assessment record which is available with him. That the CIT(A) has properly appreciated the facts after examining the whole records. That the CIT(A) has also mentioned that he has examined the statements of alleged entry providers. At no place, it has been mentioned by any of the persons that the assessee was the beneficiary of the accommodation entries. He, therefore, submitted that the order of learned CIT(A) should be sustained. In support of his contention, he relied upon the following decisions of Hon'ble Jurisdictional High Court:-

- (i) CIT Vs. Suren International P.Ltd. – [2013] 357 ITR 24 (Delhi).
- (ii) Signature Hotels P.Ltd. Vs. ITO and Another – [2011] 338 ITR 51 (Delhi).

6. We have carefully considered the submissions of both the sides and perused relevant material placed before us. The reasons recorded by the Assessing Officer for issuing notice under Section 148 read as under:-

“Reasons for issuing notice u/s 148 in the case of M/s Comero Leasing & Financial Pvt Ltd for AY 2001-02

A Report on enquiries made by the Directorate of Income Tax (Investigation) New Delhi into accommodation entries given by entry operators has been received. This report was received in the Office of Commissioner of Income Tax, Delhi-I, New Delhi and was subsequently forwarded vide F.No.CIT-I/2005-06/2132 dated 13.03.2006. These enquiries were initiated to probe into some bank account which were used to issue cheques to entry seekers or beneficiaries against cash paid by them to the entry operators. Such a camouflaged transaction came to light during the course of survey in the case of M/s Gurcharan Jewellers whose proprietor Shri Ashok Kumar Chauhan had admitted to have taken cheques under the garb of gifts after giving cash to the entry operator. Probe was initiated into the accounts which were used to provide these entries. These investigations led to revealing of many more bank accounts which were being used by the entry operators for the purpose of giving accommodation entries.

2. Extensive enquiries were made into numerous such bank accounts, the account holders, the persons operating these accounts and the persons for whom such account holders were working. These enquiries revealed inter alia the following:-

2.1 Entries were being broadly taken for two purposes :

- The plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*
- To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.*

2.2 The assesseees who had unaccounted money (called as entry takers or beneficiaries) and wanted to introduce the same in the books of accounts without paying tax, approached another person (called as entry operator) and handed over the cash (plus commission) and had taken cheques/DDs/Pos. The cash was being deposited by the entry operator in a bank account either in his own name or in the name of relative/friends or other person hired by him, for the purpose of opening bank account. In most of these bank accounts the introducer was the main entry

operator and the cash deposit slips and other instruments were filed by him. The other persons (in whose name the A/c is opened) only used to sign the blank cheque book and hand over the same to the main entry operator. The entry operator then used to issue cheques/DDs/Pos in the name of the beneficiary from the same account (in which the cash is deposited) or another account in which funds were transferred through clearing in two or more stages. The beneficiary in turn deposited these instruments in his bank accounts and the money came to his regular books of account in the form of gift, share application money, loan etc through banking channels.

2.3 The operators gave the account holders amounts ranging from Rs.1000 to 2000 per month. These account holders were masons, plumbers, electricians, peons, drivers etc. whose earnings are not sufficient for a living. They earned normally Rs.3 to 5 thousand per month in their normal work and by working for the entry operators earned extra income of Rs.2 to 4 thousand per month. Their signatures were taken on blank gift deeds, cheque books, share application money etc. In fact these persons signed all types of papers they were asked to sign. They were made directors of companies, partners of firms and proprietor of different concerns solely for operation of these accounts. Actually, many of them were not even aware of the tax implications etc. their only concern was with the few thousand rupees given to them by the entry operators.

3. Summing up, the report as a result of these extensive enquiries carried out by the D.I.T. (Inv.), New Delhi has assailed genuineness of transactions, whether shown by beneficiaries as inflow of share capital or receipt of gifts or consideration for sale-purchase. It has also dealt a body blow to the creditworthiness of the persons/persons controlling the concerns who have given these credit entries/share capital/gifts/sale consideration as they have been seen to be the man of no means.

4. In the instant case of the assessee, M/s Comero Leasing & Financial Pvt.Ltd. the following credits have been shown in the bank account of the assessee company:-

Bank of the assessee	Branch of the Bank	Amount	Instrument No.	Date	Credit entry coming from the account of
Canara Bank	Rohtas Nagar, Shahdara, Delhi	400000	417957	6-May-00	Arun Finvest P.Ltd.

Canara Bank	Rohtas Nagar, Shahdara, Delhi	500000	884997	6-May-00	Fair N Square Exports P Ltd
Canara Bank	Rohtas Nagar, Shahdara, Delhi	500000	884997	6-May-00	Fair N Square Exports P Ltd
Canara Bank	Rohtas Nagar, Shahdara, Delhi	300000	417939	13-May-00	SGC Publishing P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	300000	417939	13-May-00	SGC Publishing P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	300000	820387	13-May-00	Tashi Contractors P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	300000	820387	13-May-00	Tashi Contractors P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	400000	898341	13-May-00	Satwant Singh Sodhi Const. P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	400000	898341	13-May-00	Satwant Singh Sodhi Const. P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	700000	884989	15-May-00	Fair N Square Exports P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara, Delhi	700000	884989	15-May-00	Fair N Square Exports P.Ltd.
Canara Bank	Rohtas Nagar, Shahdara	500000	543066	27-Apr-00	Dupas Leasing & Finance

5. In view of the findings of the investigation report in these cases have been proved to be men/parties of no creditworthiness. The statements on oath and the letters of admission clearly show that these transaction are non genuine. Therefore the aforesaid credit entries are squarely hit by section 68 of the I.T. Act. I, therefore, have reasons to believe that this amount of Rs.53,00,000/- represents income of the assessee chargeable to tax which has escaped assessment for A.Y. 01-02.

Sd/-
Officer
New Delhi."

Income Tax
Ward-3(4),

7. From the above, we find that at paragraph Nos.1, 2 & 3, the Assessing Officer has discussed the facts in general i.e., the investigation carried on by the Director of Income Tax (Investigation) and the finding of such investigation, the *modus operandi*, how the entry operator worked. The facts relating to assessee's case begin

from paragraph 4. If we peruse the chart given by the Assessing Officer in the reasons recorded by which he formed an opinion that there was escapement of income of ₹53 lakhs, we find that several items have been considered twice. Item No.2 & 3, 4 & 5, 6 & 7, 8 & 9 and 10 & 11 are same. Thus, out of the total twelve items, five items have been considered twice by the Assessing Officer which is an apparent case of non-application of mind. We find that the identical case was considered by Hon'ble Jurisdictional High Court in the case of Suren International P.Ltd. (supra), wherein, at page 32 of the Report, their Lordships held as under:-

“13. We have heard counsel for the parties at length.

14. The learned counsel for the appellant contended that even though there is no specific allegation that the assessee had failed to disclose all the material facts but the same can be gleaned from the reasons itself. We are unable to accept this contention. In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded.”

8. The facts in the assessee's case are identical. In this case also, the Assessing Officer, except preparing the table of alleged accommodation entries from the details claimed to have been received from the Investigation Wing, has not at all applied his mind. From a bare perusal of the table of the alleged accommodation entries, it is evident that the same entries have been repeated five times. This is the clear indication of non-application of mind by the Assessing Officer.

Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable to the facts of the assessee's case.

9. Learned DR has also relied upon the two decisions of Hon'ble Jurisdictional High Court. The first one was in the case of Nova Promoters and Finlease (P) Ltd. (supra). However, from a perusal of the order of Hon'ble Jurisdictional High Court, we find that the issue of reopening of assessment was not before their Lordships but the issue before the Hon'ble Jurisdictional High Court was only with regard to certain cash credits. Therefore, the aforesaid decision cannot be said to be applicable to the facts of the assessee's case. Learned DR has also relied upon the decision of Hon'ble Jurisdictional High Court in the case of A.G. Holdings Pvt.Ltd. (supra). In this case, the assessment was reopened after four years from the end of the relevant assessment year. It was contended by the assessee that there was no failure on the part of the assessee to disclose all material facts because in the documents attached to the return of income, all primary facts were disclosed. Hon'ble Jurisdictional High Court did not accept the assessee's contention and held :-

“dismissing the petition, (i) that the documents attached to the return of income were only the statutory auditor's report and the final accounts, namely, the income and expenditure account, the balance-sheet and the notes forming part of the accounts. There was nothing in these papers disclosing specifically the receipt of share capital from Q. The assessee had stated in its objections to the notice that the sum received as share capital from Q was duly disclosed in the audited accounts filed along with the return of income. There was no averment in the affidavit or in the objections that the copy of the certificate of incorporation of the company, the board resolution passed for investing in equity shares of the assessee and the copy of the share application form had been submitted with the return of income. The annual return filed by the assessee with the Registrar of Companies, the balance-sheet of Q had been filed only with the objections. In these circumstances, the contention of the assessee that full and

true particulars relating to the receipt of the share capital of Rs.4,50,000 from Q had been furnished along with the return of income was not tenable.”

10. Thus, we find that the facts and contention of the assessee in the appeal before us are altogether different. In the appeal before us, the contention of the assessee is that the Assessing Officer issued the notice under Section 148 mechanically simply on the basis of information alleged to have been received from the Investigation Wing without application of mind. On the facts of the case, we find this contention of the learned counsel to be correct and moreover, on identical facts, Hon'ble Jurisdictional High Court in the case of Suren International P.Ltd. (supra) held that the reasons recorded without any application of mind cannot be said to be a proper belief with regard to escapement of income. We, therefore, respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Suren International P.Ltd. (supra), uphold the order of learned CIT(A) and dismiss the appeal filed by the Revenue.

11. At the time of hearing before us, both the parties have fairly admitted that the issue raised in the case of Camboj Brothers Pvt.Ltd. vide ITA No.4949/Del/2010 and the facts in the said case are identical to the facts in the case of Comero Leasing & Financial Pvt.Ltd. Therefore, for the detailed discussion from paragraph No.6 to 9 above, we uphold the order of learned CIT(A) in the case of Camboj Brothers Pvt.Ltd. also and dismiss both the appeals of the Revenue.

12. In the result, both the appeals of the Revenue are dismissed.

Decision pronounced in the open Court on 14th August, 2014.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated : 14.08.2014
VK.

Copy forwarded to: -

1. Appellant : **Income Tax Officer,
Ward-3(4) & 3(2),
New Delhi.**
2. Respondent : **M/s Comero Leasing & Financial Pvt.Ltd.,
24, Sadhna Enclave, Malviya Nagar,
New Delhi. and
M/s Camboj Brothers Pvt.Ltd.,
B-217, Yojna Vihar,
Delhi – 110 092.**

3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar