

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4613/Del./2010
(ASSESSMENT YEAR : 2002-03)**

ITO, Ward 13 (1), New Delhi.	vs.	M/s. Navodaya Castles Pvt. Ltd., 783, Desh Bandhu Gupta Road, Karol Bagh New Delhi – 110 005. (PAN : AAACN5437D)
---------------------------------	-----	---

**CO No.366/Del/2010
(in ITA No.4613/Del./2010)
(ASSESSMENT YEAR : 2002-03)**

M/s. Navodaya Castles Pvt. Ltd., 783, Desh Bandhu Gupta Road, Karol Bagh New Delhi – 110 005. (PAN : AAACN5437D) (APPELLANT)	vs.	ITO, Ward 13 (1), New Delhi. (RESPONDENT)
--	-----	---

ASSESSEE BY : Shri Ved Jain, Advocate
REVENUE BY : Shri F.R. Meena, Senior DR

Date of Hearing : 02.08.2016
Date of Order : 24.08.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeal and cross objection, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Present appeal is the outcome of order dated 25.08.2014 passed by the Hon'ble jurisdictional High Court in ITA 320/2012 vide which appeal has been remitted to the Tribunal to decide the whole issue afresh along with cross objections dismissed as infructuous by the Tribunal. For ready reference, operative part of the judgment rendered by Hon'ble jurisdictional High Court is reproduced as under :-

“20. Now, when we go to the order of the tribunal in the present case, we notice that the tribunal has merely reproduced the order of the Commissioner of Income Tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its coordinate bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court vide its judgment in C.I.T vs. MAF Academy P. Ltd [(2014) 206 DLT 277]. In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

21. In view of the aforesaid discussion, we feel that the matter requires an order of remit to the tribunal for fresh adjudication keeping in view the aforesaid case law. The question of law is, therefore, answered in favour of the Revenue and against the respondent-assessee, but with an order of remit to the tribunal to decide the whole issue afresh. One of the reasons, why we have remitted the matter is that the cross objections of the respondent-assessee questioning notice under Section 147/148 were dismissed as infructuous and even if we decide the issue on merits in favour of the Revenue, the cross objections would got revived and require adjudication. The appeal is accordingly disposed of.”

3. Appellant, Income Tax Officer, Ward 13 (1), New Delhi (hereinafter referred to as 'the revenue'), by filing the present appeal sought to set aside the impugned order dated 02.08.2010 passed by the Commissioner of Income-tax (Appeals)-XVI, New Delhi qua the assessment year 2002-03 on the grounds inter alia that :-

“1. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.54,00,000/- made u/s 68 of the Income tax Act, 1961 on account of share application money

2. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in ignoring the fact that the assessee failed to produce directors/authorized representative of the alleged applicants even after specifically being asked to do so by the A.O. and, thus failed to discharge its onus to establish the identity and creditworthiness of the share applicants and the genuineness of transaction.

3. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in relying upon the decision given in the case of Lovely Exports (P) Ltd. In the case of Lovely Exports P.Ltd., the A.O. did not ask the assessee to produce any of the investor shareholders. However, in the instant case the assessee was specifically asked and given a number of opportunities to produce the directors/authorized representatives of the investing companies, but yet none could be produced before the A.O. by the taxpayer.

4. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”

4. The Objector, by filing the present cross objection, sought to set aside the impugned order dated 02.08.2010 passed by the

Commissioner of Income-tax (Appeals)-XVI, New Delhi qua the assessment year 2002-03 on the ground that :-

“1. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 147 and that too without complying with the mandatory conditions as prescribed under section 147 to 153 of the Income Tax Act, 1961.

2. That in any case and in any view of the matter action of Ld. CTT (A) in not quashing the assessment order is bad in law and against the facts and circumstances of the case.

3. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.”

5. Briefly stated the facts of this case are : assessee company filed return of income declaring loss of Rs.1,58,035/- on 20.10.2002 which was processed under section 143 (1) of the Income-tax Act, 1961 (for short ‘the Act’). Subsequently, it was noticed by the revenue authorities that during the year under assessment, the assessee received accommodation entry under the garb of share application money/share capital/share premium from the following entry operators :-

Beneficiary	Beneficiary	Value of Entry taken	Instrument No. by which Entry taken	Date on which entry taken	Name of a/c Account Holder of Entry of giving A/c	Bank from which entry given	Branch of entry giving bank	A/c No. of entry giving account
HDFC Bank	Rajender Nagar Mkt.,	70000	972521	07.3.02	Sekhawati Finance P. Ltd.	SBP	Daryaganj	50111

	ND							
HDFC	Old Rajender Nagar, ND	1000000		13.3.02	D.K. Ispat & Timber Ltd.	SBP	-do-	50090
HDFC	-do-	650000		13.3.02	Kuberso Sales P. Ltd.	SBP	-do-	50084
HDFC	-do-	1200000		14.3.02	Dinanath Luhariwal Spinning Mills Ltd.	SBP	-do-	50103
HDFC	-do-	850000	33834	16.3.02	Technocom Associates P.Ltd.	Innova tive	Wazirpur	220
HDFC	-do-	1000000		18.3.02	Chintpuri Credits	SBP	DG	50058
	Total	5400000						

6. On the basis of material placed before the AO, AO came to the conclusion that the assessee has failed to disclose fully and truly all the material facts qua the assessment of income of Rs.54,00,000/- received on account of share application money, consequently assessment was reopened u/s 147 of the Act and service of notice u/s 148 of the Act was effected on 25.03.2009.

7. Assessee preferred that return filed u/s 139(1) be treated as reply to the notice u/s 148 of the Act. Reasons recorded by the AO were communicated to the assessee to which assessee raised objections that the reasons recorded for reopening the assessee did not contain the full details and reasons within the meaning of section 147 of the Act. Assessee was called upon to show cause as to why share capital of Rs.54,00,000/- be not treated as income from undisclosed sources. Summons issued u/s 131 of the Act to

the aforesaid six parties subscribing the share capital were returned unserved in case of five parties. Assessee showed its helplessness to produce the Director / Principal Officer of the aforesaid six companies. So, on failure of the assessee to discharge its onus to establish the identity and creditworthiness of the aforesaid six parties and also the genuineness of the transaction made addition of Rs.54,00,000/- u/s 68 of the Act apart from making an addition to the tune of Rs.1,08,000/- @ 2% of the aforesaid amount paid as commission to the entry operators. CIT (A) however deleted the addition.

8. In the first round of litigation, the revenue as well as assessee challenged the impugned order passed by Id. CIT (A) before the appellate Tribunal which has dismissed the appeal on merit and dismissed the cross objection filed by the assessee as infructuous. Then revenue challenged the order passed by the appellate Tribunal dated 31.10.2011 before Hon'ble jurisdictional High Court which has remitted the case back to the Tribunal to decide afresh along with cross objection.

9. Now, the revenue as well as assessee are again before the Tribunal by way of filing appeal as well as cross objection in the second round of litigation.

10. Undisputedly, it is settled principle of law that the AO is required to reach at an independent conclusion by applying his own mind that he has reason to believe that the income of the assessee has escaped assessment to assume the jurisdiction for reopening of the assessment u/s 147 / 148 of the Act.

11. Now before proceeding further, we would like to peruse the reasons rendered by the AO for reopening of the assessment u/s 147 of the Act which are reproduced for ready reference as under :-

“Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Wing during the period relevant to A.Y. 2002-03. A comprehensive investigation was carried out by the Investigation wing for identification of entry operators engaged in the business of money laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a report has been forwarded. The Assessing Officer has perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi of the ‘money laundering scam’ and explain how the unaccounted money of the beneficiaries are ploughed back in its books of account in various forms including the form of bogus share capital / capital gains etc. after routing the same through the bank account(s) of the entry operators. Entry operators were identified after thorough investigation on the basis of definite analysis of their identity, creditworthiness and the source of the money ultimately received by the beneficiaries. These entry operators are found to be mostly absconding / non-complying after the unearthing of the ‘Money Laundering Scam’ leaving the said money at the disposal of the beneficiaries without any associated cost or liability. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transaction :-

Beneficiary Bank Name	Beneficiary Bank Branch	Value of Entry taken	Instrument No. by which Entry taken	Date on which entry taken	Name of a/c Account Holder of Entry giving A/c	Bank from which entry given	Branch of entry giving bank	A/c No. of entry giving account
HDFC Bank	79, Old Rajender Nagar Mkt., ND	70000	TO CLG. 00972521	7-Mar-02	Sekhawati Finance P. Ltd.	SBP	DG	50111
HDFC	Old Rajender Nagar	1000000		13-Mar-02	D.K. Ispat & Timber Ltd.	SBP	DG	50090
HDFC	Old Rajender Nagar	1000000		13-Mar-02	D.K. Ispat & Timber Ltd.	SBP	DG	50090
HDFC	Old Rajender Nagar	650000		13-Mar-02	Kuberso Sales P. Ltd.	SBP	DG	50084
HDFC	Old Rajender Nagar	650000		13-Mar-02	Kuberso Sales P. Ltd.	SBP	DG	50084
HDFC	Old Rajender Nagar	1200000		14-Mar-02	Dinanath Luhariwal Spinning Mills Ltd.	SBP	DG	50103
HDFC	Old Rajender Nagar	1200000		14-Mar-02	Dinanath Luhariwal Spinning Mills Ltd.	SBP	DG	50103
HDFC	Old Rajender Nagar	850000	33834	16-Mar-02	Technocom Associates P.Ltd.	Innovative	Wazirpur	220
HDFC	Old Rajender Nagar	850000	33834	16-Mar-02	Technocom Associates P.Ltd.	Innovative	Wazirpur	220
HDFC	Old Rajender Nagar	1000000		18-Mar-02	Chintpuri Credits	SBP	DG	50058
HDFC	Old Rajender Nagar	1000000		18-Mar-02	Chintpuri Credits	SBP	DG	50058

The assessee has received unexplained sums from the entry operators as per the above details as per information available with the undersigned. As explained above, the identity, creditworthiness and genuineness of transactions with the persons found to be entry operators cannot be established. The Assessing Officer therefore have reasons to believe that on account of failure on the part of the assessee or disclose truly and fully all material facts necessary for assessment for

above assessment year, the income chargeable to tax to extent of accommodation entry mentioned above, has escaped assessment within the meaning of Section 147 of the Act.”

12. In the backdrop of the aforesaid facts and circumstances of the case, the sole question arises for determination in this case is :-

“as to whether AO is empowered to initiate the proceedings u/s 147/148 of the Act merely on the basis of report received from the Investigation Wing that the assessee has been provided with accommodation entry to the tune of Rs.54,00,000/- by the entry operators, without applying his mind?”

13. Identical issue has come up before the Hon’ble Supreme Court in judgment cited as **Chhugamal Rajpal vs. S.P. Chaliha – (1971) 79 ITR 603**, wherein it is held as under :-

“The Supreme Court was dealing with a case where the AO had received certain communications from the Commissioner of Income Tax showing that the alleged creditors of the Assessee were “name-lenders and the transactions are bogus.” The AO came to the conclusion that there were reasons to believe that income of the Assessee had escaped assessment. The Supreme Court disagreed and observed that the AO “had not even come to a prima facie conclusion that the transactions to which he referred were not genuine transactions. He appeared to have had only a vague feeling that they may be “bogus transactions.” It was further explained by the Supreme Court that :

“Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a) or cl. (b) of S. 147 are

satisfied, the ITO has no jurisdiction to issue a notice under S. 148.”

The Supreme Court concluded that it was not satisfied that the ITO had any material before him which could satisfy the requirements under Section 147 and therefore could not have issued notice under Section 148.”

14. Identical issue has also come up before Hon’ble jurisdictional High Court in judgment cited as **G & G Pharma India Ltd.** (supra) wherein Hon’ble High Court, by following the judgment delivered by Hon’ble Supreme Court, entitled **Chhugamal Rajpal vs. S.P. Chaliha** (supra) held as under :-

“12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: “I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries.” The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: “it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries”. In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the

materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.”

15. Furthermore, similar issue has cropped up before the **ITAT, Delhi Bench ‘H’ in M/s. USG Buildwell Pvt. Ltd.** (supra), wherein addition of Rs.20,00,000/- was made by the AO on the basis of similar intimation sent by ACIT, Central Circle 19, New Delhi on the basis of survey operation conducted in S.K. Gupta Group of cases on 20.11.2007 and the coordinate Bench came to the conclusion that the AO has not applied his mind on the information received from ACIT as required u/s 147 of the Act and as such, assessment framed u/s 143 read with section 143(3) is not sustainable.

16. Now, advertent to the case at hand in the light of the facts and circumstances of the case and settled principle of law discussed in the preceding paras, we are of the considered view inter alia that :-

- (i) the AO has merely acted in mechanical manner on receipt of the report from the Investigation Wing that
“he has reason to believe that income of Rs.54,00,000/- has escaped assessment for the assessment year 2002-03 due to failure on the part of

the assessee to disclose fully or truly all material facts necessary for assessment”;

- (ii) the AO has not even satisfied himself to prima facie make out that income of Rs.54,00,000/- has escaped assessment in the year under assessment by pursuing record, if any;
- (iii) that when the AO has been provided with copies of share application forms containing names, addresses, PAN, bank details and confirmation of the investors, he was required to conduct the independent investigation to satisfy himself that such and such income has escaped assessment before assuming jurisdiction u/s 147 of the Act;
- (iv) that even on merits when the assessee had provided copies of share application forms containing names, addresses, PAN, bank details and confirmation of the investors, the onus stood shifted to the AO to prove that these are the shell companies and not to fasten the liability of the assessee on the ground that assessee has failed to produce the aforesaid six investor

companies, moreso assessee cannot be called upon to prove negative;

- (v) that forming an opinion merely on the basis of information supplied by Investigation Wing of the revenue that such and such company has provided an accommodation entries to the assessee to the tune of Rs.54,00,000/- does not amount to the satisfaction of the AO in any manner whatsoever to reopen the case u/s 147 of the Act;
- (vi) that when the AO has sufficient material to conduct the independent investigation to assume the jurisdiction u/s 147/148 of the Act, which he has not used for the reasons best known to him rather proceeded on the basis of report of Investigation Wing without applying his mind, which is not permissible under law;
- (vii) that in view of the law laid down by the Hon'ble Supreme Court and Hon'ble jurisdictional High Court in the judgment cited as Chhugamal Rajpal vs. S.P. Chaliha and G & G Pharma India Ltd.(supra) respectively when the initiation of proceedings u/s 147

of the Act in this case is itself bad in law, consequent assessment framed u/s 143(3)/147 of the Act is also not sustainable, hence hereby quashed.

18. In view of what has been discussed above, since the reopening of the proceedings u/s 147 of the Act and consequent assessment framed u/s 143 (3) / 147 have held to be not sustainable in the eyes of law for want of jurisdictional error on the part of the AO, grounds no.1, 2 & 3 raised by the revenue in ITA No.4613/Del/2010 challenging the addition of Rs.54,00,000/- made by the AO and deleted by the Id. CIT (A) u/s 68 of the Act has become infructuous. Resultantly, present appeal filed by the revenue is dismissed and the cross objections filed by the assessee stand allowed.

Order pronounced in open court on this 24th day of August, 2016.

**Sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 24th day of August, 2016

TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**