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(770)

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

BEFORE SHRI P.N.PARASHAR, JM AND SHRI P.M.JAGTAP, AM

I.T.A.No.1361/Del/2006
Assessment Year : 1997-98

M/s Ambica Steels Limited,
C-54/1,
Wazirpur Industrial Area,
New Delhi - 110 052.
(Appellant)

Vs. Dy. Commissioner of Income Tax,
Coy.Circle-1(1),
New Delhi.

(Respondent)

Appellant by : Shri Ved Jain & Smt.Rano Jain, CAs.
Respondent by : Shri B.K.Rao, Sr.DR.

ORDER

PER P.M.JAGTAP, AM :

This appeal by the assessee is directed against the order of learned CIT(A)-IV, New Delhi dated 20.3.2006.

2. The assessee in the present case is a company which filed its return of income for the year under consideration on 28.11.1997 declaring its total income at nil under the normal provisions and at Rs.7,56,291/- u/s 115JA. Subsequently, on 15.7.2002, there was a search and seizure operation conducted by the department in the case of Shri N.C.Bansal and Others. On the basis of material found and seized during the course of the said operation, it was found that M/s Jain Brothers & Co. and other entities belonging to Shri N.C.Bansal were entry operators. It was revealed that the *modus operandi* followed by the said entry operators was to deposit the cash into bank accounts and issue cheques to the different parties from the said bank account after charging certain percentage of commission. It was also noticed that the assessee company was one of such parties who had received five cheques from M/s Jain Brothers & Co. from the current account No.3197 maintained by the said concern with Corporation Bank, Karol Bagh. The details of such cheques like cheque number, date, amount etc. were also gathered by the AO. The said cheques were found to be signed by Mr.Padam Singh Jain as proprietor of M/s Jain Brothers & Co. and in his statement recorded by the department, he could not explain the source of the cash deposited in the bank accounts of the said

concern with Corporation Bank. This specific information pertaining to the case of the assessee was forwarded by Investigation Wing of the Department was received by the AO on the basis of which he formed a belief that there was escapement of assessee's income. Accordingly, he initiated the reassessment proceedings for the year under consideration by issuing a notice u/s 148 after recording the reasons. The said notice issued on 31.3.2004 was sent to the assessee by the AO by speed post. As there was no response to the said notice on the part of the assessee, a notice u/s 142(1) was issued by the AO and in reply to the said notice, it was submitted on behalf of the assessee before the AO that the notice stated to be issued u/s 148 was never received by it. A copy of the said notice alongwith proof of dispatch by speed post on 31.3.2004 was handed over by the AO to the representative of the assessee on 4.2.2005 giving one more opportunity to the assessee to file the return in response to notice u/s 148 within a period of 30 days from 4.2.2005. No return, however, was filed by the assessee in compliance with the same. Even there was no satisfactory compliance by the assessee with the notices issued by the AO during the course of reassessment proceedings and keeping in view this non-cooperative and non-compliant attitude of the assessee, the assessment was completed by the AO ex-parte to the best of his judgement u/s 144/147 making the various additions as under:-

1.	On a/c of cash credits	18,76,087
2.	On a/c of expenses towards share capital	10,765
3.	Increase in share capital treated as cash credits	2,50,00,000
4.	Fresh unsecured loan treated as cash credits	39,72,445
5.	On a/c of sundry creditors and other liabilities	67,07,016

3. The aforesaid assessment completed by the AO u/s 144/147 was challenged by the assessee in an appeal filed before the learned CIT(A) challenging the validity thereof as well as disputing the various additions made therein on merits. The said appeal was disposed of by the learned CIT(A) by his appellate order dated 20.3.2006 upholding the validity of assessment completed by the AO. He, however, deleted most of the additions made by the AO in the said assessment and confirmed only the following additions made in the assessment:-

(i)	Addition on account of unexplained cash credits u/s 68	:	Rs.18.76.087/-
(ii)	Addition on account of sale of shares of M/s Orissa Sponge Ltd.	:	Rs.50.000/-
(iii)	<i>Disallowance of share issue expenses</i>	:	<i>Rs. 10,705/-</i>

4. The learned CIT(A) also remanded the issue relating to the addition of Rs.11,73,000/- on account of unpaid excise duty back to the Assessing Officer for deciding the same afresh. The learned CIT(A) thus partly allowed the appeal of the assessee filed before him by his appellate order dated 20.3.2006 and still aggrieved by the same, the assessee has preferred this appeal before the Tribunal.

5. Ground No.1 of the assessee's appeal is general seeking no specific decision from us.

6. In ground Nos.2 & 3, the assessee has challenged the validity of assessment completed by the AO u/s 147.

7. The learned counsel for the assessee submitted before us that the proceedings u/s 148/147 were initiated by the AO in the present case on the basis of material found during the course of search conducted in the case of some other assessee. He contended that if the information/material found during the course of search was to be used by the AO against the assessee, the same could have been done by proceeding u/s 158^{BD} only and it was not permissible for the AO to proceed u/s 148. He contended that Chapter XIV-B is an independent code in itself and the material found during the course of search can be used to proceed against the assessee u/s 158BD only and the assessment on the basis of such material can be made u/s 158BC and not u/s 147 as done by the AO in the present case. He also contended that the provisions contained in Chapter XIV-B especially Section 158BC & 158BD relating to the block assessment on the basis of material found during the course of search are special provisions and the same, therefore, have to prevail over the general provisions of Section 147/148 which deal with the regular assessment. He further contended that the notice purportedly issued by the AO u/s 148 in any case was never served upon the assessee and merely handing over a photocopy of the said notice to the assessee could not be taken as a valid service of notice as required in law. According to the learned counsel for the assessee, there was thus no valid service of notice u/s 148 upon the assessee and in the absence of the basic pre-requisite condition

having been satisfied by the AO, the entire reassessment proceedings initiated against the assessee were bad in law.

8. The learned DR, on the other hand, strongly supported the impugned order of the learned CIT(A) upholding the validity of reassessment completed by the AO in the present case. He submitted that the specific information in the present case was received by the AO from the Investigation Wing of the Department and not from the Assessing Officer having jurisdiction over the case of a searched person. He contended that it was thus not a case to proceed u/s 158BD and the only recourse available to the Assessing Officer having satisfied about the escapement of income on the basis of information received from the Investigation Wing was to proceed u/s 148 read with Section 147. According to him, the action of the AO in proceeding under the said provisions after recording the reasons as per the law thus was fully justified and the learned CIT(A) was right in upholding the same. He contended that the scope of undisclosed income assessable under chapter XIV-B is entirely different from bringing to tax the escaped income under Section 148 read with Section 147 and since the present case involved escapement of income of the assessee from the assessment as made out in the reasons recorded by the AO, there was no infirmity in the AO's action in reopening the assessment by proceeding u/s 148/147. Relying on the decision of Delhi Bench of ITAT in the case of *Badri Vishal Aggarwal Vs. DCIT - 105 TTJ 418*, he contended that if other conditions are satisfied, assessment can be validly reopened on the basis of findings or outcome of search and seizure operation. He also placed reliance on another decision of Delhi Bench of ITAT in the case of *ITO Vs. Smt. Gurinder Kaur - 102 ITD 189* wherein action u/s 148 was upheld on the basis of information received by the AO from ADI (Investigation). He contended that the conditions for proceeding u/s 158BD were not satisfied in the present case and since the said provisions were not applicable, the AO was fully justified in not invoking the same and instead in proceeding u/s 148/147. Reliance was also placed by him on the decision of Delhi Bench of ITAT in the case of *Dang & Co.(P) Ltd. Vs. DCIT - 94 ITD 29* to point out that the scope of "undisclosed income" has been explained by the Tribunal in the said decision to show clearly that the same is different from "escaped income".

9. We have considered the rival submissions and also perused the relevant material on record. As regards the contention of the learned counsel for the assessee that the AO seeking to use the information gathered during the course of search conducted in the case of other person against the assessee should have proceeded u/s 158BD and not u/s 148/147, it is noted that the provisions of Section 158BD read as under:-

“158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed ⁶⁹[under section 158BC] against such other person and the provisions of this Chapter shall apply accordingly.”

10. A perusal of the aforesaid provisions clearly shows that if the AO having jurisdiction over the case of a person searched is satisfied that any undisclosed income as reflected in the relevant documents found and seized belongs to any other person, he has to hand over the same to the AO having jurisdiction over such other person. On receipt of the same, the AO can proceed u/s 158BC against such other person and complete the assessment for the block period u/s 158BC as per the provisions of Chapter XIV-B. There are thus two pre-requisite conditions which are required to be satisfied before the AO having jurisdiction over the case of other person to proceed u/s 158BD. Firstly, the AO having jurisdiction over the case of a searched person is required to be satisfied that the material found during the course of search shows some undisclosed income belonging to such other person and after recording such satisfaction, he has to forward the relevant material to the AO having jurisdiction over such other person. In the present case, the information/material was received by the AO directly from the Investigation Wing of the Department who had conducted the search and it was not a case where the AO of the person searched had handed over the relevant information/material to the AO of the assessee. Moreover, as the said information was received by the AO directly from the Investigation Wing of the Department, there was no question of any satisfaction having been recorded by the AO having jurisdiction over the case of the person searched. The requisite conditions for proceeding against the assessee u/s 158BD thus were not satisfied in the present case and this being so, it was not permissible for the AO to proceed against

the assessee u/s 158BD on the basis of information received by him directly from the Investigation Wing of the Income Tax Department. As rightly contended by the learned DR relying, *inter alia*, on the decision of Delhi Bench of ITAT in the case of Dang & Co.(P) Ltd. (supra), the scope of undisclosed income assessable under Chapter XIV-B is materially different from the scope of escaped income which can be brought to tax by having recourse to Section 148/147 by the AO and if the information received by the AO directly from the Investigation Wing of the Department was sufficient to entertain the belief about the escapement of income, he was duly empowered to proceed against the assessee u/s 148/147 to bring such escaped income to tax even on the basis of information gathered during the course of search conducted in the case of a third person as held by Delhi Bench of ITAT in the case of Smt.Gurinder Kaur (supra) if other conditions are duly satisfied. Since in the present case, such other conditions were duly satisfied by the AO and reassessment proceedings were initiated against the assessee u/s 148/147 after recording the reasons on the basis of information coming to his possession from the Investigation Wing, we are of the view that there was no infirmity much less a legal infirmity in the action of the AO in initiating the said proceedings.

11. As regards the objection of the learned counsel for the assessee about the issue and service of notice u/s 148, it is noted that the time limit u/s 149 for issue of notice u/s 148 is prescribed as within six years from the end of the relevant assessment year if the income chargeable to tax which has escaped assessment amounts to or is likely to amount to One Lac Rupees or more for that year. In the present case, the assessment year involved is 1997-98 and the income allegedly escaped assessment being more than Rupees One Lac, the notice u/s 148 was required to be issued by the AO on or before 31.3.2004. As established by the learned DR by producing the relevant documentary evidence, such notice was not only issued by the AO on 31.3.2004 but the same was also sent to the assessee by ~~registered~~^{speed} post on the very same day i.e. 31.3.2004. The said notice thus was duly issued by the AO within the time limit stipulated in Section 149(1)(b) and there was no infirmity in issuing the said notice. As regards the service of notice, the contention of the learned counsel for the assessee is that the notice u/s 148 purportedly sent by the AO by speed post on 31.3.2004 was never received by the assessee. Although he has agreed that a photocopy of the said notice was handed over by the AO to the assessee on 4.2.2005, his contention is that the same could not be treated as

valid service of notice. We find it difficult to agree with this contention of the learned counsel for the assessee. It is no doubt true that it was only the photocopy of the notice that was handed over by the AO to the assessee on 4.2.2005. However, the same being a photocopy of the notice originally issued by the AO on 31.3.2004 bearing all the necessary contents, we are of the view that the intent and purpose of service of the said notice on the assessee was duly served. Moreover, as clearly mentioned by the AO in the assessment order and remained undisputed by the assessee, a further period of 30 days from the date of handing over the said notice on 4.2.2005 was also allowed by the AO to the assessee to file a return of income in response to the said notice. Having regard to all these aspects of the matter, we are of the view that not only the requirement of service of the notice u/s 148 upon the assessee was duly complied with by the AO but even the intent and purpose of service of such notice was also duly served leaving the assessee with no grievance on this issue. There was thus no legal infirmity either in the issue of notice u/s 148 by the AO or even service thereof upon the assessee vitiating the reassessment proceedings initiated by the AO and in our opinion, the learned CIT(A) was fully justified in upholding the validity of assessment completed by the AO in pursuance of the said initiation. His impugned order on this issue is, therefore, upheld dismissing ground Nos.2 & 3 of the assessee's appeal.

12. Ground No.4 relates to the addition of Rs.18,76,087/- made by the AO and confirmed by the learned CIT(A) on account of alleged unexplained cash credits u/s 68.

13. On the basis of information received from Investigation Wing of the Income-tax Department, it was gathered by the AO that the assessee has received accommodation entries aggregating to Rs.18,76,087/- from M/s Jain Brothers & Co. The said cheques were issued by M/s Jain Brothers & Co. to the assessee from current account No.3197 maintained with Corporation Bank, Karol Bagh and as noted by the AO, cash deposits were found to be made in the said account before issue of cheques to the assessee. During the course of reassessment proceedings initiated against the assessee, the AO offered an opportunity to the assessee to substantiate the transactions undertaken with M/s Jain Brothers & Co. by producing the necessary supporting evidence. The assessee, however, failed to substantiate the said transactions as required by the AO by producing the satisfactory evidence. Keeping in view this failure of the assessee, it was held by the

AO that the onus that lay on the assessee in terms of explaining the relevant cash credits has not been discharged and accordingly, the amount of Rs.18,76,087/- received by the assessee from M/s Jain Brothers & Co. was added by him to the total income of the assessee u/s 68 treating the same as unexplained cash credits. During the course of appellate proceedings before the learned CIT(A), it was contended on behalf of the assessee, inter alia, that the relevant amounts in question aggregating to Rs.18,76,087/- had been received against the sales and since the corresponding sales were already forming part of the income declared in the return of the assessee, the said amount could not be added again to its total income u/s 68. This contention of the assessee, however, was not accepted by the learned CIT(A) and he confirmed the addition made by the AO on this issue observing that the same was rightly made by the AO on the basis of specific information received from the Investigation Wing of the Department.

14. At the time of hearing before us, the learned counsel for the assessee reiterated the submissions made before the learned CIT(A) whereas the learned DR has strongly relied on the orders of the authorities below in support of the Revenue's case on this issue.

15. After considering the rival submissions and perusing the relevant material on record, it is observed that the relevant cash credits appearing in the books of the assessee in the name of M/s Jain Brothers & Co. aggregating to Rs.18,76,087/- were not satisfactorily explained by the assessee in terms of Section 68 and the onus in this regard thus was not duly discharged by it. However, as submitted on behalf of the assessee before the learned CIT(A) as well as before us, the said cash credits in fact represented realization of its sale proceeds and since the corresponding sales were claimed to be included by it in the income declared in the return, the addition on account of realization of the same amount again to the total income of the assessee would certainly amount to double addition. A perusal of the assessment order shows that this aspect of the matter was not specifically brought to the notice of the AO by the assessee. Before the learned CIT(A), specific plea to this effect no doubt was raised on behalf of the assessee. However, the impugned order of the learned CIT(A) shows that he has neither considered nor dealt with the said plea raised on behalf of the assessee. Keeping in view all these facts and circumstances of the case as borne out from record, we are of the view that this matter should be restored to the file of the Assessing Officer for the purpose of

examining the stand specifically taken by the assessee. The impugned order of the learned CIT(A) on this issue is, therefore, set aside and the matter is restored to the file of the Assessing Officer for the limited purpose of verifying as to whether the relevant cash credits represent the realization of proceeds against sales which have already been included in the income of the assessee as claimed. If the claim of the assessee on this issue is found to be correct on verification, the Assessing Officer shall delete the addition made on this issue and vice-versa. Ground No.4 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

16. In ground No.5, the assessee has challenged the action of the learned CIT(A) in not deleting the addition of Rs.11,73,000/- made by the AO on account of excise duty not included in the closing stock and instead remanding the said issue back to the AO.

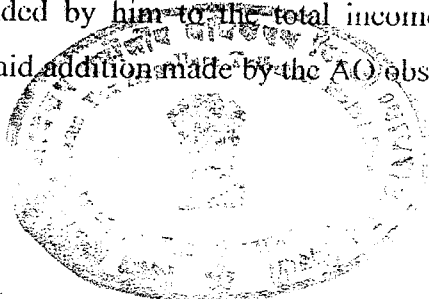
17. During the course of assessment proceedings, it was noted by the AO that the assessee has not added the excise duty of Rs.11,73,000/- payable in respect of finished goods lying ⁱⁿ the closing stock in the value of closing stock. According to him, the assessee thus had understated its income by undervaluing the closing stock and the amount of Rs.11,73,000/- was added by him to the total income of the assessee on this count. The matter was carried before the learned CIT(A) and it was pointed out on behalf of the assessee before him that the corresponding amount of excise duty had neither been paid by it during the year under consideration nor any deduction for such excise duty was claimed in that year. It was contended that as per the provisions of Section 145 as applicable to the year under consideration, it was thus not obligatory on the part of the assessee to include the said excise duty in the value of closing stock and there was no reason for the AO to include the same and make the addition to the total income of the assessee on this count. This stand of the assessee was found to be acceptable by the learned CIT(A). He, however, still remanded the matter back to the AO with a direction to verify from the assessment record as to whether the assessee had been following the accounting policy as enumerated in Section 145 and to grant the appropriate relief after due verification.

18. We have heard the arguments of both the sides and also perused the relevant material on record. At the time of hearing before us, the learned counsel for the assessee

has contended that when the corresponding excise duty in respect of finished goods was neither paid by the assessee during the year under consideration nor deduction on account of such excise duty was admittedly claimed in that year, there was no question of including the amount of such duty in the value of closing stock for that year. According to him, the learned CIT(A), therefore, ought to have deleted the addition made by the AO on this issue instead of remanding the matter back to the AO with certain directions. In support of this contention, he has relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Indo Nippon Chemicals Co.Ltd. – 261 ITR 275. A perusal of the said decision, however, shows that it was held by the Hon'ble Apex Court in this context that whatever method is adopted for valuation of closing stock, the same has to be consistent with the accepted principles of accountancy and it has to be followed consistently. Keeping in view the ratio of this decision of Hon'ble Supreme Court in the case of Indo Nippon Chemicals Co.Ltd., we are of the view that there was no infirmity in the impugned order of the learned CIT(A) in remanding the issue under consideration to the Assessing Officer for the limited purpose of verifying that the accounting policy as prescribed in Section 145 was being followed by the assessee consistently during the relevant period. His impugned order on this issue is, therefore, upheld dismissing ground No.5 of the assessee's appeal.

19. Ground No.6 relates to the addition of Rs.50,000/- made by the AO and confirmed by the learned CIT(A) on account of sale of investment held by the assessee in the shares of M/s Orissa Sponge India Limited.

20. During the course of assessment proceedings, it was noticed by the AO that the investment held by the assessee in 200 equity shares of M/s Orissa Sponge India Limited was realized during the year under consideration. Since the profit on such realization had not been disclosed by the assessee in its return of income and the relevant details of sale consideration etc. also could not be furnished by the assessee during the course of assessment proceedings, the AO estimated short term capital gain earned by the assessee from sale of shares of M/s Orissa Sponge India Limited at Rs.50,000/- and the said amount was added by him to the total income of the assessee. The learned CIT(A) confirmed the said addition made by the AO observing that the assessee has not been able



to furnish any cogent evidence in support of its claim that there was actually no gain which had arisen on sale of shares of M/s Orissa Sponge India Limited.

21. At the time of hearing before us, the learned counsel for the assessee has invited our attention to the copy of ledger account of investment placed at page No.60 of his paper book and pointed out that the shares purchased by the assessee company of M/s Orissa Sponge India Limited at Rs.2,000/- were sold at the same price without realizing any profit on such sale. The learned DR has contended in this regard that since the relevant details as required by the authorities below were not furnished by the assessee before them, this issue may be restored to the file of the AO for verifying the stand of the assessee from actual records. We find merit in this contention of the learned DR and accepting the same, we restore this issue to the file of the AO for deciding the same afresh after verifying the stand of the assessee from the relevant record. Ground No.6 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

22. At the time of hearing before us, the learned counsel for the assessee has not pressed ground Nos.7 & 8 raised by the assessee in this appeal. The same are accordingly dismissed as not pressed.

23. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Decision pronounced in the open Court on 30th April, 2008.

SN/

(P.N.PARASHAR)
JUDICIAL MEMBER

sd/

(P.M.JAGTAP)
ACCOUNTANT MEMBER

Dated : 30.04.2008.
VK.

Copy forwarded to :-

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

Deputy Registrar

CHITTOOR DISTRICT
Deputy Registrar

