

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC-3' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6558/Del/2014
Assessment Year: 2006-07

M/s R.K. GARG DEVELOPERS PVT. LTD.
E-920, SARASWATI VIHAR,
DELHI - 110 088

Vs. ITO, WARD 15(1)
NEW DELHI

(PAN: AADCR1835L)
(APPELLANT)

(RESPONDENT)

Assessee by : Sh. BL GUPTA, ITP
Revenue by : Sh. FR Meena, Sr. DR

Date of hearing : 23-08-2016

Date of order : 31-08-2016

ORDER

PER H.S. SIDHU, J.M.

The Assessee has filed the Appeal against the Order dated 1.9.2014 of the Ld. CIT(A)-XVIII, New Delhi pertaining to assessment year 2006-07 and raised the following grounds:-

On the facts and in the circumstances of the case and in law, the CIT(A) was incorrect and unjustified in:-

- a) Holding that action u/s. 147/148 has been rightly taken by the AO.

- b) Holding that addition of Rs. 41,40,000/- has been rightly made by the AO u/s. 68.
- c) Holding that the amount of Rs. 41,40,000/- is the assessee's own money / fund and liable to be included in the total income and taxed.
- d) Holding that the assessee has failed to prove the identity, creditworthiness and genuineness of the transactions with the following persons credit in the a/c books.

1.	Rashmi Garg	40,000/-
2.	Karan Kumar Garg	50,000/-
3.	Tejesvie Investment Pvt. Ltd.	7,00,000/-
4.	Puri Financial Services Pvt. Ltd.	10,00,000
5.	VDM Marketing Pvt. Ltd.	5,00,000/-
6.	Dhanuk Securities Pvt. Ltd.	5,00,000/-
7.	Dhanuk Commercial Pvt. Ltd.	6,50,000/-
8.	India Dot. Com Pvt. Ltd.	5,00,000/-
9.	Renu Kansal	1,00,000/-
10.	Rama Kansal	<u>1,00,000/-</u>
		41,40,000/-

- (e) Holding that the addition @0.5% on account of commission paid on the above said amounts has been rightly made by the AO even in the absence of any evidence.

(f) In dismissing the ground number 1 and 2 raised in the ground of appeal before the CIT(A).

2. The brief facts of the case are that the assessee company filed its return of income on 27.10.2006 declaring income of Rs. 2612/-. The return of income was processed u/s. 143(1) of the I.T. Act, 1961. The case was reopened u/s. 147/148 of the I.T. Act and notice u/s. 148 was issued to the assessee on 13.3.2013, with the prior approval of the Addl. CIT, Range-15, New Delhi, after recording the reasons. In response to the notice issued u/s. 148 of the I.T. Act assessee vide its letter dated 17.6.2013 stated that return of income for AY 2006-07 as on 27.10.2006 has already filed with the Ward 15(1) may be treated as the return filed. Statutory notices were sent u/s. 143(2) and 142(1) was issued on 19.9.2013 alongwith questionnaire to the assessee and in response thereto assessee's representative attended the proceedings from time to time. Thereafter, the AO assessed the income of the assessee at Rs. 49,67,310/- vide his order dated 14.2.2014 passed u/s. 147/143(3) of the I.T. Act, 1961 and made the addition of Rs. 49,64,700/-.

3. Against the Order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 1.9.2014 has partly allowed the appeal of the assessee and affirmed the action of the AO on the legal issue i.e. reopening of the case u/s. 147/148 of the I.T. Act, 1961.

4. Aggrieved with the aforesaid order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

5. Ld. Counsel of the assessee has filed two Paper Books one containing pages 1 to 199 attaching therewith the assessment and appellate proceedings documents and the second Paper Book is containing pages 1 to 58 having the copies of the various decision of the ITAT and the Hon'ble High Courts and the Written Submission etc. He stated that Ld. CIT(A) has erred in confirming the action of the AO in assuming jurisdiction u/s. 147 and that too without complying with the mandatory conditions as prescribed under section 147 to 151 of the I.T. Act, 1961 and the reasons recorded are invalid and contrary to law and facts and there is no satisfaction as per law u/s. 151 of the Act. He further draw our attention towards the copy of reasons for reopening the case u/s. 148 and stated that no proper reasons were recorded; no nexus between the materials relied upon and the belief formed for escapement of income; no application of mind; no proper satisfaction was recorded before issue of notice u/s. 148; no independent conclusion that there was escapement of income. It was further stated that the case was reopened only on the basis of Investigation Wing information which suffers with serious debility and lacks definiteness, without describing the basic aspects of alleged transaction and in the absence of the same, whole action of the AO gets vitiated. To support his contention he submitted that the issue in dispute is squarely covered in favour of the assessee

by the ITAT decision dated 09.1.2015 in the case of G&G Pharma India Limited vs. ITO passed in ITA No. 3149/Del/2013 (AY 2003-04) in which the Judicial Member is the Author. He further stated that the above decision of the ITAT dated 9.1.2015 has been upheld by the Hon'ble Jurisdictional High Court in its Decision dated 08.10.2015 in ITA No. 545/2015 in the case of Pr. CIT-4 vs. G&G Pharma India Ltd. In this regard, he filed the copies of the aforesaid decisions before the Tribunal. In view of the above, he requested that by following the aforesaid precedents the reassessment proceedings of the AO may be quashed by accepting the Appeal filed by the Assessee.

6. On the contrary, Ld. DR relied upon the order passed by the authorities below and stated that the AO has properly recorded the for reopening by due application of mind, hence, the appeal of the Assessee may be dismissed.

7. I have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case law cited by the assessee's counsel on the issue in dispute. In my view, it is very much necessary to reproduce the reasons recorded by the AO before issue of Notice to the Assessee u/s. 148 of the I.T. Act, 1961 which is reproduced hereunder:-

"DIT(Inv.) Unit-IV, during the course of investigation in the case of Sh. Tarun Goyal has found that Sh. Tarun Goyal created a number of private limited companies and firms for providing accommodation entries. The directors of these companies were his employees who worked in his office as peons, receptionists etc. The documents were got signed from these employees. A number of Bank Accounts in various banks were opened in the names of these companies and his employees, in which huge cash deposits were made. Later cheques were issued to various beneficiaries, disguising the whole transaction as genuine. During the course of investigation it was established that Sh. Tarun Goyal has floated about 90 companies for the purpose of providing accommodation entries. The companies floated by Sh. Tarun Goyal are not carrying out any genuine activity and are merely being used to provide accommodation entries. During the course of investigations by the DIT(Inv) it was also discovered that the network' of companies run by Sh. Tarun Goyal is only doing the business of providing accommodation entries to various beneficiaries and are not doing any real business, hence these companies are 'Bogus'.

It is noticed from the list of entries of beneficiaries that the assessee M/s R K Garg Developers P Ltd has taken following accommodation entries from the company controlled by Sh. Tarun Goyal as per details hereunder:-

<i>Beneficiary</i>	<i>Name of entry provider</i>	<i>Amount</i>
<i>RK Garg Developers P Ltd.</i>	<i>Tajasvi Investments P ltd.</i>	<i>7,00,000</i>

In view of the report received from the DITs(Inv.) New Delhi, and in view of the facts narrated above it is clear that the assessee had provided its Own cash to arrange a credit entry from the Company controlled by Sh. Tarun Coya1. The cash provided by the assessee represents its own income from undisclosed Sources. Further, the assessee had paid commission for such arrangement, which in such cases is at 1%. Therefore, the assessee had incurred an expenditure of Rs.7,000/- for such arrangement which is met out of its wwn income from undisclosed sources. Thus, the assessee has not disclosed fully and truly all material facts necessary for its assessment for that assessment year. I have therefore, reason to believe that the sum of Rs.7,00,000/-+Rs.7,000/- chargeable to tax has escaped assessment. Thus, the same is to be brought to tax under section 147/148 of the LT. Act 1961."

8. After going through the reasons recorded by the AO, as aforesaid, I am of the view that AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that income has escaped during the year. In my view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. My view is supported by the following judgment/decision:-

Pr. CIT vs. G&G Pharma India Ltd. in ITA No. 545/2015 dated 8.10.2015 of the Delhi High Court wherein the Hon'ble Court has adjudicated the issue 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.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity .

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises.

15. The appeal is dismissed.”

9. In view of above, I am of the considered view that the aforesaid issue in dispute is exactly the similar and identical to the issue involved in the present appeal and is squarely covered by the aforesaid decision of the Hon'ble High Court of Delhi in the case of G&G Pharma (Supra). Hence, respectfully following the above precedent in the case of Pr. CIT-4 vs. G&G Pharma India Ltd. (Supra) I decide the legal issue in dispute in favor of the Assessee and against the Revenue and accordingly quash the reassessment proceedings and allow the legal issue. Since I have already quashed the reassessment proceedings, as aforesaid, the other issues are not being dealt with being academic in nature.

10. In the result, Assessee's appeal is allowed.

Order pronounced in Open Court on this 31-08-2016.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 31-08-2016

SR BHATANGAR

Copy forwarded to:

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

AR, ITAT
NEW DELHI.