IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'SMC-II' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4392/Del/2016
Assessment Year: 2007-08

ROSHAN LAL JAIN & CO. PVT. LTD. B-127, WHS KIRTI NAGAR, NEW DELHI	Vs.	ITO, WARD 21(4) NEW DELHI
(PAN: AAACR4524R) **(APPELLANT)**		**(RESPONDENT)**

Assessee by : Sh. Venketesh Chaurasia, CA

Revenue by : Sh. S.K. Jain, Sr. DR

ORDER

The Assessee has filed the Appeal against the Order dated 1.7.2016 of the Ld. CIT(A)-7, New Delhi pertaining to assessment year 2007-08 and raised the following grounds:-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad, both in the eye of law and on the facts.
2. On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the initiation of the

proceedings under Section 147, read with Section 148, is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad In the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are vague.

4. On the facts and circumstances of the case, learned CIT (A) has erred both on facts and in law in confirming the addition of RS.11,16,500/- made by the AO on account of share capital money under section 68 of the Act.

5(i) On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition of RS.11 ,00,000/- made by the AO uls 68 of the Act.

(ii) That the addition was made despite the assessee bringing all material & evidences to prove the identity & creditworthiness of the share applicants as well as the genuineness of the transaction.

(iii) That the addition was made without pointing out any error or defect in the evidences filed by the assessee.

(iv) That the addition was made without bringing, any adverse material on record.

6(i) On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in confirming an addition of an amount of Rs.16,500 /- as the commission income.

(ii) That the said addition was made arbitrarily without there being any basis for the same.

7. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition despite the same being made on the basis of statements of some person without giving assessee an opportunity to cross examine and in clear violation of principle of natural justice.

8. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in

confirming the addition rejecting the contention of the assessee that the learned AO has erred both on facts and in law in drawing adverse inference against the assessee without bringing the investigation initiated by him to a logical end.

9. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The brief facts of the case are that the assessee filed e-return of income for the assessment year 2007-08 on 14.11.2006 declaring an income of Rs. 4,82,110/-. The said return was processed u/s. 143(1) of the I.T. Act, 1961. Subsequently, information received from the Investigation Wing of the Income Tax Department, New Delhi that the assessee had received accommodation entries amounting to Rs. 11,00,000/- from M/s Taurus Iron and Steel Co. (P) Ltd. and M/s Thar Steel (P) Ltd. respectively of Rs. 5,50,000/- each. On the basis of this information, the case of the assessee was reopened u/s. 147 of the Act after recording reason to believe that an income chargeable to tax amounting to Rs. 11,00,000/- has escaped assessment. Notice u/s. 148 of the Act was issued on 27.3.2014. The assessee vide letter dated 15.4.2014 submitted copy of the revised return stating that the same should be treated as return filed in response to notice u/s. 148 of the Act. Copy of reasons recorded were also supplied ot the assessee's AR on 24.4.2014. the AR vide letter dated 25.8.2014 filed

objections to reopening of case and issuance of notice u/s. 148 of the I.T. Act which was disposed off by the AO vide letter dated 26.8.2014. Thereafter order u/s 143(3) /147 of the Act was passed on 22.9.2014 after addition of unexplained credit u/s. 68 of the Act of Rs. 11,00,000/- and commission payment of Rs. 16,500/- assessing the income at Rs. 15,98,610/-.

3. Against the Order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 1.7.2016 has dismissed the appeal of the assesseee 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 as well as on merits.

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 the Paper Book containing pages 1 to 224 attaching therewith the copy of acknowledgement of return of income; copy of computation of income; Copy of Audit Report, Balance Sheet and P&L Account, copy of Notice u/s. 148 dated 27.3.2014, copy of reply dated 15.4.2014 alongwith copy of ITR and copy of bank statements; copy of notice u/s. 142(1) dated 9.7.2014; copy of reply dated 21.7.2014 alongwith various details; copy of reply dated 28.7.2014 alongwith copy of challan of Min. of company Affairs and copy of Form 2; copy of reply dated 8.8.2014; copy of reply dated 25.8.2014; copy of reply dated 3.9.2014; copy of reply dated 8.9.2014; copy of written submissions filed before

CIT(A) on 28.9.2015; copy of continued submissions-I filed before CIT(A) on 16.12.2015 and copy of continued submissions-II filed before CIT(A) on 17.6.2016. 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 reasons 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:-

> *'The assessee filed return of income for the A Y 2007-08 on 14.11.2007 declaring income of Rs.4,82,111/-.*
>
> *The return was processed u/s 143(1) on 24.10.2008. DIT(lnv.) Unit-IV, New Delhi during the course of*

investigation in tne case of 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 issue 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 investigation by the DIT(lnv.) 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 notices; from the list of entries of beneficiaries that the assessee M/s Roshan Lal Jain & Co. P. Ltd. has taken following accommodation entries from the companies controlled by Sh. Tarun Goyal during the FY 2006-07 (A Y 2007-08) as per details hereunder:-

Beneficiaries	***Name of the entry provider***	***Amount***
M/s Rohan Lal Jain & Co.	*Taurus Iron & Steel Co. P. Ltd.*	*550000*
M/s Roshan Lal Jain Co. Pvt. Ltd.	*Thar Steels P. Ltd.*	*550000*

In view of the report received from the DIT(lnv.), New Delhi, and after verifying the records, it is clear that the assessee had provided its own cash to arrange a credit entry from the company controlled by Sh. Tarun Goel. The cash provided by the assessee represents its own 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. 11,00,000/- chargeable to tax has escaped assessment for AY 2007-08. Thus, the same is to be brought to tax u/s 1471148/- of the I. T. 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 (Inv.), 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 03-1-2017.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated : 03-1-2017

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.