

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER
ITA No.2801/Mum/2014, (A.Y. 2005-06)

Smt. Leela Bhanji Gada,
Flat No.9, A-Wing, Gool Mahal Building,
2nd Floor, Slatter Road, Grant Road(West),
Mumbai 400 007.
PAN: AFOPG 0182Q Appellant

Vs.

The ITO 16(2)(4),
Mumbai. Respondent

ITA No.2798/Mum/2014, (A.Y. 2005-06)

Smt. Kasturi H. Gada,
Flat No.1404, Tower 1,
Casa Grande CHSL,
Senapati Bapat Marg, Lower Parel,
Mumbai 400 013
PAN:AABPG 0030B Appellant

Vs.

The ITO 16(2)(4),
Mumbai. Respondent

Appellants by : Shri Ajay Singh
Respondent by : Shri Rajesh Kumar Yadav

Date of hearing : 21/12/2017
Date of pronouncement : /03/2017

ORDER

PER G.S.PANNU,A.M:

The captioned appeals are filed by two different assessees belong to the same group and they pertain to assessment year 2005-06. Since common issues are involved, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. ITA No.2801/Mum/2014, in the case of Smt. Leela Bhanji Gada is taken as the lead appeal, which is directed against the order of CIT(A)-27, Mumbai dated 27/01/2014, which in turn, arises out of order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 25/03/2013. In this appeal, the Grounds raised by the assessee read as under:-

1. Violation of principles of Natural Justice :

1.1 *The learned CIT(A) erred in not giving any finding as regards ground Nos. 1 & 2 by observing that, grounds are of general in nature without appreciating that, the principle of Natural Justice was violated and evidences were used against the assessee without furnishing the copy, hence the order of the Assessing officer confirmed by CIT(A) is bad in law.*

1.2 *The Learned CIT(A) erred in confirming that the Assessing Officer, who failed to provide a copy of the statements of Mr. Mukesh Choksi on the basis of which assessment was reopened and further an opportunity of cross examination, in spite of a specific request made by the Appellant in this behalf. Therefore, the assessment order dt. 25/03/2013 is against the principles of natural justice, and hence, bad in law.*

2. Reopening is bad in law:

2.1 *The Learned CIT(A) erred in confirming the order of the Assessing Officer in reopening the assessment u/s.147 of the Act, without appreciating the facts that there was no escapement of assessment in the assessee's case as the original return was accepted u/s. 143(1) dtd. 26/10/2006. And there is no new material or facts brought on record, thus reopening is nothing but based on change of opinion and hence bad in law.*

2.2 *The Learned CIT(A) failed to appreciate that The Assessing Officer failed to provide a copy of the recorded reasons to the Appellant on the basis of which the assessment was reopened even till the completion of assessment. Therefore, the action of the Assessing Officer confirmed by the CIT (A) is contrary to law and well established principles of natural justice, and hence, the reopening of assessment is bad in law.*

2.3 *The Learned CIT(A) erred in confirming the action of the Assessing Officer and failed to appreciate the fact that the notice u/s 148 dtd. 27/03/2012 was issued on the basis of third party's statement recorded on oath in the search and seizer action u/s. 132 in the case of M/s. Mahasagar Securities Pvt. Ltd., Hence the reopening is bad in law and is liable to be quashed.*

3. Addition under section 69 of Rs.43,43,282/- on alleged Accommodation Entries :

3.1 *The Learned CIT(A) erred in confirming action of the Assessing Officer and failed to appreciate that the transactions entered into by the Appellant were only of Rs.76,664/- and were duly supported by all supporting evidence, shown in balance sheet, hence addition of Rs. 43,43,282/- may be deleted.*

3.2 *The Learned CIT(A) erred in treating Rs.43,43,282/- as the unexplained investment of the Appellant without bringing any evidence to support of the same and the provisions of Section 69 cannot be applied to the facts of the appellant, based on the statement of third party.*

3.3 *Without prejudice to above, the Learned CIT(A) failed to appreciate that the appellant has shown speculation profit of Rs. 1,87,125/- and paid tax thereon hence addition of Rs.43,43,282/- may be deleted.*

3. At the time of hearing, the rival counsels have been heard only with respect to Ground of Appeal No.2 above, wherein the action of the Assessing Officer to initiate proceedings under section

147/148 of the Act has been challenged. In this background, the rival counsels have been heard and the relevant material perused.

4. The appellant before us is an individual, who filed a return of income for assessment year 2005-06 originally on 21/12/2005 declaring a total income of Rs.1,95,293/-, which was processed under section 143(1) of the Act on 26/10/2006. Thereafter, the Assessing Officer issued a notice under section 148 of the Act on 27/03/2012 reopening the assessment on the ground that certain income chargeable to tax had escaped assessment. In the ensuing assessment finalized under section 143(3) r.w.s. 147 of the Act dated 25/03/2013, an addition of Rs.46,12,826/- has been made to the returned income on account of profit on account of sale transactions with M/s. Mahasagar Securities Pvt. Ltd. treating it as accommodation entries. In such an assessment the claim of the Assessing Officer is that consequent to a search action in the case of share broker M/s. Mahasagar Securities Pvt. Ltd. and its group concerns, assessee was found to have obtained profit of Rs.46,12,826/- on account of share transactions which were not carried out in actuality, but were mere accommodation entries. The said addition has also been sustained by the CIT(A), against which the assessee is in appeal before us.

5. Before us, the Ld. Representative for the assessee has referred to the reasons recorded for reopening by the Assessing Officer, which has been placed in the Paper Book at page -5, and which read as under:-

“The assessee has obtained accommodated entries amounting to Rs,46,12,826/- for F.Y 2004-05 relevant to assessment year 2005-06 for M/s. Gold Star Finvest Securities Pvt. Ltd.”

Assailing the validity of the reopening of assessment, the Ld. Representative for the assessee pointed out that the reasons recorded were factually incorrect, inasmuch as, assessee had not undertaken any share transactions through broker M/s. Gold Star Finvest Securities Private Limited and that even the quantum of transaction reflected in the reasons recorded was wrong, inasmuch as, the total purchases effected by the assessee was only to the tune of Rs.1,44,405/- and that too were not purchased through M/s. Mahasagar Securities Pvt. Ltd. In this context, attention has also been drawn to the reply dated 07/11/2012 furnished to the Assessing Officer, copy of which has been placed in the Paper Book. Reference has also been made to Page-47 of the Paper Book, wherein is placed the details of the purchases of shares effected during the year which amounts to Rs.1,44,405/-. The Ld. Representative for the assessee has also referred to the relevant annexure attached to the balance sheet, which also depicts the purchase of shares amounting to Rs.1,44,405/-. The Ld. Representative for the assessee pointed out that in the assessment order no additions have been made based on the reasons recorded, inasmuch as, in the assessment order the addition is with respect to the transaction with M/s. Mahasagar Securities Pvt. Ltd., whereas in the reasons recorded it is stated that assessee had undertaken accommodation entries with M/s. Gold Stan Finvest Pvt. Ltd. In this manner, the Ld. Representative for the assessee has set up a case

that the reasons has been recorded by the Assessing Officer without proper application of mind and as they are factually incorrect, the reopening is bad in law. According to the Ld. Representative for the assessee the facts stated in the reasons recorded being factually incorrect and, therefore, the same would not constitute appropriate nexus with formation of belief about escapement of income, and, hence the proceedings initiated under section 147/148 of the Act are invalid. The Ld. Representative for the assessee has also relied upon the decision of the Tribunal in the case of another group assessee, Shri Harakchand K. Gada(HUF), in ITA No.2800/Mum/2014 dated 09/12/2015, wherein also in similar situation, the reopening was held as bad in law. Reliance has also been placed on the decision of the Co-ordinate Bench in the case of another group assessee Smt. Rasila N. Gada in ITA No.2802/Mum/2014 dated 31/05/2016, wherein also incorrect facts were recorded in the reasons for reopening and the Tribunal held that the initiation of proceedings under section 147/148 of the Act to be bad in law. In fact, by referring to the relevant discussion in the order of the Tribunal in the case of Shri Harakchand K. Gada(HUF) (supra) it was pointed out that the reasons recorded therein are similarly worded as are in the present case. Apart there-from, the Ld. Representative for the assessee has also relied upon the judgment of the Hon'ble Delhi High Court in the case of PCIT vs. Meenakshi Overseas Pvt. Ltd., 395 ITR 677(Delhi) to point out that where there was an absence of link between tangible material and formation of belief

of escapement of income, the initiation of proceedings under section 147/148 of the Act is untenable in law.

6. On the other hand, Ld. Departmental Representative has not contested the factual matrix brought out by the Ld. Representative for the assessee but relied upon the orders of the authorities below and contended that the reopening was based on the information received DDIT (Inv.) Unity 1(4), Mumbai as a result of search carried out in the case of share broker M/s. Mahasagar Securities Pvt. Ltd. and its group concerns, which were found to be engaged in the business of issuing bogus bills for providing long term capital gains/loss, speculation profit or loss, bogus sales bills and also engaged in providing bogus share application money to other individual assesseees in return for cash. The Ld. Departmental Representative fairly submitted that even though there was some variation in the reasons recorded by the Assessing Officer and the ultimate assessment, yet that cannot be the ground to quash the re-assessment proceedings since assessee had duly participated in the assessment proceedings.

7. We have carefully considered the rival submissions. Ostensibly, the discussion in the assessment order reveals that the reopening under section 147/148 of the Act has been initiated in the present case as a consequence of search in the case of share broker M/s. Mahasagar Securities Pvt. Ltd. and its group concerns, whose main person was one Shri Mukesh Choksi. The reasons recorded for reopening have already been reproduced by us in the

earlier part of this order. The aforesaid reasons were made available to the assessee by the Assessing Officer vide a communication dated 04/10/2012, a copy of which is placed at page – 5 of the Paper Book. The reasons brings out a charge against the assessee, which is to the effect that assessee has obtained accommodation entries amounting to Rs.46,12,826/- in the instant assessment year from M/s. Gold Star Finvest Securities Pvt. Ltd. Ostensibly, on a perusal of the reasons recorded and the consequent assessment order, it clearly transpires that there is a variation in the facts noted by the Assessing Officer. Whereas in the reasons recorded, assessee is stated to have undertaken transactions with M/s. Gold Star Finvest Securities Pvt. Ltd. while in the assessment order, it is stated that the transactions have been carried out through M/s. Mahasagar Securities Pvt. Ltd. Notably, in the reasons recorded as well as in the assessment order, the Assessing Officer has not tabulated the transactions which are reflected by the amount of Rs.46,12,826/-. The assessee has vehemently brought out on the basis of the material on record that in the instant year no transaction amounting to Rs.46,12,826/- has been entered into. For that matter, the details annexed to the balance sheet, which is placed at page-3 of the Paper Book, has been referred to, which only reflects purchase of shares of Maruti Infra Ltd. totalling to Rs.1,44,405/-. At page – 47 of the Paper Book is placed the details of purchases effected by the assessee during the year through M/s. Mahasagar Securities Pvt. Ltd., which is to the tune of Rs.1,44,405/-. Further, the Ld. Representative for the

assessee pointed that during the year intraday speculation transactions were also undertaken by the assessee through a broker M/s. Naman Securities, which is not a part of M/s. Mahasagar Securities Pvt. Ltd. group of concerns, and, even if, the value of such transactions are added, yet it would not amount to Rs.46,26,826/- as is sought to be made out by the Assessing Officer. All these factual aspects clearly brings out that the Assessing Officer while recording reasons has failed to apply his mind and has merely referred to the report of the Investigation Wing. The least that was required by the Assessing Officer was to establish a link between the information made available by the Investigation Wing and the formation of his belief on escapement of income, which is clearly absent in the present case. The Assessing Officer records accommodation entries are purported to have been entered through M/s. Gold Star Finvest Securities P. Ltd., which is admittedly wrong. Further, in the reasons recorded there is no details of the transaction and a bald reference to "*entries amounting to Rs.46,12,826/-*" has been made. Even when the assessee pointed out to the Assessing Officer in its reply dated 7/11/2012, about the incorrectness of the purchases stated at Rs.46,12,826/- as against actual purchase of Rs.1,44,405/-, no credible negation has been brought out by the Assessing Officer. This clearly implies that at the time of recording of reasons even the minimum required application of mind was absent, which obligated the Assessing Officer to establish a crucial link between the information made available to him and his belief about escapement of income.

Therefore, in our view, the initiation of reassessment proceedings under section 147/148 of the Act in the present case is without application of appropriate mind and, thus, untenable in law. In coming to such conclusion, we have also perused the decision of the Co-ordinate Benches in the case of Shri Harakchand K. Gada(HUF)(supra) and Smt. Rasila N. Gada(supra), wherein also on similar discrepancies/infirmities, the initiation of proceedings under section 147/148 have been found to be invalid. The ratio laid down in the aforesaid two decisions is clearly applicable in the present case and, therefore, in view of the aforesaid discussion and having regard to the decision of the Co-ordinate Benches as referred above, we hold that the reopening of assessment under section 147/148 of the Act is invalid in the eyes of law. As a consequence, the impugned assessment order is liable to be quashed. We hold so. In the result, Ground of appeal No.2 raised by the assessee is allowed.

7.1 As we have decided the issue of reopening of assessment in favour of the assessee and assessment order has been quashed, the necessity to deal with other Grounds raised in the appeal are obviated since they are rendered academic.

7.2 In the result, the appeal of the assessee is allowed.

ITA NO.2798/Mum/2014:

8. At the time of hearing, it was a common point between the parties that so far as appeal in ITA No.2798/Mum/2014 in the case of Smt. Kasturi H. Gada is concerned, the issue raised is similar to

the Grounds of appeal dealt with by us in ITA No.2801/Mum/2014 in the case of Smt. Leela Bhanji Gada. As a consequence, our decision in ITA No.2801/Mum/2014 in the case of Smt. Leela Bhanji Gada shall apply *mutatis mutandis* in the appeal for assessment year 2006-07 also.

9. In the result, both the appeals are allowed, as above.

Order pronounced in the open court on 09/03/2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 09/03/2018

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai