

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC” NEW DELHI**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

I.T.A. No.4689/DEL/2018

Assessment Year: 2009-10

Esha Strips Pvt. Ltd., B-171, Nehru Ground, NIT, Faridabad, Haryana.	v.	ITO, Ward-8(3), New Delhi.
TAN/PAN: AABCE 2905N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, CA		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	03	12	2018
Date of pronouncement:	01	01	2019

ORDER

This appeal by the Assessee has been directed against the order of Id. CIT(A)-III, Delhi dated 2nd May, 2018 for the Assessment Year 2009-10, challenging the reopening of assessment u/s.148 of the IT Act, addition of Rs.18,00,000/- on account of share capital and premium u/s.68 of the IT Act and addition of Rs.36,000/- on account of unexplained expenditure for obtaining the accommodation entry.

2. I have heard the learned Representative of both the parties and perused the material available on record.

3. Briefly, the facts of the case are that return showing income of Rs.5,47,858/- for assessment year under appeal was filed by the assessee on 4th September, 2009. Subsequently, certain information was received from Investigation Wing of the Income

Tax Department with regard to financial transactions entered by the assessee during the year under consideration. On examining the said information vis-a-vis the record of the assessee and after due application of mind, the reasons were recorded by the Assessing Officer for initiating proceedings u/s.147/148 of the Income Tax Act. The notice was served upon assessee on 30th March, 2016. The assessee filed a reply that original return filed u/s.139(1) may be treated as return having filed in response to the notice u/s.148 of the IT Act. The assessee filed objections to the issue of notice u/s.148 of the IT Act which was disposed of by the Assessing Officer. The main gist of the reason for objection was that in assessment year 2004-05 and 2005-06 notices u/s.148 were issued on the same information given by the Investigation Wing and after verification returned income was accepted vide order passed u/s.143(3)/147 of the IT Act. M/s. Taurus Iron and Steel Company Pvt. Ltd. has invested an amount of Rs.18,00,000/- in the share capital of assessee company which are duly reflected in their balance sheet and no cash was found deposited in their accounts before subscription to the shares of assessee company. The assessee company has sold the goods so purchased from M/s. Maa Durga Trading Co. and accounted for sale, filed the return with Sales Tax Department and it is nowhere established that assessee-company received cash back after issue of cheques against the purchases. The Assessing Officer, however, rejected the objections of the assessee. The Assessing Officer issued notices u/s.133(6) to the investor company. However, inspector has reported that no such company is found existing at the given address. The

Assessing Officer asked the assessee to produce Principal Officer of M/s. Taurus Iron and Steel Co. Pvt. Ltd. for verifying the genuineness, identity and creditworthiness of the transactions. The Assessee, however, filed copy of share application form, confirmation given by the investor company, copy of bank statement of the investor company along with copy of balance sheet, copy of balance sheet filed with the Registrar of Companies and copy of the 'Company Master Data as per record of the ROC to prove the identity of the investor, their creditworthiness and genuineness of the transactions. The Assessing Officer, however, rejected the contention of the assessee and made the addition of Rs.18,00,000/- u/s.68 of the IT Act. The Assessing Officer also made addition of Rs.36,000/- on account of unexplained expenditure incurred for obtaining accommodation entry.

4. The assessee challenged the initiation of re-assessment proceedings of the above company before the Id. CIT(A), the written submission of the assessee is reproduced in the appellate order in which the assessee explained that reopening of the assessment is bad in law and relied upon the decision of Hon'ble Delhi High Court in the case of **Pr.CIT vs. Meenakshi Overseas (P.) Ltd. (2017) 82 taxmann.com 300**. It was submitted that Assessing Officer formed a reason to be based on the statement of Shri Tarun Goyal wherein the name of the assessee company has nowhere been mentioned, therefore, proceedings u/s.148 have been wrongly initiated. It was also submitted that addition on merit is wholly unjustified because assessee has proved the identity of the investor company, its creditworthiness and

genuineness of the transactions in the matter. However, ld. CIT(A) dismissed the appeal of the assessee.

5. I have heard the learned Representative of both the parties and perused the material available on record. Learned counsel for the assessee reiterated the submissions made before the authorities below. He has referred to Paper Book 15 which is reasons recorded for reopening of the assessment and submitted that Mr. Tarun Goyal did not name the assessee in his statement for receiving any accommodation entry, copy of statement recorded by Investigation Wing on 15th September, 2008 is filed in the paper book. He too referred to the balance-sheet of the investor company in the paper book and also submitted that confirmation was filed by the investor company. Copy of the bank statement is filed in the paper book to show that no cash was deposited in their account before making investment in assessee's company. He has submitted that the same investor company M/s. Taurus Iron and Steel Co. Pvt. Ltd. was referred to in the case of M/s. A.P. Refinery Pvt. Ltd. vs. Additional Commissioner of Income Tax, reported in 45 ITR (Trib.) 724 (Chandigarh) in which the reopening of the assessment was quashed as well as the addition on merit have been deleted. He, therefore, submitted that issue is covered in favour of the assessee by above decision of the Tribunal.

6. On the other hand, learned DR strongly relied upon the orders of the authorities below and submitted that reopening is justified in the matter and addition was rightly made against the

assessee. He has relied upon several decisions in his written submission which is taken on record.

7. I have considered the rival submissions. It is well settled law that validity of the re-assessment proceedings has to be judged with reference to the reasons recorded for reopening of the assessment. The assessee has filed copy of the reasons for reopening of the assessment at pages 15 to 17 of the Paper Book which reads as under:

“Reason of belief to issue notice u/s 148 of the I.T. Act, 1961 in the case of M/s. Esha Strips Pvt Ltd (PAN-AABCE2905N) for A.Y. 2009-10

The assessee company has e-filed its return of income for A.Y. 2009-10 on 04.09.2009 at an income of Rs. 5,47,858/-. The return was processed on 04.01.2011 at the returned income of Rs. 5,47,858/-. During the year the assessee company had shown total sales/gross receipts of Rs. 2,16,41,822/-.

Perusal of record reveals that the assessee company was incorporated on 04.03.2004. An informative letter dated 31.03.2009 from the then Addl. DIT (Inv.), Unit-IV, New Delhi was received in the office of the then Commissioner of Income Tax, Delhi-IV, New Delhi which was received in the office of the then^ AO on transferred having information regarding beneficiaries of accommodation entries provided by Sh. Tarun Goyal, CA/Director of various companies registered and addressed at his office premises 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi-110005 on which a search u/s 132 of the I.T. Act, 1961 was conducted on 15.09.2008 by the Investigation Wing. Sh. Tarun Goyal in his statement recorded on oath accepted that he through its various bogus companies provided accommodation entries. This fact was also accepted on oath by the different directors of those bogus companies which provided

accommodation entries. Those directors were the employees of Sh. Tarun Goyal having no knowledge about the modus of operandi adopted to provide the accommodation entries nor they were having any control or knowledge of the companies. The cash were deposited in the various companies which was rotated and used to provide the accommodation entries to the other beneficiary companies. M/s Esha Strips Pvt. Ltd. was one of the beneficiary company which took accommodation entries of Rs. 18,00,000/- in the F.Y. 2008-09 relevant to A.Y. 2009-10 from M/s Taurus Iron & Steel Company Pvt. Ltd run and controlled indirectly by Sh. Tarun Goyal through his office at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi-110005. To verify this transaction notice u/s 133(6) of the I.T. Act, 1961 with the prior approval of Pr. CIT-3, New Delhi was issued to M/s Esha Strips Pvt Ltd. In response to the notice the assessee has filed reply on 23.03.2016 and the assessee has submitted the ledger account of M/s Taurus Iron & Steel Company for the period 01.04.2008 to 31.03.2009 and bank account statement of M/s Esha Strips Pvt Ltd. In the ledger account of M/s Taurus Iron & Steel Company the assessee has shown share application money of Rs. 6,00,000/- whereas in the bank account statement the account of the assessee has been credited by Rs. 18,00,000/-. (two entries of Rs.9,00,000 each on 17.04.2008).

Another letter was received from Assistant Director of Income Tax(Inv.)-II, New CGO Complex, N.H.IV, Faridabad, Haryana through Income Tax Officer, Ward 8(4), New Delhi on 02.03.2016 having information regarding accommodation entries of bogus purchase through bills without any delivery of goods by Shri Vinod Goyal proprietor of M/s Maa Durga Trading company. On oath statement recorded by the Assistant Director of Income Tax (Inv.)-II, Faridabad on 21.01.2010 in question no. 5 Shri Vinod Goyal has admitted that firm was established in 2006 and continued to 2008. There were no activities done in M/s Maa Durga Trading Company. This

proprietorship firm was only established to provide accommodation entries through bogus billing against which no goods were supplied. On oath statement Shri Vinod Goyal has also admitted that he received the payment through cheques against the bills issued and withdrew the cash and after deducting the commission, remaining cash was given to the same party from which received cheque against bogus bills. Shri Vinod Goyal has also admitted that there was no selling/supply of goods to these parties. The main contents of this letter are reproduced below:

“M/s Eash Strips Pvt Ltd (PAN-AABCE2905N) has obtained accommodation entry of bogus purchase through M/s Maa Durga trading Co. during the financial year 2008-09 total quantity of Rs. 5,73,558/- (approx.) has been diverted from profit by means of bogus purchase”

In response to notice u/s 133(6) the assessee company has also submitted the ledger account of M/s Maa Durga Trading Co. for the period 01.04.2008 to 31.03.2009. In the ledger account its appear that the assessee company has made the payment of Rs. 5,73,558/- to Maa Durga Trading Company on 20.04.2008. As per bank account statement of HDFC Bank of M/s Esha Strips Pvt Ltd it is clear that the assessee has made the payment of Rs. 5,73,558/- to Maa Durga Trading Company against purchases.

As discussed above entries of Rs. 18,00,000/- from M/s Taurus Iron and Steel Co. Pvt Ltd in the share application money/share premium and debit entry of Rs. 5,73,558/- against bogus purchases are accommodation entries availed for tax evasion or in other words income to the extent of Rs. 23,73,558/- (18,00,000 +5.73 555) has escaped assessment.

In view of above facts, I have reason to belief that the income of Rs. 23,73,558/- has escaped of assessment. Therefore, I propose to initiate proceedings u/s 147 read with section 148 of the I.T. Act. It is

therefore requested to accord approval for issuance of notice u/s 148 of the I.T. Act as per sub-section (1) of section 151 of the I.T. Act.

Put up for your kind perusal and necessary approval please.

Sd/-

ITO, Ward 8(3), New Delhi

28.03.2016”

7.1 The above reasons for reopening of the assessment are based on statement of Shri Tarun Goyal recorded by the Investigation Wing on 15th September, 2008 in which he has accepted on oath that he has provided accommodation entries and cash were deposited in various companies which were rotated and used to provide the accommodation entries to other beneficiary companies. The assessee was found one of the beneficiary companies which took accommodation entries of Rs.18 lac in assessment year under appeal from M/s. Taurus Iron and Steel Co. Pvt. Ltd. run and controlled indirectly by Shri Tarun Goyal. The ld. counsel for the assessee referred to statement of Shri Tarun Goyal, referred to in the reasons copy of which is filed in the paper book. Ld. counsel for the assessee rightly contended that name of the assessee company has nowhere been mentioned to whom alleged accommodation entries have been provided by the same person. Ld. counsel for the assessee also referred to page 49 of the Paper Book which is bank statement of the investor company M/s. Taurus Iron and Steel Co. Pvt. Ltd. to show that the assessee has been credited of Rs.18 lac by the said company of Rs.9 lac each on 17th April, 2008. Prior to that there is no cash deposit in the bank account of the

investor company for making investment in shares of assessee company. The assessee filed confirmation from the investor company, its balance-sheet and other documents to show that the investor company is assessed to tax and have PAN and the amount was invested through banking channel which is confirmed and that the investor company has shown the transaction with the assessee in their balance-sheet. The investor company has sufficient capital with them to make investment in assessee-company. This fact clearly shows that the Assessing Officer without verifying the contents of the information received from Investigation Wing recorded the reasons for the reopening of the assessment without applying his mind. Whatever reasons have been recorded for reopening of the assessment were in fact incorrect. ITAT Chandigarh Bench in the case of AP Refinery Pvt. Ltd. vs. Additional CIT (supra) considered the identical issue in which one of the investor company controlled by Shri Tarun Goyal was M/s. Taurus Iron and Steel Co. Pvt. Ltd. in which the Tribunal in paragraphs 16 and 18 of the order has held as under:

“16. Considering the above discussion, it is clear that the Assessing Officer merely acted on suspicion against the assessee. It is a mere case of change of opinion and the Assessing Officer has not examined any material against the assessee for reopening of the assessment. The Assessing Officer was having no specific evidence or material against the assessee for reopening of the assessment. No fresh material has been brought on record to justify reopening of the assessment, therefore, Assessing Officer has not validly assumed jurisdiction under section 148 of the Income Tax Act for reopening of the assessment in the matter. The decisions relied upon by Id. DR are not applicable to the facts and circumstances of the case. We, accordingly,

set aside the reopening of the assessment and quash the impugned orders under section 147/148 of the Income Tax Act.

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18. In view of the above, we find that the issue on merit is also covered in favour of the assessee by order of ITAT - Chandigarh Bench in the case of Lotus Integrated Taxparks (supra) and as such, no addition could be made against the assessee. In view of the above findings and discussion, we set aside the orders of the authorities below and quash the reassessment proceedings under section 148 of the Income Tax Act, resultantly, all additions made therein stand deleted.”

7.2 It may be also noted here that the Assessing Officer in the reasons for reopening of the assessment has also mentioned above information regarding accommodation entries of bogus purchases through bills without any delivery of goods by M/s. Maa Durga Trading Company. However, in the assessment order no such addition have been made by the Assessing Officer, because nothing adverse was found against the assessee. Payment for purchase could not be regarded escaped income u/s.148 of IT Act.

7.3 Considering the facts and circumstances of the case, it is clear that the Assessing Officer without verifying an information against the assessee merely acted on suspicion against assessee. The Assessing Officer without application of mind recorded the reasons for reopening of assessment. No specific material has been brought on record to justify reopening of the assessment, therefore, Assessing Officer has not validly assumed jurisdiction u/s.148 of the IT Act for reopening of the assessment in the

matter. The documentary evidence filed on record also proved that assessee proved identity of the investor company, its creditworthiness and genuineness of the transaction in the matter. There was thus no justification to make any addition against the assessee. No evidence have been brought on record if assessee paid any amount as commission etc. for obtaining any accommodation entry. The issues are therefore covered by order of ITAT Chandigarh Bench in the case of A.P. Refinery Pvt. Ltd. (supra). The decisions cited by ld. D.R. in the written submission would not support case of the Revenue. In view of the above discussion, I set aside the orders of the authorities below and quash the reopening of the assessment in the matter. The additions on merit is also deleted.

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

Order Pronounced in the open Court on 1st January, 2019.

Sd/-

**[BHAVNESH SAINI]
JUDICIAL MEMBER**

DATED: 1st January, 2019