

IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH: 'A', NEW DELHI  
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
 AND  
 SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
 (THROUGH VIDEO CONFERENCE)

ITA NO. 9543/DEL/2019

A.Y. : 2009-10

M/S ADMACH AUTO LIMITED, C/O SH. KAPIL GOEL, ADVOCATE, F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: AACCA2729H)	Vs.	DCIT, CIRCLE (1), FARIDABAD
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Kapil Goel, Advocate
Department by	Sh. Prakash Dubey, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM:**

This appeal filed by the Assessee is directed against the impugned order dated 19.11.2019 passed by the Ld. CIT(A), Faridabad in relation to assessment year 2009-10.

2. The brief facts relating to the issue are that the e-return of income declaring at Rs. 1,03,79,410/- was filed by the assessee company on 16.9.2009. The case of the assessee was

taken for scrutiny, as survey was conducted at the business premises of the assessee on 18.2.2009. The assessment was completed u/s. 143(3) of the Income Tax Act, 1961 (in short "Act") at the assessed income of Rs. 1,10,49,970/-. AO issued notice u/s. 148 of the Act dated 11.3.2016, after recording the reasons u/s. 147 of the Act which the AO has reproduced in para no. 2 at page no. 1 & 2 of the assessment order. In response to the same, the assessee filed reply dated 21.3.2016 and requested that the return originally filed u/s. 139(1) of the Act may be treated as returned filed in response to notice u/s. 148 of the Act for the AY 2009-10. The assessee was also requested for copy of reasons recorded for issue of notice u/s. 148 of the Act which was provided by the AO. The AO issued notice u/s. 143(2) of the Act dated 29.9.2016. The AO also issued notice u/s. 142(1) of the Act by show causing the assessee that why addition of Rs. 60 lacs should not be made u/s. 68 of the Act for AY 2009-10 which the AO has reproduced vide para no. 4 of the assessment order. In response to the said show cause notice, the assessee filed the reply dated 27.12.2006 which the AO has reproduced in para no. 5 at page no. 14 to 18 of the assessment order. Rebuttal of the various contentions of the assessee, the AO has reproduced in the assessment order. Thereafter the AO has considered the reply filed by the assessee alongwith the documentary evidences for substantiate the claim of assessee and finally has held that the money in question was received through the banking channel, but did not reflect the actual genuineness business activity.

The shares subscribers did not their own profit making apparatus and were not involved in business activity during the year in dispute. The veracity of genuineness is doubted. After discussing in detail the AO was of the view that the assessee company has taken accommodation entry in the shape of share capital and share premium of Rs. 50 lacs from the dummy companies and added to the returned income of the assessee u/s. 68 of the Act by completing the assessment u/s. 143(3)/147 of the Act at Rs. 1,60,49,973/- vide order dated 28.12.2016. Aggrieved with the same, assessee filed the appeal before the Ld. CIT(A), who vide its order dated 19.11.2019 dismissed the appeal filed by the assessee. Now the assessee has filed the present appeal before the Tribunal against the impugned order.

3. At the time of hearing, Ld. Counsel for the assessee draw our attention towards various grounds raised by the assessee alongwith paper book as well as paper book compilation of case laws supporting the claim of the assessee and argued that the AO has completed the assessment in violation of principle of natural justice. He further submitted that Ld. CIT(A) has also sustained the order of the AO without appreciating that the rubber stamp reasons in the present case are based on borrowed satisfaction and without independent application of mind, as in the reasons recorded no detail of so-called dummy shares are mentioned with their respective amounts and only global amount of Rs. 60 lacs was mentioned and finally the AO has made the addition of Rs. 50 lacs meaning thereby that the

reasons recorded by the AO is without application of mind which deserve to be cancelled. He further argued that the assessee has filed the objections before the AO after receiving the notice from the Assessing Officer which was not disposed off by a separate order and has been disposed off in a consolidated assessment order dated 28.12.2016 which patently invalid and without application of mind and it is sufficient reason to quash the reopening. In support of his contention, he relied upon the order of the Hon'ble Apex Court in the case of GKN Driveshaft 259 ITR 19. He further argued that the AO has passed the order u/s. 147/143(3) of the Act without appreciating that the provisions of section 68 cannot apply to the subject share application money / share capital merely on sole and mere basis of Investigation Wing directions without independent meaningful inquiry u/s. 133(6)/131 from share applicants and made addition of Rs. 50 lacs which was confirmed by the Ld. CIT(A) in the impugned order which deserve to be deleted. Lastly he argued that the revenue authorities has passed the impugned order in violation of principle of natural justice as no back material is offered for cross examination of the assessee during the assessment proceedings made in this regard which is sufficient to strike down. In support of his contention, he filed various case laws in the shape of paper book containing pages 1-225 in which he has attached various orders of the ITAT, Delhi Benches and judgements of the Hon'ble Delhi High Court and various other Hon'ble High Courts. Finally he requested that the appeal filed

by the assessee may be accepted and the addition in dispute may be deleted.

4. On the contrary, Ld. DR relied upon the order passed by the AO and stated that AO has issued notice u/s. 148 of the Act after recording the valid reasons by adopting the prescribed procedure under the law on the basis of material on record. The objections filed by the assessee has rightly been disposed off by the Assessing Officer. The Ld. CIT(A) has considered the submissions of the assessee alongwith documentary evidences and the case laws and has rightly dismissed the appeal filed by the assessee. He requested that the appeal filed by the assessee may be dismissed.

5. We have heard both the parties and perused the relevant records available with us, especially the orders passed by the revenue authorities alongwith the written submissions filed by the assessee and the case laws relied upon by the Ld. Counsel for the assessee which he has filed in the shape of paper book containing pages 1-225. As regards to the issue of accommodation entry of Rs. 60 Lacs in the garb of share premium in the name of 06 dummy/ paper companies during the financial year in dispute, we have also gone through the reasons recorded by the AO which the Assessee has enclosed in the paper book as Annexure 'A', the contents thereof are reproduced as under:-

ANNEXURE-A

**REASONS RECORDED U/S 148(2) BEFORE ISSUE OF NOTICE U/S 148(1)**  
**OF THE INCOME TAX ACT, 1961**

Name & address of the assessee	M/s Admach Auto India Limited 166, Sector 25, Faridabad.
Assessment Year	2009-10
PAN	AACCA2729H
Status	Company


**REASON**

Return declaring taxable income of Rs. 1,03,79,410/- was filed on 16.09.2009 and assessment u/s 143(3) of the Income Tax Act, 1961 was completed at total income of Rs. 1,10,49,973/- on 22.12.2011.

2. Subsequent scrutiny of information possessed by this office and assessment records revealed that the assessee had obtained accommodation entries for Rs. 60,00,000/- in the garb of share premium in the name of 06 dummy/paper companies during the financial year 2008-09 relevant to the assessment year 2009-10.

3. The above fact is also strengthened by information received from ADIT(Inv.), Unit-2(1), New Delhi in its report sent to this office vide letter F.No.ADIT(Inv.)/Unit 2(1)/2015-16/28 dated 02.02.2016.

4. In view of above facts, I have reason to believe that income chargeable to tax amounting to Rs. 60,00,000/- and any other income which subsequently comes to notice has escaped assessment on the part of the assessee within the meaning of section 147 of the Income Tax Act, 1961 for the assessment year 2009-10. Accordingly, notice u/s 148 is being issued after getting necessary approval from the worthy Principal Commissioner of Income Tax, Faridabad.

  
**(BHOPAL SINGH, IRS)**  
 Deputy Commissioner of Income Tax,  
 Circle-1, Faridabad



5.1 The AO has also reproduced the aforesaid reasons recorded in the assessment order vide para no. 2 at page no. 1 & 2. We have also gone through the show cause notice wherein the addition of Rs. 60 lacs u/s. 68 of the Act was mentioned, which was also reproduced in the assessment order vide para no. 4. We have also perused the assessment order dated 28.12.2016 passed u/s. 143(3)/147 of the Act in which finally the AO had made the addition of Rs. 50 lacs as mentioned in para no. 7 at page no. 22 of the assessment order. We have also gone through the objections dated 27.12.2016 filed by the assessee before the AO in which the assessee has specifically objected the initiation of proceedings u/s. 148 of the Act which is without jurisdiction, time barred and bad in law. We have also perused the assessment order and we find that the AO has disposed off the objections in the assessment order dated 28.11.2016 without passing a separate order which is the contrary to law and deserves to be cancelled on this count, in view of the decision of the Hon'ble Apex Court in the case of GKN Driveshaft 259 ITR 19, which has been followed by various Benches of the ITAT, Delhi. The copy of one of the orders of the ITAT, Delhi is attached in the paper book at page no. 19-44 which was passed in ITA No. 7372/Del/2019 (AY 2011-12) & Ors. in the case of Smt. Meena Gupta vs. ITO, Faridabad & Ors. The relevant para no. 8.1 at page no. 20-24 of the aforesaid decision of the ITAT, Delhi Bench is reproduced as under:-

"8.1. The above reasons clearly show that information was supplied by the Investigation Wing to the A.O. that assessee is beneficiary of accommodation entries received from Shri Pramod Kumar Jindal in whose case search was carried-out on 18.11.2015. The A.O. relied upon the materials supplied by the Investigation Wing to him and statements recorded by the Investigation Wing during the course of search. The A.O. formed his opinion that assessee received accommodation entries of Rs.15 lakhs from M/s. Timon Infrastructure Pvt. Ltd. However, later on, it transpired that assessee has received only accommodation entry of Rs.5 lakhs. Thus, there is a factual error in the reasons recorded for reopening of the assessment. The reasons are based on incorrect and non-existing material. Whatever material was relied upon by the A.O. for recording the reasons for reopening of the assessment have admittedly not been supplied to the assessee. No statement recorded during the course of search operation in the case



*of Shri Pradeep Kumar Jindal have been confronted to the assessee and no person was produced for cross-examination on behalf of the assessee. Learned Counsel for the Assessee relied upon several Judgments above in support of this contention. The crux of the said Judgments had been that in case incorrect, wrong and non-existing reasons are recorded by the A.O. for reopening of the assessment and that A.O. failed to verify the information received from Investigation Wing, the reopening of the assessment would be unjustified and is liable to be quashed. In the present case, the facts noted above clearly show that A.O. did not verify the report of the Investigation Wing and accepted the same as it is that assessee has received accommodation entries of Rs.15 lakhs despite it was a wrong and incorrect fact which would show that A.O. did not apply his mind to the information and material supplied by the Investigation Wing. Thus, the reopening of the assessment have been done totally without application of*

*mind and without any justification. Similarly, in the case of assessee Shri Narender Kumar Gupta, A.O. recorded in the reasons that assessee received accommodation entry of Rs.15 lakhs, but, ultimately, it was found to be accommodation entry of Rs.10 lakhs. In the case of assessee Smt. Meena Gupta and Shri Sourav Jindal the A.O. recorded in the reasons that assessee received bogus entries of the purchases, but, later on it was found to be loan. Thus, these facts clearly show that A.O. without verifying the information received from the Investigation Wing, recorded the reasons for reopening of the assessment based on wrong and non-existing, incorrect facts. Thus, there was no justification for the authorities below to reopen the assessment in these four cases. Since no material was supplied to the assessee which is the basis for reopening of the assessment and no statements recorded during the course of search in the case of Shri Pramod Kumar Jindal were confronted to allow cross-examination on*

*behalf of the assessee, therefore, such material could not be used in evidence against the assessee for making any addition. It may also be noted here that assessees raised the objections against the reopening of the assessment on 27/28/29/30.11.2018, but, the objections of the assessee have not been disposed of by the A.O. prior to passing of the re-assessment orders. The impugned order of the Ld. CIT(A) clearly show that objections of the assessee have been dealt by the A.O. in the assessment order by passing the composite order. Thus, it is clear that objections of all the Assesseees were not disposed of prior to passing of the re-assessment order. Thus, it is clearly in violation of Judgment of Hon'ble Supreme Court in the case of M/s. GKN Drive Shafts [SC], Haryana Acleric [Delhi-HC], Fomento Resorts & Hotels Ltd., [Bombay-HC] relied upon by the Learned Counsel for the Assessee. Thus, in our opinion, reopening of the assessment is clearly bad in Law and is liable to be quashed. The A.O. did not assume the jurisdiction under*

*sections 147/148 of the I.T. Act, 1961, in accordance with Law and as such, the reassessment proceedings are liable to be quashed. The addition is also liable to be deleted. In view of the above discussion, we set aside the Orders of the authorities below and quash the reopening of the assessment under sections 147/148 of the I.T. Act, 1961. Resultantly, all additions stand deleted."*

5.2 After going through the aforesaid order of the ITAT, Delhi Bench, we are of the view that there is force in the arguments advanced by the Ld. Counsel for the assessee on the issue of disposal of objections in the assessment order in not passing a separate order for disposing off the objections of the assessee, which is clear violation of the law laid down by the Hon'ble Apex Court in the case of GKN Driveshaft 259 ITR 19. Secondly, in the reasons, the AO has recorded that assessee has obtained the accommodation entry of Rs. 60 lacs in the name of 6 dummy / paper companies during the year under consideration, but finally made the addition of Rs. 50 lacs in the assessment order which also shows that AO has not applied his mind before recording the reasons in issuing the notice u/s. 148 of the Act. Therefore, the addition in dispute deserve to be cancelled. Keeping in view of the facts and circumstances of the case and respectfully following the precedent as aforesaid,

we set aside the orders of the authorities below and quash the reopening of the assessment and addition in dispute stand deleted.

6. In the result, the Assessee's Appeal is allowed.

The decision is pronounced on 18.12.2020.

Sd/-

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)  
JUDICIAL MEMBER**

"SRB"

**Copy forwarded to:**

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

Asstt. Registrar, ITAT, New Delhi

