IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-3132/Del/2018
(Assessment Year: 2004-05)

Jansampark Advertising & Marketing P. Ltd., C/o Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi.	**Vs.**	Income-tax Officer, Ward 4(2), New Delhi.

PAN No. AAACJ9115G

Appellant **Respondent**

Assessee by Sh. Kapil Goel, Advocate
Revenue by Ms. Anima Barnwal, Sr. DR

Date of hearing: 06/08/2021
Pronouncement on: 12/08/2021

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 28/10/2016 passed by the learned Commissioner of Income Tax (Appeals)-5, Delhi ("Ld. CIT(A)") in the case of M/s Jansampark advertising and marketing (P) Ltd ("the assessee"), for the assessment year 2004-05, assessee preferred this appeal.

2. Brief facts of the case as could be culled out from the record are that for the assessment year 2004-05, assessee filed the return of income on 1/11/2004 declaring an income of Rs.3,180/-; that claiming to have

received specific information from investigation wing of the Department, learned Assessing Officer recorded reasons that the assessee company had indulged in receiving accommodation entries and the total amount of payment received by the assessee company amounting to Rs. 51 Lacs is bogus and represents the undisclosed income/income from other sources of the assessee company which was not offered to tax by the assessee and therefore, stating that the income of Rs. 51 Lacs chargeable to tax had escaped assessment, learned Assessing Officer issued notice under section 148 on 18/4/2007. Assessee filed the copy of return that was already filed on 1/11/2004. After hearing the assessee, an addition of Rs. 71 lakh was made on account of unexplained credit under section 68 of the Income Tax Act, 1961 (for short "the Act") and a sum of Rs. 1.42 lakhs on account of commission at 2% in respect of the accommodation entry.

3. Assessee preferred appeal before the Ld. CIT(A) and while challenging the addition on merits, also contended that the action of the learned Assessing Officer under section 148 is bad in law since the Assessing Officer had no jurisdiction to frame the assessment under section 143(3) of the Act read with section 148 of the Act inasmuch as the impugned assessment was framed on the basis of mere internal office note, without recording reasons as envisaged under section 148 of the Act and according to the assessee there is no nexus between the alleged reasons and the assessment framed.

4. By order dated 26/10/2009 Ld. CIT(A) deleted the addition made by the Assessing Officer on merits, and as a consequence thereof the grounds challenging the validity of reopening were dismissed as

infructuous. Revenue carried the matter in appeal before the Tribunal and a coordinate Bench of this Tribunal, by order dated 14/6/2013 in ITA No. 4839/Del/2009 and CO No. 103/Del/2011 upheld the order of the Ld. CIT(A) in deleting the addition and also dismissed the cross objections holding it to be infructuous. Further appeal was preferred by Revenue before the Hon'ble High Court and the Hon'ble High Court while disposing of the Revenue appeal remanded the matter back to the file of the Ld. CIT(A) with a direction first to decide the objection taken by the assessee to the validity of the reopening proceedings. Pursuant to the directions of the Hon'ble Apex Court, Ld. CIT(A) passed the impugned order on 28/10/2016 dismissing the appeal while holding both the reopening and the addition as valid. Hence this appeal before us, by the assessee.

5. It is argued on behalf of the assessee that it was brought to the notice of the Ld. CIT(A) that the reasons recorded were different from the reasons supplied to the assessee, the reasons supplied to the assessee do not contain any details as to – the transaction, how Rs. 51 Lacs was treated as accommodation entry in the hands of the assessee that could be discernible, there are no clues as to the nature of the transaction, there is no mention of any return filed earlier, there is no Annexures/statements/report enclosed with the reasons, break up of figure of Rs. 51 Lacs is not to be found, there is no tangible material much less the Livelink between the reasons and the addition so on and so forth. He further submitted that the Ld. CIT(A) looked into this aspect, advert to the reasons supplied to the assessee by letter dated 11/7/2008 and also the reasons to be found in the assessment record at page No. 30, but

recorded a finding that the reasons were properly recorded, the communication of reasons was made to the assessee at the reassessment proceedings, even in the subsequent appellate proceedings, raising any objection to the reasons recorded are to the sufficiency of material, based on which the reopening was done. He, therefore, argued that, inasmuch as the reasons recorded were not supplied to the assessee, the assessment that followed basing on such lapse is vitiated. He placed reliance on the decision of the coordinate Bench of this Tribunal in the case of Wimco Seedlings Ltd vs. JCIT (Wimco Seedlings), in ITA No. 2755, 2756, 2757/Del/2002 for the Assessment Years 1989-90 to 1991-92 by order dated dated22/06/2020.

6. Per contra, it is the submission on behalf of Revenue that there is no change in the reasons recorded and the reasons supplied to the assessee but in the reasons supplied to the assessee are only concise or a bridge ones and no prejudice was caused to the assessee, as rightly observed by the Ld. CIT(A) and therefore it is not a ground to vitiate the assessment proceedings.

7. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the reasons supplied to the assessee are condensed ones and such reasons read,-

> *"That assessee has indulged in receiving accommodation entries and the total amount of payment received amounted to Rs.51,00,000/- is bogus and represents undisclosed income not offered to tax in the return filed*."

whereas the detailed reasons recorded and found by the Ld. CIT(A) as available at page 30 of the assessment record, read as under:-

"Information has been received from the Investigation Wing of IT Department, New Delhi regarding beneficiaries and operators of accommodation entries in Delhi.

In the said information, it has been inter alia reported as under:-

"Entries are broadly taken for two purposes

1. *To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*

2. *To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.*

The specific, information provided by the Investigation Wing of IT Department, New Delhi is enclosed as per Annexure.

In view of the specific information received as above from Investigation Wing of TT Department, New Delhi, I have sufficient reason to believe that the assessee company M/s. Jansampark Advertising & Marketing (P) Ltd. has indulged in receiving accommodation entries and the total amount of payment received by the assessee company amounting to Rs. 51,00,000/- is bogus and represents the undisclosed income/income from other source of the assessee company, which has not been offered to tax by the assessee in is return filed.

Accordingly, I have reason to believe that income of Rs. 31,00,000/- chargeable to tax has escaped assessment as the assessee company has understated its returned income for the A Y 2004-05 by an amount of Rs. 51,00,000/-."

8. A reading of the above clearly establishes that the reasons supplied to the assessee are not the very same reasons recorded and found in the assessment record. Alienation of the assessee against the Revenue is that it gave few extracts of the reasons to them to defend it against the reopening of the assessment and when cornered before the higher authorities, the revenue comes out with the detailed reasons recorded by the Assessing Officer, and such furnishing of a bridge or part of reasons is deprecated by higher forums as recorded by a coordinate Bench of this Tribunal in the case of Wimco Seedlings (supra).

9. For the sake of completeness we think necessary to extract the relevant observations of the coordinate Bench in the case of Wimco Seedlings, which is an as under: –

27. *On perusal of above two statements (one) the reasons supplied it to the assessee and (two) the reasons some before the High Court, it is apparent that both are altogether different. It is not denied that in context and in substance they are same but there should be same ad verbatim. It cannot be the case of the revenue that it gives few extracts of the reasons to the assessee to defend it against the reopening of the assessment and when cornered before the higher authorities, the revenue comes out with the detailed reasons recorded by the assessing officer. In fact in all circumstances the assessing officer is supposed to provide the complete reasons recorded for reopening of the assessment to facilitate the assessee to defend itself against the reopening of the assessment. To keep few arrows in its quiver and only disclosing few arrows out of that is not expected from a revenue officer. It also against the fair play rule of reassessment proceedings. In Haryana Acrylic Manufacturing Co V Commissioner of Income tax 308 ITR 38 [Delhi] the identical issue arose. As per para no 4 following reasons were given to the assessee:-*

> *"4. The Assistant Commissioner of Income-tax supplied the reasons for initiating the proceedings under section 148 of the said Act dated March 29, 2004, sometime in September, 2004. The reasons which were supplied to the petitioner in September, 2004 were as under :*
>
> *" M/s. Haryana Acrylic Mfg. Co. Pvt. Ltd.*
>
> *Assessment year 1998-99*
>
> *Reasons for initiating the proceedings under section 148 of the Income-tax Act.*
>
> *Return of income in this case was filed on November 30, 1998 declaring nil income. Assessment under section 143(3) was completed at nil income on March 7, 2001. It has come to the notice that the assessee-company has taken accommodation entries from one of the companies of Sh. Sanjay Rastogi, i.e., Hallmark Helathcare Limited, vide cheque No. 201845 dated October 17, 1997, amounting to Rs.5,00,000 during the year*

relevant to the assessment year 1998-99. I have reason to believe that the income to the extent of Rs. 5,00,000 has escaped assessment. As such, after obtaining the approval of CIT (C)- II to reopen the case, notice under section 148 of the Income-tax Act is issued to the assessee.
(Sd) . . . . . .
29-3-2004
ACIT, CC-18, New Delhi."

28. *It was further pleaded before Honourable Court that :-*

16. Lastly, it was contended that in the counter-affidavit filed by the respondents the reasons which had been indicated for initiation of proceedings under section 147 were entirely different to the reasons which had been supplied to the petitioner. The attention of this court was drawn to paragraph 5(d) of the counter-affidavit wherein it is stated that the true copy of the reasons recorded by the Assessing Officer and the approval granted by the Commissioner of Income-tax is enclosed as annexure A. Annexure A purports to be a form for recording the reasons for initiating proceedings under section 148 and for obtaining approval of the Commissioner of Income-tax. Serial No. 11 of the form pertains to " reasons for the belief that income has escaped assessment" . Under this heading, the following is recorded :

… *…* *…*

17. It is apparent by comparing these purported reasons with the reasons extracted earlier and which had been supplied to the petitioner that the two are different. While in the reasons supplied to the petitioner there is no mention of the allegation that there was a failure on the part of the assessee to disclose fully and truly all material facts, in the reasons shown in the said form in annexure A to the counter-affidavit, there is a specific allegation that there was failure on the part of the assessee to disclose fully and truly all material facts relating to accommodation entries raised from one of the companies of Sh. Sanjay Rastogi to the extent of Rs. 5,00,000. In this context, the learned counsel for the petitioner submitted that the entire proceedings are vitiated inasmuch as the reasons which were supplied to the petitioner were different from what, according to the respondents, were the " true" reasons. Therefore, what was supplied to the petitioner cannot be regarded as the

reasons and the entire process of filing of objections to those purported reasons and the impugned order dated March 2, 2005, would be in respect of something which, even as per the respondents, were not the true reasons. Consequently, the entire proceedings leading up to the passing of the impugned order dated March 2, 2005, have to be set aside.

29. *The Honourable High Court responded to the above anomaly where the reasons given to the assessee are altogether different then the reasons given to the higher authorities when the order of the assessing officer is challenged, as under:-*

"30. The matter, however, does not end here. We have mentioned above that the stand taken by the respondents in their counter-affidavit before this court is that the " actual" reasons recorded are those recorded in the Form for recording reasons, a copy of which has been filed as annexure A to the said counter-affidavit. It was urged on behalf of the respondents that the " reasons for the belief that income has escaped assessment" at serial No. 11 of the said form clearly carries the allegation that " there was failure on the part of the assessee to disclose fully and truly all material facts relating to accommodation entries" . This being the case, it was submitted, the bar of taking action within four years would not apply and, consequently, the notice under section 148 was valid.

31. This argument suffers from several infirmities. First of all, the respondents cannot be permitted to gloss over the fact that the reasons which were supplied to the petitioner were different from the reasons purportedly recorded in the said form on which they now seek to rely. If the reasons in the said form were the " actual" reasons, why were they not communicated to the petitioner? Why was nothing said about these reasons (noted in the form) when the petitioner filed its objections to the reasons which were supplied to it? It must be remembered that in its objections, the petitioner took the specific plea that in the absence of any allegation that the petitioner had failed to disclose fully and truly all material facts necessary for assessment, the Assessing Officer had no jurisdiction to issue the notice under section 148 and initiate action under section 147 after four years from the end of the relevant assessment year. Despite this precise objection, there is no mention of the reasons noted in the said form in the impugned order dated March 2,

2005. If the respondents had regarded the reasons noted in the said form to be the " actual" reasons, it would have been very easy for the Assessing Officer to have countered this objection by simply referring to the reasons noted in the form and saying that the allegation of failure to disclose is very much there. It is obvious that the reasons noted in the said form were never regarded as the reasons for initiating action under section 147 of the said Act. Thus, the respondents cannot now be permitted to fall back on those purported reasons noted in the said form.

32. Secondly, let us assume for the sake of argument that the " actual" reasons were those as noted in the said form. Then why did the Assessing Officer communicate a different set of reasons to the petitioner? Did he think that the supplying of reasons and the inviting of objections were mere charades? Did he think that it was a mere pretence or a formality which had to be gotten over with? At this point, it would be well to remember that the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR19 had specifically directed that when a notice under section 148 of the said Act is issued and the noticee files a return and seeks reasons for the issuance of the notice, the Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitled to file objections to the issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. These are specific directions given by the Supreme Court in all cases where notices under section 148 of the said Act are issued. Surely, the Assessing Officer could not have construed these specific directions to be a mere empty formalities or dead letters? There is a strong logic and purpose behind the directions issued by the Supreme Court and that is to prevent high-handedness on the part of Assessing Officers and to temper any action contemplated under section 147 of the said Act by reason and substance. In fact, even section 148(2) stipulates that the Assessing Officer shall, before issuing any notice under the said section, record his reasons for doing so. The Supreme Court has only carried forward this mandatory requirement by directing that the reasons which are recorded be communicated to the assessee within a reasonable period of time so that at that stage itself the assessee may point out any objections that he may have with regard to the initiation of action under section 147 of the said Act. The requirement of recording the reasons, communicating the same to the assessee, enabling the assessee to file objections and the requirement of

passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons. These steps are also designed to ensure complete transparency and adherence to the principles of natural justice. Thus, a deviation from these directions would entail the nullifying of the proceedings. Assuming as we have done that the " actual" reasons were those as noted in the said form, it is obvious that the reasons were never communicated to the petitioner and it is only for the first time in the course of the present writ petition that those " reasons" have surfaced. Therefore, if he proceeded on the assumption that the " actual" reasons were those as noted in the said form, the proper course of action as directed by the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR 19, has not been followed. It would mean that the reasons which were supplied to the petitioner were not the actual reasons and the objections which were taken by the petitioner were not to the actual reasons and the speaking order dated March 2, 2005, which was passed was also neither on the basis of the actual reasons nor the objections to the actual reasons. The entire process would be a sham and would amount to making a mockery of the law as settled by the Supreme Court. Therefore, for this reason also, the notice under section 148 as well as all proceedings subsequent thereto as also the order dated March 2, 2005, are liable to be quashed."

30. *As before us also the reasons recorded by the assessing officer produced before the honourable High Court are quite different and number eight whereas the extract given to the assessee was merely of two paragraphs. In view of this, respectfully following the decision of the honourable Delhi High Court we are not inclined to uphold the reopening of the assessment and hence they are quashed. The orders of the learned Commissioner of income tax upholding of the reopening of the assessment are reversed. Thus all the three assessment years reopening proceedings are held to be invalid and quashed.*

10. It is, therefore, clear that the settled position of law on this aspect, as held by the Hon'ble High Court in the case of Haryana Acrylic Manufacturing Co. v. Commissioner of Income Tax 308 ITR 38 [Delhi] is that the requirement of recording the reasons, communicating the same to the assessee, enabling the assessee to file objections and the

requirement of passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons, and since these steps are also designed to ensure complete transparency and adherence to the principles of natural justice, any deviation from these directions would entail the nullifying of the proceedings.

11. Admittedly in the case on hand, the reasons supplied to the assessee are not the same and verbatim. In view of this settled position of law and respectfully following the line of decision in Haryana Acrylic Manufacturing Co V Commissioner of Income tax 308 ITR 38 [Delhi] by the higher forum referred to in the decision of the coordinate Bench of this Tribunal in the case of Wimco Seedlings (supra), we find it difficult to sustain the validity of the reopening of proceedings under section 147 of the Act and consequently quash the same.

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

Order pronounced in the open court on this the 12th day of August, 2021.

Sd/-	Sd/-
(N.K.BILLAIYA)	**(K. NARSIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 12/08/2021