

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1248/Mum./2023
(Assessment Year : 2009-10)

ITA no.1249/Mum./2023
(Assessment Year : 2010-11)

M P Ferrous And Non Ferrous India Pvt. Ltd.
23/2, Shed no.2, GIDC Phase-II, Vatva
Ahmedabad 382445 PAN – AADCS4956R

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-7(2)(2), Mumbai

..... Respondent

Assessee by : Shri Yeshwant Gupta a/w
Shri Piyush Chhajed
Revenue by : Shri Prashant Barate

Date of Hearing – 09/08/2023

Date of Order – 17/08/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 17/02/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*"], for the assessment years 2009-10 and 2010-11.

ITA no.1248/Mum./2023
Assessment Year – 2009-10

2. In this appeal, the assessee has raised the following grounds: –

The Grounds of Appeal mentioned hereunder are without prejudice to one another:

1. On the facts and circumstances of the case, the learned Assessing Officer erred in issuing the Notice u/s.148 on 31.03.2016 without bringing out any tangible material as to failure on the part of the Assessee to disclose truly and fully all material facts necessary for assessment and therefore the Reasons Recorded u/s.147 are bad in law and consequently the assessment proceedings deserve to be annulled.

2. On the facts & circumstances of the case, the Learned CIT(A) erred by upholding the addition of INR 14,00,000 which was merely out of suspicion relying on statement recorded of director of BCCL wherein nowhere in statement recorded it was mentioned that assessee has taken accommodation entries moreover no cross examination was provided to the assessee.

3. On the facts & circumstances of the case, the Learned CIT(A) erred in upholding the addition of treating the unsecured loan as unexplained expenditure & also making addition u/s 69 of the IT Act as unexplained investment.

4. On the facts and circumstances of the case, the Learned Assessing Officer erred by making addition of unsecured loan notwithstanding the fact that interest paid on it was allowed as business expenditure.

5. On the facts & circumstances of the case, the Learned CIT(A) erred by upholding the addition without appreciating the documentary evidence submitted duly substantiating the genuineness of loan transaction.

The Appellant craves the leave to add, amend, alter and/or delete any of the above revised rounds of appeal at or before the time of hearing."

3. The brief facts of the case as emanating from the record are: The assessee is a dealer in ferrous and non-ferrous metals. For the year under consideration, the assessee filed its return of income on 29/09/2009, declaring a total income of Rs.1,20,770. The return of income was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the ADIT (Investigation)-1, Rajkot that the assessee is a beneficiary of accommodation entries of bogus advances from the concerns engaged in providing bogus entries, proceedings under section 147 were initiated and notice under section 148 of the Act was issued to the assessee on 31/03/2016. In response to the aforesaid notice, the assessee filed a letter stating that the

return of income originally filed on 29/09/2009, be considered as a return filed in response to the notice issued under section 148 of the Act. As per the aforesaid information received from the ADIT (Investigation)-1, Rajkot, the assessee availed loan from Bhoomidevi Credit Corporation Ltd., which is engaged in providing accommodation/bogus entries. During the proceedings under section 147 of the Act, the assessee furnished the balance sheet, ITR, ledger account of Bhoomidevi Credit Corporation Ltd. for the financial year 2008-09 and bank statements with regard to the aforesaid transaction by cheque. The assessee also stated that it has paid interest on deposits to Bhoomidevi Credit Corporation Ltd. by account payee cheques for the assessment years 2009-10 and 2010-11.

4. **The Assessing Officer ("AO") vide order dated 27/12/2016**, passed under section 143(3) read with section 147 of the Act did not agree with the submissions of the assessee and held that mere payment by cheques is not sufficient to prove that the transaction is genuine. The AO further held that the assessee has not proved the genuineness of the existence of the party and no serious efforts were made by the assessee to discharge such burden. The AO held that Bhoomidevi Credit Corporation Ltd. is only a paper company that does not exist in reality and works only to show accommodation entries after charging a small amount of commission. The AO placed reliance upon the statement of the director of Bhoomidevi Credit Corporation Ltd. recorded under section 131 of the Act, wherein he admitted that he was providing accommodation entries to various business establishments and charged a commission ranging from 1.5% to 2% of the transaction. Accordingly, the AO

made an addition of Rs.14 lakh, to the total income of the assessee under section 68 of the Act.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. Vide affidavit dated 19/07/2023, sworn by the director of the assessee, it has been submitted that ground no.1 is raised as an additional ground and prayed for admission of same. In ground no.1, the assessee has challenged the validity of proceedings initiated under section 147 of the Act. Since, the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd vs CIT: 229 ITR 383 (SC).

7. We have considered the submissions of both sides and perused the material available on record. As is evident from the record, in the present case return of income filed by the assessee was not selected for scrutiny. The AO based on the information received from the ADIT (Investigation)-1, Rajkot initiated the reassessment proceedings. The reasons recorded by the AO, while reopening the assessment, are as under: -

"REASONS FOR RE-OPENING OF ASSESSMENT U/S 147 OF THE IT.ACT, 1961

The assessee M/s MP Ferrous & Non-Ferrous (India) Private Limited, having PAN AADCS4956R is assessed to tax in this charge. The assessee filed its return of income on 29.09.2009 stating total income at Rs 1,20,774/-. The same was processed under section 143(1) on 03.11.2010.

In the instant case for AY 2009-10, information was received from DIT(Inv.) Rajkot vide letter No. Rjt/ADIT(Inv.)-1/Bhoomidev Beneficiaries/2015-16/4813 dated 22.03.2016 with subject "Dissemination of information in respect of

beneficiary companies who have allegedly taken entry of share application money/ premium/ advances from M/s Bhoomidex Credit Corporation Ltd.”

A thorough Investigation was done by DDIT, Ahmedabad wherein it was found that an entity by the name of M/s Bhoomidev Credit Corporation Ltd. (BCCL) has been giving accommodation entries to various persons.

in view of this background an exercise was undertaken to identify beneficiaries of BCCL it was found that the assessee has obtained share application money / premium / advances as accommodation entries from this party in the FY 2008-09. Details of the same are given as follows:

<i>Sr.</i>	<i>Name of the Party</i>	<i>PAN</i>	<i>Amount (Rs.)</i>
<i>1.</i>	<i>M/s. Bhoomidev Credit Corporation Ltd. (BCCL)</i>		<i>14,00,000</i>

The information received has been analysed. In view of the above, he reason to believe that income of the assessee has escaped assessment to the extent of Rs.14,00,000/- in the aforesaid case and it is a fit case for re-opening for A.Y.2009-10 in terms of the provisions of section 147 of the IT Act.”

8. From the perusal of aforesaid reasons recorded by the AO, it is evident that an entity by the name of Bhoomidevi Credit Corporation Ltd. has been giving accommodation entries to various persons. Accordingly, an exercise was undertaken to identify the beneficiaries of the aforesaid entity and it was found that the assessee is one of the beneficiaries of the accommodation entries from the aforesaid party. The AO based on the said information formed the reason to believe that income chargeable to tax has escaped assessment and it is a fit case for reopening in terms of the provision of section 147 of the Act.

9. It is the plea of the learned AR that the reassessment proceedings have been initiated entirely based on the satisfaction borrowed from the Investigation Wing and no independent inquiry was conducted by the assessee to come to the aforesaid conclusion. In the present case, it is pertinent to note that no scrutiny assessment was conducted in the case of the assessee and therefore the only data available with the AO was the data provided along with

the income tax return and the information received subsequently from the office of the ADIT (Investigation)-1, Rajkot. The said information constitutes new and tangible material for initiating the reassessment proceedings in the case of the assessee and on the basis of the aforesaid information, the AO initiated proceedings under section 147 of the Act and issued a notice under section 148 of the Act. In ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court observed as under:

"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)."

10. Therefore, if there is relevant material on the basis of which a reasonable person can form a requisite belief that income chargeable to tax has escaped assessment, then proceedings under section 147 of the Act can be validly initiated. In the present case, as noted above, on the basis of information received from the investigation wing, reassessment proceedings in the case of the assessee were initiated. Further, it is also well settled that sufficiency or

correctness of the material is not a thing to be considered at the stage of recording the reasons. As a result, we find no infirmity in the reassessment proceedings initiated by the AO under section 147 of the Act. Accordingly, **ground no. 1 in assessee's appeal**, raised as an additional ground, is dismissed.

11. As regards the merits of the addition, it is the plea of the assessee that the amount in dispute was received as a loan from Bhoomidevi Credit Corporation Ltd. In this regard, the assessee has furnished a copy of ledger account of Bhoomidevi Credit Corporation Ltd. in its books and Bank statements of Bhoomidevi Credit Corporation Ltd. maintained with Dena Bank and IDBI Bank, which forms part of the paper book. Further, the assessee has also furnished the financial statements of Bhoomidevi Credit Corporation Ltd. From the perusal of aforesaid documents, we find that the loan of Rs. 13 lakh was given by Bhoomidevi Credit Corporation Ltd. to the assessee in the year under consideration, which fact is duly recorded in Schedule-5 Loans and Advances of the annual report of Bhoomidevi Credit Corporation Ltd. and this transaction is also recorded by the assessee in the ledger account of Bhoomidevi Credit Corporation Ltd. in its books. We further find that apart from the assessee, loans and advances were given to other entities by Bhoomidevi Credit Corporation Ltd. Further, even in the subsequent year, the assessee received a loan from Bhoomidevi Credit Corporation Ltd. and paid interest thereon. As evident from the record, the Revenue has doubted the existence of this entity and has claimed that this entity to be only a paper entity that works to issue accommodation entries. However, the aforesaid documents prove to the contrary as not only details of the loan by Bhoomidevi

Credit Corporation Ltd. to the assessee is recorded in the financial statements of the aforesaid entity, similar details are corroborated from the ledger account of Bhoomidevi Credit Corporation Ltd. **in assessee's books.** Since the assessee has proved the existence of Bhoomidevi Credit Corporation Ltd., we find no merits in the findings of AO which were upheld by the learned CIT(A). Accordingly, the addition made by the AO and upheld by the learned CIT(A) is deleted and grounds raised by the assessee on merits are allowed.

12. In the result, the appeal by the assessee is partly allowed.

ITA no.1249/Mum./2023
Assessment Year – 2010-11

13. In this appeal, the assessee has raised the following grounds: –

"The Grounds of Appeal mentioned hereunder are without prejudice to one another:

1. On the facts and circumstances of the case, the learned Assessing Officer erred in issuing the Notice u/s.148 on 31.03.2017 without bringing out any tangible material as to failure on the part of the Assessee to disclose truly and fully all material facts necessary for assessment and therefore the Reasons Recorded u/s.147 are bad in law and consequently the assessment proceedings deserve to be annulled.

2. On the facts & circumstances of the case, the learned CIT (appeals) has erred in upholding the addition of loan transaction of INR 17,82,407 along with its opening balance of INR. 13,00,000 with Bhumidev Credit Corporation Ltd (BCCL) as an accommodation entry without appreciating the documentary evidence submitted duly substantiating the genuineness of loan transaction.

3. On the facts & circumstances of the case, the Learned CIT(A) erred by not dealing with & giving its findings in relation to the grounds of appeal for addition of Rs. 17,824/- u/s 69C of the IT Act as unexplained expenditure being 1% of loan and interest additional and hence the same is merely out of presumption.

The Appellant craves the leave to add, amend, alter and/or delete any of the above revised grounds of appeal at or before the time of hearing."

14. In the assessment year 2010-11 also, the assessee has raised similar grounds as in the assessment year 2009-10 regarding the loan transaction with Bhoomidevi Credit Corporation Ltd. Since similar issues have already been adjudicated, therefore, findings/conclusions reached in the appeal for the assessment 2009-10 shall apply *mutatis mutandis*. Accordingly, initiation of proceedings under section 147 of the Act is upheld, while the addition on account of the loan transaction is directed to be deleted. In view of the above, the addition on account of commission expenses by treating the loan transaction as bogus is also deleted. Accordingly, the impugned order is set aside and the grounds raised by the assessee are allowed.

15. In the result, the appeal by the assessee is allowed.

16. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 17/08/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/08/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai