

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI
BEFORE MS KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA No.495/Mum/2024
(Assessment Year: 2018-19)

Jagadeesan Mani P O Box No. 2606, Ruwi, Ruwi, Ruwi, Ruwi, 112, Oman	Vs.	ITO (Int. Tax)-Ward 3(2)(1) Room No. 1627, 16 th Floor, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. AONPM 3618 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Dinesh Kukreja/Punit Shah
Respondent by	:	Shri Anil Sant
Date of Hearing	:	06.06.2024
Date of Pronouncement	:	02.09.2024

ORDER

Per Kavitha Rajagopal, J M:

This is an appeal filed by the assessee, challenging the final assessment order dated 25.11.2024 passed u/s. 147 r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act' for short) in pursuance of the Hon'ble Dispute Resolution Panel ('Hon'ble DRP' for short) directions, pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has challenged the grounds of reopening and the addition made u/s. 69A of the Act towards unexplained investment/credit amounting to Rs.99,99,911.50/-.

3. Briefly stated the assessee is a non resident individual and has not filed his return of income for the year under consideration. Based on the information received through Directorate of Income Tax (System), the assessee's case was reopened as 'high risk non

filers' case under Risk Management System (RMS) in accordance with the risk management strategy formulated by the CBDT.

4. The Id. Assessing Officer ('A.O.' for short) issued a reassessment notice u/s. 148A of the Act dated 27.03.2022 for the reason that the assessee has entered into four transactions to the tune of Rs.1,42,03,454/- which includes purchase of immovable property, purchase and sale of equity shares and other financial transactions for which the assessee has not filed his return of income, declaring the source of the said transaction and the capital gain on equity shares, thereby the Id. A.O. reopened the assessee's case on the belief that the income has escaped assessment for the year under consideration. The Id. A.O. then passed the draft assessment order dated 28.03.2023 u/s. 144C(1) r.w.s. 147 r.w.s. 144 of the Act, determining the total income at Rs.1,41,89,550/- after making addition/disallowance on short term capital gain (STCG for short) and unexplained investment u/s. 69 of the Act on best judgment assessment for the reason that the assessee has been non compliant throughout the assessment proceeding. The assessee filed his objection to the proposed variation before the Hon'ble Dispute Resolution Panel ('Hon'ble DRP' for short) and the Hon'ble DRP vide order dated 29.12.2023 issued directions u/s. 144C(5) of the Act, rejecting the original draft assessment passed by the Id. A.O. for the reason that the Id. A.O. has reopened the assessee's case based on erroneous facts and premise which does not relate to the assessee. Pursuant to the direction of the Hon'ble DRP the Id. A.O. passed the final assessment order dated 25.01.2024, determining the total income at Rs.1,03,29,160/-, after making an addition of Rs.99,99,911/- as 'unexplained investment' u/s. 69A of the Act.

5. Aggrieved by the final assessment order, the assessee is in appeal before us, challenging the impugned assessment order.

6. The learned Authorised Representative (ld. AR for short) for the assessee contended that the Hon'ble DRP in its order has rightly mentioned that the reasons for reopening the assessee's case is based on erroneous facts which does not pertain to the assessee. The ld. AR further stated that the assessee has been denying the same throughout the assessment proceeding which did not pay heed to by the ld. A.O. The ld. AR further stated that the Hon'ble DRP has erred in rejecting the original draft assessment order passed by the ld. A.O. which was on irrelevant facts and in replacing the same by the directions of the panel, pursuant to which the ld. A.O. had passed the impugned assessment order. The ld. AR relied on the decision of Hon'ble High Court of Calcutta in the case of *Excel Commodity Derivative (P) Ltd. vs. Union of India* [2023] 150 taxmann.com 94 (Calcutta) which on identical facts has held the assessment order to be illegal and unsustainable in law. The ld. AR prayed for admission of additional evidence as per Rule 29 of the ITAT Rules, 1963 to explain the source of time deposit made by the assessee which addition has been sustained by the ld. A.O. The ld. AR vehemently opposed to the impugned addition made by the ld. A.O.

7. The learned Departmental Representative (ld. DR for short), on the other hand, contended that though the ld. A.O. had reopened the assessee's case on incorrect facts, addition was made only on the deposit made in the assessee's bank account which was unexplained by the assessee neither during the assessment proceeding nor before the Hon'ble DRP. The ld. DR opposed to the admission of additional evidence and without

prejudice has stated that if the additional evidence is admitted, the same is to be remanded back to the Hon'ble DRP for verification of the same. The Id. DR further relied on the decisions cited by the Hon'ble DRP and the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is necessary to admit the additional evidence filed by the assessee for proper adjudication of the issue after duly considering the justification rendered by the Id. AR on the reason for failure on the part of the assessee to furnish the same before the lower authorities. It is observed that the Id. A.O. has reopened the assessee's case for the reason that the assessee has entered into the following financial transaction during the impugned year:

<i>Information Code</i>	<i>Information Description</i>	<i>source</i>	<i>co u nt</i>	<i>Amount Description</i>	<i>Amount (Rs.)</i>
<i>TDS-195</i>	<i>TDS Statement – Payment made non residents (Section 195)</i>	<i>Axis Bank Ltd.</i>	<i>1</i>	<i>Amount paid or credited</i>	<i>13900</i>
<i>STT-02</i>	<i>Sale of equity share (settled by the actual delivery or transfer) in a recognized stock exchange</i>	<i>NSE</i>	<i>1</i>	<i>Value of taxable securities transactions (Code 02)</i>	<i>123710</i>
<i>STT-01</i>	<i>Purchase of equity shares in a recognized stock exchange</i>	<i>NSE</i>	<i>1</i>	<i>Value of taxable securities transactions (Code 01)</i>	<i>3065843</i>
<i>AIR-006</i>	<i>Purchased immovable property valued at Rs.3000000 or more</i>	<i>Jt. Sub Registrar Kurla 1</i>	<i>1</i>	<i>-</i>	<i>11000000</i>
		<i>Total</i>			<i>14203453</i>

9. The assessee vide his submission has stated that the assessee has not entered into any of the transaction mentioned above by the Id. A.O. This fact was also admitted by the Hon'ble DRP in its order after duly considering the contention of the assessee, but has proposed to make addition on a completely different ground, i.e., on the source of time

deposit with Federal Bank, amounting to Rs.99,99,911/- which the assessee claims it to be remittance from his own bank account held in Omen and from the closure proceeds of the existing FDs in Federal Bank. The assessee has also substantiated the said transaction by sufficient documentary evidences though the assessee was unable to file the same before the lower authorities. The assessee contended that the said transaction is not liable to be taxed in India and had duly explained the same during the assessment proceeding.

10. The moot question here is whether the draft assessment order passed by the Id. A.O. on irrelevant facts could be sustained pursuant to the rejection of the same by the Hon'ble DRP and also for the allegation made by the assessee that the same was passed mechanically and without application of mind. The Id. AR has relied on the decision of the Hon'ble High Court of Calcutta in the case of *Excel Commodity Derivative (P) Ltd.* (supra), wherein it was held that the term 'information' stated in *Explanation 1* of section 148 cannot be taken at ease for the purpose of reopening an assessment and the Revenue cannot be given an unbridled power to reopen the assessment based on such information. Further, it held that the Id. A.O. has lightly used the said information and had issued notice and further proceeded to make addition on a fresh ground after duly considering the assessee's submission. The relevant extract of the said decision is cited herein under for ease of reference:

5. Further, we take note of the Circular issued by the Central Board of Direct Taxes (CBDT) dated 22nd August, 2022 giving instruction to the departmental officers with regard to the uploading of data on functionality/portal of the Income-tax Department. This circular emphasises the earlier circular dated 1st August, 2022 and in paragraph 3 therein, it has been stated as follows:

"(3). Further, it is re-emphasized that -

- (i) Before initiating proceedings under section 148/147 of the Act, any information available on data-base/portal of the Income-tax Department shall be verified before drawing any adverse inference against the taxpayers. It is not out of place to mention here that the

information made available/data uploaded by the reporting entities may not be fully accurate due to inter alia, error of human nature technical nature, etc. Therefore, due verification may be carried out and opportunity of being heard be given to the taxpayer before initiating proceedings under section 148/147 of the Act.

(ii) *The supervisory authorities are hereby advised to keep an effective supervision so as to ensure that all extant Instructions/Guidelines/Circulars/SOPs are duly followed by the Assessing Officers in their charge."*

6. From the above it is clear that it has come to the notice of CBDT that in several cases information made available/data uploaded by the reporting entries are not fully accurate due to error of human nature, technical nature etc. Therefore, the department was advised to effect due verification and opportunity of being heard given to the tax payers before initiating proceedings under section 148/147 of the Act. Thus, in the preceding paragraph we have pointed out the factual position in the case on hand and it appears that proper verification was not done on the information which was available with the assessing officer at the time of issuance of notice under section 148A(b) of the Act which has led to an erroneous order dated 7th April, 2022 being passed.

7. *In Divya Capital One (P.) Ltd. v. Asstt. CIT [2022] 139 taxmann.com 461/445 ITR 436 (Delhi), the Court had considered the new re-assessment claim and held as follows:*

"7. This Court is of the view that the new re-assessment scheme (vide amended sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19 before any exercise of jurisdiction to initiate re-assessment proceedings under section 148 of the Act.

8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to section 148 cannot be lightly resorted to so as to reopen assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under section 148 post an order under section 148A(d)."

8. *As pointed out in the aforesaid mentioned decision, the term "information" in Explanation-1 under section 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim. The assessing officer has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. Therefore, on that score also the order dated 7th April, 2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue.*

9. *For the above reasons, the appeal filed by the assessee (APOT/132/2022) is allowed and the order dated 7th April, 2022 under section 148A of the Act is set aside and the direction issued by the learned Single Bench remanding the matter to the assessing officer is also set aside. Consequently, no further action can be taken by the department against the appellant/assessee on the subject issue.*

11. From the above, it is evident that the assessee's case would squarely be covered by the said decision where the Hon'ble High Court has held that in such situation there is no necessity to remand the matter back to the Id. A.O. by holding that the said order is illegal and wholly unsustainable. The Id. AR has also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of *Akshar Builders & Developers vs. Asst. CIT* [2019] 411 ITR 602 (Bom), wherein it was held that the Id. A.O. cannot reopen the assessment mechanically based on erroneous information received by him. Further, it was held that there was complete non application of mind on the part of the Id. A.O. This proposition was further supported by the decision of the Hon'ble Jurisdictional High Court in the case of *Paranjape Schemes (Construction) Ltd. vs. DCIT* [2024] 160 taxmann.com 730 (Bom).

12. From the above observation, it is evident that the action of the Id. A.O. in reassessing a case on erroneous facts and on non application of mind has been reprimanded by various decisions of the Hon'ble High Courts and Hon'ble Apex Court. This fallacy which occurred while reopening the assessment in the present case cannot be rectified by the subsequent action of the Hon'ble DRP in rejecting the draft assessment order and in proposing a fresh addition. For the foregoing reasons, we hold that the impugned draft assessment order and the consequential final assessment order are held to be invalid and are hereby quashed.

13. As we have already held the assessment order to be invalid, the grounds on the merits require no adjudication.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 02.09.2024.

Sd/-

(Renu Jauhri)
Accountant Member

Mumbai; Dated : 02.09.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai