

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A.No. 2042/Del/2017	
	AY: 2006-07	
M/S VEER VARDHMAN FINANCE INVESTMENT PVT. LTD., 47/21, OLD RAJINDER NAGAR, NEW DELHI - 110 060 (PAN: AAACV3894N)	VS.	DCIT, CIRCLE-17(1), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Salil Aggarwal, Adv. &
Sh. Madhur Aggarwal, Adv.
Department by : Ms. Ashna Paul, Sr. DR

ORDER

This appeal by the Assessee is directed against the Order dated 30.1.2017 of the Ld. CIT(A)-9, New Delhi pertaining to assessment year 2006-07 on the following grounds:-

1. *"That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an order of assessment under section 143(3)/147 of the Act at an income of*

Rs. 9,59,516/- as against returned income of Rs. 4,43,410/-.

2 That the Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the initiation proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has otherwise also failed to appreciate that, there was no material on record on the basis of which it could be held that, there was "reason to believe" that income of the appellant company had escaped assessment and, in view thereof the proceedings initiated are illegal, untenable and, therefore unsustainable.

2.2 That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in initiating proceedings u/s 147 of the Act on the basis of

information received from OIT (investigation) mechanically and without independent application of mind. In doing so, he overlooked the fact that, there was no basis to allege or assume that Assessee Company received accommodation entries and as such notice issue u/s 148 of the Act is entirely misconceived, misplaced and, unsustainable.

2.3 That the learned Commissioner of Income Tax (Appeals) ignored the fact that the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceeding initiated under section 148 was a mere pretence.

3 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining an addition of Rs. 4,98,750/- comprising of amount received from M/s MITSU Securities Management Pvt. Ltd., as share application money

and held to be unexplained cash credit u/s 68 of the Act.

3.1 That in doing so, the learned CIT (A) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered by the assessee - appellant with regards to the said transaction and both learned AO and CIT (A) have based their decision on suspicion and surmises without conducting any enquiry of their own or rebutting the documents so tendered by assessee :- appellant, even no opportunity to cross - examine the alleged entry operator was provided to the assessee - appellant and as such, the addition needs to be deleted.

4 That the learned Commissioner of Income Tax (Appeals) further grossly erred in law and on facts in sustaining an addition of Rs. 17,456/- on account of commission paid, which addition is merely based on conjectures, surmises and suspicion.”

2. The brief facts of the case are that information has been received from the office of the DDIT(Inv.), Unit-VI(2), E-2, 2nd floor, ARA Centre, Jhandewalan Extn., New Delhi that the assessee is a beneficiary of accommodation entries received from Sh. SK Gupta worked as an entry operator and provided accommodation entries to various beneficiaries through a large number of shell companies managed by him. Cash was received and deposited in the bank account of these shell companies and through various conduits transferred to the bank accounts of the ultimate beneficiaries. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operator amounting to Rs. 4,98,750/-. AO observed that assessee has received unexplained sums from the entry operator and the identity, creditworthiness and genuineness of transactions with the person found to be entry operator cannot be established and it is clear that the assessee has introduced his own undisclosed income in the garb of share application money / gifts/ unsecured loans/ unaccounted purchases and sales through M/s MITSU. Hence, the AO observed that the assessee has deliberately furnished wrong facts at the time of filing of return. Accordingly, notice u/s. 148 of the Act within the meaning of section 147 of the Act was issued on 30.3.2013 in compliance thereto the assessee company filed written reply on 01.05.2013 stating therein that *“we are in receipt of notice u/s. 148 of the Income Tax Act, 1961 received on 3.4.2013.*

This is to bring to your kind notice that the assessment has been reopened after the expiry of 6th year. As the notice was issued and dispatched on 1.4.2013 at 6.40 PM. Copy of the speed post tract result of acknowledgement no. ED8804605351N is enclosed herewith. As the notice has been issued after the expiry of time limit prescribed in section 149 of the Income Tax Act, 1961, the issue of notice is time barred.” AO held that this contention of the assessee is not acceptable because the notice was dispatched on 30.3.2013 which was served. Accordingly, notice u/s. 143(2) and 142(1) on 23.7.2013 issued and served upon the assessee. During the assessment proceedings the assessee has not filed any return in response to the notice u/s. 148 despite several opportunity, therefore, the original return filed by the assessee was treated and in response the A.R. of the assessee attended the proceedings and has filed the submissions from time to time and vide letter dated 10.3.2014 has submitted as under:-

“This matter was examined by the Ld. ITO, 17(2), New Delhi. You are requested to kindly drop the proceeding as there is no fresh material available with the department which suggest that the assessee has concealed any income or furnished inaccurate particulars of income. I cannot attend today’s proceeding on account of illness. You are requested

*to kindly adjourn the said proceeding for some other date
convenience to your good self.”*

Thereafter the AO observed that the objection of the assessee is duly considered. However, the same is not acceptable. AO further observed that since no formal objections have been furnished by it challenging the reopening proceedings and by relying upon various case laws mentioned in the assessment order, he held that the objection of the assessee that the proceedings may be dropped are not accepted. In the assessment order, the AO observed that the assessee has failed to discharge its onus of proving the identity and creditworthiness of concerned party, and genuineness of transactions in terms of provisions of section 68 of the Act. The amount of Rs. 4,98,750/- received from the above entry operator represents the credit entry whose nature and source could not be satisfactorily proved by the assessee and hence, it is covered within the mischief of Section 68 of the I.T. Act and made the additions and assessed the income of the assessee at Rs. 9,59,516/- u/s. 143(3)/147 of the I.T. Act, 1961 vide order dated 27.3.2014.

3. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.1.2017 has dismissed the appeal of the assessee on the legal ground and on other ground on merits as well. Aggrieved with the impugned order, the assessee is in appeal before the Tribunal.

4. During the hearing, learned counsel of assessee Sh. Salil Aggarwal, Advocate, appeared and argued that non disposal of objections through a separate speaking order is an illegality in law and is against the mandate of judgment of Hon'ble Apex Court in the case of GKN Driveshafts vs ITO reported in 259 ITR 19 and for the aforesaid proposition he sought reliance on following decisions of the Tribunal by which the issue in dispute is squarely covered.

i) ITO vs M/S M.L. Creations (ITAT Delhi) in ITA No. 4009/Del/2016 (AY 2009-10)

ii) Shyamal Mukherjee vs ITO (ITAT, Delhi) in ITA No. 4141/Del/2016);
and

iii) Khusro Irshad vs. ITO (ITAT, Delhi) in ITA No. 2115/Del/2016 (AY 20078-08)

5. On the contrary, the learned Sr. DR, Ms. Ashna Paul, objected to the above argument of assessee's counsel and relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records especially the orders of the authorities below. I find that assessee has specifically challenged the proceedings so initiated under section 147 of the Act and more so, the non

disposal of objections by the AO through a separate speaking order. Since the said ground is a legal in nature, therefore, the same should be decided first.

6.1 That after going through the paper book filed by assessee and assessment order passed by AO, it is apparent that assessee filed objections to reopening of assessment vide reply 10.3.2014 (at page 31 of paper book filed by assessee) and admittedly AO has not passed any speaking order against the said objections so filed by assessee, which is a mandatory requirement as has been held by Hon'ble Apex Court in the case of M/s GKN Driveshafts (India) Ltd vs ITO reported in 259 ITR 19. I further find that the said legal issue in dispute is no more res integra, as the ITAT, SMC-3, New Delhi in the case of ITO vs M/s M.L. Creations has quashed the reopening of assessee on account of non disposal of objections by AO and in the process the ITAT has considered all the judgments so cited by the learned counsel of assessee. The relevant findings recorded by ITAT in the aforesaid case is as under:

"6.1 On going through the aforesaid finding of the Ld. CIT(A) on the legal issue. I find that Ld. CIT(A) by respectfully following the judgment of the Hon'ble Supreme Court i.e. in the case of GKN Driveshafts India Ltd. 259 ITR 19 (SC) and further following the decision of the Hon'ble Gujarat High Court in the case of Arvind Mills Ltd. vs. ACWT (2004) 270 ITR 469 (Guj.) and has rightly observed that AO has not passed the speaking order in disposing of the assessee's objections against the notice u/s. 148 of the I. T. Act, before proceeding with the assessment, hence, he held that the subsequent assessment order is bad in law and deserving of being quashed....."

6.2 On going through the aforesaid decisions, I am of the considered view that the legal issue in dispute is squarely covered by the aforesaid decisions/judgments, hence, respectfully following the judgments of Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd reported in 259 ITR 19; ITAT Delhi decision in the case of ITO vs M/s M.L. Creations (ITAT Delhi) in ITA No. 4009/Del/2016 and ITAT, Delhi decision in ITA No. 2115/Del/2016 (AY 2007-08) in the case of Sh. Khusro Irshad vs. ITO, I quash the assessment order dated 27.3.2014 passed by AO on account of non disposal of objection under section 147 of the Act. Since I have already quashed the assessment order, as aforesaid, hence, it is not necessary to adjudicate upon the grounds on merits.

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

Order pronounced on 27/11/2017.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 27/11/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches