

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "F" NEW DELHI

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT
AND SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA Nos.: 5936,5937/Del/2012
Assessment Years : - 2005-06, 2006-07

M/s. PCI Ltd. vs. ACIT
19, Rajendra Park Circle 14 (1)
New Delhi -110 060 New Delhi.
(PAN AAACP1565E)

(Appellant)

(Respondent)

Appellant by : Shri Satish Aggarwal, CA
Respondent by : Shri Vikram Sahay, Sr. DR

Date of Hearing :1.4.2015
Date of pronouncement :5.5.2015

ORDER

PER G.C. GUPTA, VICE PRESIDENT

These two appeals by the assessee for the assessment years 2005-06 and 2006-07 are directed against the order of CIT(A). Since identical issue is involved in both these appeals preferred by the assessee, these are being disposed of by a consolidated order.

2. The grounds of appeal of the assessee for the assessment year 2005-06 are as under :-

1. *"That the order of the Learned Commissioner of Income Tax (Appeals) is arbitrary, biased and bad in law and facts of the case.*

2. *That the Learned Commissioner of Income Tax (A) has grossly erred in confirming the action of the assessing officer in assuming jurisdiction u/s 147/148 of the Act, and in passing an order u/s 143(3)/147 which is void, ab-initio.*
3. *That the Learned Commissioner of Income Tax (A) has grossly erred in holding the mechanical reopening of the assessment by the assessing officer as proper without having belief that the income had escaped assessment as the information received from the Investigation Wing of the department was mechanically reproduced in reasons for reopening the assessment.*
4. *That the Learned Commissioner of Income Tax (A) has grossly erred in confirming the action of the assessing officer in reopening the assessment u/s 147/148 ignoring that in the reasons given for reopening the name of three parties was mentioned with whom the appellant had alleged dealings whereas, the appellant did not have any dealings with two of the parties mentioned in the reasons for reopening the assessment namely M/s Esquire Printers and M/s Hi-tech Computech Ltd.*
5. *Without prejudice to Ground no. 2, 3 and 4 above, the CIT(A) has grossly erred in confirming the addition of Rs. 3 lakhs of expenditure incurred by the appellant and paid to M/s Globtex Tech India Ltd by holding it to be unexplained expenditure.*
6. *That the CIT(A) has grossly erred in ignoring the fact while confirming the addition that the appellant had discharged its onus for claiming the above expenditure.*
7. *Conversely, the Learned Commissioner of Income Tax (A) has grossly erred in holding that the revenue has discharged its onus to prove the amount of Rs. 3 lakhs spent as business expense by the appellant and paid to M/s Globtex Tech India Ltd as an accommodation entry without the revenue bringing on record any evidence or material to disallow the expenditure. “*

3. The grounds of appeal of the assessee for the assessment year 2006-07 are as under :

- 1) *“ That the order of the Learned Commissioner of Income Tax(Appeals) is arbitrary, biased and bad in law and facts of the case.*
- 2) *That the Learned Commissioner of Income Tax (A) has grossly erred in confirming the action of the assessing officer in assuming jurisdiction U/S 147/148 of the Act, and in passing an order U/S 143(3)/147 which is void, ab-initio.*
- 3) *That the Learned Commissioner of Income Tax (A) has grossly erred in holding the mechanical reopening of the assessment by the assessing officer as proper without having belief that the income had escaped assessment as the information received from the Investigation Wing of the department was mechanically reproduced in reasons for reopening the assessment.*

- 4) *Without prejudice to Ground no. 2 and 3 above, the CIT(A) has grossly erred in confirming the addition of Rs. 6 lakhs of expenditure incurred by the appellant and paid to M/s BT Technet Ltd. by holding it to be unexplained expenditure.*
- 5) *That the CIT(A) has grossly erred in ignoring the fact while confirming the addition that the appellant had discharged its' onus for claiming the above expenditure.*
- 6) *Conversely, the Learned Commissioner of Income Tax (A) has grossly erred in holding that the revenue has discharged its onus to prove the amount of Rs. 6 lakhs spent as business expense by the appellant and paid to M/s BT Technet Ltd. as an accommodation entry without the revenue bringing on record any evidence or material to disallow the expenditure.*
- 7) *That the appellant craves leave to add, alter, amend or delete the above grounds of appeal at the time of hearing. “*

4. The Ld. Counsel for the assessee submitted that the main issue in these two appeals is regarding validity of the action of the AO in assuming of jurisdiction u/s 147/48 of the Act. He submitted that the reopening in this case was void ab-initio as there was no information received by the AO that the income of the assessee has escaped assessment. He referred to the direction of the Ld. CIT(A) u/s 250(4) of the Act dated 27.2.2012 to the AO directing him to verify the sworn statements of Shri S.K. Gupta, the so-called entry provider, and intimate whether there is any reference to the transactions with M/s. PCI Ltd.(the appellant). The CIT(A) has categorically mentioned in this direction dated 27.2.2012 that he was unable to find any reference to the transaction with M/s. PCI Ltd. in the copy of the sworn statement of Shri S.K. Gupta supplied to his office. The Ld. Counsel for the assessee submitted that the AO in his remand report dated 4.7.2012 with reference to the direction of the CIT(A) u/s 250 (4) dated 27.2.2012 submitted in para 3.2 thereof that the copy of statement of Shri S.K. Gupta as reported by investigation wing and forwarded to CIT(A) was presently not available in his office record. He made a general observation that Shri S.K. Gupta has floated a number of papers concerns / entities and each concern gave huge number of accommodation entries

of different natures to number of interested persons. The Ld. Counsel for the assessee submitted that it is clear from the reading of the remand report submitted by the AO in response to the direction by the CIT(A) that there is no material whatsoever to connect the assessee company with the statements of Shri S.K. Gupta and in fact Shri S.K. Gupta has never stated that it has provided accommodation entries to the appellant M/s. PCI Ltd. . In these facts the Ld. Counsel for the assessee submitted that the action of the AO in reopening the assessment u/s 147 is bad in law. He submitted that the assessee did not have any dealing with two of the parties mentioned in the reasons recorded for reopening the assessment namely M/s. Esquire Printers & Stationers and M/s. Hitech Computech Ltd..

5. The Ld. DR has opposed the submissions of the Ld. Counsel for the assessee. He referred to para 2 of the assessment order wherein it is recorded that it was pointed out by the investigation wing that Shri S.K. Gupta was having paper entities and indulging in giving bogus beneficiary, who had taken accommodation entries from few companies managed by Shri S.K. Gupta. He submitted that there was a specific information with the Directorate of Investigation, New Delhi and a search and seizure operation was carried out against Shri S.K. Gupta group of cases. He submitted that it was pointed out by the investigation wing that all such companies were paper entities and these companies have no supportive infrastructure whatsoever to render service so disclosed in the business. He referred the relevant portion of the order of the CIT(A) in support of the case of the revenue and relied on the order of the AO and CIT(A).

6. We have considered the rival submissions carefully and perused the order of the AO and the CIT(A). In this case of the assessee original assessment was framed in scrutiny assessment u/s 143(3) of the Act. Thereafter the completed assessment was sought to be reopened by the AO by issuance of the notice u/s 148 on the assessee on basis of reopening of the two assessments of the assessee by way of reasons recorded by the AO that information was received from investigation wing of the department as a result of search and seizure operation carried out against one Shri S.K. Gupta group of cases that he has floated paper entities and these companies have no supportive infrastructure whatsoever to render services so disclosed in the business. We find that even if the reasons recorded by the AO that Shri S.K. Gupta has floated paper entities in the form of companies to provide accommodation entries to various persons is taken as correct, the same could not be made the basis for reopening the assessments of the appellant company before us till the revenue has some material brought on record to connect the act of providing accommodation entries by the said Shri S.K. Gupta group of companies with the appellant company. In the case before us the department has failed to provide any material to connect the assessee company with the so called paper entities floated by Shri S.K. Gupta. We find that CIT(A) vide his direction u/s 250(4) of the Act dated 27.2.2012 addressed to the AO has specifically mentioned that he was unable to find any reference of the transaction with the appellant company M/s. PCI Limited in the copy of sworn statement of Shri S.K. Gupta supplied to the office of the CIT(A). The AO was requested in the direction dated 27.2.2012 to verify the duly sworn statement and intimate whether any reference to the transactions with M/s PCI Limited in these sworn statements of Shri S.K. Gupta was there. The CIT(A) in para

2 of the direction dated 27.2.2012 recorded that it appears that no enquires were conducted in the address of both M/s Globex Tech India Ltd. and M/s. BT Tech Net Ltd.(group companies of Shri S.K. Gupta). The CIT(A) has further directed to depute the inspector to carry out necessary enquires etc. and the assessee may be asked to furnish copies of the bank account, details of the persons who have verified these payments etc. The AO has filed a detailed remand report dated 4.7.2012 admitting that the action u/s 147 of the Act was taken in the assessee's case on the basis of information received from the investigation wing. The AO further submitted in the remand report that the copy of statement of Shri S.K. Gupta as recorded in the investigation wing and forwarded to CIT(A)'s office is presently not available in this office record. He further submitted that Shri S.K. Gupta has floated a number of paper concerns/entities and each concern gave huge number of accommodation entries of different natures to number of interested persons. He further recorded in his remand report the total of such entries / recipients parties was running into thousands and therefore it was certainly not possible for Shri S.K. Gupta to name each such recipients / transactions in his statement.

7. We find that the CIT(A) has categorically recorded in his direction u/s 250 (4) dated 27.2.2012 that he was unable to find any reference to the transaction with M/s. PCI Ltd. (the appellant) in the copy of the sworn statement supplied to this office. This finding of the CIT(A) recorded in his direction u/s 250(4) dated 27.2.2012 could not be controverted by the revenue. The AO in his remand report dated 4.7.2012 has admitted that the statement of Shri S.K. Gupta as recorded by the investigation wing was presently not available in his office record. In these facts of the case we are unable to uphold the action of the AO in reopening the

assessment by issuance of notice u/s 148 as the department has failed to connect the name of the appellant before us with the statements of the so-called entry provider Shri S.K. Gupta . According to the AO the statements of Shri S.K. Gupta as recorded by the investigation wing of the department were not available in his office. The CIT(A) has already held that he was unable to find any reference to the transaction with the appellant company M/s. PCI Ltd. in the copy of the sworn statements of Shri S.K. Gupta supplied to his office. Accordingly the reasons recorded by the AO for reopening the assessment u/s 148 were based on no material and are clearly unsustainable. In this view of the matter we hold that there was no valid reason with the AO to reopen the assessment for the relevant assessment years and accordingly the jurisdiction u/s 147 / 148 of the Act was wrongly assumed by the AO and the reopening is held void and the reassessment framed for both the relevant assessment years are cancelled and the grounds of appeal of the assessee relating to the legal issue of reopening of assessment for both the assessment years are allowed. In view of our decision holding that reopening of assessment in both the assessment years was void , we are not adjudicating the other grounds of appeal on merits of the additions made by the AO.

8. In the result both the appeals of the assessee are allowed.

Order pronounced in the open court on 5th May, 2015.

sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

sd/-
(G.C. GUPTA)
VICE PRESIDENT

Dated: the 5th May, 2015

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Copy of the Order forwarded to:

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

By order
Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	1.4.2015
2.	Draft placed before the Dictating Member	6.4.2015
3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	