

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5570/Del/2011
Assessment Year: 2002-03

DCIT, Central Circle-23, Room no. 359, E-2, ARA Centre, Jhandewalan Extn., New Delhi	Vs.	M/s. Erawat Infotech Pvt. Ltd., B-44, Second Floor, Jangpura -B, New Delhi
PAN :AAACE8941P		
(Appellant)		(Respondent)

Appellant by	Ms. Ashima Neb, Sr.DR
Respondent by	None

Date of hearing	11.09.2018
Date of pronouncement	24.10.2018

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 06/09/2011 passed by the Ld. Commissioner of Income-tax (Appeals)-XIII, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2002-03, raising following grounds:

- 1. On the facts and in the circumstances of the case. The CIT(A) has erred in law and on facts in holding that proceeding u/s 148 of the Income Tax Act, 1961 were invalidly initiated by the Assessing Officer.*
- 2. On the facts and in the circumstanced of the case. The CIT(A) has erred in law and on facts in quashing the assessment on purely technical grounds especially when the CIT(A) himself has held that the AO was justified in making addition of*

Rs.91.25 lakhs as the assessee had failed to discharge its onus u/s 68 of the Income Tax Act, 1961.

3. *The order of CIT(A) is erroneous and is not tenable on facts and in law.*
4. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

2. At the outset, we may like to mention that despite notifying, neither anyone was present in hearing on behalf of the assessee nor any application for adjournment was filed on behalf of the assessee. We may also like to mention that this case has been listed for hearing since 2012, but on last several occasions i.e. 15.12.2015; 27.07.2016; 19.10.2016; 16.01.2017; 03.04.2017; 06.06.2017; 22.08.2017; 18.01.2018; 02.04.2018, no one was present in hearings on behalf of the assessee despite notifying, thus, the case is heard *ex parte* qua the assessee.

3. Briefly stated facts of the case are that original return of income declaring nil income was filed on 15/09/2003. The return of income was processed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, on receipt of information from the Investigation Wing of the Income Tax Department that the assessee received accommodation entries in the form of share application money, the Assessing Officer initiated proceedings under section 147 of the Act for reopening of the assessment, by way of issue notice under section 148 of the Act on 25/05/2007. In response, the assessee filed return of income. The assessee was provided reasons recorded. In the reasons recorded, it was mentioned that certain investigations were carried out by the Investigation Wing of the Department, wherein it was found that amount of Rs.91,51,200/- entered in

the books of the accounts of the assessee by way of share application money received from following parties, was actually in the nature of accommodation entries taken from entry operators:

a. Aggregate Finance and Investment P. Ltd.	Rs.50,00,000/-
b. Garner Finance and Securities P. Ltd.	Rs.26,25,000/-
c. Viniyas Finance and Investment P. Ltd.	Rs.15,00,000/-
Total	Rs.91,25,000/-

3.1 During assessment proceedings, in support of genuineness of the share application money, the assessee filed confirmation letters, bank statement, copy of the Income Tax Return, copy of certificate of incorporation alongwith Memorandum of Articles etc. The Assessing Officer issued summon under section 131 of the Act to the above 3 parties at their addresses as disclosed by the assessee, however, the notice were received back with the remark that '*the concerned do not exist at the given address*'. The fact of return of summon issued under section 131 of the Act was brought to the knowledge of the assessee and the assessee was requested to produce the said parties, however, the assessee expressed its inability. In view of the facts and circumstances, the Assessing Officer made addition of Rs.91,25,000 under section 68 of the Act as unexplained cash credit.

3.2 Aggrieved, the assessee challenged the finding of the Assessing Officer before the Ld. CIT(A) on legal grounds as well as merit of the addition. Though on the merit of the addition, the Ld. CIT(A) upheld the finding of the Assessing Officer, however, on the legal ground, the Ld. CIT(A) after discussing various decision cited by the assessee, observed that Assessing Officer has borrowed satisfaction and not made any independent enquiries in regard to

the information received and thus reopening has been made without application of the mind. Accordingly, the proceedings under section 147 of the Act were held as not validly initiated by the Assessing Officer.

3.3 Aggrieved with the finding of the Ld. CIT(A) on the validity of the reassessment proceeding under section 147 of the Act, the Revenue in appeal before the Tribunal.

4. All the grounds raised by the Revenue are in relation to challenge of reopening proceedings held as invalid by the Ld. CIT(A) .

5. The Ld. DR submitted that the Ld. CIT(A) has decided the issue of the validity of the reassessment ignoring the fact that the Assessing Officer prima facie gone through the information is received from the Investigation Wing and thereafter recorded detailed reasons to believe that the income escaped the assessment. According to him, the information received was from a credible source gathered after carrying out enquiries, it was in the nature of a fresh information and could not be termed as vague. He further submitted that there is no requirement in law to make preliminary investigation by the Assessing Officer prior to reopening of the assessment under section 147 of the Act. He also submitted that the Ld. CIT(A) has relied on the decision of the Hon'ble Delhi High Court in the case of CIT versus Atul Jain & Vinita Jain 299 ITR 383 (Delhi) wherein it is held that a reopening without verifying correctness of the information received was illegal. But according to him, the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd versus ITO and Others has held that at the stage of initiation of reassessment proceeding, the sufficiency or correctness of the material is not to be seen. He

relied on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs Paramount Communication Private Limited (2017) 392 ITR 444 (Delhi) wherein the information received from the DRI regarding bogus purchases was held to be a tangible material outside the record to initiate valid reassessment proceedings. He submitted that the SLP filed by the assessee against the above decision was also dismissed by the Hon'ble Supreme Court as reported in Paramount Communication Private Limited Vs PCIT 2017-TIOL-253-SC-IT. The Ld. Sr. DR also relied on the decision of the Hon'ble Gujarat High Court in the case of Ankit Financial Services Ltd. versus DCIT (2017) 78 taxmann.com 58 (Gujarat). In view of the above arguments, the Ld. Sr. DR submitted that the reassessment proceeding have been validly initiated by the Assessing Officer.

6. We have heard the submission of the Ld. DR and perused the order of the lower authorities. In the instant case, the reasons recorded for the belief that income had escaped assessment are available on page 5 of the paper book of the assessee, which are reproduced as under:

“Certain investigations were carried out by the Directorate of Investigation, Unit-V, Jhandewalan, New Delhi, in respect of the bogus/accommodation entries provided by certain individuals/companies. I have examined the report and the data of such beneficiaries as compiled by the Directorate of Investigation. The name of the assessee figures as one of the beneficiaries as well as entry giver of these alleged bogus transactions given by the Directorate after making the necessary enquiries. It has been revealed that the entries amounting to Rs 91,51,200/- had been received by it from other entry givers. Details of these transactions are as per ANNEXURE enclosed in the preceding year as well the assessments of the company had been re-opened and the amount received as beneficiary had been brought to tax.

The report of the Directorate of Investigation reveals that there is a systematic plan in which the cash is given to the entry provider -

who deposits the same in his own account or that of his friends, relatives/persons hired by him - and in turn issues the cheque of equal amount. It is a notorious practice in which the unaccounted money of the beneficiary is received in the form of share application money/share capital/ unsecured loans etc. The unaccounted money is given to the entry operator who in turn issues the cheque to the beneficiary. The transactions reported above, constitutes fresh evidence/information in respect of the assessee as a beneficiary of bogus accommodation entries and constitutes the unexplained income of the assessee.

On the basis of this new information, I have reason to believe that the unexplained income represented by the amount received as beneficiary has escaped assessment as defined by section 147 of the I T Act, 1961 Therefore, it is a fit case for the issuance of notice u/s 148 of the I T Act, 1961.”

7. The Annexure referred in the above reasons recorded has been reproduced in the assessment order. For ready reference, same is reproduced here:

BENEFICIARY'S NAME	VALUE OF ENTRY TAKEN	INSTRUMENT NO. BY WHICH ENTRY TAKEN	DATE ON WHICH ENTRY TAKEN	NAME OF ACCOUNT HOLDER OF ENTRY GIVING ACCOUNT	BANK FROM WHICH ENTRY GIVEN	BRANCH OF ENTRY GIVING BANK	A/C NO ENTRY GIVIN ACCOL
ERAWAT INFOTLCH PVT LTD	1001000		7-Dec-01	AGCRF.GATF. FINANCE & INVLS	RATNAKAR	KAROL BAG II	52
ERAWAT INFOTLCH PVT LTD	1001000	2851	8-Dec-01	AGGREGATE FINANCE & INVLS	RATNAKAR	KAROL BAGH	52
ERAWAT INFOTLCH PVT LTD	1001000	2852	10-Dec-01	AGGREGATE FINANCE & INVLS	RATNAKAR	KAROL BAGH	52
ERAWAT INFOTLCH PVT LTD	1001000	2853	11-Dec-01	AGGREGATE FINANCE & INVES	RAINAKAR	KAROL BAGH	52
LERAWAT INFOTLCH PVT LTD	1001000	2855	12-Dec-01	AGGREGATE FINANCE & INVES	RATNAKAR	KAROL BAGH	52
ERAWAT INFOTECH PVT LTD	1001000	502873	29-Oct-01	DINANATH LAHURIWALA	OBC	MIN TO ROAD	19
ERAWAT INFOTECH PVT LTD	1001000	502873	29-Oct-01	DINANATH LAHURIWALA	one	MINTO ROAD	19
ERAWAT INFOTLCH PVT LTD	500500	3002	14-Dec-01	GARNER FINANCE & SECURITE	RAINAKAR	KAROL BAGH	65
ERAW A 1 INFOTLCH PVT LTD	500500	3002	14-Dec-01	GARNER FINANCE & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	125125	3003	15-Dec-01	GARNER FINANCE & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	125125	3003	15-Dec-01	GARNER FINANCE & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	500500	3010	19-Dec-01	GARNER FINANCE & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	500500	3010	19-Dec-01	GARNER FINANCE & SECURITE	RATNAKAR	KAROL BAGH	65

ERAWAT INFOTLCH PVT LTD	1501500	3012	7-Jan-02	GARNER FINANCE: & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	1501500	3012	7-Jan-02	GARNER FINANCE: & SECURITE	RATNAKAR	KAROL BAGH	65
ERAWAT INFOTLCH PVT LTD	500500	1207	29-Nov-01	VINIYAS FINANCE & INVI S EMI NE	RATNAKAR	KAROL BAGH	30
ERAWAT INFOTLCH-PVT LTD	500500	1207	29-Nov-01	VINIYAS FINANCE: & INVESTMENT	RATNAKAR	KAROL BAGH	30
ERAWAT INFOTLCH PVT I II)	1001000	1211	29-Nov-OI	VINIYAS FINANCE: & INVESTMENT	RATNAKAR	KAROI BAGII	30
ERAWAT INFOTLCH PVT LTD	1001000	1211	29-Nov-OI	VINIYAS FINANCE & INVESTMENT	RATNAKAR	KAROL BAGII	30

8. We find that in the instant case, the return of income filed by the assessee in the regular course was only processed under section 143 (1) of the Act, wherein prima-facie arithmetical error in computation of income are only checked. No detailed scrutiny of the return of income filed was carried out prior to issue notice under section 148 of the Act and thus the Ld. CIT(A) rejected the plea of the assessee of reopening of the assessment on mere change of opinion in para 9.2 of the impugned order as under:

“9.2 In so far as the plea of mere change of opinion is concerned it is held that this argument of Ld. Counsel is totally misplaced as the original proceedings culminated u/s 143(1) and not u/s 143(3). Undersection 143(1) there is no occasion for the AO to examine any issue and when issues cannot be examined where is the question of forming an opinion with relation to any matter indicated in the return? As the return was not examined under Section 143(3) before issuing the notice u/s 147 it cannot be said that the AO formed any opinion with regard to the disclosure of the share application money as shown in the return. The rulings relied upon by the Ld. Counsel do not pertain to a return merely processed u/s 143(1) hence are distinguished on facts.”

9. Since the Ld. CIT(A) has already rejected the contention of the assessee and the assessee is not in appeal before us on this

issue, we are not commenting on above finding of the Ld. CIT(A) on the issue of validity of reopening of the assessment.

10. Further, on the claim of the assessee that the Assessing Officer reopened the assessment merely on borrowed satisfaction and without conducting any independent enquiries to arrive at own satisfaction, the Ld. CIT(A) relied upon on the decisions cited by the authorised representative of the assessee as under:

“9.3 With regard to the claim of AO having borrowed the satisfaction of the Investigation Wing and not having conducted any independent enquiries to arrive at own satisfaction for valid initiation of proceedings u/s 147, it is held that the case of the appellant is squarely covered by the decisions of the Hon’ble Jurisdictional High Court in the case of M/s. Commissioner of Income V/s SFIL Stock Broking Ltd., 325 ITR 285 (Delhi), CIT Vs. Atul Jain and Vinita Jain, 299 ITR 383 (Delhi) & Sarthak Securities Co. P. Ltd. V/s Income Tax Officer, 329 ITR 110 (Delhi) the gist of which have been provided in paras 5.6, 5.7 & 5.8 (supra).”

11. In the case of CIT Vs SFIL Stock Broking Ltd(supra) relied upon by the Ld. CIT(A), the reassessment was held invalid due to non-application of mind by the Assessing Officer as the assessment was reopened on the direction of the Additional Commissioner of Income-tax. In the present case before us, there is no such allegation and hence ratio of the said decision cannot be applied over the instant case.

12. In the case of CIT Vs Atul Jain & Vinita Jain (supra) relied upon by the Ld. CIT(A), the reopening was held illegal on the ground that case was reopened without verifying the correctness of the information received but merely accepted the truth of vague information in the mechanical manner. In this regard, the Ld. DR has relied on the decision of the Hon’ble Supreme Court in the

case of Raymond Woollen Mills Ltd (supra), wherein the Hon'ble Supreme Court has held that sufficiency or correctness of the material is not a thing to be considered at the stage of reopening of the assessment. Thus, in view of the decision of the Hon'ble Supreme Court in the case of Raymond Woollen Mills Limited (supra), the ratio of the decision in the case of Atul Jain & Vinita Jain (supra) cannot be applied over the facts of the instant case.

13. In the case of Sarthak Security Co. P. Ltd (supra) relied upon by the Ld. CIT(A), a reopening was held illegal as there was no new information before the Assessing Officer, but in the instant case the reopening has been made on the basis of the information from the DIT (Investigation) that specific money shown in books of account as received from share application money, was actually accommodation entry only. We note that the information of accommodation entry was unearthed by the enquiries carried out by the DIT Investigation and, thus, it is in the nature of new information. Accordingly, the ratio of the decision in the case of Sarthak Securities Co. Pvt Ltd (supra) cannot be applied over the facts of the instant case.

14. Therefore, we can summarise that the Assessing Officer himself recorded his satisfaction on the basis of the material in the form of report of the DIT (Investigation) available before him and it cannot be said as borrowed satisfaction without application of the mind. Thus, the Ld. CIT(A) has committed error in relying on the ratio of the above 3 cases while arriving at her decision.

15. Thereafter, the Ld. CIT(A) has referred to the decision of the Hon'ble Delhi High Court in the case of Signature Hotels Private Limited in WP(C) No. 8067/2010 vide order dated 21/07/2011.

The Ld. CIT(A) relying on the above decision held that the proceedings under section 147 of the Act have been initiated invalidly. The finding of the Ld. CIT(A) is reproduced as under:

“9.5 In the case under consideration as in the case of M/s Signature Hotels, the AO has referred to the data received from the Investigation Wing as well as the annexure containing particulars of the accommodation entry providers as well as accommodation entry amount received by the appellant. However no independent inquiries have been conducted by the jrmation received so as to independently arrive at his own belief regarding escapement of income. The action u/s 148 was initiated mechanically. In such circumstances as held by the jurisdictional High Court in several cases including Commissioner of Income v/s SFIL Stock Broking Ltd. 325 ITR 285 (Delhi), CIT V/s Atul Jain and Vinita Jain, 299 HR 383 (Delhi) & Sarthak Securities Co. Pvt. Ltd. V/s Income Tax Officer 329 ITR 110(Delhi) and recent case of M/s Signature Hotels Ltd. the proceedings u/s 148 are held to be invalid for want of jurisdiction as the preconditions for the initiation of the said proceedings as stipulated as section 147 of the Act are not satisfied. Accordingly, no. 2 to 4 raised by appellant are treated as allowed and it is held that proceedings u/s 148 have been invalidly initiated by the Assessing Officer.”

16. In the case of Signature Hotels Private Limited (supra) the Hon'ble High Court observed that the information on the basis of which the assessment was reopened, was scanty and vague and there was no reference of any document or statement. The Assessing Officer accepted the plea on the basis of the vague information in mechanical manner. Thus, it was held that apparently the Assessing Officer did not apply his own mind to the information and examined the basis and material of the information.

17. However, we note that in the instant case, the information is specific having detail of value of the amount of accommodation entry taken, the instrument and date through which entry was taken, name and account number of the entry provider were

available before the Assessing Officer and thus we cannot hold the information was vague. Further, the Hon'ble Delhi High Court in the case of PCIT Vs Paramount Communication Private Limited (supra), after considering various decisions held that the information received from Revenue Intelligence Authority constitute a tangible material and, thus, assessment was reopened validly. The relevant finding of the Hon'ble High Court's reproduced as under:

“8. As far as AY 2004-05 is concerned, this Court is of the opinion that in the reference to the bogus purchase made by the assessee from M/s. Kashish Impex Pvt. Ltd. and the information received for the period 17.09.2002 to 20.05.2005 and the amount of bogus purchase for the period under consideration amounted to '1.64 crores was entirely based upon the information received from the Directorate of Revenue Intelligence (DRI) Regional Unit at Jaipur. This in turn was based upon information given by the Central Excise Department. While it is true that the court is conscious that the reassessment notice should not have been routinely issued, at the same time, the nature of power is wide enough that when there an escapement of income and the Revenue has information ruling that this escapement is also relatable to suppression of material facts (which could include false claims), the power to reopen concluded assessment can validly be exercised. The consideration which ought to weigh with the Revenue and are considered valid are the existence of tangible material or information - in the light of the judgment in CIT v. Kelvinator of India. [2010] 320 ITR 561 (SC).

9. Having regard to the contents of the notice for AY 2003-04, the court is unable to agree with the findings of the ITAT. It constitutes reference to tangible material “outside” the record, i.e. information based upon the investigation of the Commissioner of Central Excise with respect to the purchases made by the assesses. However, as far as the second issue is concerned, the Court is of the opinion that even the rectified order does not address the issues squarely. Thus, arguendo such arguments could be validly raised. At the same time, the court notices that for both AYs 2004-05 and 2005-06, the note discloses the source of the information, i.e. DRI Local Unit at Jaipur, sending information based upon the Commissioner of Central Excise's investigations. To require the Revenue to disclose further details regarding the nature of documents or contents thereof would be virtually rewriting the conditions in section 147. After all, Section 147 merely authorises the issuance of notice to reopen with conditions. If the Court were to dictate the manner and contents of

what is to be written, the statutory conditions would be added as it were. In this context, it needs to be emphasized that the court would interpret the statute as they stand in their own terms, but at the same time being conscious of the rights of the citizens. So viewed, Kelvinator (supra) strikes just balance. To add further conditions to the nature of discussion/reasons that the officer authorising the notice would have to discuss in the note or decision would be beyond the purview of the Courts and would not be justified. For the above reasons, this Court is of the opinion that the impugned order - and the consequential order of 05.01.17 cannot be sustained. They are accordingly set aside. The question of law urged by the Revenue is answered in its favour. The parties are directed to be present before the ITAT on 06.03.2017. The ITAT shall proceed to hear the Revenue's appeals on its merits and render decision in accordance with law. All rights and contentions of the parties with respect to the merits are reserved."

18. In the instant case before us, the information has been received from the Director of Income Tax (Investigation) after carrying out detailed enquiries from the accommodation entry providers. As held by the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd.(supra), the sufficiency or correctness of the information is not to be seen at the stage of the reopening of the assessment. In our opinion, the reassessment proceeding is a kind of enquiry, where the assessee is granted opportunity to explain his stand on the correctness of reasons to believe escapement of income. Further, the Assessing Officer is not empowered in law to carry out any enquiry, if no assessment proceeding are pending. The reassessment proceedings thus, empower the Assessing Officer to verify correctness of the information.

19. In the case of Ankit Financial Services Ltd. (supra) material indicating that assessee has received bogus share application through accommodation entry is one of the beneficiary, was recovered in the search of another person. In such circumstances, the initiation of reopening was justified.

20. In view of the aforesaid discussion, in our opinion the Ld. CIT(A) is not justified in holding that reassessment proceeding are invalid. Accordingly, we set-aside the order of the Ld. CIT(A) to the extent of holding the proceedings under section 147 of the Act is invalid. The grounds of the appeal of the Revenue are accordingly allowed.

Order is pronounced in the open court on 24th October, 2018.

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

**Sd/-
O.P. KANT
ACCOUNTANT MEMBER**

Dated: 24th October, 2018.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi