

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-I', NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

ITA NO. 4797/DEL/2019

A.Y. : 2011-12

M/S AASH TRADING COMPANY PVT. LTD., C/O SH. KAPIL GOEL, ADVOCATE, F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: AAICA3739M)	Vs.	ITO, WARD 1(2), NEW DELHI ROOM NO. 380A, C.R. BUILDING, NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Kapil Goel, Advocate
Department by	Sh. Gayasuddin Ansari, Sr. DR.

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the impugned order dated 30.04.2019 passed by the Ld. CIT(A)-1, New Delhi in relation to assessment year 2011-12.

2. The brief facts of the case are that the assessee filed its return of income declaring NIL income on 30.3.2012. The case of the assessee was reopened u/s. 147 of the Income Tax Act, 1961 (hereinafter called as "Act") by issuing notice u/s. 148 of the Act on 31.3.2018 with the prior approval of the competent authority. The assessment in this case was completed under section 148 of the Act on 17.12.2018 at Rs. 15,00,000/-. In the assessment order AO made addition u/s. 68 of the Act amounting to Rs. 15,00,000/-. Against the assessment order, assessee appealed before the Ld. CIT(A) who vide his impugned order 30.4.2019 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 30.4.2019, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee draw our attention towards various grounds raised by the assessee, but he mainly argued that the AO has not applied his mind and made the addition in dispute. He stated that in the reasons recorded AO has mentioned that Rs. 75 lacs on account of accommodation entry has been escaped and issued noticed u/s. 148 of the Act to the assessee. In response to the same,

assessee filed the objection which was decided in a summary manner. He further stated that after considering the reply filed by the assessee as well as documentary evidences, the AO has made the addition of Rs. 15 lacs u/s. 68 of the Act whereas he has issued the notice u/s. 148 of the Act for escapement of income of Rs. 75 lacs. He further stated that while issuing the notice u/s. 148 of the Act, AO has not applied his mind, therefore, assessment in dispute framed by the AO is bad in law and deserve to be quashed. He further stated that exactly under the similar facts and circumstances there are various cases in which similar issue has been adjudicated and decided in favour of the assessee wherein the assessment has been quashed. He draw our attention towards the written submissions filed by the assessee in which he has mentioned various cases to support the issues in dispute raised by the assessee in the grounds of appeal, but mainly he draw our attention towards the issue argued as mentioned above. He especially draw our attention the case of Smt. Meena Gupta passed in ITA No. 7372/Del/2012 (AY 2011-12) decided vide Order dated 10.09.2020, ITAT, Delhi SMC-I Bench in which on similar facts and circumstances of the case, the assessment

was quashed by the Tribunal. Therefore, he requested to quash the assessment in this instant case also by following the aforesaid ratio.

4. On the contrary Ld. DR relied upon the orders passed by the Revenue Authorities.

5. We have heard both the parties and perused the orders passed by the Revenue Authorities as well as the written submissions filed by the Ld. Counsel for the assessee and the case laws relied upon therein. We find that AO in the reasons recorded has mentioned that Rs. 75 lacs on account of accommodation entry has been escaped, however, he had issued noticed u/s. 148 of the Act to the assessee. In response to the same, assessee filed the objection which was decided in a summary manner. We further find that after considering the reply filed by the assessee as well as documentary evidences, the AO has made the addition of Rs. 15 lacs u/s. 68 of the Act whereas AO has issued the notice u/s. 148 of the Act for escapement of income of Rs. 75 lacs which is contrary in law and shows the non-application of mind on the part of the assessee. Hence, on this account, the assessment in dispute

framed by the AO is bad in law and deserve to be quashed. We further find that exactly under the similar facts and circumstances there are various cases, as relied by the Id. Counsel for the assessee, in which similar issue has been adjudicated and decided in favour of the assessee wherein the assessment has been quashed, especially the recent ITAT, Delhi SMC-I Bench decision dated 10.09.2020, passed in the case of Smt. Meena Gupta passed in ITA No. 7372/Del/2012 (AY 2011-12). The relevant para no. 8.1 of the aforesaid recent decision dated 10.09.2020 is reproduced as under:-

"8.1 The above reasons clearly show that information was supplied by the Investigation Wing to the AO that assessee is beneficiary of accommodation entries received entries received from Shri Pramod Kumar Jindal in whose case search was carried-out on 18.11.2015. The A.O. relied upon the materials supplied by the Investigation Wing to him and statements recorded by the Investigation Wing during

the course of search. The A.O. formed his opinion that assessee received accommodation entries of Rs.15 lakhs from M/s. Timon Infrastructure Pvt. Ltd. However, later on, it transpired that assessee has received only accommodation entry of Rs.5 lakhs. Thus, there is a factual error in the reasons recorded for reopening of the assessment. The reasons are based on incorrect and non-existing material. In the present case, the facts noted above clearly show that A.O. did not verify the report of the Investigation Wing and accepted the same as it is that assessee has received accommodation entries of Rs.15 lakhs despite it was a wrong and incorrect fact which would show that A.O. did not apply his mind to the information and material supplied by the Investigation, Wing. Thus, the reopening of the assessment have been done totally without

application of mind and without any justification. Similarly, in the case of assessee Shri Narender Kumar Gupta, A.O. recorded in the reasons that assessee received accommodation entry of Rs.15 lakhs, but, ultimately, it was found to be accommodation entry of Rs.10 lakhs. In the case of assessee Smt. Meena Gupta and Shri Sourav Jindal the A.O. recorded in the reasons that assessee received bogus entries of the purchases, but, later on it was found to be loan. Thus, these facts clearly show that A.O. without verifying the information received from the Investigation Wing, recorded the reasons for reopening of the assessment based on wrong and non-existing, incorrect facts. Thus, there was no justification for the authorities below to reopen the assessment in these four cases.”

5.1 Respectfully following the aforesaid precedent, the assessment framed in the present case is hereby quashed. Since we have quashed the assessment, hence, the other grounds have become academic and need not be adjudicated.

6. In the result, the Assessee's Appeal is allowed.

The decision is pronounced on 25.11.2020.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi