

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 4080/Del/2019
(Assessment Year: 2009-10)

M/s. AmritBrakewell Products Pvt Ltd,
a-202, Vikas Tower, Sonia PVR Complex, Vikaspuri,
New Delhi-110018
(Appellant)

Vs. ITO,
Ward-2(3),
New Delhi
(Respondent)

PAN: AACCA3317P

Assessee by : Sh. Ved Jain, Adv
Sh. Aman Garg, CA
Revenue by: Sh. Om Parkash, Sr. DR

Date of Hearing 16/03/2023
Date of pronouncement 02/05/2023

ORDER

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-I, New Delhi dated 25.03.2019 for Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated under section 148 are bad in law as there is no live nexus between the reasons recorded and the belief formed by the AO.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order passed by the learned AO under section 148 of the Income tax Act is barred by limitation since the same is passed beyond the specified time limit.*

6. *On the facts and circumstances of the case, the notice issued under section 148 is illegal having been issued on the basis of reasons containing no whisper as to how the assessee has failed to disclose fully and truly all material facts, the notice having been issued after four years from the end of the relevant assessment year.*

7. (1) *On the facts and circumstances of the case, the reassessment proceedings initiated by the AO and upheld by the learned CIT(A) are bad in the eyes of law, as the reasons recorded for the issue of notice under section 148 are based merely on account of change of opinion. (ii) On the facts and circumstances of the case, the learned CIT(A) has erred in law and on facts in upholding the reassessment proceedings, despite the fact that there has been no omission on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the action of the learned AO under section 148 of the Income tax Act is illegal, that the same has been passed without assumption of valid jurisdiction.*

9. (1) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 25,00,000/- made by AO on account of share capital and commission there upon of Rs. 43,750/- treating the same as unexplained credit under Section 68 of the Act. (ii) That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the shareholders as well as the genuineness of the transaction.*

10. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.*

11. *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the same having been made on the basis of material*

collected at the back of the assessee without giving it an opportunity to rebut the same.

12. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in rejecting the contention of the assessee that the order has been passed by the AO without affording adequate opportunity of being heard to the assessee."

3. Apropos Ground Nos. 2 to 8 of assessee the Id counsel submitted that the assessment has been reopened merely on the basis of information received from Investigation Wing which is evident from the reasons recorded for reopening of the assessment available at page No. 16 and 17 of the assessee's paper book wherein, the AO solely relied on the findings of the Investigation Wing and no independent exercise for having reason to believe has been done by the AO. The Id counsel submitted that as per order of ITAT Delhi Benches in the case of M/s. Savita Holdings Pvt. Ltd Vs. ITO reported in 2021 (3) TMI 833, the Tribunal while quashing the reassessment proceedings held that when it is clear that the AO recorded incorrect and wrong facts in the reasons recorded for reopening assessment and did not apply his mind to the information received from the Investigation Wing. Thus, the reopening of the assessment is invalid and bad in law and is liable to be quashed.

4. Replying to the above the Id Sr. DR strongly supported the orders of the authorities below and submitted that the AO has considered the information received from the Investigation Wing and thereafter have reason to believe that the income of Rs. 25 lakhs and commission therein Rs. 43,750/- has escaped assessment. The Id Sr DR submitted that though the legal grounds of assessee are not tenable and the same may kindly be dismissed.

5. On careful consideration of the above submission first of all I note that the AO has reproduced the reasons recorded by him for reopening of the assessment which are reproduced below for the sake of completeness of the order:-

**REASONS RECORDED IN WRITING FOR REOPENING THE CASE U/S
148 OF THE INCOME TAX ACT, 1961**

Ms Amrit Bakewell Products Pvt. Ltd. (A.Y.- 2008-09)

Information was received from DIT (Inv)-11 vide letter No. F.No. DIT(Inv)-II/u/s 148/2012-13/198 dated 12/3/2013, whereby it was intimated that on the basis of search in the cases of Sh. Surendra Kumar Jain group of cases (entry operator) and further enquiries, it has been found that accommodation entries has been provided by this group to various entities. The report of the DDIT(Inv). Unit-VI(2), Delhi dated 12/3/2013 was enclosed with this letter whereby it has been intimated that Sh. S.K Jain and Sh. Virendra Jain are known entry operators and are in the business of providing accommodation entries to various beneficiary companies/ entities/ persons through cheques through a number of paper and dummy companies in lieu of cash. The ADIT in the report has pointed out the receipt of accommodation entries by various entities in the form of Share Capital/Premium/Loan or the basis of documents seized during the course of the search proceedings of Sh. Surendra Kumar Jain group of cases.

The name of the assessee company, M/s Amrit Bakewell Products Pvt. Ltd., appears in the list of beneficiaries who have taken accommodation entries. The investigation wing's report has recorded the true nature of such transactions being sham transactions/ accommodation entries and the entry giving entities has been shown to be mere shell companies of no means. I have perused the information and the report of the DDIT(Inv), Unit-VI(2), Delhi received from the investigation wing. The report explains at length the modus operandi of the entry operators, bringing out the fact that the entries in the bank accounts through which the amounts are routed do not represent any genuine business transactions. The operators in whose names these bank account exits are not carrying out any actual business, other than the activity of providing accommodation entries through these bank accounts. The Investigation Wing has sent comprehensive details comprising inter-alia the Beneficiary's name Beneficiary's bank account, Bank Branch Name in which the accommodation entries are received. Further, the report provides the amount of entry taken name of the accommodation entry provider, its bank details etc.

As per the details received revealed that the entries have been provided as accommodation entries to the assessee company by M/s Finage Lease & Finance India Ltd., M/s Shalini Holdings Ltd., M/s Virgin Capital Services Pvt. Ltd., M/s Humtum Marketing Pvt. Ltd. & M/s Singhal Securities Pvt. Ltd., bogus and dummy companies of Sh. S.K.Jain group the entry operators. The detailed chart containing cheque no, date amount of entry bank name and mediator through whom entries given are as under: -

Cheque Book Dale	From Company name	To Company/Person name	Name of the issuing bank	Cheque /RTGS/ PONo	Cheque date	Amount (*>	Name of the middleman/ Mediator	Annxure No	Page No t
13/03/08	Finage Lease & Finance India Ltd	M/s Amrit Bakewell Products Pvt. Ltd.	AXIS	CH NO. 128112	13/03/08	5,00.000	SATISH GARG	A-95	18
13/03/08	Shalini Holdings Ltd.	M/s Amrit Bakewell Products Pvt. Ltd.	AXIS	CH NO 229615	3/03/08	5.00,000	SATISH GARG	A-95	18
13/03/08	M/s Virgin Capital Services Pvt. Ltd	M/s Amrit Bakewell Products Pvt. Ltd.	AXIS	CH NO. 102442	13/03/08	5,00,000	SATISH GARG	A-95	18
13/03/08	M/s Humtum Marketing Pvt. Ltd.	M/s Amrit Bakewell Products Pvt. Ltd.	AXIS	CH NO. C94566	13/03/08	5,00,000	SATISH GARG	A-95	18
13/03/08	M/s Singhai Securities Pvt Ltd.	M/s Amrit Bakewell Products Pvt. Ltd.	AXIS	CH NO. 120031	13/03/08	5,00,000	SATISH GARG	A-95	18
					TOTAL	25,00,000			

Such true nature of the transaction undertaken by the assessee company has come light only after the detailed investigation carried by the Investigation Wing, Delhi. This tantamount to fresh information. The transaction involving 25,00,000 mentioned in the manner above, constitutes fresh information in respect of t assessee as a beneficiary of bogus accommodation entries received by it a represents the undisclosed income/ income from other sources of the assess company, which has not been offered to tax by the assessee in its return filed.

The total of the above accommodation entries taken by the assessee company comes to 25,00,000/-. It has been reported that the rate of commission charged providing accommodation entries stands at 1.75%. As such assessee company has a paid the said amount of commission for 43,750/- (being 1.75% of the entry taken the entry providers out of undisclosed sources. Having perused and considered information received from the Investigation Wing and on the basis of this n information, I have reason to believe that the income of 25,43,750/- has escape assessment as defined by sec.147 of the I.T.Act.

In view of the above, I am satisfied that this is a fit case for issuance of notice 148. Submitted for perusal and necessary sanction, as per Section 151(2) for issuance of notice u/s 148."

6. From the above it is clear that in the first, second, third and fourth paras the AO noted the report of investigation wing and drew a table. Thereafter, the AO noted that the transactions involved of Rs. 25 lakhs considered therefore, information in respect of assessee

as a beneficiary of bogus accommodation entries received by it which represents an undisclosed income/ income from other sources of the assessee company, which has not been offered to tax by the assessee in its return filed. From carefully reading of entire reasons I am unable to see any characterization by the AO that as to whether the impugned amount is loan/ credit/ share application money or any other thing the AO is alleging the entries as accommodation entries and as per him the same represents undisclosed income/ income from other sources of assessee company. From the last para it is clear that the AO concluded that having perused and considered the information received from the Investigation Wing and on the basis of this new information he has reason to believe that the income of Rs. 25,43,750/- has escaped assessment as defined u/s 147 of the Act.

7. On logical analysis the reasons recorded by the AO I clearly noted that the AO has merely reproduced the information and modus operandi of accommodation entries provider thereafter he noted a detailed chart containing five entries and below the chart he noted that it is a fresh information regarding the fact that the assessee is a beneficiary of bogus accommodation entries which represents undisclosed income/ income from other sources even upto this stage the AO was not characterize the entry found by the Investigation Wing. Even in the last para he clearly stated that on the basis of information received from Investigation Wing he has reason to believe that income has escaped income. No exercise has been undertaken of the AO to ensure as what were the character of entries and what is basis of which he has reason to believe that income as escaped assessment.

8. Under identical facts and circumstances of ITAT Delhi Benches in Savita Holding Vs. ITO (supra) has held that follows:-

"8.AO did not refer to any material found during the course of search against the assessee in the reasons recorded for reopening of the assessment. The AO believed the

information received from Investigation Wing that assessee has received accommodation entry but all the annexure seized during the course of search from S.K. Jain group of cases as discussed above did not implicate the assessee of receiving any accommodation entry. No material was found during the course of search as to how Sh. S.K. Jain group was controlling the investor companies or the companies provided loan to the assessee. Such fact is also not corroborated by any evidence or material, if found during the course of search. Thus, the AO recorded incorrect and wrong facts in the reasons recorded for reopening of the assessment. The AO independently did not apply his mind to the information received from Investigation Wing and merely believed the same to be correct for the purpose of reopening of the assessment despite no specific material was found during the course of search against the assessee company. Whatever material was recovered during the ITA.No.1389/Del./2019 course of search or any statement recorded during search in the case of S.K. Jain group of cases, such material was never supplied to assessee or confronted or given any right of cross examination to the assessee. Therefore, such material cannot be used against the assessee. Considering the above discussion, it is clear that AO has mentioned wrong and incorrect facts in the reasons recorded for reopening of the assessment and did not apply his mind to the information received from Investigation Wing. Thus, the reopening of the assessment is invalid and bad in law and is liable to be quashed. The decisions relied upon by Ld. Counsel for assessee support our findings. In this view of the matter, we set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly all additions stand deleted."

9. In view of the above, I have no hesitation to hold that from the reasons recorded I am unable to see any exercise done by the AO to ensure what is the character of alleged accommodation entries and no exercise has been undertaken by him regarding impugned five entries tabulated in the reasons recorded. In the last operative part he again reiterated that on the basis of information received from Investigation Wing he has reason to believe that income as escaped assessment. Therefore, it is clear that AO has acted only on the basis of information received from Investigation Wing without any exercise it has own level and only on the basis of borrowed satisfaction, he initiated the reopening of assessment u/s 147 and issued notice u/s 148 of the Act, which are invalid being bad in law and liable to be quashed.

10. In view of the foregoing discussion, I set aside the orders of the authorities below and quash the reopening of the assessment.

11. Since I have granted relief to the assessee on legal ground therefore, other grounds of the assessee on merit are not being adjudicated and they are left open.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 02/05/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 02/05/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi