

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S.(ACCOUNTANT MEMBER)

I.T.A. No.3085/Mum/2023
(Assessment year : 2013-14)

M/s Manu Stock Broking Private Limited, Centre Point, 2 nd Floor Suite No.201-202, 21, Hemanta Basu Sarani G.P.O, Kolkata, West Bengal, India-700 001 PAN : AAECM3713B	vs	The ACIT-Central Circle 1(4), Room NO.902, 9 th Floor, Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai-400 020
APPELLANT		RESPONDENT

Present for the Assessee	Shri. Akshay Jain, Ld. CA.
Present for the Department	Smt. Mahita Nair, Ld. Sr.DR

Date of hearing	25/01/2024
Date of pronouncement	31/01/2024

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 20/07/2023 impugned herein passed by the Commissioner of Income-tax (Appeals)-47, Mumbai (in short 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y. 2013-14.

2. In the instant case, the Assessee had declared its total income at Rs.6,01,110/-by filing its return of income on

23/09/2013 which was assessed under section 143(3) of the Act vide order dated 16th March, 2016, whereby the total income of the Assessee was computed at Rs.12,555,970/-.

3. As per assessment order, subsequently, the information was received vide emails dated 22/03/2020 and 24/03/2020, which reads as under:

“That the Assessee company has received bogus accommodation entries amounting to Rs.68,15,357/-. Credible information was received that 31 non-individual current accounts were opened during November 2012 and March 2013 at Sarat Bose Road Branch, Kolkata, West Bengal [Sol Id 1172]. These parties are mainly dealing in Wholesale Garment, Metal and Non-food items trading. Since opening of these accounts within span of six months, high value transactions mainly in the form of cash, RTGS/NEFT and internal transfers happened. High value cash deposited within the CC limit of Rs.10,00,000/- and subsequently transferred to other non-individual entities of the same branch. Internal transfers are received from other non-individual entities of the same branch. Most of these accounts are repeatedly violating multiple rules in AML software as per the PMLA act. Most of the accounts are newly opened since November 2012. There is crossing of transaction threshold limit in most of the accounts as per the customer profile. High Value cash deposited in non-individual account and the same funds are subsequently transferred to other non-individual accounts of the same branch. Receiving funds in non-individual accounts through internal transfers are subsequently transferred to other non-individual accounts of the same branch or to third parties through RTGS/NEFT. Since opening of these 31 accounts within a span of six months, a total credit turnover is Rs. 194,77,39,375/- and total debit turnover is Rs. 194,76,56,116/-.

3. It is seen that the total cash turnover [deposits] is Rs.81,76,25,000/- and total cash turnover [withdrawals] is Rs.90,63,000/-. High value transactions are routed through these accounts to other non-individual entities of the same branch or other branches. On the basis of modus opted in the transactions suspicion is raised. On perusal of bank statement of these entities, it is observed that the entire funds credited through cash deposit were

transferred to M/s. Gagandeep Mercantile Pvt. Ltd. from where transferred to the bank accounts of different entities.

3.1 Further, it is seen that M/s. Gagandeep Mercantile Pvt. Ltd. had shown a turnover of Rs.94 Lakhs only, whereas as per account statement of the company it is seen that a total of Rs.76.67 crore credit into the account. Further, it is also observed from the shell company database available with Investigation Wing Kolkata that the company is among the shell company which is owned, controlled and managed by well known entry operator named Shri Mahendra Kr. Agarwal of Kolkata. The current account of the entities were purposely opened only to deposit cash into the account and was closed after that, which implies unaccounted cash from different locations were deposited to pretend genuineness of cash and subsequent transfer of deposited cash were channelized to accommodate unaccounted cash of the beneficiaries through different companies.

3.2 Further, it is observed that the substantial cash has been deposited in the current accounts of 31 entities. The cash fund deposited into those accounts was further routed through various shell entities and finally to the ultimate beneficiaries who brought back their unaccounted money. **On perusal of report, following movement of money is noted which is eventually been credited to the Assessee-company:**

Amount (Rs.)	Transferor	Beneficiary
68,45,357/-	Bsr Finance & Constructions Ltd. Swabhumi Dealers Pvt. Ltd	Manu Stock Broking Private Limited

It is clear from the above that assessee company M/s Manu Stock Broking Private Limited is beneficiary of accommodation entry and Rs.68,45,357/- is taxable in the hands of Assessee company.”

4. On the basis of said information, the AO formed the reasons to believe that income chargeable to tax of Rs.68,45,357/- or more has escaped assessment by reason of failure on the part of the Assessee to disclose fully and truly all material facts

necessary for that assessment year i.e. for A.Y. 2013-14 within the meaning of section 147 of the Income-tax Act, 1961. The AO accordingly, recoded the reasons for reopening of the case under section 147 / 148 of the Act and issued the notice under section 148 of the Act on 30/03/2021. In response to the said notice, the Assessee, by filing its return of income on 01/04/2021 declared total income of Rs.6,03,740/-. Subsequently, the statutory notices were also issued and objections filed by the Assessee in response to the reasons recorded were also disposed off by the AO vide order dated 14/12/2021.

5. The Assessing Officer, by perusing the financials of the Assessee observed that the Assessee being a company is engaged in the business of stock broking and trading and during the year under consideration derives income from business or profession. The AO in order to verify the claim of the Assessee asked the Assessee to substantiate its claim by issuing statutory notices, in response to which the Assessee filed its submission.

6. The AO during the course of assessment proceedings, also issued a show cause notice 19/03/2022 to the Assessee, whereby the Assessee was asked as to why non-genuine losses of trading in illiquid trade stock options on the BSE during the assessment year under consideration and cash expenses on commission should not be added to the total income of the Assessee.

7. The Assessee, by filing its reply/submissions dated 25/03/2022 denied the allegation of expiry trading in illiquid stock options.

8. The Assessing Officer not being impressed by the denial of the Assessee, ultimately made the addition of Rs.32,93,200/- on account of loss booked by the Assessee on BSE equity derivative segment by way of expiry trade / artificial loss being bogus. Similarly, the Assessing Officer also made the addition of Rs.65,864/- under section 69C @2% on the loss booked by the Assessee to the tune of Rs.32,93,200/-.

9. The Assessee being aggrieved, before the Ld. Commissioner not only challenged the addition on merit, but also on legal points vis-à-vis making of disallowance of loss as made by the Assessing Officer based on the entirely different issue not being covered by the reasons recorded. The Ld. Commissioner not only dismissed the appeal of the assessed on merit, but also on the legal questions raised by the Assessee. The Assessee being aggrieved is in appeal before us.

10. Heard the parties and perused the material available on record. The Ld. AR and Ld. DR not only argued on the merits of the case but also argued on the following additional ground of appeal raised by the Assessee:

"That, on the fact and circumstances of the case, the order dated 30.03.2022 passed by the Assessing Officer is wholly without jurisdiction, bad in law and liable to be quashed in view of the Instruction No.1/2011 dated 31st January,2011 issued by CBDT."

11. We have given thoughtful consideration to the facts and circumstances of the case, the documents available on record and rival submissions of the parties and observe that admittedly, the case of the Assessee was reopened mainly on the reason / information received from DDIT(Inv), Kolkata to the effects that the Assessee has received bogus accommodation entries amounting to Rs.68,15,357/- from BSR Finance & Construction Ltd. And Swabhumi Dealers Pvt. Ltd. . Against the said reasons for reopening, the Assessee filed its reply / submission and admittedly, no addition on account of reasons recorded / alleged bogus accommodation entries amounting to Rs.68,15,357/- has been made by the Assessing Officer, which impliedly goes to show that the Assessing Officer accepted the claim of the Assessee qua ground for reopening the case.

11.1 However, the Assessing Officer proceeded further to make the disallowance of Rs. 31,93,200/- on account of bogus and artificial loss booked by the Assessee on BSE equity derivative

segment by way of expiry trade and the disallowance of Rs.65,864/- under section 69C of the Act @2% of the loss to the tune of Rs.32,93,200/- allegedly booked by the Assessee. Admittedly, no notice under section 148 of the Act has been issued for making such disallowance. Therefore question emerge **“Whether addition which is not based on the reasons for reopening is sustainable or not”**.

11.2 The Hon’ble jurisdictional High Court in the case of Commissioner of Income-tax-5, Mumbai vs. Jet Airways (I) Ltd 331 ITR 236 (Bom) has clearly held that if after issuing a notice under section 148 of the Act, the Assessing Officer accepted the contention of the Assessee and holds that the income for which he had initially formed a reason to believe had escaped assessment, as a matter of fact not escaped assessment, it is not open to the Assessing Officer independently to Assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be decided in the event of a challenge by the Assessee.

11.3 The Hon’ble Delhi High Court as well, in the case of Ranbaxy Laboratories Ltd. vs CIT 336 ITR 136 (Del) has also dealt with identical issue as involved in the instant case and by considering the judgment in the case of CIT Vs Jet Airways (I) Ltd (supra) ultimately held that where a new

issue comes before AO during the course of proceedings of assessment or re-assessment of escaped income and which intends to take into account, he would be required to issue a fresh notice under section 148 of the Act.

11.4 Hence on the aforesaid analyzations and dictum laid down in the cases i.e. Jet Airways and Ranbaxy Laboratories Ltd. (supra), we are of the considered opinion that addition which is not based on the reasons for reopening is un-sustainable sans notice u/s 148 of the ACT .

11.5 Coming to the instant case, the return of income was assessed under section 143(3) of the Act and the additions made by the Assessing Officer and affirmed by the Ld. Commissioner, in fact, are based on the different issue on which no reasons were recorded and therefore dents the proceedings under section 147 / 148 of the Act as well as the assessment order itself. Hence, we do not find any hesitation to quash the assessment order itself being *void-ab-initio*.

10.6 As we have already quashed the assessment order, and therefore not delving into the merits of the case and additional ground of appeal raised by the Assessee, as adjudication of the same would prove futile exercise.

11. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31/01/2024.

Sd/-

sd/-

(MISS. PADMAVATHY S.)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
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BY ORDER,

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Asstt. Registrar,
ITAT, Mumbai