

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ“ए”, अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“ A ” BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।  
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.382/Ahd/2022  
निर्धारण वर्ष /Assessment Year : 2010-11

L.K.S. Bullion (Import and Export) Pvt.Ltd. 368, LKS House, Khetarpal-ni-Pole Manek Chowk Ahmedabad -380 001 (Gujarat)	<b>बनाम/ v/s.</b>	The Income Tax Officer Ward-2(1)(3) Ahmedabad – 380 014
<b>स्थायी लेखा सं./PAN: AAACL 7369 N</b>		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri S.N. Soparkar, Sr.Advocate & Shri Parin Shah, AR
Revenue by :		Shri Alpesh Parmar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/08/2024  
घोषणा की तारीख /Date of Pronouncement: 08/08/2024

**आदेश/ORDER**

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

This appeal is filed by the Assessee as against the order dated 27/08/2022 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld.CIT(A)” in short] arising out of the assessment order dated 18/12/2017 by the Assessing Officer (AO) under section 143(3) r.w.s. 147 of the Income

Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2010-11.

**Facts of the case**

2. The assessee-company is engaged in the business of trading in gold, jewellery, Bullion and manufacturing of lagadies. The assessee-company filed its return of income for A.Y. 2010-11 on 14-10-2010 declaring total income of Rs.19,75,190/- which was processed u/s. 143(1) of the Act. On the basis of information received from the DDIT(Inv), Unit-6(4), Mumbai the case was reopened by issuing notice u/s.148 of the Act, after recording the reasons for the same.

2.1. As per the recorded reasons in the assessment order, the inquiry was carried out in case of Shri Anil Kumar Jain and Shri Pravin Kumar Jain and other entities connected with them and observed that the high value transactions were credited through RTGS/Clearing/cash/transfer from various accounts and immediately withdrawn by way of cash/multiple transfers. Accordingly, the bank statements were called for and statements of Shri Anil Kumar Jain and Pravin Kumar Jain were recorded u/s.131 of the Act, who admitted that they were carrying of business of cheque entries. It was found that one of the entities M/s.Vishnu Trading Co. handled by Shri Anil Kumar Jain and Shri Pravin Kumar Jain has undertaken some transactions with the assessee company.

2.2. By issuing notices u/sections 143(2) and 142(1) of the Act, the assessee was asked to submit the ledger account extract of M/s.Vishnu Trading

Company for the Financial Year (FY) 2009-10. In reply thereto, the assessee stated that they do not have any transactions with said M/s.Vishnu Trading Co. However, on verification of bank statement furnished by the assessee the AO found that there are two credit entries dated 10-10-2009 for Rs.1,11,79,000/- and dated 12-10-2009 for Rs.80,50,000/- totaling to Rs.1,92,29,000/-. In the bank account of Vishnu Trading Co. with Axis Bank (A/c No. 9090232205114), following debit entries were appearing:

<b>Trans Date</b>	<b>Transaction Particular</b>	<b>Amount (Rs.)</b>
10-10-2009	LKS BLN	37,30,000/-
10-10-2009	LKS BLN	30,49,000/-
10-10-2009	LKS BLN	44,00,000/-
12-10-2009	LKS BLN I & E	41,50,000/-
12-10-2009	LKS BLN I & E	39,00,000/-
<b>Total</b>		<b>1,92,29,000/-</b>

2.3. A show-cause letter was issued to the assessee as to why the total credit amounting to Rs.1,92,29,000/- should not be treated as income. In reply to which the assessee-company stated that they have credited these amounts to Sales account and debited to bank account for the sales made and hence no party account has appeared in their books. The assessee also submitted sales bills, sales register, etc.

2.4. The AO observed that the details furnished by the assessee pertains to transactions with M/s. Edelweiss Commodities Ltd. The AO also concluded that the assessee deliberately provided such documents to disguise the truth and confuse the department. The AO also issued notice to M/s.Vishnu Trading Co. u/s.133(6) of the Act, but the same could not be served as it returned back. Relied on some judicial precedents and the observations, the

AO treated this amount of Rs.1,92,29,000/- as unexplained cash credit and added to the total income of the assessee.

3. The assessee preferred an appeal before the Ld.CIT(A), who dismissed the appeal of the assessee concluding that the assessee failed to offer any explanation as to the nature of entries and offered explanation related to M/s.Edelweiss Commodities Ltd. He also noted that the AO has brought on record validation of similar transactions of alleged entry providers in case of other assessees.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us with following grounds of appeal:

- "1. Ld. CIT (A) National Faceless Appeal Centre (NFAC) erred in law and on facts dismissing ground challenging reopening of the assessment by AO on the basis of information received from DDIT (Inv) without independently forming belief that income chargeable to tax escaped assessment.*
- 2. Ld. CIT (A) (NFAC) erred in law and on facts in confirming addition made by AO of Rs. 1, 92, 29, 000/- as unexplained cash credit u/s 68 of the Act by way of a cryptic order concurring with findings of AO without considering detailed submissions made by the assessee.*
- 3. Ld. CIT (A) (NFAC) erred in law and on facts in confirming action of AO to treat sales realization as loan to make addition u/s 68 of the Act ignoring the fact that profit embedded in sales is already offered for tax by the assessee.*
- 4. Ld. CIT (A) (NFAC) ought to have deleted addition made by AO neither supplying statement recorded u/s 131 & relied upon for making addition nor affording opportunity of cross examination to the assessee.*
- 5. Ld. CIT (A) erred in law and on facts in confirming action of AO taxing income u/s 115BBE though income is not chargeable u/s 68 of the Act.*
- 6. Levy of interest u/s 234A/ 234B, 234C & 234D of the Act is unjustified.*

7. *Initiation of penalty proceedings u/s 271 (1)(c) of the Act is unjustified."*

**On Ground No. 1**

5. During the course of hearing before us, the Ld. Sr.Counsel for the assessee, took us through the detailed submission and order of lower authorities. He argued that the reopening of the assessment u/s.148 of the Act is on the basis of borrowed satisfaction and without application of mind. He also stated that the information received from the DDIT(Inv), Unit 6(4), Mumbai was required to be perused to determine the exact nature of information. On the grounds of challenging the reopening u/s.148 of the Act he placed reliance on judgement of **Hon'ble High Court of Gujarat in case of Amar Jewellers Ltd. Vs. Dy. CIT [2017] 405 ITR 561 (Gujarat)**. He also placed reliance on the decisions in case of **Nayar Metal Company (ITA No.1374/Del/2015)**, **Navkar Enterprises (ITA No. 4722/Mum/2017)**.

5.1. The Ld.Departmental Representative (Ld.DR), on the other hand, stated that the assessment was reopened on the basis of information received from the DDIT and the AO observed the debit entries in the bank account of M/s.Vishnu Trading Co. relating to the assessee and, therefore, the AO had a reason to reopen the assessment. The Ld.DR relied on the judgment of **Hon'ble High Court of Gujarat in case of Pushpak Bullion (P.) Ltd. Vs Dy. CIT [2017] 85 taxmann.com 84 (Gujarat)**. The Ld. DR also placed reliance on decisions of Hon'ble High Courts in the case of **Meghavi Minerals (P.) Ltd. Vs. ITO [2019] 110 taxmann.com 174 (Guj.)**, **Aaspas Multimedia Ltd. Vs. DCIT [2017] 83 taxmann.com 82 (Guj.)** and **J.M.D. Global (P.) Ltd. [2019] 112 taxmann.com 204 (Delhi)**.

6. We have heard the rival contentions and considered the facts as well as the judicial precedents relied upon by the parties. In the case of **Amar Jewellers Ltd.(supra)**, the Hon'ble Gujarat High Court quashed the reopening of the assessment stating that the AO's belief that income had escaped assessment was based on incorrect premises and lacked tangible evidence linking the transactions to the assessee. The Court emphasized the need for the AO to form an independent belief based on concrete evidence. In the case of **Nayar Metal Company (ITA No. 1374/Del/2015)**, the Tribunal found that the AO did not possess adequate information or material evidence at the time of issuing the notice under Section 148. The decision to reopen was based on a list provided by the CIT (Central-II) without independent verification or application of mind by the AO. In case of **Navkar Enterprises (ITA No. 4722/Mum/2017)**, the Tribunal found that the AO was having a reason to suspect and AO without making preliminary enquiries reopened the assessment.

6.1. In the case of **Pushpak Bullion (P.) Ltd.(supra)**, relied upon by the Revenue, the Hon'ble Gujarat High Court upheld the reopening of the assessment where the AO had credible and specific information from the investigation indicating bogus transactions. The Hon'ble Court held that the AO had sufficient material to form a bona fide belief that income chargeable to tax had escaped assessment.

6.2. In the present case, it is important to note that the return of the assessee was proceeded u/s.143(1) of the Act and there was no instance of original assessment u/s.143(3) of the Act. The AO received specific

information from the DDIT (Inv) indicating that there were transactions between the assessee and M/s. Vishnu Trading Co. During the preliminary enquiry AO observed that the name of M/s Vishnu Trading Co. appeared in the bank account statement of assessees and also the name of assessee was found in the bank statement of M/s Vishnu Trading Co. The AO recorded his reasons for satisfaction for reopening and had a reason to believe that income had escaped assessment. This belief was based on the substantial material provided by the DDIT (Inv.), which warranted further investigation. It is also noted that the prior approval of the PCIT was obtained as per procedure.

6.3. At this stage, in our opinion, the sufficiency of the reasons is not the test for deciding the validity of a notice issued under Section 148 of the Income Tax Act. The correct test is whether the Assessing Officer had a reason to believe that income chargeable to tax had escaped assessment. This principle is well established in judicial precedents and "reason to believe" does not mean that the AO should have finally ascertained the fact by legal evidence or conclusion. It only means cause or justification to believe that income has escaped assessment. The sufficiency or correctness of the material is not a matter for consideration at the stage of issue of notice. Therefore, AO's action of reopening the assessment was in line with the principles laid down in **Pushpak Bullion (P.) Ltd.(supra)**, where the reopening was justified based on tangible and specific information.

6.4. Based on the detailed submissions, analysis of the facts, and legal precedents, it is concluded that the AO had a valid reason to believe that income chargeable to tax had escaped assessment. The information received

from the DDIT (Inv.) provided a substantial basis for the AO's belief, and his decision to reopen the assessment was justified. The AO's action was not merely based on borrowed satisfaction but on specific information that required further investigation to ascertain the correctness of the transactions. Accordingly, Ground No.1 is dismissed, and the reopening of the assessment under Section 148 of the Act is upheld. The appeal of the assessee on this ground is dismissed.

**On Ground Nos. 2 to 4**

7. On merits, the Ld.Sr.Counsel for the assessee stated that the alleged transaction is actually sales and the same was explained by the assessee during the course of reassessment and appellate proceedings. He also explained that the said transaction was credited to sale and account and already offered as income in profit and loss account. He argued that the already declared income cannot be regarded as unexplained cash credit. Since the assessee has already explained nature and source of amount credited in the books, the onus of the assessee stands discharged. The Ld. Counsel also explained that the assessee during the course of assessment has submitted copies of sales invoice showing same cheque numbers as appearing in the bank statement, sales register, item register showing quantitative details and the bank book. The Ld.Sr.Counsel also stated that the AO has not disputed the sales and also has not raised any question relating to quantitative details of the stock. Ld.Sr.Counsel also argued that AO has not rejected the books of accounts and has not commented on the incorrectness of books of accounts which means he has accepted the books of accounts and sales. The Ld.Sr.Counsel for the assessee also contended



that the AO did not provide the opportunity to cross examine the parties based on whose statements recorded u/s. 131 of the Act the addition was made.

7.1. Regarding the mention of information relating to M/s.Edelweiss Commodities Ltd. in both assessment order and appellate order, the Ld.Sr.Counsel stated that both the AO and the Ld.CIT(A) have confused purchase from M/s.Edelweiss Commodities Ltd. as sale and have concluded that the assessee is deliberately misguiding. Ld. Sr.Counsel further explained with the help of purchase register, purchase bills and bank statements that the items sold to different parties as per invoices provided to the AO (which are alleged as sale to M/s.Vishnu Trading Co.) are purchased from M/s.Edelweiss Commodities Ltd. and, therefore, the assessee was not making any deliberate efforts to misguide the AO and, in fact, he was explaining the fact. On the merits of the case, Ld. Sr.Counsel for the assessee placed reliance on the decision of **Hon'ble High Court of Gujarat in case of Vishal Export Overseas Ltd. (Tax Appeal No. 2471 of 2009)** along with other decisions as detailed below:

- (a) Manoj Sharma (in ITA No. 4342/Del/2018).
- (b) Hit Iron & Steel Pvt. Ltd. (in ITA No.379/Ahd/2018).
- (c) Kamala Merchantile Ltd. (in ITA No.687/Ahd/2018).

8. The Ld.DR, on the other hand, placed reliance on the order of AO and the Ld.CIT(A) and stated that the assessee failed to explain the genuineness of the transactions.

9. We have heard the rival contentions, perused the material on record and observe that the amounts credited to the sales account cannot be treated as unexplained cash credits under Section 68 of the Act, if they are already included in the total sales declared and taxed. This is supported by the judicial precedent in the case of *Vishal Exports Overseas Ltd.(supra)*, where the Hon'ble Gujarat High Court held that income already offered for taxation cannot be taxed again as unexplained cash credit, as it would amount to double taxation. We further note that the AO did not reject the books of accounts or question the quantitative details of the stock. We also observe that the AO has not placed any conclusive evidence on record to prove that the credits in the assessee's bank account are accommodation entries. The addition of Rs.1,92,29,000/- as unexplained cash credit cannot be sustained without such evidence. The assessee has provided sufficient documentary evidence, including sales invoices, sales register, item register showing quantitative details, and the bank book, to substantiate the transactions. We have noted the other judicial precedents relied on by the assessee can be distinguished on the basis of facts and circumstances but in case of Manoj Sharma (supra) it was held that the addition cannot be made when the quantitative details of purchase, sale and stock tally.

9.1. Furthermore, the failure to provide an opportunity for cross-examination of individuals whose statements were relied upon for making the addition violates the principles of natural justice, as established in many judicial precedents. We also note the assessee's clarification that transactions with M/s. Edelweiss Commodities Ltd. were purchase transactions and not related to the alleged sales to Vishnu Trading Co. The AO's and the

Ld.CIT(A)'s misunderstanding of these transactions led to incorrect conclusions.

9.2. In light of the above findings, we conclude that the addition of Rs.1,92,29,000/- as unexplained cash credit under Section 68 of the Act is unwarranted, given that the amount represents sales already declared and taxed. Therefore, the addition made by the AO and confirmed by the Ld.CIT(A) is deleted, and these grounds of appeal are allowed.

**On Ground Nos. 5 to 7**

10. Since we have deleted the addition under Section 68 of the Act, the confirmation by the Ld.CIT(A) of the AO's action to tax the income under Section 115BBE of the Act is also unwarranted. As the principal addition itself is deleted, the consequential levy of interest under section 234A, 234B, 234C and 234D of the Act is accordingly deleted. With the deletion of the addition, the initiation of penalty proceedings under Section 271(1)(c) of the Act becomes unjustified and is accordingly quashed. Accordingly, these grounds of the assessee's appeal are allowed.

11. In the result, the appeal by Assessee is partly allowed.

**Order pronounced in the Open Court on 8 August, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 08/08/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)-Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad