

Reassessment on basis of info. that bogus accommodation entries were received by way of share capital justified

Summary – The Delhi ITAT in a recent case of V3S Infratech Ltd., (the Assessee) held that where revenue received information from ACIT that during search conducted upon premises of one person, several information and evidences were found which showed that such person was engaged in providing bogus accommodation entries by way of share capital and assessee was also one of beneficiaries, impugned reassessment notice against assessee on basis of such information was justified

Facts

- There was a search and seizure action under section 132(1). Assessment was framed under section 153A/143(3) and the income of the assessee was assessed at Rs. 3.96 crores after making additions on account of receipt of bogus accommodation entries by way of share capital. However, the Commissioner (Appeals), *vide* order dated 3-3-2010, deleted the entire addition. Further, the Tribunal also upheld the order of the Commissioner (Appeals).
- Meanwhile on 19-1-2009, a second search was carried out under section 132. In compliance to the notice under section 153A, return declaring income was again filed. The assessment was completed on 30-12-2010 at an income of Rs. 4.31 crores by making a further addition of Rs. 35 lakhs to the income assessed earlier. This addition was also on account of bogus share capital. The Commissioner (Appeals), *vide* order dated 21-1-2013, deleted the addition.
- In between, on 30-3-2011 notice under section 148 was issued on grounds *inter alia* mentioned that during the course of survey in the premises of one SKG, several ledger accounts were found to be maintained in tally software besides other documents and accounts. SKG had admitted during the survey proceedings that he used to provide accommodation entries to various persons/beneficiaries. It was also stated in the reasons that as per the information received from the ACIT, the assessee was the recipient of Rs. 20 lakhs through three different cheques from CFS and CFSL which were companies floated/controlled by SKG. The assessee objected to the validity of initiation of proceedings under section 147 and the objections were disposed of by the Assessing Officer. The assessment was completed under section 143(3)/153(A)/147 at an income of Rs. 4.51 crores after making a further addition of 20 lakhs to the income determined earlier *vide* assessment order under section 153A/143(3).
- On appeal, the Commissioner (Appeals) also upheld the order passed by the Assessing Officer.
- On assessee's appeal against the impugned reopening of assessment.

Held

- Lets first take up the assessee's plea that the reassessment proceedings cannot be sustained as the reassessment was based on the statement of SKG, who the assessee was not allowed the

opportunity to cross examine. From the perusal of the reasons recorded, it is very much evident that the statement of SKG was only one of the factors responsible for the initiation of reassessment proceedings. Apart from the statement of SKG, the Assessing Officer also had information which had been received from the Central Circle that the assessee was in receipt of Rs. 20 lakhs from two concerns namely CFS and CFSL which were companies floated/controlled by SKG. The information duly mentioned the name of the bank as well as the cheque numbers through which the impugned transaction/s of Rs. 20 lakhs had taken place. Thus, it cannot be said that the foundation for the initiation of reassessment proceedings was only the statement of SKG. The department also had other corroborative evidences in this regard. During the survey operation under section 133A at the premises of SKG, a laptop was found. The said laptop which contained ledger accounts from financial years 2003-04 to 2007-08. In the ledger for financial year 2003-04 there was an account namely 'Loan July 03 to July 04 Premium' in the name of one SG. Scanned copy of pages of ledger have also been reproduced in the assessment order. As per the noting in the said premium account, there is an entry of premium (Commission) received from SG on account of cheque drawn on 'F' Bank from CFS in favour of the assessee for Rs. 15,000/-. Similarly, the ledger of SG showed that cash of Rs. 10 lakhs was received and cheque was given to GBPL through CFS for Rs. 10 lakhs (two cheques of Rs 5 lakhs each.). It is also not the case of the assessee that the assessee was not confronted with the documents/entries as found in the laptop found in the premises of SKG. A perusal of the assessment order shows that the entire statement of SKG, reproduced in the assessment order alongwith the evidences, were given to the assessee for rebuttal. Thus, it is very much apparent that the statement of SKG was not the sole foundation for the initiation of re-assessment proceedings. The department also had sufficient corroborative evidence/s as found in the laptop found during the course of survey at the premises of SKG to proceed against the assessee by issuing notice under section 148. Therefore, the assessee's plea that the reassessment proceedings stand vitiated as the assessee was denied the opportunity to cross examine SKG is dismissed.

- The assessee has also challenged the re-opening on the ground that no fresh material had come into existence and the issue of share capital had already been examined in the earlier assessment proceedings. However, this contention of the assessee also does not hold much ground. The re-opening was based on information collected during the course of survey at the premises of a third party and this, constitutes fresh information, therefore, the contention of the assessee that the information from the investigation wing could not be treated as fresh material for the purpose of initiating re-assessment proceedings.
- The assessee had also argued that the assessee was not confronted with any incriminating material or contrary evidence with respect to the impugned addition. In this regard, the assessment order is perused and it is noted that the entire evidence has been reproduced in the assessment order and it has been stated by the Assessing Officer that the same was given by way of show cause to the assessee for rebuttal. The Assessing Officer has also mentioned that the assessee chose not to offer

its comments on the same. Therefore, this argument of the assessee also cannot be accepted and the same is rejected.

- It has also been argued by the assessee that since the impugned transaction pertaining to share capital already stood verified and assessed twice and, therefore, no addition could have been made on this account as there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. However, the fact remains that although the issue of share capital was examined by the Assessing Officer on earlier two occasions, this time, fresh information, gathered during the course of survey proceedings, added an entirely new dimension to the impugned transaction. The Assessing Officer simply could not be expected to put blinkers on his eyes and ignore the information just for the reason that the impugned transaction was a part of the share capital which had been examined on two earlier occasions.
- Therefore, "opinion" formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of "change of opinion". Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression material facts' means those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a pre-condition which confers jurisdiction to reopen the assessment. In the appeal the Assessing Officer has recorded a clear finding in the "reasons recorded" that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment within the meaning of section 147. It has been contended by the assessee that the Assessing Officer has simply stated that there was a failure on the part of the assessee to fully and truly disclose all the material particulars and the Assessing Officer has not stated as to which material the assessee had failed to disclose and, therefore, the re-opening was bad in law. However, the contention of the assessee regarding full and true disclosure has to be rejected in terms of *explanation 1* to section 147.
- On the facts of the present case, the *explanation* supports the case of the revenue that mere submission of documents like income returns, copy of PAN cards, copy of bank statements, confirmation from the share applicants etc. by itself would not amount to proper disclosure by the assessee as the very material fact that the impugned transaction/s related to accommodation entries was not disclosed by the assessee.
- In the light of the aforesaid, it has to be held that the requirement of full and true disclosure by the assessee is not satisfied in the present case.
- In view of the above specific facts of this case, the validity of the re-assessment proceedings is upheld.