

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.302/Ahd/2022  
Assessment Year: 2012-13**

Oasis Jewels Private Limited, SF-5, Abhishek Complex, Above Girish Cold Drink, C.G. Road, Navrangpura, Ahmedabad – 380 009. <b>[PAN – AAACO 6306 L]</b>	Vs.	The Income Tax Officer, Ward – 3(1)(4), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Parimalsinh B. Parmar, AR	
Revenue by	Shri Urjit B. Shah, Sr. DR	
Date of Hearing	23.04.2024	
Date of Pronouncement	28.06.2024	

**ORDER**

This appeal is filed by the assessee against order dated 30.05.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

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

**Ground No.1**

1. *The Honourable Commissioner of income tax (Appeal) has erred in confirming the action of the learned assessing officer in reopening the assessment u/s. 147 of The Income Tax Act 1961 after a period of more than 4 years from the end of the relevant assessment year without bringing any fresh and tangible material on record. Further, the appellant has disclosed all material facts fully and truly during the assessment proceedings u/s.143(3) of the act.*
  - 1.1 *That learned Commissioner of Income-tax (Appeals) was ought to have considered the fact that before assuming jurisdiction under section 147 and issuing notice under section 148 of the Act, learned A.O. failed to bring on record any findings or material about failure on the part of the*

*appellant to disclose truly and fully all material facts necessary for assessment during the original assessment proceedings.*

- 1.2 *That learned CIT(Appeals) further failed to consider that fact that information, based on which learned A.O. assumed jurisdiction under section 147 of the Act, had no link with the taxable income of the appellant company. In fact, information was not directly or indirectly had any connection with the appellant or its taxable income.*

### **Ground No.2**

2. *That on the facts and in the circumstances of the case and as per law, learned CIT (Appeals) erred in sustaining the additions of Rs.12,50,000/- on the ground of unexplained cash credit.*
- 2.1 *That learned CIT(Appeals) failed to consider the fact that during the assessment proceedings, appellant had submitted substantial evidence in support of source of credit entries aggregating to Rs.12,50,000/-. Learned A.O. failed to rebut the same with any material or findings on record.*
- 2.2 *That learned CIT (Appeals) further erred by not considering the submission of the appellant, substantiated with evidence during the assessment and appellate proceedings, that receipts aggregating to Rs.12,50,000/- were out of sale proceeds in its normal course of business. Hence, learned A.O. had no jurisdiction to treat the same as accommodation entry or unexplained cash credit.*

### **Ground No.3**

3. *That on the facts and in the circumstances of the case and as per law, learned CIT(Appeals) erred in confirming the additions of Rs.12,500/- on the ground of commission paid for so called accommodation entry.*
- 3.1 *That learned CIT(Appeals) was ought to have considered the fact that additions of Rs.12,500/- is solely based on assumption about commission paid for so called accommodation entry. Hence, additions of Rs.12,500/- is not sustainable as per settled law."*

3. The assessee company is engaged in the business of Bullion Trading and Ornaments Manufacturing. The assessee filed original return of income for the Assessment Year 2012-13 on 30.09.2012 declaring total income of Rs.13,42,000/-. The said return of income was processed under Section 143(1) of the Income Tax

Act, 1961. Thereafter, the case was selected for scrutiny and the assessment was finalised under Section 143(3) of the Act determining total income at Rs.13,78,000/- after disallowing ROC filing fees of Rs.36,000/-. On the basis of information received by the Department, the case was reopened under Section 147 of the Act after recording reasons thereof and obtaining prior approval of the competent authority. Notice under Section 148 of the Act dated 31.03.2019 was issued and duly served upon the assessee. The assessee did not comply the said notice by the stipulated date but in response the assessee e-filed return of income on 05.08.2019 declaring total income of Rs.13,42,000/-. Accordingly, notices under Section 143(2) and 142(1) of the Act dated 17.10.2019 were issued and duly served upon the assessee supplying therewith a copy of reasons recorded and also calling for certain details. In response, the assessee filed online submissions on 30.10.2019 stating that the details and explanation called for would be submitted later on. The assessee once again requested for grant of adjournment upto 20.11.2019, but the assessment was time barred by limitation period expiring on 31.12.2019. Therefore, the Assessing Officer proceeded and observed that the assessee company provided accommodation bills without carrying out actual trading and thus the assessee was found to have transactions with Growth Capital thereby receiving amount of Rs.12,50,000/- from the said firm. The assessee's letter dated 28.11.2019 states that during the year under consideration the company made sales of the goods and the same was accounted in the books of accounts and in fact has given complete details of the parties to whom sales aggregating to Rs.12,50,000/- was made. The Assessing Officer observed that the assessee failed to furnish details and supporting evidence in respect of receipt of Rs.12,50,000/- received from Growth Capital to establish that the said receipt was from normal course of its business and no accommodation entry received from Hawala Operator. The Assessing Officer, therefore, made addition of Rs.12,50,000/- treating the same as accommodation entry being unexplained as well as making disallowance of unexplained expenses of commission at 10% amounting to Rs.12,50,000/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as relates to ground no.1 the CIT(A) erred in upholding action of reopening as the assessee pointed out that the reasons for reopening are absolutely vague, scanty and non-specific. The assessee is in the business of bullion trading and ornament manufacturing. The case was reopened broadly on the count that sum of Rs.12,50,000/- received by cheque by the assessee is an accommodation entry. Also, the assessee must have paid commission of Rs.12,500/- at 0.10% of such transaction which is not reflected in the books of accounts. The Assessing Officer accordingly held that there is escapement of income chargeable to tax to the tune of Rs.12,62,500/-. The reasons for reopening are on the reasons that one Shri Dilip J. Shah (a third party) used to provide accommodation entries and Growth Capital was associated with the Dilip J Shah. The Ld. AR further submitted that the reasons for reopening also state that the assessee has carried out transaction with Growth Capital thereby receiving Rs.12,50,000/- from the said Growth Capital. But it was not reflected in the disclosed bank accounts and, therefore, the assessee has taken entry to evade tax during the year. The Ld. AR submitted that the reasons do not specify the real nature of transaction as to whether it is unsecured loan, share application money or share capital, share premium, sales, repayment of loan advanced by the assessee in the past or that of refund of consideration by seller upon purchase returned by the assessee. The Ld. AR submitted that all the receipts would not partake the character of income in the hands of the recipient of the underlying sum. The Ld. AR submitted that the Assessing Officer was not aware about the real nature of transaction either at the stage of recording reasons for reopening or at the stage of framing the assessment. Thus, it is clearly evident that reopening is merely based on vague, scanty and non-specific reasons. The Ld. AR relied upon the following decisions

- 1) *Surani Steel Tubes Limited vs. ITO (2020) 136 taxmann.com 139 (Guj);*
- 2) *Bharatkumar Nihalchand Shah vs. ITO - SCA 5353 of 2022 (Guj)*
- 3) *Paresh Babubhai Bhalani vs. ITO – (2023) 156 taxmann.com 517 (Guj).*

5.1 The Ld. AR further submitted that the case was reopened on the count that the assessee has received Rs.12,50,000/- from Growth Capital but the said transactions are not reflected in the disclosed bank accounts, but this observation is factually incorrect as the underlying amount is part of sale and such sales were recorded in books of account. The funds were reflected in accounts held with Karur Vysya Bank which was reflected in audited annual accounts as well. The Ld. AR submitted that the CIT(A) has not taken cognisance of the same and no adverse observation has been made by the CIT(A) while dismissing the ground of reopening. The Ld. AR further submitted that the jurisdictional facts stated by the Assessing Officer for reopening the case of the assessee were incorrect, since, as a matter of fact, there is no contrived loss as stated in the reasons for reopening. The Ld. AR relied upon the following decisions:-

- 1) *Mumtaz Haji Mohmad Memon vs. ITO – 408 ITR 268 (Gujarat);*
- 2) *Manishkumar P. Kiri vs. ACIT – SCA 15475 of 2015 (Guj);*
- 3) *Kolahai Infotech Pvt. Ltd. Vs. ITO – 409 ITR 595 (Delhi).*

5.2 The Ld. AR further submitted that the reopening is merely based on borrowed satisfaction in respect of information received from DDIT (Investigation), Mumbai and there is no independent application of mind at the end of the Assessing Officer. The Ld. AR relied upon the following decisions:-

- a) *Harikishan S. Virmani vs. (2017) 394 ITR 146 (Guj);*
- b) *Varshaben S. Patel vs. ITO (2015) 64 taxmann.com 179 (Guj);*
- c) *Signature Hotels P. Ltd. vs. ITO (2012) 338 ITR 51 (Delhi);*
- d) *Paresh Babubhai Bhalani vs. ITO - SCA 922 of 2022 and others (Guj).*

5.3 The Ld. AR further submitted that the assessee vide letter dated 26.11.2019 submitted before the Assessing Officer that underlying receipts aggregating to Rs.12,50,000/- were against sales in the normal course of business and the same has been duly accounted for in the audited bank account. The assessee has given the details with respect to sales mainly names and address of customers, bill numbers, dates, description of product, weight, rate & amount, VAT and total amount. As regards confirmation of customers, the

assessee has given date of credit in bank account, cheque number, date of bill & bill numbers. The Ld. AR submitted that no fault has been found by the Assessing Officer in respect of these documentary evidences and in fact the Assessing Officer has not issued summons under Section 131 of the Act to those parties as well as notices under Section 133(6) of the Act were also not issued. Thus, it demonstrates that there is no infirmity in the evidences furnished by the assessee as held in case of *Rushivan Enterprise vs. PCIT, SCA 20420 of 2019 (Guj)*. The condition precedent for reopening is that there has to be escapement of income chargeable to tax but in the present case this condition was not satisfied, thus, reopening is not justifiable. As regards to reopening, the same is beyond a period of four years from the end of the relevant Assessment Year but there is no failure on the part of the assessee as to full and true disclosure. The Ld. AR submitted that the case was originally selected for scrutiny and the assessment was finalised under Section 143(3) of the Act and necessary details were placed on record. Thus, the reopening on the same line does not establish the “no live link” between “information received by the Assessing Officer” and “formation of belief as to escapement of income chargeable to tax in the hands of the assessee”.

6. The Ld. DR submitted that the Assessing Officer has given detailed prima facie belief as relates to the reopening and in fact the reasons stated out is categorically mentioned nature of transaction conducted by the assessee in respect of assessee's receipt of Rs.12,50,000/- from Growth Capital which has association with Shri Dilip J. Shah who was providing accommodation entries. The Ld. DR further submitted that the nature of business of Growth Capital was not in respect of jewellery and thus the Assessing Officer has rightly reopened after recording reasons, prior approval and satisfaction. The Ld. DR submitted that that the decisions relied upon by the assessee have their distinct fact and will not be applicable in the assessee's case as in the assessee's case the Assessing Officer has recorded reasons after taking cognisance of the transaction with Growth Capital wherein the assessee received Rs.12,50,000/- which provided accommodation entries because of the association with Dilip J Shah. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reasons recorded through the assessee's contention is that it is vague, scanty and non-specific, yet from the perusal of the reasons, it can be seen that it has given details as relates to which third party was providing accommodation entries and which party was associated with the transaction with assessee especially that of Growth Capital which was not reflected in the disclosed bank accounts and, therefore, the Assessing Officer has rightly reopened the proceedings under Section 147 of the Act. Thus, ground no.1 of the assessee's appeal is dismissed.

8. As regard to ground no.2 relating to sustaining additions of Rs.12,50,000/- on the ground of unexplained cash credit, the Id. AR submitted that once the underlying amount forms part of sale duly accounted for in the books of account and such income has been accepted by the Assessing Officer, the very same amount cannot be again added under Section 68 of the Act as it will tantamount to double taxation. The Id. AR submitted that all the documentary evidences related to names and address of customers, bill numbers, dates, description of product, weight, rate & amount, VAT and total amount including that of confirmation of customers has been given by the assessee during the assessment proceedings and the same establishes that the assessee has in fact explained the sales and the Assessing Officer has accepted the same.

9. The Id. DR submitted that there was cash deposits and thus the 97% amount received was without paying any tax. Therefore, the CIT(A) has rightly upheld the addition related to the source of credit entries aggregating to Rs.12,50,000/-.

10. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the amount on which the Assessing Officer has made addition under Section 68 of the Act has been duly explained by the assessee which forms part of sales accounted in the books of account of the assessee which was not disputed at any juncture by the Assessing Officer. In fact, the Assessing Officer has accepted such income and, therefore, the contention of the Id. AR that the same amount cannot be again added under

Section 68 of the Act is justifiable as the assessee has given details related to sales, profit element in such receipts has already been offered to tax and income declared by the assessee was accepted by the Assessing Officer. Thus, the amount cannot be treated as unexplained cash credits. In fact, the Assessing Officer has not doubted the corresponding purchase/quantitative details and, therefore, the addition made by the Assessing Officer is not justifiable. Thus, ground no.2 is allowed.

11. As relates to ground no.3, the Ld. AR submitted that the commission paid for so called accommodation entry will not be suffice as the addition under Section 68 allegedly made by the Assessing Officer has been very well explained by the assessee through documentary evidences and, therefore, the question of commission does not arise in the present case. In alternate, the Ld. AR submitted that the total turnover of the assessee is Rs.520,64,77,230/- and the assessee would not take entry of Rs 12,50,000/-, i.e. 0.02% of total turnover. Thus, even in view of material concept, the impugned addition is not justified and commission expense at 0.10% under Section 69C will not be justifiable.

12. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

13. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the very addition of Rs.12,50,000/- under Section 68 of the Act does not survive as per the findings given hereinabove and, therefore, the question of commission expenses will also be not arisen at this juncture. Hence, ground no.3 is allowed.

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

Order pronounced in the open Court on this 28 <sup>th</sup> June, 2024.
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Sd/-  
(SUCHITRA KAMBLE)  
Judicial Member

**Ahmedabad, the 28<sup>th</sup> June, 2024**  
**PBN/\***



*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*