

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

**BEFORE SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER AND  
SHRI N.S. SAINI, ACCOUNTANT MEMBER**

**ITA No.436/Ahd/2013  
A.Y. 2005-06**

<b>Kamalchand Nathmal Lunia, 208, Hazoori Chambers, Zampa Bazar, Surat. PAN: AALPL7361A</b>	<b>Vs</b>	<b>ITO, Ward-5(2), Surat.</b>
(Appellant)		(Respondent)

Revenue by :	Shri O.P. Batheja, Sr.D.R.,
Assessee(s) by :	Shri R.N. Vepari, AR

सुनवाई की तारीख/**Date of Hearing** : **10/04/2014**  
घोषणा की तारीख/**Date of Pronouncement**: **9<sup>th</sup> May/2014**

**आदेश/ORDER**

**PER SHRI MUKUL KUMAR SHRAWAT, JUDICIAL MEMBER**

This is an appeal filed by the assessee arising from the order of learned CIT(A)-I, Surat dated 17.12.2012. The main ground contested before us is reproduced below:

“I. Reopening of the assessment:

(1) *The Assessing Officer erred in reopening of assessment when valid conditions for the reopening were not satisfied.*

(2) *The appellant submits that reopening was also not justified because instead of the Assessing Officer recording his satisfaction, he initiated action at the behest of DIT (Investigation), Surat.*

(3) *The appellant further submits that the Assessing Officer having taken his decision based on the decision of the DIT, the Assessing Officer ought to have been provided with the copy of the report.*

(4) *On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) ought to have held that the reopening was not validly initiated. ”*

2. Facts in brief as emerged from the corresponding assessment order passed u/s. 143(3) r.w.s. 147 of IT Act, dated 30<sup>th</sup> of December, 2011 were that the AO has received information that a search u/s.132 was carried out in the case of M/s. Mahasagar Securities Pvt. Ltd. In that case a statement of one Sri Mukesh Choksi was recorded u/s.132(4) of IT Act. He had admitted that the said company was engaged in providing bogus speculation profit/loss, as well as commodities profit/loss. Pursuant to the said information a notice u/s.148 was issued on 23<sup>rd</sup> of March, 2011. Reasons were recorded and duly communicated to the assessee, for the sake of completeness reproduced below:

“REASONS FOR ISSUE OF NOTICE U/S. 148 OF THE I. T. ACT  
ASSESSMENT FOR A.Y.2005-06 :

*In this case, the assessee has filed return of income declaring total income at Rs.88,695/- on 13.02.2006. The assessee had during the A.Y. 2005-06 relevant to F.Y. 2004-05 has shown the share profit of Rs. 4,05,576/-. The transaction of share has been carried out by the assessee with Alliance Intel. Mediateries and network Pvt. Ltd. In the return of income he has claimed the said long term capital gain exempld u/s. 10(38) of the I.T. Act.*

*As per the information received from the DIT(Inv.), Surat, in the case of the assessee had sold the share of Rs. 4,80,035/-. During the search and seizure action u/s. 132 of the I.T. Act undertaken in the case of M/s. Mahasagar Securities Pvt. Ltd. it has been revealed that the Mahasagar Securities Pvt. Ltd. its related group company, out of which ones being M/s. Alliance Intel. Mediateries and network Pvt. Ltd. from whom the assessee has sold the shares of various companies. On verification of the return of income filed, the assessee has sold the following shares of the various companies as on 28.02.2005 vide Bill No. CC/2005/039/5 dated 28.02.2005.*

Sr. No.	Name of the company	No of Share	Amount
	Channel Guide	3400	Rs. 39,950/-
2	Broadban Ltd.	17000	Rs. 65,200/-
3	D. Karuna Cable	12500	Rs. 2,89,605/-
4	Sacheta Metals	2600	Rs. 85,280/-
		Total	Rs, 4,80,035/-

*During the course of search proceeding it was revealed that the Mahasagar Securities Pvt. Ltd. and its related group of 34 odd companies (the prominent ones being M/s. Alliance Intermediaries & Network Pvt. Ltd., M/s. Mihir Agencies Pvt. Ltd., M/s. Gold star Finvest Pvt. Ltd. etc- all run by Mukesh Choksi) were engaged in fraudulent billing activities and in the business of providing bogus speculation profit/loss, short term/long term capital gain/loss, Share application money, commodities profit/loss on commodity trading (Through MCX) and had been continuing this business for many years, In this case the assessee has received accommodation entry by way of long term capital gain of Rs. 4,80,035/- and increased his capital or introduce his unaccounted income by way of LTCG.*

*I have reason to believe that income chargeable to tax shown as long term capital on sale proceeds of shares has escaped the assessment and within the means of section 147 of the IT Act. Therefore, it is necessary to initiate the action u/s.147 of the IT Act, 1961, in the case of the assessee.*

*Issue notice u/s.148 of the accordingly.”*

2.1 The assessee has challenged the reopening of the case before learned CIT(A) who has rejected the same in the following manner:

*“12. The contentions of the appellant have been examined. The AO followed all the procedural formalities for issue of notice u/s.148 and for proceedings conducted that. The search led to admission of the fact that the only business of those companies was to provide accommodation entries. The transaction with appellant appeared the seized materials. Therefore, the AO had a reason to believe that income has escaped assessment. **Considering the same reopening is held to be valid and ground 1 is decided against the appellant.**”*

3. Now before us, learned AR, Mr. R.N. Vepari has pleaded that there was no independent application of mind by the AO and merely on an information from DIT (Investigation), the AO has issued the impugned notice u/s.148 of IT Act. He has argued that the AO should have satisfied himself about the reason of reopening. He has also pleaded that the reasons talk about revelation that Mahasagar Securities P. Ltd. and other group companies were engaged in fraudulent billing activities, etc. But it is not mentioned or found in search proceedings that there was any evidence found that the appellant too, had engaged himself in such activities. This would come out only if report of DIT(Inv.), which is the

basis of reopening is made available to assessee. This has not been done. On last date i.e. on 30.12.2011, the assessee was given inspection of this report but copy denied. In the report, there is no mention of assessee having been part of such activities. In absence of any such clear finding in search about assessee having been involved in it, there can be only “reason to suspect” and not “reason to believe. On this legal point, he has placed reliance on various judgments.

- “1. Rajesh Jhaveri Stock Brokers (P) Ltd., 196 CTR 105 (Guj)*
- 2. SFIL Stock Broking Ltd., 41 DTR 98 (Del)*
- 3. Sarthak Securities Co. P. Ltd., 329 ITR 110 (Delhi)*
- 4. Aslam Ulla Khan, 321 ITR 150 (Karn)*
- 5. M.B. Traders, 41 DTR 441 (Nag)*
- 6. Signature Hotels (P) Ltd., 60 DTR 30*
- 7. Radheshyam Mohanlal Maheswari, 12 ITR 429*
- 8. Mahadev Trading Co., 65 DTR 140 (Ahd)*
- 9. Durga Prashad Goyal, 98 ITD 227*
- 10. Bhubaneswar Stock Exchange, 96 ITD 480 (Cuttack)*
- 11. Yakub Ali Gopal Singh & Party (Wine Contractor), 98 TTJ 821*
- 12. Hindustan Dorr Oliver Ltd., 4 DTR 61 (Bom)*
- 13. Bakulbhai Ramanlal Patel, 56 DTR 212 (Guj)*
- 14. Poonam Rani singh, 97 ITD 390*
- 15. Shree Rajasthan Syntex Ltd., (SLP(c)No.8167 of 2009), 313 ITR 27*
- 16. Batra Bhatta Company, 321 ITR 526 (Del.)”*

Finally, he has submitted that the share transactions were genuine because the purchase of shares was as early as on 24<sup>th</sup> of April, 2001. Those shares stood reflected in the balance-sheet of the assessee. According to him, the shares were transferred in physical form in the name of the assessee. Later on, shares were transferred in Demat Account with Growth Avenue Ltd. He has also informed that on sale of shares the required STT and Service Tax have also been paid. He has concluded that merely on suspicion, the reopening was done which was bad in law.

4. From the side of the Revenue, learned Sr.D.R., Mr. O.P. Batheja appeared and placed reliance on the provisions of Section 147 of IT Act. He has argued that consequent upon a search an information was received by the AO according to which it was found that all material facts have not been disclosed by the assessee, therefore, as per proviso to Section 147 the reopening should be upheld. He has cited a decision of Hon'ble Supreme Court pronounced in the case of *ITO vs. Purushottam Das Bangur*, 90 Taxman 541 (SC), *Phool Chand Bajrang Lal*, 69 Taxman 627 (SC), *Selected Dalurband Coal Co. Pvt. Ltd.*, 217 ITR 597 (SC), *Rattan Gupta*, 234 ITR 220 (Del), *AGR Investment Ltd.*, 197 Taxman 177 (Del).

5. We have heard both the sides. We have perused the material placed before us. At the outset, it is worth to reproduce the Proviso to Section 147 of IT Act as under:

*"147. If the [Assessing] Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*

***Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."*

5.1 Although, the admitted factual position is that for A.Y. 2005-06, the AO was required to issue notice u/s.148 within 4 years from the end of relevant assessment year. Meaning thereby, the AO should have issued the notice u/s.148 upto 31<sup>st</sup> March, 2010. However, the admitted factual position was that the notice u/s.148 was issued on 23<sup>rd</sup> of March, 2011. Because the notice was issued after the expiry of four years as prescribed in the statute, therefore, we have to examine the correct position of law as prescribed under the Ist Proviso to Section 147 of IT Act. It was not disputed that the assessee is in individual capacity has filed the Income Tax Return for Rs.88,664/- on 13<sup>th</sup> of February, 2006, which was processed u/s.143(1) of IT act. The proviso prescribes that no action should be taken u/s.147 after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, we have to examine whether the disclosure was full and true of all material facts by the assessee when the return was filed or when the assessment was made. We have noted that the information which was received after the search operation was new information which was not revealed by the assessee and that information came to the notice of the AO consequently after the search was conducted. Because of that reason, it was held by the AO that there was a failure on the part of the assessee.

5.2 We have examined the case laws as cited by learned AR, Mr. R.N. Vepari. This is not the case, where an audit objection was raised and on the basis of the said objection the case of the assessee was reopened. But

later on in that cited decision it was noticed by the learned Court that there was no belief of the AO; hence, the reopening was held as not sustainable in the eyes of law. Once, the reason recorded were assigned by the AO then it is wrong to say that he has not applied his mind, rather we hereby hold that there was a proper application of mind by the AO. The AO has given copy of the “reasons for reopening” to the assessee which was duly signed; hence, it is wrong to argue that the AO has not recorded his own satisfaction.

5.3 It is also worth to mention that although the notice was issued after the expiry of four years but it was issued within six year. This fact has not been controverted by the appellant. Therefore, the time limit for notice as prescribed u/s.149 of IT Act was not in controversy because the amount which has escaped the assessment had exceeded Rs.1 lac. We hereby hold that there was no force on the ground of the assessee challenging the reopening of the assessment. The grounds in this regard are hereby dismissed.

6. Ground No.2 is reproduced below:

“II. Addition of Rs.4,80,035/-:

(1) *On the facts and circumstances of the case and as per law, the addition of Rs.4,80,035/-ought to be deleted.*

(2) *The appellant submits that the learned Commissioner of Income Tax (Appeals) having accepted that several legal issues and several case laws has dismissed them without dealing with it and has not at all dealt with the various contentions.”*

7. During the course of assessment proceedings, the AO had inquired about the genuineness of the share transaction consequent upon the

search on M/s. Mahasagar Securities and a statement of Mukesh Chokshi u/s.132(4). The AO had doubted the genuineness of the share transaction. It was noted that the assessee had claimed sale of the following shares.

<i>Sr. No.</i>	<i>Name of the Company</i>	<i>No. of shares</i>	<i>Amount</i>
1.	Channel Guide	3400	Rs.39,950/-
2.	Broadban Ltd.	17000	Rs.65,200/-
3.	D. Karuna Cable	12500	Rs.2,89,605/-
4.	Sacheta Metals	2600	Rs.85,280/-
		<b>Total:</b>	Rs.4,80,035/-

7.1 The AO had asked to furnish the Demat Account for the period of 2003-04 and 2004-05. The query of the AO was as under:

- “1. Demat account for the period F.Y. 2003-04, 2004-05*
- 2. Bank statement for indicating the purchase of shares.*
- 3. Date of purchase of the shares, its sale during the F.Y. 2004-05 and from whom the shares have been purchased and how the purchase considerations have been paid.*
- 4. Brokers Contract note for the purchase of the above stated shares.*
- 5. Name and full address of the companies as stated above.*
- 6. Details of dividend received for the period you have retained the shares with you.*
- 7. Submit the details of shares sold with evidence with Bank statement indicating the consideration received.”*

7.2 The assessee has claimed that the shares were purchased since long and the shares were sold through M/s. Alliance Intel on 28.02.2005. The shares were purchased in the year 2001 and the details of the purchase of shares were as under:

<i>Date purchase</i>	<i>Name of the security</i>	<i>No. of shares purchase</i>	<i>Rate</i>	<i>Total Price</i>
18.04.2001	Channel Guide	3400	1.65	5610
18.04.2001	IOL Limited	10000	1.60	16000
18.04.2001	IOL Limited	7000	2.35	16450
18.04.2001	Karuna Cable	12500	2.35	29375
18.04.2001	Sucheta Metal	2600	2.35	12220



7.3 Thereafter, the AO has collected information and on the basis of those information in respect of all the shares it was found that the rates were not matching with the rates on the website of BSE. The AO has mentioned the prices of the shares as quoted on the website of BSE but he had found that the scrip as per the contract filed by the assessee has not matched with the rate informed by the assessee. He has, therefore, concluded that only fictitious bills have been prepared and the purchases as per stock exchange price were far from truth. The assessee had made payment in cash for purchase of shares likewise in respect of sale of shares which took place on 28.02.2005. The assessee was asked to place on record the Demat Account, the bank statement, the dividend received for the period in which shares have been retained. Although, the assessee has placed copy of bank passbook, copy of Demat Account, transaction slip, contract note of M/s. Alliance Intel, Statement of Account but it was found that the pay in or pay out was “off market” transaction. The observation of the AO after investigation was as under:

*“On the basis of the above information furnished by the A.R. of the assessee, in order to verify the genuineness of the transactions a notice under section 133(6) of the Act was issued on 16.12.2011 to NSDL, Mumbai to verify the transaction which have been shown as per Demat Account furnished by the assessee. Further they were asked to furnish the share transactions shown through Demat accounts to verify whether those transactions have been completed either by **relevant pay in or pay out or off market transaction**. In response to the said notice, the NSDL vide letter dated 23.12.2011 has furnished the information that “In this regard, the details of **off market transfers** reflecting the given SOT are enclosed in a compact discrepancy as per the format given in Annexure-A.” [Annexure B-7 pages]*

**3.8** *On going through the enclosed annexure it is found that in all the above 4 scrip's i.e. Channel Guide India, Globus Corporation, IOL Net Com Ltd. and Sacheta Metals Ltd., in comparison with the copy of demat account filed, it is stated that on both the dates i.e. on 25.2.2005 and 28.2.2005, **the above share transaction are not genuinely delivered against the sale as the assessee claimed, but it is off market transaction on both the occasions i.e. either at the time of debit and credit of all the relevant scrip's.***

7.4 On further investigation, the explanation of the assessee was not acceptable to the AO in view of the following reasons:

*“3.11 (1) On going through the reply received from the NSDL and copy of print out generated from CD in respect of trail of transaction of sale proceeds as reflected in the demat account submitted by the furnished by the assessee. Further they were asked to furnish the share transactions shown through Demat accounts to verify whether those transactions have been completed either by relevant pay in or pay out or off market transaction and the source of the shares credited/received with full trail of transaction. In response to the said notice, the NSDL vide letter dated 23.12.2011 has furnished the information that “In this regard, the details of off market transfers reflecting the given SOT are enclosed in a compact discrepancy as per the format given in Annexure-A” It shows that the delivered of the sale proceeds had never been floated but on both the occasions i.e. on 25.02.2005 and 28.02.2005, the transactions were known as off market transactions. It means that, on first transactions, the shares were transfer off market in the demat account of the assessee by IL & FS Securities Service Ltd. and on second occasion also the same transactions were shown as off market in favor of IL & FS Securities Service Ltd. It leads to establish that in any of the four scrip's, at any time sale were never executed. Thus, in all circumstances it is nothing but sham transactions. Further, the decisions on relied upon the assessee is totally irrelevant not applicable in this case.....*

*3.15 It is evident from the above that Mahasagar Securities Pvt. Ltd. group is not member of ISE and therefore the business carried out is illegal. Further, most important evidence of entry business is that the companies of this group are declaring their profession as entry provider in the return of income and also disclosing of the income at the rate of 15% to total entries provided by them. This being done on the basis of following the order of ITAT Mumbai. Based upon the ITAT order all the companies including M/s. Alliance Intermediaries and Network Pvt. Ltd., M/s. Gold Star Finvest P Ltd. & M/s Alpha Chemie Trade Agencies Pvt. Ltd. have also filed their returns declaring is to be in the business of an entry provider and estimating its income @15% of total receipts from entry seekers. The same has been accepted in the assessment order dated 12.11.2008 for the A.Y.2007-08 u/s. 143(3) by ACIT (OSD)-1, Central Range-7, Mumbai.*

*The Hon. ITAT has already declared this company as entry providers and later assessments are based upon this decision.*

*3.16 It proved beyond doubt that the Mahasagar Group companies are engaged in the business of issue of fraudulent bills of short term and capital gain in the name of fictitious persons. The assessee is also involved in such fictitious transactions which are evident from the fact that the assessee has furnished the return of income from the sale of share which is carried out of Market transaction. The purchase consideration has been paid in cash and*

*purchased date has been misrepresentation to show that the shares were held more than 1 year but in fact the same were purchased in genuine. The assessee has not furnished any details regarding application made for demat of such shares. The claim of the assessee that the shares were purchased on 18.04.2001 is also not found genuine in support of details of contract note not supporting with transactions as data made available either on BSE or Money Control. Com. All these sequences of events and documents founds as well as the admission made by Mukesh Chokshi. It is proved that the assessee is involved in fictitious transactions. Therefore, I am of the considered view that the amount of Rs.,4,80,035/- as claimed to be received against the sale of shares is nothing but the undisclosed income of the assessee. The assessee has credited this entry in his books of accounts and therefore the same is treated as unexplained cash credit u/s. 68 of the IT Act and added to the total income of the assessee. I am also satisfied that the assessee has concealed the particulars of income as well as furnished inaccurate particulars of income. Therefore, the penalty proceedings, u/s 274 r.w.s. 271(1) (c) is initiated.”*

8. Being aggrieved, the matter was carried before the First Appellate Authority who has affirmed the action of the AO.

9. From the side of the appellant, learned AR, Mr. R.N. Vepari appeared and argued that in a situation when the purchase of shares have duly been reflected in the past and the transaction of sale was made through banking channel and that Demat Account was available with the assessee then it was wrong on the part of the AO to presume that the transaction was not genuine. In respect of this contention, he has cited few case laws as well as the corresponding accounts in the books of the assessee. He has also furnished a copy of the Demat Account and the copy of account with Alliance Intel etc.

10. On the other hand, from the side of the Revenue, learned DR has supported the assessment order and argued that the transactions were not genuine as it was revealed after the search was conducted on M/s. Mahasagar Securities.

11. After hearing both the sides and considering the totality of the facts and circumstances of the case, we are also of the opinion that the purchase as well as the sale transactions of the scrips in question was not genuine. The reason for taking this view is that the purchase rate had not tallied with the rate as per BSE website and that the purchases have also been made in cash. Only paper transactions have been made because there was no evidence of physical delivery of the shares. The AO was right in asking the details of the dividend if any received during the holding period. But no such information was provided at any stage of proceeding. Even, the entries in the Demat Account were not *sacro sanct* because the AO had found on investigation that those were all “off market” transactions. It was also noted by the AO that Hon’ble ITAT Mumbai Bench had held that those companies were nothing but entry providers. Rather, it was proved beyond doubt that Mahasagar Group was engaged in the business of issuance of fraudulent bills. We, therefore, affirm the findings of the Revenue Authorities and dismiss the ground of the assessee.

12. Since, both the grounds have been dismissed; therefore, this Appeal of the Assessee is dismissed.

Sd/-  
(N.S. SAINI)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 9<sup>th</sup> May/2014

*Prabhat Kr. Kesarwaní, Sr. P.S.*

Sd/-  
(MUKUL Kr. SHRAWAT)  
**JUDICIAL 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

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4. आयकर आयुक्त (अपील) / The CIT(A)-III, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/** BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad