

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH `B' NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

I.T.A.No.2068/Del/2010  
Assessment Year : 2004-05

ACIT,  
Circle II, B-Block,  
CGO Complex, NH-IV,  
Faridabad.

(Appellant)

vs Shri Devesh Kumar,  
Prop Dinesh Steels,  
Plot No.B0610, Nehru Ground,  
Faridabad.

(PAN: ACZPK4928D)

(Respondent)

Appellant by: Smt. Parwinder Kaur, Sr. DR

Respondent by : Shri Ashwani Taneja, Adv.

**ORDER**

**PER CHANDRA MOHAN GARG, JUDICIAL MEMBER**

This appeal has been preferred by the revenue against the order of CIT(A), Faridabad dated 4.3.2010 in Appeal No.252/09-10 for AY 2004-05.

2. The revenue has raised following grounds in this appeal:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law annulling the assessment even though after the amendment in section 147 w.e.f. 1-4-1989, the only requirements before issue of a notice u/s 148 are the Assessing Officer should have, reason to believe that income had escaped assessment and the same was fully met in this case."*

2. *"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in holding that the Assessing Officer has proceeded beyond the jurisdiction u/ s 147 which was limited only to the reasons of escapement of income of Rs. 4,51,000/- even though there is no such bar under the Income Tax Act but if he found any material during the course of reassessment proceedings, he can assess accordingly."*

3. *"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in holding that assessee was not provided any opportunity and thus suffers severely from the violation of natural justice and hence vitiates the reassessment disregarding the fact that assessee was provided as many as 14 (fourteen) opportunities as details given on page No. 2 & 3 of assessment order, but mostly he either did not attend the proceedings or no relevant details filed, thus deliberately tried to avoid/ delay the proceedings throughout."*

4. *"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in giving relief of Rs. 98,80,100/- thus reducing the assessee's income to NIL as against income of Rs. 3,06,245/ - declared by the assessee himself in his return of income and is contrary to the Hon'ble Supreme Court's decision in the case of CIT vs Shelly Products and another (2003) 261 ITR 367 wherein the Apex .Court has held that the assessee is not entitled to refund of entire tax including the advance tax and tax deducted at source, which were payable on the basis of income declared in the return by the assessee himself."*

6. *"Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in quashing the assessment and not adjudicated upon the merits of the additions ?"*

*7. That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal. ”*

3. Briefly stated, the facts giving rise to this appeal are that the assessee is deriving income from the business of Trading of Iron & Steel and manufacturing of crane parts under the name and style of proprietary concern, M/s Dinesh Steels. The assessee furnished his return of income on 30.10.2004 declaring a loss of Rs. 3,06,245/- which was duly processed u/s 143(1)(a) as such on 15.03.2005. Later on, on account of information received from Additional Commissioner of Income Tax, Range-II, Faridabad that the assessee was beneficiary of obtaining accommodation entries to the tune of Rs.4.51 lakhs, the proceedings u/s 147 were initiated by recording the reasons u/s 148(2) to tax the said escaped income of Rs.4,51,000/-. After considering and analysing the submissions of the assessee regarding compliance to the show cause notices, the AO completed the reassessment proceedings u/s 143(3) r/w section 147 of the Act to the total income of Rs.98,80,100/- in which besides addition of Rs.4,55,000 in regard to unexplained cash credit u/s 68 of the Act, the AO also made additions in regard to addition of Rs.10,40,900 in the capital account, disallowance of loss on sale of machinery, disallowance of unsecured loans amounting to Rs.25,26,000, disallowance of sundry creditors amounting to Rs.64,30,347/-, interest of TDS of Rs. 167 and personal disallowance pertaining to the claimed expenditure in the P&L account amounting to Rs.3,69,598/-. The

AO finalised the assessment at Rs.98,80,100 as against the returned loss of the assessee.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), Faridabad which was allowed by accepting the legal contentions of the assessee against the assumption of jurisdiction for issuance of notice and reassessment u/s 147 and 148 of the Act and the CIT(A) Faridabad quashed the entire reassessment proceedings. Since the CIT(A) noted that the opening of assessment was not valid and the same was quashed by accepting the legal grounds and objections of the assessee, therefore, the CIT(A) refrained from adjudicating the appeal of the assessee on other grounds pertaining to the additions on merits.

5. Now, the aggrieved revenue is before this Tribunal with the grounds as reproduced herein above.

6. We have heard arguments of both the sides and carefully perused the relevant material placed on record, inter alia reassessment order, impugned order and ratio of the decisions relied by both the parties.

7. Ld. DR submitted that the CIT(A) has erred on facts and circumstances of the case in annulling and quashing the assessment even though after the amendment in section 147 w.e.f. 1-4-1989, the only requirement before issue of a notice u/s 148 is that the Assessing Officer should have reason to believe that income had escaped assessment. Ld. DR also contended that the CIT(A) has

also erred on factual matrix and in law in holding that the AO has proceeded beyond jurisdiction available with him u/s 147 of the Act which was limited only to the reason of escapement of income of Rs.4,51,000 even though there is no such restriction in the Act. The DR further contended that if the AO found any incriminating material, evidence or fact during the course of reassessment proceedings, then the AO is empowered to reassess the income of the assessee accordingly. Ld. DR placed his reliance on the following decisions to support the case of the revenue:-

- i) Decision of Hon'ble Supreme Court in the case of ACIT vs Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500
- ii) Decision of Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. Vs ITO (1999) 236 ITR 34(SC)
- iii) Decision of Hon'ble Jurisdictional High Court in the case of AGIR Investment Ltd. Vs ACIT (2011) 333 ITR 146 (Delhi)
- iv) Decision of ITAT Delhi Bench in the case of Ambika Steels Ltd. Vs DCIT (2008) 305 ITR (AT) 49 (Del)

8. Replying to the above, Id. Counsel of the assessee has drawn our attention towards reasons recorded available on page no. 17 and 18 of the Paper Book and submitted that the AO mechanically proceeded to assume jurisdiction u/s 147 of the Act and to issue notice u/s 148 of the Act. Ld. Counsel pointed out that there is no mentioning of the date on which the AO recorded reasons for

issuance of notice u/s 148 of the Act and the AO simply proceeded on information of the Investigation Wing without analysing and applying his mind towards the nature of transaction to establish that the impugned transactions were in the nature of accommodation entries. Supporting the impugned order, Ld. Counsel has drawn our attention towards operative para no. 5 and 6 of the impugned order and submitted that the so-called information said to be received from Investigation Wing has not been duly processed by the AO and there is no material on record to show that the AO had applied her mind in forming a belief which may result in the reason to believe as required to proceed u/s 147 and 148 of the Act. Ld. Counsel vehemently contended that the copy of the reasons recorded given to the assessee which is available on page no. 17 and 18 of the Paper Book of the assessee clearly shows that the AO simply proceeded in a mechanical manner, even she has not mentioned the date on which such reasons were recorded, therefore, there was a clear lack of application of independent mind by the AO prior to issuance of notice u/s 148 of the Act, and hence, the CIT(A) rightly annulled and quashed the notice u/s 148 of the Act and entire assessment proceedings conducted thereunder. Ld. Counsel has placed his reliance on the following decisions:-

1. CIT Vs. Kamdhenu Steels & Alloys Ltd. & Ors., SLP No. 15640/2012.(SC).
2. CIT Vs. Kamdhenu Steels & Alloys Ltd. & Ors., (2012) 248 CTR (Del) 33., (DHC)

3. CIT vs. SFIL Stock Broking Ltd.,(2010) 325 ITR 285.,(DHC).
4. Sarthak Securities Co. Pvt. Ltd. Vs. ITO.,(2010) 329 ITR 110.,(DHC).
5. Signature Hotels Pvt. Ltd. Vs. ITO & Anr., (2011) 338 ITR 51.,(DHC).
6. Recent decision of Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs Insecticides (India) Ltd. 2013 357 ITR 330 (Del).
7. Decision of ITAT Delhi Bench in the case of ITO vs On Exim Pvt. Ltd. (2013) 157 TTJ 633 (ITAT Delhi).
9. On careful consideration of above submissions and ratio of the decisions relied by both the parties, and careful reading of the impugned order, specially operative para no. 5 & 6, we observe that the CIT(A) has quashed the reassessment proceedings initiated u/s 147 and 148 of the Act with following observations and conclusions:

*“5. I have carefully considered the contentions of the Ld. AR and perused the order of assessment. I have also gone through the reasons recorded u/s 148 of the Income Tax Act, 1961 and the reassessment framed by the AO consequential to that notice. It is observed that as the facts float in the instant case, the action of the AO in making the total addition of Rs. 1,01,86,341/- to the returned loss is not in conformity with the correct adherence to the provisions of section 147 to 151 of the Income Tax Act, 1961. As sufficiently brought out by the Ld. AR above, and as the AO's order abundantly manifests, the AO has merely proceeded on the basis of information contained in a CD alleging the receipt of amount of Rs. 4,51,000/- as an accommodation entry. The so-called information has not been duly processed by the AO and there is no material on record to show that the AO had applied her independent mind in forming a belief which may result in "the reasons to believe" as envisaged in the proceedings u/s 147/148 of the Income Tax Act, 1961. The law on this point is very much clear, as has been established by the Ld. AR in the various judgments relied upon by him. The AO's disposal of*

*the various judgments relied upon by the Ld. AR during the assessment proceedings is wholly hollow and fallacious and hence untenable. Even so the amount of Rs. 4,51,000/-, as per the AO's own acknowledgement in para 3, had been substantiated by various documentary evidences like the copy of affidavit from Shri Sachin Gupta and Shri Rajesh Kumar Gupta, their Income Tax returns, bank statement of Shri Rajesh Kumar Gupta and copies of gift deeds from Shri Sachin Gupta and Shri Rajesh Kumar Gupta and their balance sheets, thus the appellant discharging the initial onus on him. However, in the proceedings u/s 147, the onus is entirely and heavily on the Revenue to prove that the amount of Rs. 4,51,000/- was an accommodation entry to be treated under the provisions of section 68 of the Income Tax Act, 1961 as undisclosed income. But the AO has not discharged her onus in any way in proving that the amount of Rs. 4,51,000/- was an accommodation entry and has thus vitiated the intent and purpose of the proceedings u/s 147 of the Income Tax Act, 1961.*

*6. In effecting the other additions by not mentioning them in the reasons recorded u/s 148(2), it is further observed that the AO has proceeded beyond the jurisdiction intended u/s 147 which was limited only to the reasons of escapement of income of Rs. 4,51,000/-. As per the amended provisions of section 147 with effect from 01.04.1989, the scope of section 147 still remains restricted to the escaped income proposed to be taxed in the reasons recorded u/s 148 of the Income Tax Act, 1961. As brought out by the Ld. AR above, such situations have been sufficiently discussed by the courts like the Apex Court in the case of CIT Vs. Sun Engineering Work Pvt. Ltd. (Supra) and the Jurisdictional High Court in the case of Vipin Khanna Vs. CIT and Amrinder Singh Dhiman Vs. ITO (Supra). All these judgments have been fully re-elucidated and affirmed not only by the Kerala High Court in the case of Travancore Cement Ltd. Vs. ACIT (Supra) but also recently by the Hon'ble Delhi High Court in the case of Jai Bharat Maruti Ltd. Vs. CIT (Supra). The amended provisions of section 147 only justify those same additions to be made as are mentioned in the reasons recorded but also those which are found to be identical or central or key to the issues additions referred to in the reasons u/s 148(2). But here in this particular case all the additions except that of Rs. 4,51,000/-, are wholly unrelated to*



*the reasons recorded and hence the reassessment u/s 147 becomes ultrawires. Again, in framing these additions of Rs. 97,35,341/- (RS. 1,01,86,341/- (-) Rs. 4,51,000/-), the appellant was not provided any opportunity and thus the reassessment also suffers severely from the violation of natural justice and hence further vitiates the reassessment. In all, the whole assessment is completely high-handed and legally infirm and hence being invalid, deserves to be annulled.”*

10. From bare reading of the copy of the reasons recorded by the AO for issuance of notice u/s 148 of the Act available on page no. 17 and 18, we observe that there is no mention of date therein. However, the details given are only with regard to name of the bank and its branch, address of the beneficiary, instrument no., date of transaction and amount is mentioned therein but in the operative part of the reasons recorded, there is no mention of the nature of transaction, much less to establish that the impugned transactions were in the nature of accommodation entries in the garb of gift.

11. At this juncture, we find it appropriate to consider the ratio of the decisions relied by both the parties in the case of Ambika Steels Ltd. (supra), the information was received by the AO directly from the Investigation Wing of the department which had conducted the search. It was not the case where the AO of the person searched had handed over the relevant information to the AO of the assessee. In this case, the assessment was reopened at the instance of the same AO who conducted search and on information received during the course of search of person other than the assessee, therefore, it was held that there was

no question of any satisfaction having been recorded by the AO having jurisdiction of the case of person searched.

12. In the case of AGR Investment Ltd. (supra), the Hon'ble Jurisdictional High Court of Delhi observed that sufficiency of reason cannot be considered in the writ petition seeking acquiring of initiation of proceedings u/s 147 and 148 of the Act. Their lordships also observed that the assessee has a right to participate in the reassessment proceedings and to satisfy revenue authorities that there was no escapement of taxable income by the assessee.

13. In the case of Raymond Woollen Mills (supra), Hon'ble Apex Court considered the fact that there was a charge of under-valuation of closing stock against the assessee company, therefore, it was held that court can only consider whether there was a prima facie case for reassessment; sufficiency of material cannot be considered.

14. In the case of Rajesh Zhaveri (supra), Hon'ble Apex court held that formation of belief within subjective assessment of AO is required. In this case, the claim of the assessee towards bad debts was examined during the reassessment proceedings. In this case, the return of income was processed u/s 143(1) of the Act.

15. In the light of facts and circumstances of the present case, we respectfully hold that the benefit of the ratio of the above decisions are not available for the

revenue in the present case as the AO proceeded to record reason to believe as required for issuance of notice u/s 148 of the Act in a mechanical manner only after mentioning detailed reason from Investigation Wing of the Department in a CD Form without applying its independent mind and even without mentioning the date of recording of reason to believe that the income has escaped assessment.

16. We further proceed to consider the ratio of the decisions relied by the Id. Counsel of the assessee in the recent judgment of Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs Insecticides (India) Ltd., it was held that on the basis on which the AO has initiated proceedings u/s 147 of the Act was vague and uncertain and should not be construed to be sufficient and relevant material on the basis of which reasonable belief could be formed that income had escaped assessment, then notice of reassessment u/s 148 of the Act was not valid and was liable to be quashed. In this case, their lordships have also considered the decision of Hon'ble High Court of Delhi in the case of Signature Hotel (P) Ltd. (supra) wherein it was held that where the reasons did not satisfy the requirement of section 147 of the Act, then the reassessment proceedings cannot be held as valid and the same is liable to be quashed.

17. In the case of CIT vs. SFIL Stock Broking Ltd. (supra), speaking for the Jurisdictional High Court of Delhi, their lordships held that where the AO has not applied his mind to information to independently arrive at a belief that

income had escaped assessment, then quashing of reassessment and entire proceedings thereunder is justified.

18. In the case of ITO vs On Exim (P) Ltd. (supra), ITAT Delhi 'E' Bench, it was held as under:-

*“13. However, the detail given is only with regard to name of the bank, ledger account number and amount. Even the nature of transactions is not given, much less to establish that the above transactions are in the nature of accommodation entries. It has been stated by the learned counsel at the time of hearing before us that the assessee has only sold the shares through M/s Aayushi Stock Brokers (P) Limited and the sale proceed has duly been considered while computing the income of the assessee for the assessment year under consideration. In view of the above, in our opinion, the ratio of the above decisions of Hon'ble Jurisdictional High Court would be squarely applicable and, respectfully following the same, we hold that the reasons did not satisfy the requirement of Section 147.”*

19. In the light of aforesaid discussion, we are inclined to hold that in the extant case the AO proceeded to initiate proceedings u/s 147 of the Act and to issue notice u/s 148 of the Act on the basis of information received from Investigation Wing of the department in the form of a CD prepared by Shri Sanjay Shah and Shri Vishesh Prakash, ITOs of Unit V, New Delhi. Subsequently, the AO reproduced details gathered from the CD and without application of independent mind, held that the assessee was beneficiary of accommodation entries amounting to Rs.4,51,000. In the main part of reason to believe, there is no mentioning of nature of transaction to establish and fortify the fact that the impugned transactions were in the nature of accommodation

entries. We also observe that there is no mentioning of date therein and it can safely be presumed that the AO had not examined the assessment record of the assessee which was processed u/s 143(1)(a) of the Act on 15.3.2005 for forming a belief that the income of the assessee had escaped assessment.

20. Under these facts and circumstances, we are in agreement with the observation and conclusion of the CIT(A) that there was no material on record to show that the AO had applied her independent mind in forming a belief which may result in the required reason to believe as per provisions of section 147 and 148 of the Act. We also held that the CIT(A) was right in following the ratio of the decision of apex court in the case of CIT vs Sun Engineering Works Pvt. Ltd. and the decision of Hon'ble Jurisdictional High Court of Vipin Khanna vs CIT (supra), Amrinder Singh Dheeman vs ITO (supra) which have been fully re-elucidated and affirmed by subsequent decision of Delhi High Court in the case of Jai Bharati Maruti Ltd. Vs CIT (supra). In this situation, the CIT(A) was justified and reasonable in quashing the notice u/s 148 of the Act and entire reassessment proceedings conducted thereunder. Accordingly, ground no. 1 and 2 of the revenue being devoid of merits are dismissed.

### **Ground no. 3, 4 and 5 of the Revenue**

21. Since by earlier part of this order, we have dismissed legal grounds of the revenue by upholding the impugned order of the CIT(A) which quashed notice u/s 148 of the Act and entire reassessment proceedings, therefore other grounds

pertaining to the facts and merits of the case do not survive for detailed adjudication and we dismiss the same.

22. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 31.10.2014.

Sd/-

(G.D. AGRAWAL)  
VICE PRESIDENT

Sd/-

(CHANDRAMOHAN GARG)  
JUDICIAL MEMBER

DT. 31st OCTOBER, 2014  
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. C.I.T.(A)
4. C.I.T.
5. DR

By Order

Asstt.Registrar