

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**(THROUGH VIDEO CONFERENCE)**

**BEFORE  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.1197/Del./2019  
ASSESSMENT YEAR : 2009-10**

Dove Consultants Pvt. Ltd. Vs. D.C.I.T  
C/o. Kapil Goel Circle 7(1),  
Adv. F-26/124 New Delhi  
Sector 7 Rohini

**(PAN :AACCD5338B)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Sh. Kapil Goel, Adv.  
Sh. Sandeep Goel, Adv.  
REVENUE BY : Sh. Maninder Kaur, Sr. DR**

**Date of Hearing : 21.09.2021  
Date of Order : 29.09.2021**

**ORDER**

**Per Sanjay Garg, Judicial Member :**

Appellant, Dove Consultants Pvt. Ltd., New Delhi  
(hereinafter referred to as 'the assessee'), by filing the present  
appeal sought to set aside the impugned order dated 07.01.2019  
passed by the Commissioner of Income-tax (Appeals)-03, New

Delhi , qua the assessment year 2009-10 on the grounds inter alia that :-

***“1.That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by Ld. AO u/s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld. AO was in violation of mandatory jurisdictional conditions stipulated under the Act;***

***1.1 That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by Ld. AO u/s 147/143(3) without appreciating that no where assessee is validly issued and served with jurisdictional notice u/s 148 dated 31.03.2016 without which entire proceedings are void ab initio;***

***1.2 That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by Ld. AO u/s 147/143(3) without appreciating that assessee is not supplied valid reasons to believe along with approval if any before completion of assessment proceedings without which entire proceedings are void ab initio;***

***1.3 That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by Ld. AO u/s 147/143(3) without appreciating that just because cheques credited in a/c of bhola trading co were credited into other accounts from where cash was withdrawn as stated in para 3.9 of assessment order and just because proprietor of said concern did not appear in response to summons before investigation wing cant give rise to valid reasons to believe as at best it can be reason to suspect only and without reasons to believe entire proceedings are void ab initio (Refer ground no 4 before CIT-A);***

***1.4 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that Ld AO has just on basis of modus operandi of bank a/c of bhola trading co said concern is treated by Id AO as entry provider (para 3.10 of assessment order) without any valid reason to believe and tangible material being brought on records***

and no material is confronted and cross examined to assessee during assessment proceedings despite specific request for cross examination noted in para 3.7 of assessment order *without which entire proceedings are void ab initio*;

**1.5** *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that no back material like, investigation wing report details vis a vis assessee, and statements etc if any recorded by investigation wing, was lawfully confronted to assessee thus invalidating entire reopening and even cross examination request has not been adhered to by Ld AO/Ld CIT-A;*

**2.** *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that addition is mechanically made u/s 69 on a/c of alleged unexplained expenditure by Ld AO where all purchases made by assessee are fully recorded and section 69 cant apply to recorded purchases in books of accounts thus addition of Rs 59,19,233 deserves to be deleted in toto;*

**3.** *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that on basis of prodigious evidences brought on records (like bills , ledger a/c, bank statement, consumption of items purchased etc refer para 3.3 , 3.10 of assessment order) burden lying on assessee has been fully discharged and met so addition made by Ld AO (Rs 59,19,233 and confirmed by CIT-A in impugned order deserves to be deleted as stated ground of non production of vendor to draw adverse inference is held not to be a valid ground (para 3.5 and para 3.7 of AO assessment order).*

**3.1** *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s*

*147/143(3) without appreciating that none of evidence filed by assessee is overruled in accordance with law ;*

*3.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that when sales/turnover are not doubted purchase cant be doubted is well settled principle;*

*3.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that payment of purchases is made through banking channel as replied in our letter to AO refer page 2 &3 of assessment order and duly accepted at para 3.8 of assessment order which fact is no where contradicted and no material is brought on records for cash flying back to assessee herein from stated banking channel payments without which entire addition is bad and deserves to be deleted;*

*3.4 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that it was specifically pointed out to Ld CIT-A vide ground no 6 of appeal that assessee fully cooperated with investigation wing in summon proceedings and filed necessary details which plea has not been objectively considered, without which entire addition is bad and deserves to be deleted;*

*4. That on the facts and circumstances of the case and in law, ld. CIT-A erred in not restoring the returned income declared by assessee in its return of income.*

*5. That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in not deleting the addition made by Ld. AO which was also unlawful and made in violation of principles of natural justice as no back material are confronted and cross examined to assessee during assessment/appeal proceedings despite*

*repeated requests made in this regard which is sufficient to strike down the assessment framed (refer ground no. 5 before CIT-A).  
That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

2. The brief facts of the case are that during the year under consideration, the assessee company was engaged in the business of electrical contractor. The return of income declaring income of Rs. 59,93,110/- was filed by the assessee on 27.09.2009 and processed u/s 143(1) of the Income Tax Act, 1961. Thereafter the assessment was reopened u/s 147 read with section 148 of the Income Tax Act, and the impugned addition of Rs. 59,19,233/- was made by the Assessing Officer in the assessment framed u/s 147 / 143(3) of the Income Tax Act.

3. The addition made by the assessing officer has been confirmed by the Ld. CIT(A). Being aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. At the outset, the Ld. Counsel for the assessee has submitted that the assumption of jurisdiction by the assessing officer to reopen the assessment was bad in law as the Assessing Officer did not have any reason to believe that the income of the assessee has escaped assessment. In this respect he had relied upon the copy of

the reasons recorded for reopening of the assessment, the contents of the same are reproduced as under :-

The ADIT (Investigation), unit – 5 (3), New Delhi vide letter F.No. ADIT (Inv.)/U-5(3)/2015-16/256 dated 23.03.2016 intimated that **M/s Dove Consultants Pvt Ltd [PAN : AACCD5338B]** is getting accommodation entry from a shell company namely M/s Bhola Trading Co. During the financial year 2008-09, **M/s Dove Consultants Pvt Ltd [PAN : AACCD5338B]** has taken accommodation entry of Rs. 2,36,76,932/- from M/s Bhola Trading Co. During the investigation M/s Dove Consultants Pvt Ltd [PAN : AACCD5338B] has failed to furnish the nature of transaction made with M/s Bhola Trading Co. The report also states that creditworthiness & genuineness of M/s Bhola Trading Co. is dubious and also these companies have failed to prove the genuineness of these transaction.

I have perused the information received from the Investigation Wing. The fact that emerges that:-

M/s Bhola Trading Co. was receiving funds from M/s Dove Consultants Pvt Ltd (PAN : AACCD5338B) through Oriental Bank of Commerce A/ C No. 00711131000066. The credit so appeared in the account of M/s Bhola Trading Co. has been transferred from one account to another account of intermediary companies. At the end, the cash was withdrawn. M/s Dove Consultants Pvt Ltd has admitted during investigation that it has paid the funds to M/s Bhola Trading Co on account of purchase of cable etc. However, M/s Bhola Trading Co. has furnished its business trading of sheets in account opening form of bank. Sh. Mahender Kumar Aggarwal, director of M/s Dove Consultants Pvt Ltd (DCPL) stated during his statement u/s 131 of the I T Act that his company is engaged in the business of trading of iron scrap and earth sand. It is unusual that cables will be purchased from a firm working in iron scrap and earth sand. During the financial year 2008-09, M/s Dove Consultants Pvt Ltd [PAN : AACCD5338B] has taken accommodation entry of Rs. 2,36,76,932/- from M/s Bhola Trading Co. During the investigation, ledger account of M/s Bhola Trading Co. in the books of M/s Dove Consultant Pvt Ltd was taken which is reflecting that M/s Dove Consultants Pvt Ltd has made transactions of Rs. 2,36,76,932/- during F.Y 2008-09. Ledger account of M/s Bhola Trading Co. in the books of M/s Dove Consultants Pvt Ltd is as under:

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Date	Particulars	Vch Type	Vch No.	Debit	Credit
27-4-2008	By Purchase Account	Purchase	012		29,42,160.00
14-5-2008	By Purchase Account	Purchase	016		15,49,600.00
15-6-2008	By Purchase Account	Purchase	018		11,44,000.00
25-6-2008	By Purchase Account	Purchase	025		8,48,040.00
28-7-2008	To OBC A/c No. 00711131000088	Payment		29,42,160.00	
6-8-2008	To OBC A/c No. 00711131000088	Payment		15,49,600.00	
	To OBC A/c No. 00711131000088	Payment		11,44,000.00	
27-8-2008	By Purchase Account	Purchase	030		31,84,480.00
2-9-2008	By Purchase Account	Purchase	034		22,74,480.00
16-10-2008	By Purchase Account	Purchase	036		32,22,700.00
18-10-2008	By Purchase Account	Purchase	047		12,03,800.00
25-10-2008	By Purchase Account	Purchase	049		16,62,960.00
3-11-2008	By Purchase Account	Purchase	052		10,20,074.00
15-11-2008	By Purchase Account	Purchase	054		34,58,978.00
18-11-2008	By Purchase Account	Purchase	038		11,67,660.00
29-1-2009	To OBC A/c No. 00711131000088	Payment		8,48,040.00	
30-1-2009	To OBC A/c No. 00711131000088	Payment		31,84,480.00	
2-2-2009	To OBC A/c No. 00711131000088	Payment		22,74,480.00	
31-3-2009	To OBC A/c No. 00711131000088	Payment		8,00,000.00	
				1,27,40,760.00	2,36,76,932.00
				1,09,36,172.00	
	To Closing Balance				2,36,76,932.00

Analysis of ITR of the assessee company has been carried out

As the source of funds are not known, therefore, the returns of income of assessee Company have been downloaded from the ITD system and the same have been examined in the light of information received from Investigation Wing. On comparative examination of return of income of the assessee company for A.Y. 2008-09 & 2009-10, 2010-11 the following has been observed with regard to the share capital and share premium of the assessee company:-

S.No.	Particulars	A.Y. 2008-09	A.Y. 2009-10	A.Y 2010-11
1.	Authorised Share Capital	0	Rs. 10,00,000	10,00,000
2.	Issued, Subscribed and Paid up Capital	Rs. 1,00,000	Rs. 1,00,000	5,05,000
3.	Share Application Money	Rs. 2,50,000	Rs. 2,50,000	0
4.	Security Premium Account	0	0	Rs. 4,00,95,000
5.	Purchase	Rs. 5,91,39,982	Rs. 11,80,09,613	Rs. 1,13,68,837
6.	Gross Receipts/ Turnover	4,98,89,624	15,86,19,977	Rs. 2,25,56,420
7.	Aggregate Income	Rs.17,65,910	Rs.59,93,110	Rs. 6,94,540

On analysis of the above data, it is evident that the assessee the assessee company is showing purchase of Rs. 11,86,19,977/- in the balance sheet for the A.Y 2009-10, which is almost two times purchase of its previous year. Therefore, the accommodation entry of Rs. 2,36,76,932/- is included in the A.Y 2009-10. It is also seen from the above data, gross receipts/turn over of the company has increased by Rs. 10,87,30,353/- from the A.Y 2008-09 to A.Y 2009-10. Further income of the company has also increased by Rs. 42,27,200 from A.Y 2008-09 to A.Y 2009-10. Suddenly in A.Y 2010-11, the Gross receipts/turnover and income of the company has drastically decreased. The financial status of the company is inconsistent because this company is in practices of accommodation entry.

**Reasons for formation of belief**

In view of explanation 2 to clause b of proviso of section 147 of the Income Tax Act, 1961, where a return of income has been furnished by the assessee but no assessment has been made and it is noticed that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, deemed to be cases where income chargeable to tax has escaped assessment. **Keeping in view all the above, I have reason to believe that an amount at least of Rs. 2,36,76,932/- has escaped assessment in case of M/s Dove Consultants Pvt Ltd (PAN : AACCD5338B) for the A.Y. 2009-10 within the meaning of Section 147/148 of Income Tax Act,1961.**

The assessment/re-assessment proceedings in this case for A.Y. 2009-10 pertain to period beyond four years but before the expiry of six years from the date of issue of notice. In view of the same, as no assessment has been made in this case for A.Y. 2009-10 u/s 143(3) or u/s 147, the first proviso to section 147 is not applicable to the case.

5. The Ld. Counsel has submitted that in the aforesaid reasons recorded by the Assessing Officer for reopening of the assessment, there is no mention of any reliable information or evidence coming to the possession of the Assessing Officer which may be sufficient to form the belief by the assessing officer that the income of the assessee has escaped assessment.

6. The Ld. DR on the other hand has submitted that the due satisfaction was recorded by the Assessing Officer before reopening of the assessment and that the Assessing Officer has rightly reopened the assessment as he has information from the

investigation wing that the assessee has obtained a bogus entry of purchase.

7. We have considered the rival contentions of both the Ld. Representative of the parties. A perusal of the reasons recorded for reopening of the assessment (as reproduced above) would show that the Assessing Officer had only an information that the assessee M/s. Dove Consultants Pvt. Ltd. has made a transaction with M/s. Bhola Trading Company. However, there was no reliable information that the said transaction was a sham transaction. The assessee admittedly is engaged in the business of Electric Contractor. The assessee purchased electric cables from the said M/s. Bhola Trading Company. The Assessing Officer, however, doubted the said transaction. However, it has been noted by the Assessing Officer himself that during the investigation, ledger account of M/s. Bhola Trading Company in the books of assessee company was reflecting the aforesaid transaction of Rs. 2,36,76,932/-. The purchase invoices were also produced before the investigation wing. The Assessing Officer further mentioned about the gross turnover of the assessee and observed that the income of the assessee company has considerably increased from AY 2008-09 to AY 2009-10. The Ld. Counsel, in this respect has

submitted that the assessment year under consideration is AY 2009-10 and the assessee's income as per the reasons recorded has considerably increased. The sales / consumption of the material by the assessee has also not been doubted by the Assessing Officer. There is no mention of any evidence available before the AO to show that the aforesaid transaction was a bogus transaction. The assessing officer merely on the basis of suspicion observed that the aforesaid entry might be a bogus entry and that the assessee might have purchased the material from outside. A perusal of the reasons recorded by the Assessing Officer does not show that the Assessing Officer had any credible information or evidence to believe that the aforesaid transaction made by the assessee was bogus, rather, a reading of the whole of the contents of the document containing reasons for reopening of the assessment would reveal that the reopening of the assessment has been made merely on the basis of suspicion. Even the sales / consumption of the material purchased through the aforesaid transaction has not been doubted. Even the turnover and gross profits of the assessee during the year have considerably increased.

8. It has been held time and again that there is a lot of difference between the 'reasons to believe' and 'reasons to

suspect'. That the reopening of the assessment cannot be made on mere suspicion in the absence of any reliable information or evidence to form the belief that the income has escaped assessment. In this case, there is no mention of any such reliable document / evidence which may be sufficient to form the belief that the transaction in question was a bogus transaction or that the income of the assessee had escaped assessment.

9. We, therefore, do not find any justification on the part of the assessing officer for reopening of the assessment. The same being bad in law, the consequential assessment made by the assessing officer is quashed. The appeal of the assessee stands allowed.

**Order pronounced in open court on this 29<sup>th</sup> day of September, 2021.**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Dated the 29<sup>th</sup> day of September, 2021

**\*Binita\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT
5. CIT (ITAT), New Delhi.

**Sd/-**

**(SANJAY GARG)  
JUDICIAL MEMBER**

AR, ITAT  
NEW DELHI.