

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'SMC-1' NEW DELHI ]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, S. M. C.**

**ITA. No. 69/Del/2020  
Assessment Year :2007-08  
(THROUGH VIDEO CONFERENCING)**

SPJ Hotels Pvt. Ltd., C/o. Kapil Goel, Advocate, F-26/124, Sector: 7, Rohini, New Delhi-110085. <b>PIN : AAKCS7722C</b> <b>(APPELLANT)</b>	Vs.	Income Tax Officer, Ward : 24 (2), New Delhi. <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Shri Kapil Goel, Advocate;</b>
<b>Department by:</b>	<b>Shri R. K. Gupta, Sr. D.R.;</b>

<b>Date of Hearing</b>	<b>27.04.2021</b>
<b>Date of Pronouncement</b>	<b>27.04.2021</b>

**ORDER**

This appeal by the assessee is preferred against the order of the CIT (Appeals)-25, New Delhi, dated 6.11.2019 pertaining to assessment year 2007-08.

2. The assessee has challenged the order of the CIT (Appeals) on two counts. Firstly, the assessee has challenged the validity of the order on account of assumption of jurisdiction under Section 148 of the Income Tax Act, 1961 (the Act) claiming that the Assessing Officer has wrongly assumed jurisdiction under Section 148 of the Act and grossly erred in re-opening assessment which is in violation of mandatory jurisdiction conditions stipulated under the Act and secondly on merits the assessee claimed that the addition of Rs.20.40 lakhs is against the facts of the case.

3. At the very outset, the learned counsel for the assessee drew my attention to the order of the Tribunal dated 10.12.2018 by which the Tribunal has disposed of a bunch of appeals and the appeal of the appellant in that

consolidated order is at I.T. Appeal No. 2857 (Del) of 2017 pertaining to the assessment year 2007-08. In that appeal the challenge was the assumption of jurisdiction by the Pr. Commissioner of Income Tax under Section 263 of the Act wherein the reasons for issue of notice under Section 148 of the Act, read as under :-

“Reasons for issue of notice u/s 148 of the I.T.Act, 1961 in the case of M/s. SPJ Hotels (PV Limited, PAN AAKCS7722C for the A.Y. 2007-08 - Reg.

25.03.2014 : Information about entry operators and their beneficiaries of Delhi has been received from the office of the DIT .(Inv.)-II, New Delhi vide letter F. No. DIT(Inv)-148/2011-12/7539 dated 21,03.2012 and F. No. DIT (Inv)-II/U/s 148/2012-13/196 dated 12.03.2013 along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries, the Addl. Directorate of Income Tax, Unit - VI of Investigation, in his report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It is revealed from the list that the assessee company M/s. SPJ Hotels (P) Limited (termed as beneficiary) during the previous year 2006-2007 relevant to Assessment. Year 2007-2008 had taken accommodation entries totaling Rs.10,00,000/- from the persons/parties (termed as entry operators). These entries have been investigated by the Investigation Wing and found to be given as accommodation entries from entities operated and controlled by Surender Kumar Jain. The details of which are mentioned below :

Beneficiary's Name	Amount (Rs.)	Entry Provider	Cheque/ P.O.No.	Dated
M/s. SPJ Hotels (P) Limited	5,00,000/-	M/s. Hillridge Investments Limited.	011048	28.03.2007

M/s. SPJ Hotels (P) Limited	5,00,000/-	M/s. Vogue Leasing & Finance (P) Limited	011047	28.03.2007
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I have very carefully considered the aforesaid piece of information and the modus operandi of the entry operator Surender Kumar Jain and its controlled entities. I find that the quantum of amount of such entries received by the assessee company M/s. SPJ Hotels (P) Limited as per details mentioned above is Rs.10,00,000/-. These accommodation entries taken by M/s. SPJ Hotels (P) Limited are earlier identified and examined by the Investigation Wing to establish that all these entry providing entities were tools in Surender Kumar Jain business of providing accommodation entries in lieu of cash/cheques through which he had drawn a long trail of bank transaction to impart a color of genuineness on these transactions.

In view of facts stated herein above, I am of the considered opinion & belief that the assessee company managed the above said transactions of accommodation entries out of its income from undisclosed sources. In this case, as per records available, the assessee has not filed its return of income for the A.Y. 2007-08. In view of above, I have reason to believe that income of Rs.10,00,000/- has escaped assessment within the meanings of the provisions of Section 147 of the Income Tax Act, 1961. Therefore, a notice u/s. 148 of the Income Tax Act, 1961 is required to be issued to the assessee company to assess the income escaped as stated hereinabove. As the period to reopen the case exceeds four years and as per records no scrutiny assessment has been done in this case for the A.Y. 2007-08, approval from the Addl. Commissioner of Income Tax, Range-9, New Delhi has been obtained vide letter dated

25.03.2014 to issue notice u/s.148, as per the provisions of Section 151(2) of the I.T. Act.

Therefore issue notice u/s. 148 of the I.T. Act.

Sd/-Virender Kumar Rathee  
ITO, Ward 9(2), New Delhi.”

4. The Tribunal was of the considered view that the re-assessment proceeding was on the basis of non-application of mind on the part of the Assessing Officer and since the re-opening of the assessment was not accepted by the Tribunal, order framed under Section 263 of the Act was quashed. The relevant findings of the Tribunal, read as under :-

“ 13.2. Since the facts are totally different as A.O. had reason to believe that Rs.10 lakhs has escaped assessment on account of Rs.5 lakhs received from two companies referred to above, which was ultimately found to be incorrect and non-existent, therefore, there may not be any application of mind on the part of the A.O. to proceed to initiate the re-assessment proceedings. There is no other material available on record except the information received from the Investigation Wing. The A.O. on the basis of the information and material received from Investigation Wing has recorded reasons for reopening of the assessment which was ultimately found to be incorrect and non-existent. It is well settled law that when no new material other than examined by the A.O originally found on record for the purpose of initiating the re-assessment proceedings, the proceedings under section 148 of the I.T. Act would be invalid and bad in law. We rely upon decision of Delhi High Court in the case of Atul Kumar Swamy 362 ITR 693, Consulting Engineers Services India Pvt. Ltd., 378 ITR 318, Nestle India Ltd., 384 ITR 334 and Priyadesh Gupta 385 ITR 452. The Hon'ble Delhi High Court in the case of SNG Developers Ltd., 404 ITR 312 held that when A.O. initiated the

re-assessment proceedings without application of mind, such proceedings would be invalid. A.O. in the present case has failed to verify the information received from Investigation Wing. Therefore, it is non-application of mind on the part of the A.O. to record correct facts in the reasons for reopening of the assessment. In such circumstances, the re-assessment order could not be treated as valid and in accordance with law. Since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. Following the reasons for decision in the case of M/s. Supersonic Technologies Pvt. Ltd., (supra), we set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same. “

5. Since the present assessment order is framed on the very same reasons, which were considered by the Tribunal (supra) while quashing the order, I am of the considered view that once the reasons have not been accepted by the Tribunal, the same cannot be held to be good for the present assessment. Respectfully following the order of the Tribunal (supra) the re-opening of the assessment is held to be invalid and unlawful and accordingly, I quash the assessment order.

**Order pronounced in the Open Court on this 27<sup>th</sup>Day of April, 2021.**

**Sd/-  
(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated : 27/04/2021.

\*MEHTA\*

Copy forwarded to:

1. Appellant
2. Respondent

ITA. 69/Del/2020.

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	27.04.2021
Date on which the typed draft is placed before the dictating Member	27.04.2021
Date on which the typed draft is placed before the Other Member	27.04.2021
Date on which the approved draft comes to the Sr. PS/PS	27.04.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	27.04.2021
Date on which the fair order comes back to the Sr. PS/PS	27.04.2021
Date on which the final order is uploaded on the website of ITAT	27.04.2021
Date on which the file goes to the Bench Clerk	27.04.2021
Date on which the file goes to the Head Clerk	