

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 3117/DEL/2016 (A.Y 2007-08)

(THROUGH VIDEO CONFERENCING)

Sushil Kumar (Prop of M/s Shree Ram Overseas), 5520 Basti Harphool Singh, Sadar Bazar, Delhi AALPK5068M (APPELLANT)	Vs	ITO Ward-63(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Amit Goel & Sh. Nippun Mittal, CA
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	15.09.2021
Date of Pronouncement	04.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 31/03/2016 passed by CIT(A)-20, New Delhi for assessment year 2007-08.

2. The grounds of appeal are as under:

“1. On the facts and circumstances of case and in law, the notice u/s 148 issued in this case is illegal, void, barred by limitations and without jurisdiction and the CIT(A) erred in not holding so.

2. On the facts and circumstances- of case and in law, the CIT(A) erred in confirming the addition of Rs.8651758/- made by the assessing officer on account of alleged bogus purchases.

3. *On the facts and circumstances of case and in law, the CIT(A) erred in not deleting the addition of Rs.8651758/- made by the assessing officer on account of alleged bogus purchase.*

4. *On the facts and circumstances of case and in law, the CIT(A) erred in enhancing the additions to Rs. 10425365/-.*

5. *On the facts and circumstances of case and in law, the enhancement to income done by the CIT(A) is totally arbitrary and erroneous.*

6. *On the facts and circumstances of case and in law, the CIT(A) erred in passing exparte order.*

7. *On the facts and circumstances of case and in law, the order passed by CIT(A) is against the principles of natural justice.”*

3. The return of income was filed by the assessee on 29/10/2007 declaring an income of Rs.8,84,000/-. The same was processed u/s 143(1) of the Income Tax Act, 1961. Later on, information was received from ACIT, Central Circle, 10, New Delhi, vide letter dated 13/3/2013 forwarded through CIT, Central ii, New Delhi and the CCIT, Delhi (i) vide letters dated 19/3/2013 & 26/3/2013 respectively therein providing CD where in the list of parties to whom the bogus purchases/accommodation entries provided by Sh. Rakesh Gupta, Shri Vishesh Gupta, Sh. Navneet Jain and Sh. Vaibhav Jain were appearing. After going through the complete list and identifying parties whose territorial jurisdiction lies with the present assessee's ward, the Assessing Officer recorded the reasons for forming the belief that the income of Rs. 86,51,758/- has escaped assessment in the case of M/s Shri Ram over years, proprietor Shshuhil Kumar, that is the assessee and taking administrative approval from the JCIT, Range-39, New Delhi granted on 13/3/2014, the assessment of the assessee for Assessment Year 2007-08 was reopened as per Section 147 of Income Tax Act. The Assessing Officer made addition of Rs. 86,51,758/- on account of alleged bogus purchases.

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

5. The Ld. AR submitted that the reopening was done merely on the assumption basis only on the ground that facts in respect of identical reasons incorporated in various cases. The Ld. AR further submitted that all the information and evidences were produced before the Assessing Officer in the original assessment itself. Therefore, the Ld. AR submitted that the reasons recorded u/s 148 assume jurisdiction u/s 148 of the Act are not validly recorded in accordance with law and accordingly all the subsequent actions founded on such reasons namely notice issued u/s 148, the order passed by the Assessing Officer and the CIT(A) are void-ab-initio and reserved to be quashed.

6. The Ld. DR submitted that the Assessing Officer has rightly recorded the reasons and reopening is just and proper. The Ld. DR also relied upon the orders of the Assessing Officer and the CIT(A). But the Ld. DR could not distinguish the facts of the assessee's case and that of the various Tribunals decision cited by the Ld. AR.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the Ld. AR during the course of hearing submitted almost 10 decisions of the Tribunal wherein the reasons recorded for reopening are identical and in fact the name of the accommodation entries provider are exactly the same. The Ld. DR also could not point out any distinguishing facts with these orders of the Tribunals. We are reproducing the order cited by the assessee in case of Rajender Prasad Vs. ITO in ITA No. 7060/Del/2017 dated 7/9/2018. The Tribunal held as under:-

5. Reasons for reopening assessment read as under;

"A letter bearing F.No. Addl.CIT/(Hq)/(Coord.)/Accommodation entry/2012-13/15016 dated 26.03.2013 was received from the Office of the Chief Commissioner of I. Tax, Delhi-I, New Delhi therein forwarding letter bearing F.No. CIT(C)-II/2012-13/3898 dated 19.03.2013 received from the Commissioner of I. Tax, Central-II, New

Delhi along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain in the shape of bogus purchases and directing this office to take necessary action as per section 148 in respect of entries pertaining to A.Y. 2006-07, which were going to be barred by limitation on 31.03.2013. The information provided by the CIT, Central-ll, New Delhi vide his letter dated 19.03.2013 reads as under :-

“Kindly find enclosed herewith letter dated 13.03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above.

2. The assessment of search cases of Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry providers has been obtained by the A.O.

3. The list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh. Vishesh Gupta. Hard copy of the list is enclosed as Annexure A, duly signed by Sh. Vishesh Gupta. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

4. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty- seven paper entities. The list of the firms giving accommodation entry is enclosed as annexure- B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list B' have provided accommodation entries to the firms mentioned in list 'C.

5. The soft copy of the information in respect to annexure A, B & C is also enclosed.

6. The information of accommodation entry includes A.Y. 2006-07 also, which is a time barring year for taking action u/s 148 of the Act

7. This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed).”

It is evident from the assessment order passed by the ACIT, Central Circle-10, New Delhi on 28.03.2013 that Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of search proceedings, in post search proceedings and in assessment proceedings u/s 153A of (Tax Act admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle-10, New Delhi. Therefore, the assessment of the Firms/concerns/individuals for A.Y. 2006-07, whose names were appearing in the said list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain and whose territorial jurisdiction was lying with this Ward, were reopened u/s 147 of I.Tax Act and notices u/s 148 of I. Tax Act were issued.

After making necessary verification and disposing off the objections filed by most of the assesseees' against reopening of their cases u/s 147 of I.Tax Act and after considering the replies/details/documents furnished by the assesseees' in their respective cases, including the case of the assesseees, it was held that no satisfactory explanation about the sources of bogus purchases made from Sh. Rakesh Gupta and Sh Vishesh Gupta could be furnished. Hence keeping In view the provisions of section 09C of I Tax Act read with section 4, 5 and 14 I. Tax Act, the amount of such bogus purchases were treated as deemed income of the assessee for A.Y. 2006-07.

Since the accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Shi Navneet Jain & Sh. Vaibhav Jain in the shape of bogus purchases were treated as deemed income of the assesseees' for A.Y. 2006-07 and in the said list, names of the concerns/jifersons who have taken accommodation entries in the shape of bogus purchases in subsequent assessment years were also appearing, including A.Y.2007-08, therefore, this office is of The firm view that these cases also need to be reopened u/s 147 of I. Tax Act.

Accordingly, on examining the list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A.Y. 2007- OS, it is noticed that the following accommodation entries have been taken by the assessee namely M/s Friya Enterprises in A.Y. 2007-08 and whose territorial jurisdiction lies with this Ward

Sl. No.	Accommodation entry provided by	Name of party to whom Accommodation entry is provided	Amount of Accommodation entry
1.	Shree Bankey Bihari Trading	M/s Priya Enterprises	Rs. 3,69,408/-
2.	OM Agencies	M/s Priya	Rs. 7,24,172/-
		Total amount of	Rs. 10,93,580/-

Also the details of Income tax Return filed by M/s Priya Enterprises for A.Y. 2007-08 and processing done u/s 143(1) of I. Tax Act thereof were tried to be taken out from ITD System, However, the same were not found available there. Thus, as per our record, the assessee has not filed any return of income for A.Y. 2007-08. Further, no scrutiny assessment was done in A.Y. 2007-08. Therefore, I have reasons to believe that income chargeable to tax amounting to Rs. 10,93,580/- for the F.Y. 2006-07 relevant to A.Y. 2007-08 has escaped assessment. Besides this, any other income chargeable to tax that has escaped assessment, which will come to the notice of this office during assessment proceedings shall also be added back. Thus, I have reasons to believe that it is a fit case for initiation of proceedings u/s 147 of the Act.

Proposal in the prescribed form for the A.Y. 2007-08 (F.Y. 2006-07) is submitted herewith for kind consideration and necessary approval u/s 151(2) of the I. Tax Act, 1961 as [getting barred by limitation on 31.03.2014.

[Pawan Kumar Vashist]
Income Tax Officer Ward-39 (3),
New Delhi”

6. A perusal of the above clearly shows that the Assessing Officer has borrowed the findings. Moreover, the entries pertain to assessment year 2006-07 as is clearly evident from the reasons recorded mentioned hereinabove. It can be further seen that there is a reference to some

verification and disposing off the objections filed by most of the assesseees against reopening of their cases u/s 147 of the Act. On the strength of the fate of the other assesseees, the Assessing Officer formed a belief that the assessee has also made bogus purchases and the same has to be treated as income of the assessee for assessment year 2006-07.

7. In the penultimate para, the Assessing Officer has emphasised that the assessee did not file any return of income for the year under consideration whereas, as mentioned elsewhere, on page 2 of the assessment order, the Assessing Officer himself has admitted that return of income for the year under consideration was filed on 18.10.2007. Considering the reasons recorded by the Assessing Officer, which are undisputedly borrowed from somewhere else and considering the fact that he Assessing Officer has emphasised that the assessee did not file any return of income by contradicting himself in the body of the assessment order by admitting that return was filed on 18.10.2007 establishes only and only one thing, that notice u/s 148 vis a vis reasons are devoid of any application of mind.

8. From the reasons, it can be safely concluded that the Assessing Officer proceeded to make opinion on the basis of borrowed reasons and there is no independent application of mind and in such circumstances and facts of the case, reopening of the assessment u/s 147 of the Act is bad in law and is accordingly directed to be quashed.

9. Our view is fortified by the decision in the case of G & G Pharma India Ltd 545/DEL/2015 wherein reliance was placed on 384 ITR 147 and the same read as under:

“In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of

above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(31) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment is missing in the present case."

10. On identical set of facts in the case of *Sapra Metal company 2910/DEL/2016*, the Bench had occasion to consider the reopening of the assessment on the basis of very same information which was considered in the case in hand and while quashing the reopening, the bench had considered the following judgment of the Hon'ble Jurisdictional High Court in the case of *Sarthak Securities Pvt. Ltd 329 ITR 110*. The Hon'ble High Court has held as under:

" In the case at hand, as is evincible, the assessing officer was aware of the existence of four companies with whom the assessee had entered into transaction. Both the orders clearly exposit that the assessing officer was made aware of the situation by the investigation wing and there is no mention that these companies are fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind. True it is, at that stage, it is not necessary to have the established fact of escapement of income but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof is

not germane at this stage but the formation of belief must be on the base or foundation or platform of prudence which a reasonable person is required to apply. As is manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence is not disputed. What is mentioned is that these companies were used as conduits. In that view of the matter, the principle laid down in Lovely Exports (P) Ltd. (supra) gets squarely attracted. The same has not been referred to while passing the order of rejection. The assessee in his objections had clearly stated that the companies had bank accounts and payments were made to the assessee company through banking channel. The identity of the companies was not disputed. Under these circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It is totally unwarranted. Resultantly, the initiation of proceedings under Section 147 and issuance of notice under Section 148 of the Act are hereby quashed.”

12 In the case of Signature Hotels P Ltd Vs. ITO 338 ITR 51, it has been held as under:

The first sentence of the reasons states that information had been received from Director of Income-Tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lacs during financial year 2002-03 as per the details given in W.P. (C) NO. 8067/2010 Page 12 Annexure. The said Annexure, reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary. The aforesaid reasons do not satisfy the requirements of Section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same

basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the W.P. (C) NO. 8067/2010 Page 13 information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment. The company was incorporated on 4th January, 1989 and was also allotted a permanent account number in September, 2001. The facts indicated above do not show that SS Ltd is a non existing and a fictitious entity/person. For the reasons stated above, writ of the certiorari is issued quashing the proceedings u/s 148 of the Act.”

13. *In the case of CIT Vs. SFIL Stockbroking Co. 325 ITR 285, it has been held as under”*

“The first sentence of the so-called reasons recorded by the Assessing Officer is mere information received from the Deputy Director of Income Tax (Investigation). The second sentence is a direction given by the very same Deputy Director of Income Tax (Investigation) to issue a notice under Section 148 and the third sentence again comprises of a direction given by the Additional Commissioner of Income Tax to initiate proceedings under Section 148 in respect of cases pertaining to the relevant ward. These three sentence are followed by the following sentence, which is the concluding portion of the so-called reasons:-

"Thus, I have sufficient information in my possession to issue notice u/s 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of reasons recorded as above."

10. *From the above, it is clear that the Assessing Officer referred to the information and the two directions as „reasons“ on the basis of which he was proceeding to issue notice under Section 148. We are afraid that these cannot be the reasons for proceeding under Section 147/148 of the said Act. The first part is only an information and the second and the third parts of the beginning paragraph of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the Assessing Officer had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, we find that the Tribunal has arrived at the correct conclusion on facts. The law is well settled. There is no substantial question of law which arises for our consideration.”*

11. *In view of the above discussion, facts of the case in hand, vis a vis the judicial decisions mentioned hereinabove, I have no hesitation in holding that reopening of the assessment is without any application of mind and examination of the facts. Accordingly, reopening is held to be invalid and the same is quashed. Ground No. 1 is accordingly allowed.*

12. *Since the reopening has been held to be invalid, I do not find it necessary to dwell into the merits of the case.”*

From the perusal of the reasons recorded in the present assessee's case, it can be clearly seen that the Assessing Officer has simplicitor taken the reasons recorded in another cases. In fact, from first page of the reasons it is mentioned that the information of accommodation entry includes A.Y. 2006-07. It can be further seen that there is a reference to some verification and disposing off the objections filed by most of the assessees against reopening of their cases u/s 147 of the Act. Thus, taking the reasons as it is without verifying the assessee case, the Assessing Officer formed a belief that the assessee has also made bogus purchases and the same has to be treated as income of the assessee for assessment year 2007-08. The Assessing Officer proceeded to make opinion on the basis of borrowed reasons and there is no independent application of mind and in such circumstances and facts of the case, reopening of the assessment u/s 147 of the Act is bad in law and is accordingly directed to be quashed. Thus, the issue contested herein is identical as in the aforesaid appeal i.e. ITA No. 7060/DEL/2017 for the A.Y. 2007-08. So respectfully following the said order dated 07.09.2018, we hold that the assessee succeeds on the legal ground regarding validity of reassessment proceeding, therefore, we are not adjudicating the grounds on merit as the same becomes academic in nature. The appeal of the assessee is allowed.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 04th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 04/10/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI