

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH: 'B' NEW DELHI**  
**BEFORE SHRI L. P. SAHU, ACCOUNTANT MEMBER**  
**AND**  
**SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**I.T.A .No.-2806/Del/2012 (A.Y 2002-03)**

Cambhoj Brothers (P) Ltd. B-217, Yozna Vihar New Delhi AAACC5649Q <b>(APPELLANT)</b>	vs	ITO Ward-3(2), C. R. Building New Delhi <b>(RESPONDENT)</b>
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**I.T.A .No.-2793/Del/2012 (A.Y 2002-03)**

ITO Ward-3(2), C. R. Building New Delhi <b>(APPELLANT)</b>	vs	Cambhoj Brothers (P) Ltd. B-217, Yozna Vihar New Delhi AAACC5649Q <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. V. P. Gupta, Adv</b>
<b>Respondent by</b>	<b>Ms. Anima Barnwal, SR. DR</b>

<b>Date of Hearing</b>	<b>09.05.2016</b>
<b>Date of Pronouncement</b>	<b>12.05.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These are two appeals placed before this Bench for the Assessment Year 2002-03. ITA 2806/Del/2012 is filed by the assessee and ITA No. 2793/Del/2012 is filed by the Revenue

against the order dated 30/03/2012 passed by CIT(A) IV, New Delhi.

2. During the course of hearing, the assessee pointed out that the assessee's appeal is in respect of legal issue that the re-assessment proceeding u/s 148 and 147 is bad in law and this main issue should be decided first. Therefore, the grounds of appeal are as follows:-

**ITA NO. 2806/Del/2012**

- “1. *That the order of the Commissioner of Income-tax (Appeals)-VI, New Delhi, dated 30/3/2012, is wrong on facts and bad in law in respect of the issues in the present Appeal;*
2. *That the Commissioner (Appeals) failed to appreciate that the provisions of Section 147 of the Ct were not applicable and the reassessment proceedings were void, illegal and invalid;*
3. *That the Commissioner of Income-tax (Appeals)- erred in holding that the initiation of the reassessment proceedings u/s 148 of the Ct was valid. He failed to appreciate that the Assessing Officer had no jurisdiction, competence and/or authority to initiate the reassessment proceedings;*
4. *That the Commissioner of Income-tax (Appeals)- failed to appreciate that there was no new/fresh information/material in the possession of the Assessing Officer justifying that the income liable to tax has escaped assessment;*
5. *That the Commissioner of Income-tax (Appeals) failed to appreciate that was no reason justifying the reopening of the assessment.*
6. *That the Commissioner of Income-tax (Appeals) failed to appreciate that there was no failure to disclose fully and truly all the material facts.*

7. *That the Commissioner (Appeals) failed to appreciate that it was a case of change of opinion;*
8. *That the Commissioner (Appeals) failed to appreciate that said notice u/s 148 of the Act was illegal being issued without the requisite approval u/s 151 of the Act. The approval accorded u/s 151 of the Act, if any, was also illegal;*
9. *That the conclusions and inferences of the Assessing Officer and/or Commissioner (Appeals) are based on suspicions, conjectures, surmises and extraneous and irrelevant considerations;*
10. *That the reliefs prayed for may kindly be allowed and the orders(s) of the Assessing Officer and/ or Commissioner (Appeals) may kindly be quashed, set aside, annulled or modified;*
11. *That the aforesaid Grounds of Appeal are without prejudice to each other.*

3. The assessee is a company carrying on business of sub-broking and dealing in shares & securities. Return of income for Assessment Year 2002-03 was duly filed by the Appellant declaring income of Rs. 8840/-. Subsequently, notice u/s 148 of the Act dated 30.03.2009 (wrongly mentioned in the assessment order as 30.03.2008) was issued in the case of the assessee company.

4. The assessee filed a letter dated 27.04.2009 with the Assessing Officer stating therein that there was no escapement of income attracting reopening of assessment. It was also stated that there has been no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, Further.

It was submitted that its Return of Income earlier filed as per section 139(1) of the Act may be treated as Return filed in compliance to the notice. The assessee also requested the assessing officer to supply a copy of reason recorded under Section 148(2) of the Act to enable it to make its submissions regard to validity of reopening of assessment.

5. The Assessing Officer provided a copy of reason recorded by him to the representative of the Assessee Company on 08.05.2009. Assessee on going through the reasons observed that same was general in nature. There was no specific reference anywhere to the fact that income in the case of assessee has escaped assessment. There were references to statements recorded and affidavits submitted by some of the persons in the reason recoded during the course of investigation carried out in a general manner by directorate of income tax (investigation), New Delhi. Accordingly, the assessee vide its letter dated 21.05.2009 requested the Assessing Officer to provide for copies of statements and affidavits along with report received by the assessing officer to enable assessee company to appreciate reference therein to the case of the Assessee and make its submissions in regard to validity of reassessment proceedings initiated in its case. The Assessee also specifically requested the Assessing Officer to make available a copy of proposal put-up for approval of reopening the assessment and copy of approval of joint commissioner of income tax. It was not apparent from the reasons that necessary approval had been sought. Copy of reason is given in the paper book on pages 13 to

15. Copy of letter dated 21.05.2008 of the assessee company is on pages 16 to 17.

6. Pursuant to the request made to the Assessing Officer vide letter dated 21 05 2009 for submitting the copies of documents, the Assessing Officer provided the copies of some of the documents to the representative of the company on 10.07.2009. Copies of some of the documents, however, were not provided in spite of repeated request by the representative of the assessee company to the assessing officer. The Assessing Officer without providing copy of remaining documents, issued notices under section 142(1) and 143(2) of the Act dated 01.09.2009 requiring the presence of the Assessee in connection with assessment proceedings before him on 10 09.2009 and also submit certain documents. The assessee in response to the notice again vide its letter dated 10.09.2008 requested assessing officer to provide the copies of the remaining documents so as to enable the assessee company to submit its objections regarding the validity of the proceedings u/s -147 of the act. Thereafter the Assessing Officer made available copy of statement of one more person, namely Shri Trilok Chand Bansal. Copy of letter dated 10.09.2009 is given in the paper book on pages on 38-41. Copy of the statement of Trilok Chand Bansal is given in the paper book on pages 42-47.

7. The Assessee Company on going through the statements / affidavits of the persons named above read with the reasons recorded by the Assessing Officer submitted a letter dated

07.10.2009 to the Assessing Officer wherein it was strongly submitted that —

*Paras 1-5 of the reasons recorded contain only the facts regarding the modus operandi of the entry providers and these facts were not relevant to the Assessee Company. Further there was no reference to the case of the Assessee Company.*

*Para 6 contain details of entries stated to have come to the Assessee Company from M/S. S.J. Capita! limited, but the copies of the statements of Shri Mahesh Garg as well as Shri Trilok Chand Bansal do not have any reference to the name of M/s S.J. capital limited. Accordingly the Reasons recorded are not bases on the statements of Shri Manish Garg and Shri Trilok Chand Bansal. There was no other material made available to the Assessee on the basis of which the reason can be said to have been recorded.*

*Reasons have been recorded in a routine manner on the basis of investigation made by the Addl. Director of Income Tax (Inv.) unit-1. New Delhi and there was no application of mind by the Assessing officer, which is as mandatory requirement.*

*Reasons have been recorded without reference to the facts and the return of income filed by the assessee company and therefore allegation for escapement of income could not be levied.*

*There was no basis or reason for arriving at the conclusion that there was escapement of income. Just on the basis of credit entries appearing in the bank account it can be said that there was escapement of income.*

*Reasons recorded by the Assessing Officer also do not bear any date. Statements of Shri Mahesh Garg and Shri Trilok Chand Bansal were recorded in 2003 whereas the notice has been issued to the Assessee Company on 30.03.2009. Accordingly, it can be said that the Assessing Officer was not confident about the correctness of the allegation of the escapement of income in the case of the Assessee on the basis of the available material and therefore, the notice had not been issued earlier. Same had been issued only on 30.03.2009 as the limitation of time was expiring on 31.03.2009.*

*Copy proposal put up to the Jt. Commissioner of Income Tax for approval for reopening of Assessment and his approval have not been provided to the Assessee Company and therefore, it appears that notice has been issued without approval of JCIT and/or it is not known to the Assessee whether approval had been granted by the JCIT after considering the facts of the case of the Assessee.*

*In conclusion, reopening of assessment in the case of the Assessee Company was not legally valid. Therefore, the Assessing Officer was requested to drop the proceedings. Reference in the aforesaid letter was also specifically made by*

*the Assessee Company to the decision of supreme court in the case of GKN Drive-shaft India Limited Vs. CIT, 259 ITR 19 (SC) in accordance with which decision the Assessing Officer was required to firstly dispose of objections of the Assessee Company by passing a speaking order before proceedings further in regard to the assessment. A copy of the above referred letter dated 07.10.2009 is given in the proper book on pages 48-55.*

8. The Assessing Officer further passed an order dated 28/10/2009 on objections filed by the Assessee Company in regard to the reopening of assessment in the aforesaid order he has however, not specifically discussed and appreciated the contentions of the Assessee company made vide dated 07.10.2009 Without giving any specific information he mentioned in the order that case was reopened after recording the reasons and after taking necessary app-oval from the Superior Authority. According, it is evident that he has no specific approval on record, otherwise he ought to have mentioned specific details regarding the approval and also would have made available copy of the same to the Assessee Company. He has also not specifically dealt with other objections raised by the Assessee Company in his aforesaid order. The Assessee Company has filed a separate Appeal before the CIT(A) VI, N Delhi against the aforesaid order, which has been listed as Appeal no. 130/09-10.

9. The Assessing Officer thereafter issued another notice to the Assessee Company requiring certain details. Details as required by the Assessing Officer were duly submitted vide letter dated 09.11.009. A copy of each of notice issued by the Assessing Officer dated 03 11 2009 and reply to the same by the Assessee Company dated 09.11.2009 are given in the paper book on pages 60-75. The Assessing Officer further asked for copy of bank account ledger in the books of the Assessee Company. Same was given vide letter dated 16.1 1.2009. Copies of the aforesaid letter with the enclosures are given in the paper book on pages 76-80.

10. The Assessing Officer also asked the Assessee Company to explain the transactions with M/s S J Capital Limited, which have been referred to in the reasons recorded. The Assessee company vide its letter dated 25/11/2009 explained to the assessing officer that the transactions with M/S S.J. capital Limited, having the membership of Delhi stock Exchange, were relating to the share trading undertaken by the Assessee company through them. Copy of ledger account of M/S S.J. capital Limited in the books of the Assessee Company along with the copies of bills and contract notes regarding the share trading transactions were submitted to the Assessing officer. A copy of the aforesaid letter along with copies of ledgers accounts and copies of bills and contract notes are given in the paper book on pages 81-163.

11. The Assessing Officer had not appreciated the nature of transactions and genuineness thereof. He, has mentioned in the

assessment order, noted on 25 11 2009 That Shri Trilok Chand Bansal had stated in the statement recorded before Addl. DIT (Inv) that entries were provided against cash payments. The representative of the Assessee Company specifically requested him during the course of hearing to make available Shri Trilok Chand Bansal and also Shri Mahesh Garg for cross examination by the Assessee Company in case the Assessing Officer is relying upon their statements in regard to the entries under reference. It was also submitted that in their statements there is no specific reference to the effect that the entries between M/s S.J. Capital Limited were not relating to genuine transactions. The Assessing Officer however had not taken note of the request of the representative of the Assessee Company and contrary to the request he has recorded in the assessment order that the representative of the Assessee Company was not able to produce Shri Trilok Chand Bansal in support of its contentions. The Assessing Officer, accordingly, made additions of Rs. 34,50,000/- and also for Rs. 17250/- as deemed commission, aggregating to Rs. 34,67,250/- in the assessment order dated 24-12-2009.

12. The Assessee Company has filed appeal before the CIT(A). Each of the grounds of appeal are being discussed herein after

13. The CIT (A) held that the reassessment proceedings are in consonance with Section 148 of the Income-tax Act and rejected the contention of the assessee on that ground, but partly allowed the appeal on merit.

14. The Ld. AR submitted that the Assessee had categorically submitted before the Assessing Officer that notice issued under Section 148 of the Act in the case of the Assessee had been invalid as same was issued on the basis of vague information stated to be received by the Assessing Officer from Investigation Wing. The Assessing Officer had not properly adjudicated and dealt with the contentions of the Assessee vide his order dated 28-10-2009 and / or vide the impugned order dated 24-12-2009 and, therefore, order of assessment is not valid and sustainable under law. Further, addition under Section 68 of the Act has also been made without the evidence and explanations in respect of entries under reference submitted by the Assessee before the Assessing Officer vide its letter dated 25-11-2009. Further, additions had been made on the basis of the statements of Shri Mahesh Garg and Shri Trilok Chand Bansal stated to have been given before the Addl. Director of Investigation, without providing the opportunity to the Assessee Company for cross examination of above mentioned persons. Therefore Ld.AR submitted that the principles of natural justice were not followed by the Assessing Officer.

15. The Ld. AR further submitted that the Assessing Officer had recorded reasons for issuing notice under Section 148 of the Act. The Assessing Officer in the reasons recorded, in Para-1 refers to the investigation made by Directorate of Investigation, Delhi New

Delhi into accommodation entries given by entries operators and copy of report received by CIT. Delhi-1, N w Delhi which was subsequently forwarded on 13.0,0.2006 to the Assessing Officer. It is also submitted that investigations had commenced on the basis of survey in the case of M/s Gurcharan Jewellers. In paras 2 to 4 Modus Operandi adopted by the entry providers has been discussed. Para 5 of the reasons recorded by the Assessing Officer states that investigation carried out by DIT, Investigation. New Delhi has assailed genuineness of transactions, whether shown by beneficiaries as inflow of share capital or receipt of gifts or consideration for sale — purchase. It has also dealt with a body blow to the credit worthiness of the persons providing the credit entries. Para -6 refers to four credit entries stated to be in bank account of the Assessee. There is no reference, however, of any document / information on the basis of which the information has been received by the Assessing Officer in respect of entries. Further there is reference to the statements and affidavit of Shri Mahesh Garg, Shri Vinod Garg, Shri Trilok Chand Bansal and Shri Deepak Kumar Chang:a given before Addl. DIT, Investigation. Unit I, New Delhi, In all the paragraphs mentioned above there is no specific reference to any document or information on the basis of which it could be alleged that the entries were received by the assessee company and same were bogus. Copies of affidavit and statements made available by the Assessing Officer to the Assessee Company also have no reference to the transactions with the Assessee Company. There is no averment to the effect that entries

in the books of assessee company and are genuine entries. Copy of report of the DIT (Inv.) has not been made available to the Assessee and, therefore, Assessee was not in a position to make any comments at the relevant point. The Ld. AR further submitted that there was no material available with the Assessing officer on the basis of which it could be alleged that entries under reference were bogus entries. Therefore, in the facts of the Assessee no belief could be formed to the effect that income in the case of the assessee has escaped assessment. Accordingly, the conclusion of the Assessing Officer if the reasons recorded by him to the effect that amount of Rs. 34,50,000/- represents income of the Appeal and chargeable to tax which has escaped assessment, is not supported by any information / material on record.

16. The Ld. AR further submitted that as per the settled legal position, the Assessing Officer is required to form his view and record the reasons for issuing the notice. He has neither made any investigation himself in regard to the transactions nor has he recorded his satisfaction that the entries are bogus.

17. The Ld. AR submitted that no reasons were recorded as per the statute and there was new material available before the Assessing Officer for reassessment. Hence, in light of Delhi High Court decision in case of Principal CIT Vs. G & G Pharma India Ltd as well as various other case laws submitted before the Bench. The

reasons have to be sufficient and just. In light of this, the reassessment proceedings are not just and valid.

18. The Ld. DR submitted that as per the decision in case of Nova Promoters. The contentions of the assessee are not applicable in this case and the case is fully covered by Nova Promoters.

19. We have perused all the records and heard both the parties, the submissions made by the A.R that there was no new material given are produced before the Assessing Officer to start re-assessment proceedings is right while going through the reasons annexed to the paper book. There was no mention of a superior authority in the assessment order as well as in the order for rejecting the assessee's objections related to re-opening. Thus, the Assessing Officer prima facie has not acted upon as per the statute. As relates to Nova Promoters though the submissions made by DR related to Nova Promoters. The said judgment was not produced before this Bench and was not properly justified how it is applicable in the present case. While going through Nova Promoters, the basic difference that the reasons were provided to the assessee in that particular case along with all the documents. But in present case before us, the test of giving reasons to the assessee and the documents is missing. Therefore, Nova Promoters will not apply in the present case.

20. In result, the assessee's appeal is allowed and Revenue's appeal is dismissed.

Order pronounced in the Open Court on 12<sup>th</sup> May, 2016.

**Sd/-**

**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Dated: 12/05/2016

*R. Naheed \**

Copy forwarded to:

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

**Sd/-**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	/05/2016	PS
2.	Draft placed before author	/05/2016	PS

3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	12.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	12.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		