

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 26/DEL/2010 (A.Y 2002-03)**

ITO Ward-4(4), Room No. 234B, C. R. Building, I.P. Estate, New Delhi  <b>(APPELLANT)</b>	Vs	Long Island Dox Services Pvt. Ltd. 506, Hemkunt Tower, Nehru Place New Delhi AAACL4744P  <b>(RESPONDENT)</b>
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**C.O .No. 59/DEL/2010 (A.Y 2002-03)**

Long Island Dox Services Pvt. Ltd. 506, Hemkunt Tower, Nehru Place New Delhi AAACL4744P  <b>(APPELLANT)</b>	Vs	ITO Ward-4(4), Room No. 234B, C. R. Building, I.P. Estate, New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant/Respondent by</b>	<b>Sh. Amit Jain, Sr. DR</b>
<b>Respondent/Appellant by</b>	<b>None</b>

<b>Date of Hearing</b>	<b>30.11.2017</b>
<b>Date of Pronouncement</b>	<b>28.12.2017</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal and Cross Objection is filed by the assessee and Revenue against the order dated 27/10/2009 passed by CIT (A)-VII, New Delhi for Assessment Year 2002-03.

2. The grounds of appeal are as under:-

**I.T.A .No. 26/DEL/2010**

1. *The order of the Ld.CIT(A) is erroneous & contrary to facts & law.*
2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has quashing the order passed by the A.O u/s 143(3)/147 of the I.T Act and holding the issuing of notice u/s 146 of the I.T. Act as illegal.*
2. *The Ld.CIT(A) ignored the fact that the A.O issued notice u/s 148 of the I.T Act after recording proper reason and the notice was properly served on the assessee.”*

**C.O No.59/DEL/2010**

- “1. *That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not quashing the assessment order passed by Ld. A.O on the ground that mandatory notice u/s 148 was not served upon the assessee and Ld.CIT(A) ought to have quashed the impugned assessment order on this ground also.*
2. *That in any case and in any view of the matter action of Ld.CIT(A) in not quashing the assessment order is bad in law and against the facts and circumstances of the case.”*
3. The return of income was filed on 31-03-2004 at an Income of Rs.5,49,340/-. The case was processed u/s 143(1) on 29-06-2004. The Assessing Officer issued notice u/s 148 of the Income Tax Act on 27-03-2007 after recording reasons in writing. The notice was served on the assessee both by Speed Post and personally on 29-03-2007. Thereafter having received no response, a reminder letter dated 02-11-2007 was issued to the assessee requiring compliance with the notice issued earlier u/s 148. In response, the assessee filed a letter dated 08-11-2007 submitting that the original return

filed on 31-03-2004 vide acknowledgment no. 526 may be considered as return for the purpose of notice u/s 148. The AR also requested the copy of reasons recorded by AO before issuance of notice u/s 148. A photocopy of the reasons recorded by AO on 27-03-2007 before issuance of the notice u/s 148, was handed over to the AR of the assessee vide order sheet entry dated 08.11.2007. A notice u/s 143(2) dated 8/11/2007 alongwith a detailed questionnaire/notice u/s 142(1) was also issued to the assessee by speed-post fixing the hearing for 15/11/2007. During the previous year, the assessee company was stated to be engaged in the business of IT enabled services. Besides operational income of Rs.2,00,000/- from Software Development, the assessee had also shown other income of Rs.47,87,786/- from bank interest. The books of accounts and vouchers etc. were produced by the AR. These were examined on test check basis by the Assessing Officer. The Assessing Officer completed Assessment on 19.12.2007 by making addition on various heads.

4. The assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in partly allowing the appeal of the assessee and relied upon the order of the Assessing Officer.

6. We have heard Ld. DR and perused the material available on record. The CIT(A) held as under:-

*“Thus, in view of the aforementioned judgments and clear position of law, I am of the considered view that the reasons recorded are invalid and cannot be upheld and the assessment order is liable to be quashed and is held so. The other aspect raised by the appellant is that even otherwise these reasons cannot be upheld as no belief could be formed about escapement of income on the basis of ‘reasons’ recorded. Ld. A.O. has himself noted in the impugned reason that the assessee company earned operational income of Rs.2 lacs and since this fact is admitted in the ‘reasons’, the natural corollary is that*

*the expenses claimed in profit and loss account were eligible for being allowed against the said income unless some contrary material was available with Ld. A.O. to prove otherwise, which is admittedly not there. Once, the expenses are held to be allowable, it does not make a difference even if the interest income is held as income from other sources as the same would be eligible for set off against loss under the head business. In any case there was no ground with Ld. A.O. to hold and that too merely on the basis of prima facie perusal of balance sheet that interest income was liable to be assessed as income from other sources. Thus, viewed from any jingle there was no ground to believe that there was any escapement of income. Ld. A.O. also made an allegation that there was failure on the part of the assessee company in disclosing material facts fully and truly but Ld. A.O. has not shown anywhere in the reasons that how and in what manner the assessee company failed in disclosing all material facts fully and truly. Thus, at the best these reasons could be termed as an exercise aimed for making further Deeper scrutiny of the case to examine whether any income of the assessee has escaped and Ld. A.O wanted to test the suspicion he had and it is settled law that suspicion is not equivalent to -chef as also held by Hon'ble Delhi High Court in a recent judgement in the case of CIT vs Gupta Abhushan(P.) Ltd.(2009) 312 ITR 166 (Del) relying upon the judgement of Hon'ble Supreme Court in the case of ITO vs. Indian Oil Corporation (1986) 159 ITR 956 (SC). Recently Hon'ble Delhi Bench of ITAT in the case of ITO vs Takshila Distributors (P) Ltd.(2009)121 TTJ 973(Delhi) has held that the reasons cannot be recorded for making further deeper scrutiny and only that material which is available at the stage of recording of reasons can be referred to examine the validity of reasons recorded. Thus, in view of all these case laws and facts of the case I hold that reasons recorded are invalid and contrary to law and facts and order passed u/s 147 is without the authority of law and same is hereby quashed.”*

The CIT(A) has given detailed findings, therefore, there is no need to interfere with the order of the CIT (A). The appeal of the Revenue and C.O. of the assessee are dismissed.

7. In result, appeal of the Revenue is dismissed and cross objection of the assessee are dismissed.

**Order pronounced in the Open Court on 28th December, 2017.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

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

Dated: 28/12/2017  
R. Naheed \*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	30/11/2017	PS
2.	Draft placed before author	01/12/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM

4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	29.12.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	29.12.2017	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.		