

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

**BEFORE SHRI G.D. AGARWAL, PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos.6628 & 6629/Del/2014  
Assessment Year: 2007-08 & 2006-07**

<b>Income-Tax Officer Ward 14(4), New Delhi</b>	vs	<b>Kuber Fertilizers Pvt. Ltd., A-404, Lake View Apartments, Paschim Vihar, New Delhi PAN: AABCK7153L</b>
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Appellant

Respondent

<b>Assessee by</b>	<b>Shri Rajiv Saxena, Advocate Shri Shyam Sunder, Advocate</b>
<b>Revenue by</b>	<b>Ms Naina Soin Kapil, Sr. DR</b>

<b>Date of Hearing</b>	<b>22.10.2018</b>
<b>Date of Pronouncement</b>	<b>23.10.2018</b>

**ORDER**

**PER BENCH**

Challenging the order dated 23.9.2014 in Appeal Nos. 0267/2014-15 and 0301/2013-14 passed by the learned Commissioner of Income-tax (Appeals)-VIII, New Delhi (in short "CIT(A)") in relation to the Assessment Years 2007-08 and 2006-07 respectively, assessee preferred both these appeals.

2. Briefly stated facts are that the assessment was completed in both the years u/s 143(3) of the Income-tax Act, 1961 (“the Act”). However, subsequently, there were search operations conducted on the premises of one Shri Surendra Kumar Jain group of companies and after further enquiries, it was found that Surender Kumar Jain group provided accommodation entries to various beneficiaries with the help of several bank accounts opened in the name of several proprietary concerns and companies in which either he himself or his employees were directors/proprietor. After receiving information from the Directorate of Income-tax (Investigation) Unit-VI(2) to the effect that the assessee’s name also appeared in the list of beneficiaries who had taken accommodation entries in the garb of share application money, loan, gifts, bogus sales/purchases or some other ostensible business transaction through the bank accounts existing in the name of the paper dummy concerns/entities operated by the entry operators, learned AO formed an opinion that there are reasons to believe that income of the assessee company to the extent of Rs.25 lacs had escaped assessment.

3. Learned AO recorded the reasons and issued notice u/s 148 of the Act on 21.3.2013 and 6.3.2014 respectively for Asstt. Years 2006-07 and 2007-08 after obtaining the approval u/s 151(2) of the Additional CIT, Range-V, New Delhi. Learned AO concluded the assessment proceedings by making an addition of Rs.65,10,000/- on account of bogus accommodation entries taken by the assessee u/s 68 of the Act and a sum of Rs.1,30,200/- towards the expenditure incurred to arrange accommodation entries u/s 69C of the Act in respect of Asstt. Year 2006-07 and Rs.90 lacs on account of bogus entries u/s 68 of the Act and a sum of Rs.1,80,000/- u/s 69C of the Act

towards the expenditure incurred to arrange the accommodation entries in respect of Asstt. Year 2007-08.

4. Assessee preferred the appeals against the quantum additions both on facts and law contending that this case squarely falls under proviso to Section 151(1) of the Act, as such, approval or satisfaction of the Chief Commissioner or Commissioner of Income-tax was necessary and for want of which the proceedings are bad in law and were liable to be quashed. By way of impugned order, the learned CIT(A) accepted the contention of the assessee on the question of law and allowed the same on three grounds, namely, firstly, the proceedings are bad for want of the approval or satisfaction of the Chief Commissioner or Commissioner of Income-tax as required under proviso (1) to Section 151 of the Act; secondly, no notice u/s 143(2) of the Act was issued before making the additions, as such, such defect being incurable, proceedings were liable to be quashed; and lastly, learned CIT(A) recorded that in cases of the reopening of the concluded assessment beyond the period of four years, the learned AO has to record a finding that because of the reason of the failure on the part of the assessee to disclose fully and truly all material facts for the assessment. However, there is no such allegation against the assessee in this matter, as such, reopening of the assessment cannot be sustained and the reopening is on the basis of change of opinion.

5. In so far as the merits of the case are concerned, learned CIT(A) recorded that there is a failure on the part of the AO to make any enquiries from the investors whose money is said to have invested by the assessee and further, the amendment in Section 68 of the Act to explain the source of the source of the share applicant w.e.f. 1.4.2013 and had no application to the

earlier assessment years, as such, because AO did not make any efforts to brought on record any such material which show that investment made by the shareholders is not their money, the addition is not sustainable. Learned CIT(A), therefore, both on law and merits reached a conclusion that reopening of the assessment was bad in law and addition cannot be sustained. Hence, the revenue is in these appeals before us.

6. It is submitted by the learned DR that the learned recorded in his order that after perusal and considering the information received from the Investigation Wing, reason to believe that income of the assessee company had escaped assessment was recorded and notice u/s 148 of the Act was issued after obtaining the approval u/s 151(2) of the Act of the learned Additional CIT. She, therefore, submits that the revenue had a very strong case on merits and prayed to dismiss the plea of the assessee basing on technical grounds. Ld. DR heavily relied on the order of the Ld. Assessing Officer.

7. Per contra, it is the argument of the learned AR that admittedly, the Assessment Years are 2006-07 and 2007-08 whereas the notices u/s 148 were issued on 21.3.2013 and 6.3.2014 respectively, clearly beyond the period of four years, thereby taking the case within the mischief of the proviso to Section 151(1) of the Act. He further submitted that no evidence is produced to show that the notice u/s 143(2) was issued nor is there any finding of the learned AO that because of the failure on the part of the assessee to disclose fully and truly all material facts for the assessment, there was escapement of some income from assessment.

8. We have gone through the record. The dates admitted. There is no dispute that the notice u/s 148 was issued to the assessee in respect of assessment years, beyond the period of four years from the end of the relevant assessment years as contemplated under the proviso to sub section (1) of Section 151 of the Act, which stipulates that after the expiry of four years from the end of the relevant assessment year, no notice u/s 148 of the Act shall be issued unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. Ld. AO himself recorded in the order that the approval of the Additional CIT Range-V, New Delhi was obtained and stated that it was so u/s 151(2) of the Act. As a matter of fact in respect of the cases where notice u/s 148 was proposed to be issued after the expiry of four years from the end of the relevant assessment year, Section 151(1) is applicable but not Section 151(2) of the Act. Section 151(2) clearly states that it is applicable to the cases other than the cases falling under sub-section (1). A plain reading of Section 151 makes it amply clear that the learned AO misread the same and did not follow the mandate of the proviso to Section 151(1) of the Act inasmuch as the case in hand relates to the proposed notice u/s 148 of the Act after the expiry of four years from the end of the relevant assessment year. On this ground, assessee succeeds.

9. Be that as it may, it is not the case of the revenue that any evidence is there on record to establish that any notice u/s 143(2) was issued before the conclusion of the assessment after its reopening, nor did the learned AO record finding that because of the failure of the assessee to furnish fully and truly all material facts necessary for the assessment, there was escapement of

income from assessment. In these circumstances, we find it difficult to hold that the impugned order suffers any illegality or irregularity warranting interference by the Tribunal. The reasons recorded by the learned CIT(A) are perfect and there is no ground for us to interfere with the same.

10. Since we uphold the order of the learned CIT(A) on the question of law, we do not deem it necessary to delve deeper into the merits of the case. We, therefore, while upholding the order of the CIT(A), dismiss the appeals of the revenue.

11. In the result, both the appeals of the revenue are dismissed.

**Order pronounced in the Open Court on 23<sup>rd</sup> October, 2018.**

Sd/-

**(G.D. AGARWAL)**  
**PRESIDENT**

sd/-

**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 23<sup>rd</sup> October, 2018  
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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