

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2144/Del/2015
Assessment Year: 2006-07**

Asstt. Commissioner of Income Tax, Circle 3(2), New Delhi.	Vs	M/s Asis Plywood Pvt. Ltd. (Formerly known as M/s Metro Doors Pvt. Ltd.), E-430, Greater Kailash-I, Delhi-110048
Appellant		Respondent

**Department by: Shri Sridhar Dora, Sr. DR
Assessee by: Shri Sanjeev Jain, CA**

**Date of hearing: 22.11.2018
Date of pronouncement: 28.01.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

This appeal is preferred by the Revenue against the order dated 29.01.2015 passed by the Ld. CIT (Appeals)-1, New Delhi for assessment year 2006-07.

2.0 Brief facts of the case are that the return of income for the year under consideration was originally filed on 22.02.2007 declaring total income at nil. Subsequently, information was received by the department vide letter dated 20.3.2013 from the Investigation Wing of the department that the assessee had

raised share capital and share premium totalling to Rs. 1,25,00,000/- during the year under consideration but had not filed any return of income. Further, the Assessing Officer received another information from the Investigation Wing that the assessee had received accommodation entries of Rs. 19,00,500/- from one Shri S.K. Jain who had been found to be providing accommodation entries. Accordingly, the Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961 (hereinafter called 'the Act') after recording reasons that income to the extent of Rs. 1,44,00,500/- had escaped assessment. The assessment was completed u/s 147 r/w 143(3) of the Act at an income of Rs. 1,44,00,500/-.

2.1 Aggrieved, the assessee approached the learned First Appellate Authority and challenged the initiation of reassessment proceedings as well as challenged the addition on merits. The Ld. Commissioner of Income Tax (Appeals) noted in the appellate order that from the perusal of reasons recorded by the Assessing Officer, it was apparent that the entire basis for reopening of the case was based on the premise that the assessee company had not filed the return of income for the year under consideration but the fact of the matter was that the assessee had filed the

return of income on 22.02.2007 vide acknowledgement no. 1111. The Ld. Commissioner of Income Tax (Appeals) held that the very basis for issuance of notice u/s 148 did not exist. Ld. Commissioner of Income Tax (Appeals) also noted that while recording reasons u/s 148, the Assessing Officer did not apply his mind to the information received from the Investigation Wing and that the Assessing Officer had recorded the reasons in a very casual/mechanical manner as he had merely reproduced the letter/list received from the Investigation Wing. It was further noted by the Ld. CIT (Appeals) that with respect to the information received from the Investigation Wing relating to accommodation entries of Rs. 19,00,500/- from Shri S.K. Jain, the Assessing Officer had not even given the basic details, name of the parties and nature of transactions and, thus, the reasons had been recorded in a mechanical manner without independent application of mind. The Ld. Commissioner of Income Tax (Appeals) went on to hold that the initiation of reassessment proceedings and issuance of notice u/s 148 of the Act was bad in law and was not sustainable. The Ld. Commissioner of Income Tax (Appeals) proceeded to quash the notice issued u/s 148 as well as the consequent assessment order. The department is

now in appeal before the ITAT against the quashing of this reassessment order and has raised the following grounds of appeal:-

- “1. The Ld. CIT (A) erred in quashing the assessment and issue of notice u/s 148 of the Act.*
- 2. The Ld. CIT(A) erred in observing that the return was available with the A.O. and hence the main ground of reopening itself that the return was not available itself is wrong. The fact is that the assessee had filed return with wrong assessing officer which is a non-est return.*
- 3. The Ld. CIT(A) erred in holding that the only reason for reopening being a finding of investigation wing of Department that the assessee had received accommodation entries from the entities indentified as entry operators, is not sufficient material for reopening the assessment.*
- 4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3.0 The Ld. Sr. DR submitted that the Ld. Commissioner of Income Tax (Appeals) had erred in observing that the return was available with the A.O. and hence the main ground of reopening itself that the return was not available itself is wrong. The fact is that the assessee had filed return with wrong assessing officer which is a *non est* return. The Ld. Sr. DR also submitted that the Ld. Commissioner of Income Tax (Appeals) had erred in holding

that the only reason for reopening being a report from the investigation wing of Department that the assessee had received accommodation entries from the entities identified as entry operators was not sufficient material for reopening the assessment. It was submitted that the Assessing Officer had definite information from the Investigation Wing that the assessee company was one of the beneficiary companies of Shri S.K. Jain and had received accommodation entries and, therefore, the Assessing Officer had reason to believe that the income of the assessee had escaped assessment and, therefore, the Assessing Officer was justified in issuing notice u/s 148 of the Act. The ld. Sr. DR also placed reliance on numerous case laws in support of his contention that the quashing of re-assessment was bad in law.

4.0 In response, the Ld. AR submitted that the Ld. Sr. DR was factually incorrect in alleging that the assessee had filed return with the wrong Assessing Officer. It was submitted that the assessee had filed the return with the jurisdictional Assessing Officer only but it was the Assessing Officer not having jurisdiction over the assessee who had initiated the reassessment proceedings. The Ld. AR also placed reliance on the findings of

the Ld. Commissioner of Income Tax (Appeals) and submitted that in the present case, the reasons recorded for initiating the proceedings u/s 147 of the Act could not be recorded as “reason to believe” as required under the mandate of the section because the reasons recorded were totally vague and the Assessing Officer had failed to apply his mind on the information said to have been received from the Investigation Wing. He also drew our attention to the reasons recorded in this case and submitted that it was the apparent from the reasons that the Assessing Officer had not carried out any independent inquiry apart from relying on the information received from the Investigation Wing while recording his satisfaction that the case was to be reopened. It was prayed that the order of the Ld. Commissioner of Income Tax (Appeals) be upheld.

5.0 We have heard the rival submissions and perused the material available on record. We have also gone through the reasons recorded by the Assessing Officer in this regard. Section 147 of the Act empowers the assessing officer to initiate proceedings under that section to assess or reassess any income of the assessee that escapes assessment. The powers to initiate proceedings under section 147 of the Act are, however, not

unfettered and unrestricted. In order to initiate proceedings under section 147, the assessing officer has to comply with the provisions of sections 148 to 153 of the Act. Under the scheme of the Act, the assessing officer can initiate proceedings under section 147 of the Act only if he has “reasons to believe” that any income of the assessee has escaped assessment. In terms of section 148 of the Act, the assessing officer is required to record the reasons on the basis of which proceedings under section 147 of the Act are initiated. The reasons recorded must show application of mind by the assessing officer to come to the belief that any income of the assessee had escaped assessment, and thus the reasons act as the stepping stone in initiation of proceedings under section 147 of the Act. The validity or otherwise of the proceedings initiated under section 147 is adjudged on the basis of such reasons recorded. The reasons recorded must, therefore, show application of mind by the assessing officer. If the reasons recorded are vague or ambiguous, the proceedings initiated under section 147 of the Act are liable to be held as invalid and bad in law.

5.1 A perusal of the reasons shows that the Assessing Officer has clearly borrowed the information received from the

Investigation Wing but he has not carried out any verification to test the veracity of the information which has been passed by the Investigation Wing. Thus, he has proceeded to form an opinion on the basis of borrowed reasons and there is no independent application of mind. It is also seen in the assessment order that the Assessing Officer had duly noted that the original return of income was filed on 22.02.2007 but has noted in the reasons that the assessee had not filed any return of income. Thus, the Assessing Officer has contradicted himself by admitting that the return was filed and then saying that it was not filed. Thus, this establishes that notice u/s 148 vis-à-vis the reasons recorded is devoid of any application of mind.

5.2 An identical issue arise before the Hon'ble Delhi High Court in the case of Principal CIT vs. RMG Polyvinyl (I) Ltd. reported in (2017) 83 taxmann.com 348 (Del) and the Hon'ble Delhi High Court upheld the order of the ITAT holding that the reopening of the assessment u/s 147 was bad in law. In this case, the assessee had filed the return of income declaring a certain income and the Assessing Officer subsequently had issued notice u/s 147 of the Act on the ground that information had been received from the Investigation Wing that the assessee was a beneficiary of

accommodation entries received from certain established entry operators identified by the Investigation Wing. As per the information received from the Investigation Wing, the accommodation provider had given accommodation entries in the garb of share application money etc. Notice was issued by the Assessing Officer to reopen the assessment on the basis that income chargeable to tax to the extent of accommodation entry had escaped assessment. The Assessing Officer also noted that the assessee had not filed any return of income. The ITAT held in favour of the assessee by holding that reopening u/s 148 was bad in law. The revenue, thereafter, approached the Hon'ble Delhi High Court and the Hon'ble High Court held that there was a failure of application of mind by the Assessing Officer as it had proceeded on two wrong premises, one regarding non-filing of the return and second regarding the extent of accommodation entries. The Hon'ble Delhi High Court held that the court was unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. The Court further held that the information received from the Investigation Wing cannot be said to be tangible material *per se* without a further inquiry being undertaken by the

Assessing Officer and in the present case, the Assessing Officer had deprived himself of that opportunity by proceeding on the erroneous premise that the assessee had not filed the return when in fact it had. The Hon'ble High Court proceeded to uphold the order of the Tribunal.

5.3 In the instant case before us also, the facts are identical and, therefore, respectfully following the ratio of the judgment as laid down by the Hon'ble Delhi High Court in the case of Principal CIT vs. RMG Polyvinyl (I) Ltd. (supra), we uphold the findings of the Ld. CIT (A) in holding that the initiation of reassessment proceedings in the instant case was bad in law and not sustainable. Accordingly, we dismiss the grounds raised by the department.

6.0 In the result, the appeal of the department stands dismissed.

Order pronounced in the open court on 28.01.2019.

Sd/-

**(N.K. SAINI)
VICE PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 28th JANUARY, 2019
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

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