

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'FRIDAY', NEW DELHI.**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6634/Del./2013  
(ASSESSMENT YEAR : 2003-04)**

M/s. Hopewin Admark & Consultancy vs. ITO, Ward 12 (4),  
Services Pvt. Ltd., New Delhi.  
39/2068, Naiwala, 315, Dakha Chamber,  
Karol Bagh,  
New Delhi – 110 005.  
**(PAN : AAACH6960P)**

**ITA No.256/Del./2014  
(ASSESSMENT YEAR : 2003-04)**

ITO, Ward 12 (4), vs. M/s. Hopewin Admark & Consultancy  
New Delhi. Services Pvt. Ltd.,  
39/2068, Naiwala, 315,  
Dakha Chamber, Karol Bagh,  
New Delhi – 110 005.  
**(PAN : AAACH6960P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Deepak Ostwal, CA  
Shri Rishab Ostwal, Advcoate  
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 31.01.2019  
Date of Order : 25.02.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Present cross appeals filed by the assessee as well as by the Revenue are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, M/s. Hopewin Admark & Consultancy Services Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 17.10.2013 passed by Ld. CIT (Appeals)-XI, New Delhi qua the Assessment Year 2003-04 on the concise grounds inter alia that:-

***“On the facts and in the circumstances of the case, the CIT (A), New Delhi has erred both facts and in law, in upholding the illegal Order of The respondent on the following grounds and hence liable to be quashed because:***

***1. Reasons recorded are vague and scanty, without application of his own mind by AO and without necessary approval of the Joint CIT and hence re-assessment proceeding are not in terms of section 147 to 151 of the Income Tax Act.***

***2. Re-assessment proceedings are without issue/service of notice u/s 148 render the proceeding void-ab-initio.***

***3. Objection specifically raised were not disposed of before passing the impugned order.***

***4. No addition on account of income alleged to escape assessment on the basis of which assessment was reopened then other additions cannot be sustained as***

*per decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited Vs. CIT (2011) 336 ITR 136.*

*5. Reassessment order passed in violation of natural justice without providing corroboration of the material and without providing cross examination asked and without proper show cause notice.*

*6. Addition of Rs.5,25,000/- u/s. 68 by treating unexplained income.*

*7. Additions of hypothetical commission of Rs.1,28,535/- u/s. 68 by treating unexplained income.*

*8. CIT (A) erred by exceeding his jurisdiction by issuing unwarranted direction to AO to launch prosecution against the appellant and unwarranted action under Money Laundering Act as well as by Serious Fraud Investigating Authority etc. Such directions are liable to be vacated.*

*9. Illegal additions and disallowances and consequent demands of Income Tax, Interest and penalties illegally raised.”*

3. The appellant, ITO, Ward 12 (4), New Delhi (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 17.10.2013 passed by Ld. CIT (Appeals)-XI, New Delhi qua the Assessment Year 2003-04 on the grounds inter alia that :-

*“1. On the facts and circumstances of the case and in law, the order of the Ld. CIT (A) is wrong and against the provisions of law which is liable to be set aside.*

***2. On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.1,28,53,466/- as the assessee company has failed to explain the identity, genuineness and source of credits appearing in his bank account.***

***3. On the facts and circumstances of the case, the Ld. CIT (A) has erred in holding that the assessee company was a stepping stone in routing back undisclosed money of the beneficiaries.”***

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer framed the assessment under section 143(3)/147 of the Income-tax Act, 1961 (for short ‘the Act’) at total income of Rs.7,82,370/- on substantive basis and Rs.1,35,07,301/- on protective cases. AO made substantive addition on account of unexplained cash credit at Rs.6,25,000/- and additions of Rs.15,625/- & Rs.1,28,535/- are made on account of commission earned on providing entries to the beneficiaries. Protective addition of Rs.1,28,53,466/- was made on account of bogus cash credits used by the assessee for rotating the entries as entry operators.

5. Assessee carried the matter before the Id. CIT (A) by way of an appeal who has given part relief by partly allowing the appeal. Feeling aggrieved, the revenue as well as the assessee have come before the Tribunal by way of filing cross appeals.

6. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1 to 5 Of**  
**ASSESSEE'S APPEAL (ITA NO.6634/DEL/2013)**

7. AO reopened the assessment under section 147 of the Act after recording reasons which are extracted as under :-

*“Reasons for issuing Notice u/s 148 in the case of  
M/s. HOPEWIN ADMARK & CONSULTANCY SERVICES  
PRIVATE LIMITED. AY 2003-04*

*The assessee filed return of income on 02.12.2003 vide receipt no.1244000859 declaring income of Rs.13,210/-. The same was processed u/s 143(1) of the I.T. Act 1961 on 12.03.2004.*

*An information regarding entry operators and their beneficiaries have been received in the form of CD from the Office of the Directorate of Income-tax, Jhandewalan, that the assessee has received Rs.4,50,000/- as accommodation entries from M/S. SHIVAM SOFTECH LTD. & ARPIT SALES CORP. The detail is as under :-*

BENEFICIARY'S NAME	VALUE OF ENTRY TAKEN	INSTRUMENT NO. BY WHICH ENTRY TAKEN	DATE ON WHICH ENTRY TAKEN	NAME OF ACCOUNT HOLDER OF ENTRY GIVING ACCOUNT	BANK AND BRANCH FROM WHICH ENTRY GIVEN	A/C NO. ENTRY GIVEING ACCOUNT
HOPEWIN ADMARK & CONSULTANCY SERVICES (P) LTD.	250000	941601	08/02/2002	SHIVAM SOFTECH LTD.	FEDERAL KAROL BAGH	595
HOPEWIN ADMARK & CONSULTANCY SERVICES (P) LTD.	200000	115504	27/03/2003	ARPIT SALES CORP.	KESHAV SEHKARI KAROL BAGH	695

*The above mentioned amount of Rs.4,50,000/- was credited in the bank account of the assessee with SBBJ, New Rohtak Road. The report received from DIT (Inv.) revealed that the enquiries were initiated to probe into some bank account which were used to issue cheques to entry seekers or beneficiaries against cash paid by them to the entry operators. The assessee company has received the said entry.*

*On the basis of the information sent by the investigation wing and after going through accompanying documents, I am completely satisfied that this transaction of Rs.4,50,000/- as mentioned above, is nothing but assessee's own unaccounted money which has been routed back to it in the form of accommodation entry only. Accordingly, the amount of Rs.4,50,000/- is unaccounted money belonging to the assessee which has been utilized for the entry and represents income escaping assessment. Accordingly, I have reasons to believe that Rs.4,50,000/- has escaped assessment and the escapement has been on account of failure on part of assessee to truly and fully disclose all material facts therefore it is a fit case for initiation of proceedings u/s 147 of the I.T. Act.*

*In view of the provision of section 151 of the I.T. Act, necessary approval for the issue of notice u/s 148 may kindly be accorded for the A.Y. 2003-04.*

*SD/-  
(YOGESH NAYYAR)  
Income Tax Officer,  
Ward 12 (4), New Delhi.*

*Addl.CIT, Range 12, New Delhi.”*

8. Undisputedly, AO reopened the assessment on the ground that an income of Rs.4,50,000/- (Rs.2,50,000/- and Rs.2,00,000/-) taken by the assessee as entry from M/s. Shivam Softech Ltd. and M/s. Arpit Sales Corp. respectively has escaped assessment. It is also not in dispute that the amount of Rs.2,00,000/- alleged to have been taken by the assessee from M/s. Arpit Sales Corp. merely as an entry pertains to earlier year i.e. for AY 2002-03 being of 27.03.2003.

9. It is also not in dispute that the entry amount of Rs.2,50,000/- and Rs.2,00,000/- alleged to have escaped assessment by the AO, has been duly accepted by the AO during assessment proceedings, having been duly explained by the assessee and no addition thereon has been made.

10. Now the question arises for determination in this case is :-

*“as to whether in the assessment under section 143 (3)/147, the AO can travel beyond the subject matter of the reasons recorded for reopening the assessment?”*

11. This issue has already been dealt with by the Hon’ble Delhi High Court in case cited as *Ranbaxy Laboratories Ltd. vs. CIT – (2011) 336 ITR 136 (Delhi)* by returning the following findings:-

*“Held, that section 148 was supplementary and complementary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax had escaped assessment. All these conditions were required to be fulfilled to assess or reassess the escaped income chargeable to tax. Under Explanation 3 if during the course of the proceedings the Assessing Officer comes to the conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into*

*account, he would be required to issue a fresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-I which was not permissible. The Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive.”*

12. When undisputedly the AO has not made any addition qua the income alleged to have escaped assessment as per reasons recorded, he had no jurisdiction to make reassessment on other items for which reopening was not initiated. When the AO has accepted the explanation made by the assessee as to the alleged escapement of income of Rs.4,50,000/- and has not made any addition there on, initiation of proceedings qua other subjects has ceased to survive. So, we are of the considered view that other additions made by the assessee which were not the subject matter

of the reasons recorded, are not sustainable. So, Grounds No.1 to 5 are determined in favour of the assessee.

**GROUND NO. 6 & 7 of**  
**ASSESSEE'S APPEAL (ITA NO.6634/DEL/2013)**

**GROUND NO.2 of**  
**REVENUE'S APPEAL (ITA NO.256/DEL/2014)**

13. AO made addition of Rs.5,25,000/- on account of unexplained income taken by him in the form of share application money from M.C. Goyal, Smt. Manju Agarwal, Paramanand Bhardwaj and Vikas Agarwal to the tune of Rs.2,00,000/-, Rs.25,000/-, Rs.1,00,000/- and Rs.2,00,000/- respectively. Similarly AO after noticing credit entry of Rs.1,28,53,466/- made addition of Rs.1,28,535/- on substantive basis being 1% of the commission of Rs.1,28,53,466/- credited in the profit and loss account. At the same time, AO made addition of Rs.1,28,53,466/- on protective basis in the hands of assessee.

14. Undisputedly, protective addition of Rs.1,28,53,466/- has been deleted by the Id. CIT(A) wide impugned order which has been challenged by the Revenue by way of filing cross appeal. But again for the sake of repetition, we are of the considered view that since items of these additions were not subject matter of the reasons recorded / reopening, the addition per se cannot survive, as

has been held by Hon'ble Delhi high court in *Ranbaxy Laboratories Ltd.* (supra). Consequently, Grounds No.6 & 7 of the assessee's appeal are determined in favour of the assessee and ground no.2 of Revenue's appeal is determined against the revenue.

**GROUND NO.1 & 3 OF  
REVENUE'S APPEAL (ITA NO.256/DEL/2014)**

15. Grounds No.1 & 3 of Revenue's appeal need no adjudication being general in nature.

16. In view of what has been discussed above, appeal filed by the assessee is hereby allowed, however the appeal filed by the revenue is dismissed.

**Order pronounced in open court on this 25<sup>th</sup> day of February, 2019.**

**Sd/-  
(G.D. AGRAWAL)  
VICE PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 25<sup>th</sup> day of February, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**