

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

**BEFORE HON'BLE SHRI G. D. AGRAWAL, PRESIDENT  
AND  
HON'BLE SMT. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 7441/DEL/2018 (A.Y 2010-11)**

The Gita Education Society, C/o Kapil Goel Adv F-26/124 Sector 7 Rohini, Delhi-110085 PAN-AAAAT9753G <b>(APPELLANT)</b>	Vs	Income Tax Officer, Exemption Ward, Ghaziabad  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Kapil Goel, CA</b>
<b>Respondent by</b>	<b>Sh. S.S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>07.05.2019</b>
<b>Date of Pronouncement</b>	<b>22.05.2019</b>

**ORDER**

**PER G.D. AGRAWAL, V.P.**

This is an appeal filed by the assessee against the order dated 28.09.2018 passed by the CIT(A, Ghaziabad).

In this appeal filed by the assessee, Ground No. 1 reads as under:-

*i. That order passed by Ld AO dated 13/11/2017 and further order passed by Id CIT (A) dated 28/09/2018 are bad in law in as much as impugned assessment is made in violation of jurisdictional conditions stipulated under the Act, ergo, orders of Ld AO and Ld CIT-A may please be quashed.*

*a. That order passed by Ld AO dated 13/11/2017 and further order passed by Id CIT A dated 28/09/2018 are bad in law as reasons recorded are based on borrowed satisfaction and without independent application of mind as no where it is established that assessee is real beneficiary of stated amount of Rs 50,00,000 which is solely based on suspicion only and reasons recorded lack live nexus which is sine qua non for valid reopening action;*

*b. That order passed by Ld AO dated 13/11/2017 and further order passed by Id CIT A dated 28/09/2018 are bad in law as reasons recorded in extant case are delightfully silent on lack of disclosure on stated bank a/c in earlier assessment proceedings (order u/s 143(3) dated 27.02.2013) vide first proviso in section 147 of the Act and same is the position in notice u/s 148 dated 28.03.2017 for AY 2010-2011 and objection disposal dated 29.09.2017.*

*c. That order passed by Ld AO dated 13/11/2017 and further order passed by Id CIT A dated 28/09/2018 are bad in law as reasons recorded as supplied are sans approval if any taken from competent authority.*

*d. That order passed by Ld AO dated 13/11/2017 and further order passed by Id CIT A dated 28/09/2018 are bad in law as reasons recorded stated Rs 50,00,000 is unexplained amount simply where as Ld AO changing basis of reopening in order passed states that assessee has utilized undisclosed funds being cash for clearing of cheque in the bank a/c and Ld CIT-A further changes it to held that assessee could not substantiate the genuineness of transaction of Rs 50,00,000 being amount reed from SOWHAP which amorphous and fleeting allegation breaks the entire belief formed in reasons recorded.*

2. At the time of hearing before us, it is stated by the assessee's counsel that the assessee is a society which has been granted registration under section 12AA of the Income Tax Act. For the year under consideration, the assessment was originally completed under section 143(3) vide order dated 27.2.2013 on nil income. The assessment was reopened vide notice under section 148 dated 28<sup>th</sup> March, 2017. Thus, admittedly the assessment was reopened beyond the period of four years when the original assessment was completed under section 143(3). Therefore, the proviso to section 147 is clearly applicable. That no finding is recorded by the Assessing Officer in the reasons recorded that the alleged escapement of income is on account of any failure on the part of the assessee to disclose any material fact and therefore, the reopening is not valid.

3. He further stated that in the reasons recorded it is alleged by the Assessing Officer that as per the information received from the CIT(E) Kolkata it was gathered by the Department that there was a society

named as M/s Society for Welfare of Handicapped Persons, which was approved under section 35 (i)(ii) of the Income Tax Act and it is used to transfer the bogus donation to the society / trust in lieu of cash. The Assessing Officer alleged that the assessee had received the donation of Rs. 50,00,000/- on 17<sup>th</sup> March, 2010 by cheque for which the assessee made the payment in cash which was the undisclosed income of the assessee.

4. However, in the reasons recorded, the Assessing Officer himself has recorded that the assessee furnished the list of donation during the assessment proceedings but no name of the donor M/s Society for Welfare of Handicapped Person is mentioned. Thus as per the books of the assessee, no donation is received from the so called society. Moreover, the Assessing Officer himself has mentioned in the reasons recorded that the assessee received the sum of Rs. 50,00,000/- on 17<sup>th</sup> March, 2010 and paid Rs. 50,00,000/- on 19<sup>th</sup> March, 2010. He stated that by some mistake the cheque of Rs. 50,00,000/- was issued and credited in the name of assessee when this fact came to the knowledge of the assessee it returned the same immediately and therefore, there is no credit of any donation in the accounts of the assessee.

5. The learned DR on the other hand filed the written submissions which is reproduced below:-

*"In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to reopening of cases beyond 4 years u/s 147 of I.T.Act:*

1. **PCIT Vs Paramount Communication (P.) Ltd.(2017-TIOL-253-SC-IT)(Copy enclosed)** where Hon'ble Supreme Court dismissed SLP of assessee. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

**PCIT Vs Paramount Communication (P.) Ltd.[2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)**

where Hon'ble Delhi High Court held that Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings

**2. Aradhna Estate (P.) Ltd.Vs DCIT [2018] 91 taxmann.com 119 (Gujarat) (copy enclosed)**

where Hon'ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinised by Assessing Officer during original assessment, reassessment could not be held unjustified

**3. Pushpak Bullion (P.) Ltd. Vs DCIT[2017] 85 taxmann.com 84 (Gujarat)(copy enclosed)**

where Hon'ble Gujarat High Court held that where investigation wing of department had during course of investigation in case of a third party found that he was indulged in providing accommodation entries and bogus bills, and assessee had made sizeable purchases from him, reopening notice against assessee was justified

**4. Ankit Financial Services Ltd. Vs DCIT[2017] 78 taxmann.com 58 (Gujarat) (Copy enclosed)**

where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

**5. Aaspas Multimedia Ltd. Vs DCIT[2017] 83 taxmann.com 82 (Gujarat)(Copy enclosed)**

where Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

**6. Ankit Agrochem (P.) Ltd. Vs JCIT[2018] 89 taxmann.com 45 (Rajasthan)(Copy enclosed)**

where Hon'ble Rajasthan High Court held that where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

**7. Mona Mahesh Bhojani Vs ITO (2017-TIOL-345-SC-IT)(copy enclosed)**

SLP dismissed against appeal challenging the judgment, whereby the High Court had held that reopening initiated in case of an assessee who had not filed his return, could not be claimed by the assessee to be based on 'change of opinion'.

The Assessee had also challenged the action of High Court in holding that when the AO had tangible material at his command to form a bonafide belief that income chargeable to tax had escaped assessment, the writ court would not interfere with the formation of such belief unless it is shown to be wholly perverse.

**8. Indu Lata Rangwala Vs DCIT [2017]80taxmann.com102(Delhi)/[2016] 384 ITR 337 (Delhi)/[2016] 286 CTR 474 (Delhi) (copy enclosed)**

where Hon'ble Delhi High Court held that where initial return of income is processed under section 143(1), it is not necessary in such a case for Assessing Officer to come across some fresh tangible material to form 'reasons to believe' that income has escaped assessment

**9. Honda Siel Power Products Ltd. v. Dy. CIT [2012] 20 taxmann.com 5 (SC)/[2012] 206 Taxman 33 (SC)(MAG.)/[2012] 340 ITR 64 (SC)/[2012] 247 CTR 316 (SC) (Copy enclosed)**

where Hon'ble Supreme Court held that assessee having not pointed out during assessment proceedings about expenses incurred relatable to tax free income u/s 14A there was omission and failure on its part to disclose fully and truly material facts and hence reopening of assessment was justified

**10. Honda Siel Power Products Ltd. v. Dy. CIT [2011] 10 taxmann.com 2 (Delhi)/[2011] 197 Taxman 415 (Delhi)/[2012] 340 ITR 53 (Delhi)/[2012] 247 CTR 322 (Delhi) (Copy enclosed)**

where Hon'ble Delhi High Court held that assessee having not pointed out during assessment proceedings about expenses incurred relatable to tax free income u/s 14A there was omission and failure on its part to disclose fully and truly material facts and hence reopening of assessment was justified

**11. New Delhi Television Ltd. Vs DCIT[2017] 84 taxmann.com 136 (Delhi) (Copy enclosed)**

where Hon'ble Delhi High Court held that proceedings under section 147, beyond a period of 4 years can only be initiated if the Assessing Officer has reason to believe that there has been escapement of income and this escapement is owing to the lack of true and fair disclosure by the assessee. In this regard, it is essential to understand the meaning of the phrase 'true and fair disclosure'. The Court has considered the meaning of this phrase in Honda Siel Power Products Ltd. v. Dy. CIT [2012] 340 ITR 53/[2011] 197 Taxman 415/10 taxmann.com 2 (Delhi) where the Court held that that the term 'failure' on the part of the assessee is not restricted to the return and the columns of the return or the tax audit report. There can be omission and failure on the part of the assessee to disclose material facts fairly and truly during the course of the assessment proceedings. [Para 42]

**12. Sun Direct TV Pvt. Ltd. Vs ACIT [2018] 98 taxmann.com 201 (Madras) (Copy enclosed)**

where Hon'ble Madras High Court held that completed assessment could be reopened within period of six years where there were some information with department that share premium invested by foreign company was income of assessee-company which had not been disclosed

**13. A Sridevi Vs ITO (2018-TIOL-2246-HC-MAD-IT)(Copy enclosed)**

where Hon'ble Madras High Court held that any fresh information filed before the AO during the process of re-assessment u/s 147, which gives force to the belief of the AO that certain income of the assessee had escaped assessment, can be construed as tangible material for reopening the assessment once again. Since alleged escapement of income exceeds One lakh rupees, reopening in such case can be done within the period of six years from the end of relevant AY as prescribed by section 149(1)(b), and thus, the same cannot be said to be barred by limitation

**14. South Asia FM Ltd. Vs ACIT [2018] 98 taxmann.com 200 (Madras) (Copy enclosed)**

where Hon'ble Madras High Court held that Reopening of assessment on basis of information on record with revenue that assessee had received share capital which according to CBI were revenue receipts camouflaged as capital receipts, was justified. Reasons to be recorded by Assessing Officer for taking decision to reopen escaped assessment does not mean that such reasons are to be communicated along with notice itself; very notice will not provide a cause of action for assessee to file writ petitions.

**15. CIT Vs P.V.S. Beedies (P.) Ltd.[1999] 103 Taxman 294 (SC)/[1999] 237 ITR 13 (SC)/[1999] 155 CTR 538 (SC) (Copy enclosed)**

where Hon'ble Supreme Court held that Audit party had merely pointed out a fact which had been overlooked by Assessing Officer and this was not a case of information on a question of law. Reopening of case under section 147(b) on basis of factual information given by internal audit party was valid in law

**16. PranawaLeafin (P.) Ltd. Vs DCIT [2013] 33 taxmann.com 454 (Bombay)/[2013] 215 Taxman 109 (Bombay)(MAG.)(Copy enclosed)**

where Hon'ble Bombay High Court held that where there was failure on part of assessee to make true and complete disclosure in respect of share transactions entered into by it, in view of proviso to section 147, Assessing Officer was justified in initiating reassessment proceedings even after expiry of four years from end of relevant assessment year

**17. CIT Vs KiranbhaiJamnadasSheth (HUF)[2013] 39 taxmann.com 116 (Gujarat)/[2014] 221 Taxman 19 (Gujarat)(MAG.) (Copy enclosed)**

where Hon'ble Gujarat High Court held that Assessment without scrutiny would mandate reassessment beyond 4 years even if assessee made true disclosure

**18. Dishman Pharmaceuticals & Chemicals Ltd. Vs CIT[2012] 346 ITR 228 (Guj) (Copy enclosed)**

The assessee had shown an amount as loan from company. The assessee had not disclosed that it had substantial interest in the company. Reassessment

*proceedings after four years to assess amount as deemed dividend was held to be valid.*

**Sd/-**  
**(S S Rana)**  
**Commissioner of Income Tax(DR)**  
**G-Bench, ITAT, New Delhi.**

6. The learned counsel for the assessee on the other hand stated that on the peculiar facts of the case, none of the above decision would be applicable, on the other hand the decision of Hon'ble Jurisdictional High Court in the case of **Unitech Limited** vide W.P. (C) 12324/2015 would be squarely applicable wherein their Lordships have clearly mentioned that for complying with the Jurisdictional requirement under the first proviso to section 147 of the Act, the reasons would have to show in what manner the assessee had failed to make a full and true disclosure of all the material facts necessary for assessment.

7. We have carefully considered the argument of both the sides and perused the material placed before us. The copy of the reasons recorded for reopening of the assessment is produced before us, which reads as under:-

*Sub: Communication of Reasons for issue of notice U/s 148 of I.T. Act.- Reg:*

*Please refer to your letter dated 25.04.2017 requesting reasons. As requested the reasons are communicated to you, as under:-*

*In this case , an information is received from the Commissioner of Income Tax (Exemption), Kolkata vide letter dated 08.08.2016 that a large number of societies/trust, situated all over India have received huge donation from a Society named M/s Society for Welfare of Handicapped Persons located at 27, Tagore Avenue, Durgapur. This society has approval of section 35(l)(ii) of the income Tax Act. It transpires that one chartered Accountant based in Kolkata by fraudulent means opened a bank account in the name of this society in Axis Bank Limited. Prince Anwar Shah Road, Kolkata branch vide A/c No. 255010100128834 which carried the transfer of several crores of rupees. Contributions were received u/s 25(l)(ii) of the Income Tax Act, 1961 from various corporate/non - corporate entities in this fraudulent account and these amount were either withdrawn in cash through two or more layers, which happed to be societies/trusts or bogus donations were paid in lieu of cash to the societies*

*/trusts, who are beneficiaries to these transactions of bogus donation, which are situated all over India. The mediators, who are generally Chartered Accountants, get commission of 15-20% in cash out of the contributions received u/s 35(l)(ii) of the I.T. Act and 2-5% out of the bogus donation paid. By way of this mediators get benefit from both parties. This facts relating to fraudulent bank account opened by the Chartered Account, are further confirmed from the letter filed by the President of the society before various enforcement agencies namely:-*

1. The Manager, Axis Bank, Kolkata
2. The Chairman, Axis Bank, Mumbai
3. Officer Incharge, Durgapur Police Station
4. FIR/complain in Durgapur Police Station
5. Letter of ACIT, Durgapur

*The list of second/third layer Trust/Societies, through which money is either withdrawn in cash or transacted for bogus donations alongwith their respective bank account numbers are as follows:-*

<b>S. No.</b>	<b>Name of the society</b>	<b>Name of the Bank</b>	<b>Name of the Bank branch</b>	<b>Account Numbers</b>
1.	M/s Society for Welfare of the Handicapped Person	Axis Bank Ltd.	Prince Anwar Shah Road branch, Kolkata	255010100128834
2.	M/s Society for Rural & Development	Axis Bank Ltd.	New Alipore branch, Kolkata	909010033440278
3.	M/s Community Rural Orient Service Society	Axis Bank Ltd.	One Town branch, Vijaywada	911010041883071

*The list of the beneficiary trust / societies who received donation in lieu of cash is as per annexure-D, which speaks that the assessee society M/s Geeta Education Society, has received donation of Rs.50,00,000/- on 17.03.2010 and thereafter on 19.03.2010 paid Rs.50,00,000/-. The name of the assessee finds place in the bank statement of Axis Bank Limited. The assessee has taken the amount of Rs.50,00,000/- from M/s Society for Welfare of the Handicapped Person, which is in lieu of cash because before the clearing entry of cheque No. 228925 of Rs.50,00,000/- on 17.03.2010, there are two cash deposit of Rs.25,00,000/- and 25,00,000/- in the bank account on 17.03.2010. Thus, this amount of Rs.50,00,000/- is unexplained amount. In this case, assessee filed return showing NIL income on 11.11.2010 and assessment was completed u/s 143(3) on 27.02.2013 on NIL income. The assessee furnished the list of donation during assessment proceedings, but no name of donor M/s Society for Welfare of Handicapped Persons located at 27 Tagore Avenue, Durgapur is mentioned.*

*Keeping in view the above facts, the above amount of Rs.50,00,000/- being amount of donation in lieu of cash is assessable in the hands of assessee. I have therefore reason to believe that the income of Rs.50,00,000/- has escaped the assessment within the meaning of section 147 of the Income Tax Act, 1961 and is chargeable to tax for the A.Y 2010-11.”*

8. We find that the identical issue is considered by the Hon’ble Jurisdictional High Court in the case of Unitech Limited vs. DCIT in W.P. (C) 12324/2015 wherein their Lordships of Jurisdictional High Court vide order dated 24.7.2017 quashed the notice under section 148. Their Lordships followed the decision of the same court i.e. Hon’ble Delhi High Court in the case of **HCL Technologies Limited vs. DCIT** in W.P. (C) 8164/2010 order dated 20.7.2017 wherein their Lordships held as under:-

*“16. The AO has not made the effort of disclosing, in the reasons, what according to him constituted the failure by the Assessee to make a full and true disclosure. A mere reproduction of the language of the provision will not suffice. Also, although making such an averment either in the order rejecting the objections of the Assessee or subsequently in the counter-affidavit in the answer to a writ petition will not satisfy the requirement of the law. The reasons will have to speak for themselves. For complying with the jurisdictional requirement under the first proviso to Section 14/ of the Act, the reasons would have to show in what manner the Assessee had failed to make a full and true disclosure of all the material facts necessary for the assessment. The failure to do so would not be a mere irregularity. It would render the reopening of the assessment after four years vulnerable to invalidation.“(emphasis supplied)*

Thus wherever first proviso to section 147 is applicable the reasons recorded should show in what manner the assessee had failed to make a full and true disclosure of all material facts necessary for the assessment. The failure to do so would not be more irregularity but it would render the reopening of assessment after four year invalid.

9. We have already reproduced above the reasons recorded for reopening of assessment. In the reasons recorded, the Assessing Officer nowhere mentioned that which material facts assessee failed to disclose.

There is no finding by the Assessing Officer that there is any failure on the part of the assessee to make a full and true disclosure of any material fact and therefore on these fact, the Hon'ble Jurisdictional High Court in the case of HCL Technologies Limited (supra) as well as Unitech Limited (supra) would be squarely applicable.

10. Even otherwise an allegation in the reasons recorded is that there was a society at Kolkata named as M/s Society for Welfare of Handicapped Person. The assessee paid the cash of Rs. 50,00,000/- to the said society and got the cheque of donation of Rs. 50,00,000/-. Thus the assessee utilized its undisclosed income to get the accommodation entry in the form of donation of Rs. 50,00,000/-. However, at the time of conclusion of the reasons recorded the Assessing Officer himself has mentioned that the assessee has furnished the list of donation during assessment proceedings but no donor from M/s Society Welfare of Handicapped Person is mentioned. Thus, when the assessee has not claimed to have received any donation from the said society the question of making any cash payment from undisclosed sources by the assessee could not arise. Therefore, we are of the opinion that there was no justifiable reason for arriving at the finding by the Assessing Officer that there was undisclosed income of the assessee which was utilized for obtaining Donation from M/s Society for Welfare of Handicapped Person.

11. After considering the above facts and also relying upon the decision of Hon'ble Jurisdictional High Court in the case of Unitech Limited and also in HCL Technologies Limited (supra), we quash the notice issued for reopening of assessment under section 148.

12. Once the notice for reopening of assessment u/s 148 is quashed, the assessment order passed in pursuance to such notice cannot survive the same is also quashed. Since the assessment order itself has been

quashed, the other ground raised by the assessee which is against the addition of Rs. 50,00,000/- made by the Assessing Officer does not require any adjudication.

13. In the result, assessee's appeal is allowed.

**Order pronounced in the Open Court on 22<sup>nd</sup> May, 2019.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

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

Dated: 22/05/2019  
SH

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	14.5.2019	PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		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.		
11.	Date of uploading	22.5.2019	

