

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.1471 & 1472/Del/2019
Assessment Years: 2010-11 & 2011-12

Shri Gautam Bhalla, PHB, LCG, 5, Laburnum, Sushant Lok-1, Gurgaon, Haryana	Vs.	ACIT, Central Circle-8, New Delhi
PAN :AGMPB8807G		
(Appellant)		(Respondent)

Appellant by	Shri C.S. Aggarwal, Sr. Adv. & Shri Ravi Pratap Mal, Adv.
Respondent by	Shri Amit Katoch, Sr.DR

Date of hearing	19.08.2019
Date of pronouncement	03.09.2019

ORDER

PER O.P. KANT, A.M.:

These two appeals by the Revenue are directed against two separate orders, both dated 14/01/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-24, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2010-11 and 2011-12 respectively. As identical grounds have been raised in same set of circumstances in both these appeals, therefore, same were heard together and disposed off by way of this consolidated order for sake of convenience.

ITA No. 1471/Del/2019 for AY : 2010-11

2. First we take up the appeal having ITA No. 1471/Del/2019 for assessment year 2010-11. The grounds raised in the appeal are reproduced as under:

1. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the order of assessment passed u/s 148 r.w.s. 143(3)/153A of the Act. In so doing, he has failed to comprehend that even the assumption of jurisdiction u/s 147 of the Income Tax Act by the AO was outside the pale of the aforesaid statutory provisions.*
2. *That the learned CIT(A) has further failed to appreciate that the proceedings had been initiated by the AO on the directions of the CIT(A), which was beyond his jurisdiction and as such the initiation of proceedings itself on that ground alone is untenable in law.*
3. *That even otherwise, the learned CIT(A) has failed to appreciate that the assessment had been framed u/s 153A of the Act and as such, no valid proceedings could have been initiated u/s 147 of the Act.*
4. *That the learned CIT(A) has further failed to comprehend that the third proviso below section 147, specifically excludes the taxability of such income which are the subject matter of appeal, as such the learned AO could not have initiated the proceedings to tax such income by issue a notice u/s 147 of the Act to tax only that income which was the subject matter of appeal and to tax such an income.*
5. *That the learned CIT(A) has failed to appreciate that the sum sought to be added and has been alleged to be an escaped income, was such a sum which had been assessed to tax by the AO and on appeal was deleted by the learned CIT(A) against which revenue was in appeal, hence was the subject matter of appeal before the Hon'ble Tribunal.*
6. *That in any case and without prejudice to each of the aforesaid ground, the preconditions for invoking the provisions of section 147 of the Income Tax Act, since were not satisfied in as much as there had been no escapement of income, the initiation of proceeding was without a reason to believe that there has been an escapement of income and as such no proceedings u/s 147 of the Act could have held as validly initiated proceedings.*

7. *That the learned CIT(A) has failed to appreciate that the assessee had discharged his initial onus by establishing the identity, creditworthiness and genuineness of the credit balance either in the account of M/s Stanford Hospitality (India) Private Limited or even in the accounts of (a) Anglican Indian Consultancy Private Limited and (b) Stanford Hotel Management Private Limited.*
8. *That in any case and without prejudice there was no justification either of facts or in law to have sustained the addition made by the AO of Rs. 4,95,00,000/-. In so doing the learned CIT(A) has failed to appreciate that the assessee had received a sum of Rs. 3,15,00,000/- from M/s Stanford Hospitality (India) Private Limited and remaining sums were received from (a) Anglican Indian Consultancy Private Limited and (b) Stanford Hotel Management Private Limited., though the same were under same management and one of the director was a common director of the company.*
9. *That without prejudice to each of the aforesaid ground of appeal, the learned CIT(A) ought to have remanded the matter to the AO to have either summoned the creditors whose identity was well established or the manager of the bank with whom the said creditors had their accounts and monies had been received by the assessee from the said bank accounts.*

It is therefore prayed the addition sustained of Rs. 4,95,00,000/- be directed to be deleted.”

3. Briefly stated facts of the case are that:

- (i) The assessee, an individual filed its original return of income for the year under consideration on 27/07/2010, declaring total income of Rs.93,09,220/-.
- (ii) Subsequently, a search and seizure action under section 132(1) of the Income-tax Act, 1961 (in short 'the Act') was carried out on 16/01/2013 at the premises of the assessee along with the search action at the premise of "Vatika" group.
- (iii) Consequent to search action, in response to notice under section 153A of the Act, the assessee again filed return of income and assessment was completed on 30/03/2015 under section 153A read with section

143(3) of the Act at total income of Rs.5,18,09,223/- after making addition of Rs.4,95,00,000/- as unexplained credit under section 68 of the Act.

- (iv) The assessee filed appeal before the learned First Appellate Authority against the assessment order and filed confirmation letter from M/s Stanford Hospitality (India) Private Limited (in short the 'Stanford Hospitality') in respect of the loan received of Rs.4,95,00,000/- as an additional evidence. The Ld. CIT(A) asked remand report from the Assessing Officer with the direction to conduct enquiry regarding the loan received.
- (v) During remand proceeding, the Assessing Officer issued summon under section 131 of the Act to the assessee for producing Principal Officer of 'Stanford Hospitality'. The Assessing Officer also issued summon directly to the 'Stanford Hospitality' but no compliance was made either by the assessee or 'Stanford Hospitality'. In the spot enquiry made by the Income-Tax Inspector of the office of the Assessing Officer, it was found that no entity was in existence at the address provided in the confirmation letter of 'Stanford Hospitality'. The Assessing Officer submitted remand report to the learned First Appellate Authority.
- (vi) The learned First Appellate Authority vide order dated 07/03/2017 deleted the addition of Rs.4,95,00,000/- relying on the ratio of the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawala (2015) taxmann.com 412 observing that there was no

reference to any document seized during the search or any incriminating material which was utilized for making the addition. The learned First Appellate Authority, however, advised the Assessing Officer for reopening the assessment of the year under consideration using the information gathered during remand proceeding.

- (vii) After considering the observation of the learned First Appellate Authority, the Assessing Officer recorded reasons for reopening the assessment and issued notice under section 148 of the Act on 29/03/2017. The assessee filed return of income in response to the notice under section 148 of the Act on 05/05/2017. The assessee was supplied copy of reasons recorded for reopening the assessment on 28/08/2017. The objections filed by the assessee on 20/11/2017 challenging the reassessment proceeding, were disposed off by the Assessing Officer on 18/12/2017 and the reassessment under section 147 was completed on 28/12/2017 at total income of Rs.5,88,09,223/-, *inter alia*, making addition of Rs.4,95,00,000/-.
- (viii) During reassessment proceeding, the Assessing Officer again issued summon under section 131 to the assessee requiring to produce Principal Officer of 'Stanford Hospitality' along with relevant document, however, the assessee failed to do so. The Assessing Officer further observed from the assessment order dated 28/03/2013 in the case of 'Stanford Hospitality'

for the year under consideration that name of the assessee was not appearing in the loans of Rs.1,04,95,500/- provided by said identity during the year under consideration. The assessee for the first time claimed that a part of the unexplained credit of Rs.4,95,00,000/- was received from some other entities also. In view of the facts, the Assessing Officer concluded that the assessee failed to satisfy ingredient of section 68 of the Act and accordingly, made the addition of Rs.4,95,00,000/-.

- (ix) The Ld. CIT(A), upheld the legality of initiating reassessment proceeding challenged by the assessee and also upheld merit of the addition.
- (x) Aggrieved with the impugned order of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above challenging the legality of the reassessment proceeding as well as merit of the addition.

4. In the grounds raised, grounds No. 1 to 6 are with respect challenge of reassessment proceeding and ground No.7 to 9 are related to merit of the addition.

4.1 Before us, Ld. Senior Counsel of the assessee filed paper-book containing pages 1 to 480 and filed brief synopsis of the case. The Ld. Senior Counsel mainly argued ground No. 5 of the appeal. The Ld. Senior Counsel drawn our attention to the copy of reasons recorded available on page 120 of the paper-book and submitted that reassessment proceedings have been initiated on the advice of the Ld. CIT(A). He further submitted that addition of

unexplained cash credit made by the Assessing Officer in the reassessment proceeding was deleted by the Ld. First Appellate Authority in his order dated 07/03/2017 and against which Revenue was in appeal and hence, was subject matter of appeal before the Tribunal. He submitted that in view of the 3rd proviso to section 147 of the Act, no proceeding can be initiated to assess or reassess such income, involving matters and subject matter of an appeal.

4.2 The Ld. DR, on the other hand, relied on order of the lower authorities and submitted that the reassessment proceedings have been validly initiated in the case of the assessee. According to him, the appeal has been filed by the Revenue before the Tribunal on challenging the legal ground, and thus proviso-3 of section 147 is not applicable.

4.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The reasons recorded by the Assessing Officer are reproduced as under:

"The case of the assessee was completed u/s 153A r.w.s 143(3) of the Income Tax Act, 1961 vide assessment order dated 30.03.2015 and the income was assessed at Rs. 5,18,09,223/- after making an addition of Rs. 4,25,00,000/- on account of unexplained credit u/s 68 of the Income Tax Act, 1961.

2. *The Ld. CIT(A) vide its order dated 08.03.2017 has deleted the additions made by the assessing officer relying upon Hon'ble Delhi High Court order in the case of Kabul Chawla. The addition was deleted on technical ground that no incriminating material was found during the search action conducted upon the assessee from which it can be established that the loan received from M/s. Stanford Hospitality (I) P. Ltd. are not genuine and are bogus.*

3. *The Id. CIT(A) has not given any comment regarding the merits of the case. During the remand report proceeding of the case,*

it was noticed that the party named M/s. Standard Hospitality does not exist. This party had filed confirmation letter dated 23.12.2016 regarding the loan transaction before the Ld. CIT(A). But, when the enquiries were conducted by the inspector in this matter, it was found that the address given by it in its confirmation letter during the appellate proceeding, i.e. T-5B, Windsor Court, DLF City Phase-IV, Gurgaon. is a residential complex. The said flat is in the possession of Miss Anushka and she does not even know M/s. Stanford Hospitality (India) Pvt. Ltd. (Inspector report is enclosed with this proposal as per annexure 'X'.)

4. further, the summon u/s 131 of the I.T. Act, 1961 was issued to the assessee with a direction to produce the party ;M/s. Stanford Hospitality (India) Pvt. Ltd', before the undersigned on 13.03.2017. But the assessee failed to produce the party. Hence, it is evident that the loan which has been shown by the assessee in its books as received from M/s. Stanford Hospitality (I) P. Ltd. are not genuine and are bogus credits in the assessee's books.

5. The fact of non-existence of alleged lender was not known during assessment proceedings and the addition has been deleted by the CIT(A) on technical grounds, without considering above fact noted during remand proceeding. Thus at this stage, the income of Rs. 4,25,00,000/- stands escaped assessment, which should be charged in the hands of the assessee. Therefore, the case of Sh. Guatam Bhalla is required to be reopened for the A.Y. 2010-11.

6. From the facts and discussion above, it is clear that the escapement of tax in the case is only due to the incomplete and partial disclosure of facts by the assessee during the assessment proceedings as well as appellate proceedings. Hence, I am satisfied that this is the fit case for issuance of notice under section 148 of the Act.”

4.4 In background of the facts of the case reproduced by us above, we find that that the addition of Rs.4,95,00,000/- which is in dispute before us has been deleted by the Ld. First Appellate Authority in his order dated 07/03/2017 relying on the decision of the Hon'ble High Court in the case of Kabul Chawala (supra) and the Revenue challenged that order of the Ld. CIT(A) before the Tribunal. Thus, it is an admitted fact that very sum in respect of which the Assessing Officer reopened the proceeding, were the subject matter of the appeal before the Tribunal. We find that the

third proviso mandates that no proceeding can be initiated to tax such income, which is subject matter of the appeal. For the sake of ready reference, the 3rd proviso to section 147 of the Act is extracted below:

“Income escaping assessment.

147. *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Provided

Provided further

Provided also *that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.”*

4.5 In view of the clear provisions, we are of the considered opinion that Assessing Officer was not justified in reopening the assessment for assessing the income which was subject matter of the appeal before the Tribunal. Accordingly, we hold the reassessment in the instant case as *void-ab-initio* thus, the reassessment proceeding are accordingly quashed.

4.6 As we have already quashed the reassessment proceeding, the other arguments of the Ld. Senior Counsel challenging the reassessment proceeding and the merit of the addition are rendered merely academic and, therefore, we are not adjudicating upon those arguments.

4.7 The appeal of the assessee is accordingly allowed.

ITA No.1472/Del/2019 for AY: 2011-12

5. In ITA No.1472/12/2019 for assessment year 2011-12 following grounds have been raised:

1. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the order of assessment passed u/s 148 r.w.s. 143(3)/153A of the Act. In so doing, he has failed to comprehend that even the assumption of jurisdiction u/s 147 of the Income Tax Act by the AO was outside the pale of the aforesaid statutory provisions.*

2. *That the learned CIT(A) has further failed to appreciate that the proceedings had been initiated by the AO on the directions of the CIT(A), which was beyond his jurisdiction and as such the initiation of proceedings itself on that ground alone is untenable in law.*

3. *That even otherwise, the learned CIT(A) has failed to appreciate that the assessment had been framed u/s 153A of the Act and as such, no valid proceedings could have been initiated u/s 147 of the Act.*

4. *That the learned CIT(A) has further failed to comprehend that the third proviso below section 147, specifically excludes the taxability of such income which are the subject matter of appeal, as such the learned AO could not have initiated the proceedings to tax such income by issue a notice u/s 147 of the Act to tax only that income which was the subject matter of appeal and to tax such an income.*

5. *That the learned CIT(A) has failed to appreciate that the sum sought to be added and has been alleged to be an escaped income, was such a sum which had been assessed to tax by the AO and on appeal was deleted by the learned CIT(A) against which revenue was in appeal, hence was the subject matter of appeal before the Hon'ble Tribunal.*

6. *That in any case and without prejudice to each of the aforesaid ground, the preconditions for invoking the provisions of section 147 of the Income Tax Act, since were not satisfied in as much as there had been no escapement of income, the initiation of proceeding was without a reason to believe that there has been an escapement of income and as such no proceedings u/s 147 of the Act could have held as validly initiated proceedings.*

7. *That the learned CIT(A) has further erred in sustaining an addition of Rs. 4,62,94,000/- despite the fact that the balance at the end of the year aggregated to Rs. 6,14,00,000/- in the account of*

M/s Stanford Hospitality (India) Pvt. Ltd. out of which only Rs. 3,44,00,000/- had been received during the year and after repayment of Rs. 45,00,000/- the balance remained at Rs. 2,99,00,000/-.

8. That in any case and without prejudice the learned CIT(A) has erred in sustaining addition of Rs. 1,63,94,000/- received from Ram Shanti Co-operative Group Housing Society Limited, which was not the sum held as unexplained credit (though the same were under same management and one of the director was common director of the company).,

9. That without prejudice to each of the aforesaid ground of appeal, the learned CIT(A) ought to have remanded the matter to the AO to have either summoned the creditors whose identity was well established or the manager of the bank with whom the said creditors had their accounts and monies had been received by the assessee from the said bank accounts.

It is therefore prayed the addition sustained of Rs.4,62,94,000/- be directed to be deleted.

6. The grounds raised in the instant assessment year are identical to the grounds raised in assessment year 2010-11. The facts and circumstances of the case are also identical to the facts and circumstances of assessment year 2010-11. The only change in respect of the amount of unexplained cash credit made under section 68 of the Act, which in the instant year, is of Rs.4,62,94,000/-. A copy of reasons recorded for reopening the assessment for the year into consideration, is available on page 124 of the paper book filed by the assessee, are reproduced as under:

“The case of the assessee was completed u/s 153A r.w.s 143(3) of the Income Tax Act, 1961 vide assessment order dated 30.03.2015 and the income was assessed at Rs. 5,43,83,644/- after making an addition of Rs. 4,62,94,000/- on account of unexplained credit u/s 68 of the Income Tax Act, 1961.

2. The Ld. CIT(A) vide its order dated 08.03.2017 has deleted the additions made by the assessing officer relying upon Hon'ble

Delhi High Court order in the case of Kabul Chawla. The addition was deleted on technical ground that no incriminating material was found during the search action conducted upon the assessee from which it can be established that the loan received from M/s. Stanford Hospitality (I) P. Ltd. are not genuine and are bogus.

3. *The ld. CIT(A) has not given any comment regarding the merits of the case. During the remand report proceeding of the case, it was noticed that the party named M/s. Standard Hospitality does not exist. This party had filed confirmation letter dated 23.12.2016 regarding the loan transaction before the Ld. CIT(A). But, when the enquiries were conducted by the inspector in this matter, it was found that the address given by it in its confirmation letter during the appellate proceeding, i.e., T-5B, Windsor Court, DLF City Phase-IV, Gurgaon, is a residential complex. The said flat is in the possession of Miss Anushka and she does not even know M/s. 'Stanford Hospitality (India) Pvt. Ltd. (Inspector report is enclosed with this proposal as per annexure 'X'.)*

4. *Further, the summon u/s 131 of the I.T. Act, 1961 was issued to the assessee with a direction to produce the party 'M/s. Stanford Hospitality (India) Pvt. Ltd', before the undersigned on 13.03.2017. But the assessee failed to produce the party. Hence, it is evident that the loan which has been shown by the assessee in its books as received from M/s. Stanford . Hospitality (1) P. Ltd. are not genuine-and are bogus credits in the assessee's books.*

5. *The fact of non-existence of alleged lender was not known during assessment proceedings and the addition has been deleted by the CIT(A) on technical grounds, without considering above fact noted during remand proceeding. Thus at this stage, the income of Rs. 4,62,94,000/- stands escaped assessment, which should be charged in the hands of the assessee. Therefore, the case of Sh. Guatam Bhalla is required to be reopened for the A.Y. 2011-12.*

6. *From the facts and discussion above, it is clear that the escapement of tax in the case is only due to the incomplete and partial disclosure of facts by the assessee during the assessment proceedings as well as appellate proceedings. Hence, I am satisfied that this is the lit case for issuance of notice under section 148 of the Act.*

7. *In view of above facts, I have reasons to believe that income of Rs.4,62,94,000/- which should be charged to tax in the hands of Sh. Gautam Bhalla has escaped from being taxed for A.Y. 2011-12. Hence, I am satisfied that it is a fit case for issuance of notice u/s 148 of the Income Tax Act, 1961."*

7. In view of the facts and circumstances of the instant year identical to facts and circumstances of assessment year 2010-11, the reassessment proceeding in the instant year is also quashed.

8. The appeal of the assessee for assessment year 2011-12 is accordingly allowed.

9. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 3rd September, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 3rd September, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi