

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & DR. B.R.R. KUMAR, AM

आयकर अपील सं. / ITA No.4096/Del/2018

निर्धारण वर्ष / Assessment Year 2005-06

Sheela Foam Ltd.,
C-55, Preet Vihar, Vikas Marg,
New Delhi-110092.

PAN-AAACS0189B

.....अपीलार्थी / Appellant

vs

The DCIT,
Central Circle-6,
New Delhi-110016

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Ajay Vohra, Sr.Adv.,
Sh. Gaurav Jain, Adv. & Ms. Manisha Sharma, Adv.

प्रत्यर्थी की ओर से / Respondent by : Sh. Saras Kumar, Sr.DR

सुनवाई की तारीख / Date of Hearing : 02.01.2020	घोषणा की तारीख / Date of Pronouncement: 27.04.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of CIT(A)-28, New Delhi dated 28.03.2018 relating to assessment year 2005-06 against the order passed under section 147 r.w.s 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised following grounds of appeal:-

1. “That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in upholding validity of re-assessment proceeding initiated under section 147 through issuance of notice under section

148 of the Income Tax Act, 1961 ('the Act') and not quashing the same on the ground of being illegal, bad in law and void-ab-initio.

1.1 That the CIT(A) erred on facts and in law in holding that reliance by the assessing officer on the report from investigation wing alleging share application money of Rs. 10,00,000 received by the appellant from VPC Financial Services Pvt. Ltd., company belonging to search party, i.e., Sh. S.K. Jain Group as an accommodation entry, without any independent verification / satisfaction of the assessing officer, constituted valid "reason to believe" to assume jurisdiction under section 147 of the Act.

1.2 That the CIT(A) erred on facts and in law in holding that the assessing officer applied independent mind on the investigation report before forming 'reason to believe' and issuing notice under section 148 of the Act.

1.3 That the CIT(A) erred on facts and in law in not adjudicating and not quashing the impugned reassessment order passed under section 147 on the ground of being barred by limitation, having been initiated after the expiry of four years from the end of the relevant assessment year in terms of first proviso to section 147 in the absence of any failure on the part of the appellant to disclose fully and truly all material facts in relation to the receipt of share application money from VPC during original assessment.

1.4 That the CIT(A) erred on facts and in law in not adjudicating and not quashing the impugned reassessment order under section 147 on the ground of being initiated merely on the basis of change of opinion formed at the time of original assessment.

Merits

1.5 Without prejudice to the above, that the CIT(A) erred on facts and in law in holding that share application money of Rs. 10,00,000/- received from VPC Financial Services Pvt. Ltd constituted unexplained cash credit under section 68 of the Act.

1.6 Without prejudice to the above, that the CIT(A) erred on facts and in law in upholding

the addition of Rs.2,02,05,424 (out of total addition Rs.3,22,09,048 made by the assessing officer) under section 68 of the Act, comprising of Rs. 1,77,00,000 on account of inter corporate deposits and Rs.25,05,424 on account of interest accrued thereon, holding that the appellant failed to establish identity, creditworthiness of the lenders as also genuineness of the transaction(s) without any adverse material being found by the assessing officer in relation to said transactions, failing to appreciate that onus placed on the appellant was satisfactorily discharged, which was even accepted by the

assessing officer after thorough examination in original assessment completed under section 143(3) of the Act.

1.7 Without prejudice to the above, the CIT(A) erred on facts and in law in adding the interest accrued on inter-corporate deposits aggregating to Rs.25,05,424 without appreciating that out of the aforesaid, only an amount of Rs.6,83,903 pertained to fresh additions made during the year and the balance amount of Rs. 18,21,521 pertained to the opening balances of deposits, which were never treated as unexplained cash credits in assessment(s) completed for the preceding assessment year(s).”

3. The preliminary issue raised in the present appeal is against the validity of re-assessment proceedings initiated u/s 147/148 of the Act. The assessee has raised an additional ground of appeal which reads as under:-

1. “That the reassessment order dated 28.03.2013 passed under section 147 r.w.s 143(3) of the Income Tax Act, 1961 (“the Act”) is beyond jurisdiction, bad in law and void-ab initio in as much as same has been passed without issuing and serving the jurisdictional notice under section 143(2) of the Act.”

4. The Ld.AR for the assessee pointed out that the additional ground raised by it is purely legal in nature and does not require any adjudication of facts and the same be admitted for adjudication.

5. Briefly in the facts and circumstances of the case the assessment has been initiated u/s 147 of the Act by recording reasons for re-opening the assessment on the basis of certain information received consequent to search and seizure operations carried out at the residential and business premises of Sh.Surendra Kumar Jain and Sh. Virendra Jain on 14.09.2010. The Assessing Officer recorded the reasons for re-opening the assessment and thereafter, issued notice u/s 148 of the Act. Though, several additions have been made in the hands of the assessee, which

stand confirmed by the order of CIT(A); but the preliminary issue which need to be adjudicated first is against the reopening of the assessment u/s 147/148 of the Act.

6. The Ld.AR referred to the reasons recorded for re-opening the assessment u/s 147 of the Act, which are placed at pages 188 & 189 of the Paper Book and pointed out that the reasons are only in respect of the accommodation entry received of Rs.10 Lakhs only. He then referred to the letter dated 16.11.2012 wherein the Assessing Officer talks of notice issued u/s 142(1) of the Act; but do not talk of any notice issued u/s 143(2) of the Act. He stressed that in the absence of any notice issued u/s 143(2) of the Act, the assessment completed u/s 147 r.w.s. 143(3) of the Act is not valid.

7. Coming to the second plea with regard to the reassessment proceedings, the Ld.AR for the assessee stressed that the initiation of reassessment proceedings were on account of addition of Rs.10 Lakhs, which has not been added in the hands of the assessee. Our attention was drawn to chart filed during the course of hearing wherein it was pointed out that the addition u/s 68 of the Act was initiated on account of following amounts:-

	Amount (In Rs.)	Remarks
(a) Share application money received from VPC Financial Services Pvt.Ltd.	NIL	No addition made by the AO
(b) Deposits from Shareholders	18,44,411	2,79,84,016-2,61,39,605-addition made on accounts of difference between closing balance and opening balance
(c) Inter-Corporate Deposits	3,03,64,637	4,56,86,545-1,53,21,908-addition made on accounts of difference

between closing balance and
opening balance

8. The Id.AR for the assessee further pointed out that in respect of the first item, no addition was made by the Assessing Officer. In respect of second item of Rs.18,44,411/-, the same was deleted by CIT(A). However, he restricted second addition to Rs.1,77,00,000 and interest of Rs.25,05,424/- on account of fresh Inter-Corporate deposits. He then took us through the balance sheet placed at page 4 of the Paper Book and also referred to order of CIT(A) wherein above said additions have been deleted by the CIT(A) against which no appeal has been filed by the Revenue. Our attention was also drawn to pages 65 & 66 of the Paper Book i.e. details of Inter-Corporate deposits, which do not include the name of any entity from Sh. Surendra Kumar Jain and deposit of Rs.10 Lakhs. He stressed that the Assessing Officer did not make any addition of share application money, which was the reason for re-opening the assessment and after the order of CIT(A), the only addition which has been retained was on account of Inter-Corporate deposits. In this regard, he stressed that the main addition does not survive, then there is no merit in the re-opening of assessment proceedings u/s 147/148 of the Act. Reliance was placed by the ratios laid down by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs CIT [2011] 336 ITR 136 (Del.) and Hon'ble Bombay High Court in the case of CIT vs Jet Airways (I) Ltd. [2010] 331 ITR 236 (Bom.). The third issue raised by the Ld.AR was that re-opening of assessment was after a period of 4 years and there was no failure on the part of the assessee. Our attention was drawn to the

original proceedings u/s 143(3) of the Act and the queries raised. He also stressed that there was no independent application of mind by the Assessing Officer on the information received and on this ground also the reassessment proceedings cannot survive.

9. The Ld.DR for the Revenue pointed out that the information was with Assessing Officer and after applying his mind, other contentions were raised and the additions were made. He fairly pointed out that the issue be decided accordingly.

10. We have heard the rival contentions and perused the record. Various issues have been raised by the assessee with regard to re-opening of assessment u/s 147/148 of the Act. The preliminary issue raised is whether the aforesaid re-opening of the assessment is validly initiated or not? Without going into the aspect of issue of notice u/s 143(2) of the Act, we proceed to address the second issue raised by the assessee. The perusal of the reasons recorded for re-opening the assessment which are placed at pages 181 of the Paper Book reflects that the only reason for re-opening the assessment was consequent to the inquiries conducted by the Investigation Wing of the Department in the case of Sh. Surendra Kumar Jain Group. In the reasons recorded, it was mentioned that the assessee company had also received accommodation entry from Sh. Surendra Kumar Jain during the Financial Year 2004-05 wherein the sum of Rs.10 Lakhs was received from VPC Financial Services Ltd. on 12.05.2004. On account of this, the Assessing Officer recorded reasons of escapement of income on the failure of the assessee to truly and fully disclose all the

material facts necessary for assessment. Hence, the re-assessment proceedings were initiated by way of issue of notice u/s 148 of the Act. The Assessing Officer in the final analysis in the said reasons recorded for re-opening the assessment held that *“Therefore, I have reason to believe that an income of Rs.10 Lakhs has escaped assessment within the meaning of section 147 of the Income tax Act, 1961.”*

11. The assessment in the case of the assessee was completed u/s 147/143(3) of the Act wherein no addition was made by the Assessing Officer on account of share application money received from VPC Financial Services Ltd. and also no fresh addition was made by the CIT(A) on this account. The Assessing Officer made addition on account of deposits from shareholder/s and Inter-Corporate deposits. The CIT(A) deleted the first addition, but restricted the addition for Inter-Corporate deposits on fresh addition made during the year totaling Rs.1.77 crores and interest thereon of Rs.25,05,424/-, as against the original addition of Rs.3.03 crores made by the Assessing Officer. The details of the Inter-Corporate deposits are available on record which are placed at pages 65 & 66 of the Paper Book and the said deposits do not include alleged share application money received from VPC Financial Services Ltd.. In other words, no addition has been made in the hands of the assessee on account of the reasons recorded for re-opening the assessment u/s 147/148 of the Act.

12. The question which arises for adjudication is where no addition is made on account of the reason recorded for re-opening the assessment; does the addition on account of any other source be upheld in the hands

of the assessee in assessment completed u/s 147 r.w.s. 143(3) of the Act. The Income tax Act very clearly provides that in case the re-assessment proceedings has been initiated on one account then any other addition can be in the hands of the assessee; but in case no addition has been made on account of the reasons recorded for re-opening the assessment then whether the other additions made in the hands of the assessee can survive or not is the question before us.

13. The Hon'ble Bombay High Court in CIT vs Jet Airways (I) Ltd. (supra) had considered the amendment u/s 147 of the Act by Finance (No.2) Bill of 2009 and held as under:-

9. *"The effect of s. 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) The AO must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the AO has to serve on the assessee a notice under sub-s. (1) of s. 148; (iii) The AO may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and (iv) Though the notice under s. 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.*

10. *Now the submission of the learned counsel appearing on behalf of the assessee in the present case is that the words "and also" in s. 147 postulate that the AO may assess or reassess the income which he has reason to believe has escaped assessment together with any other income chargeable to tax which has escaped assessment and which comes to his notice during the course of the proceedings. In other words, unless the AO assesses the income with reference to which he had formed a reason to believe within the meaning of s. 147, it would not be open to him to assess or reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. On*

the other hand, it has been urged on behalf of the Revenue that even if, during the course of assessment or, as the case may be reassessment, the Assessing Officer does not assess or reassess the income which he has reason to believe has escaped assessment and which formed the subject-matter of a notice under s. 148(2), it is nonetheless open to him to assess any other income which, during the course of the proceedings is brought to his notice as having escaped assessment.

11. *The rival submissions which have been urged on behalf of the Revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under s. 147 and following the issuance of a notice under s. 148, the AO has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The legislature did not rest content by merely using the word "and". The words "and", as well as "also" have been used together and in conjunction.*

The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the AO, upon the formation of a reason to believe under s. 147 and the issuance of a notice under s. 148(2) must assess or reassess : (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the AO has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of

the formation of the reason to believe is not assessed or reassessed, it would not be open to the AO to independently assess only that income which comes to" his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under s. 148(2), the AO accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of s. 147 w.e.f. 1st April, 1989 clearly stipulated that the AO has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.

12. *In CIT vs. Sun Engineering Works (P) Ltd. (1992) 107 CTR (SC) 209 : (1992) 198 ITR 297 (SC) : (1992) 64 Taxman 442 (SC), the Supreme Court dealt with the following question of law in the course of its judgment :*

"Where an item unconnected with the escapement of income has been concluded finally against the assessee, how far in reassessment on an escaped item of income is it open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income ?"

The issue which arose before the Supreme Court was whether, in the course of a reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of s. 147, as they stood prior to the amendment on 1st April, 1989. The Supreme Court held that the expression "escaped assessment" includes both "nonassessment" as well as "underassessment". Income is said to have escaped assessment within the meaning of the section when it has not been charged in the hands of an assessee during the relevant assessment year. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of s. 147. The expression "reassess" refers to a situation where an assessment has already been made but the AO has reason to believe that there is underassessment on account of the existence of any of the grounds contemplated by Expln. 1 to s. 147. The Supreme Court adverted to the judgment in V. Jaganmohan Rao vs. CIT (1970) 75 ITR 373 (SC), which held that once an assessment is validly reopened, the previous underassessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. The Court held that the object of s. 147 enures to the benefit of the Revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and

thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

The judgment in V. Jaganmohan Rao vs. CIT (supra) dealt with the language of ss. 22(2) and 34 of the Act of 1922 while the judgment in Sun Engg. Works (P) Ltd. (supra) interprets the provisions of s. 147 as they stood prior to the amendment on 1st April, 1989.

13. *The effect of the amended provisions came to be considered in two distinct lines of precedent on the subject. The first line of authority, to which a reference has already been made earlier, adopted the principle that where the AO has formed a reason to believe that income has escaped assessment and has issued a notice under s. 148 on certain specific issues, it was not open to him during the course of the proceedings for assessment or reassessment to assess or reassess any other income, which may have escaped assessment but which did not form the subject-matter of the notice under s. 148. This view was adopted in the judgment of the Punjab & Haryana High Court in Vipin Khanna (supra) and in the judgment of the Kerala High Court in Travancore Cements Ltd. (supra), This line of authority, would now cease to reflect the correct position in law, by virtue of the amendment which has been brought in by the insertion of Explan. 3 to s. 147 by Finance (No. 2) Act of 2009. The effect of the Explanation is that once an AO has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice under s. 148, it is open to him to assess or reassess income in respect of any other issue though the reasons for such issue had not been included in the reasons recorded under s. 148(2).*

14. *The second line of precedent is reflected in a judgment of the Rajasthan High Court in CIT vs. Shri Ram Singh (2008) 217 CTR (Raj) 345 : (2008) 306 ITR 343 (Raj). The Rajasthan High Court construed the words used by Parliament in s. 147 particularly the words that the AO 'may 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 s. 147. The Rajasthan High Court held as follows:*

". . . if is only when, in proceedings under s. 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under s. 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under s. 147, the AO were to come to the conclusion, that any income chargeable to

tax, which, according to his 'reason to believe', had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

15. Parliament, when it enacted the Expln. (3) to s. 147 by the Finance (No. 2) Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Expln. 3 to s. 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain Courts that the AO has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by "Parliament in the form of Expln. 3 consequently provides that the AO may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under s. 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd. (supra) and of the Punjab & Haryana High Court in Vipin Khanna (supra) would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh (supra), Expln. 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana High Court in CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 (P&H) : (1989) 46 Taxman 315 (P&H). The decision in Atlas Cycle Industries (supra) held that the AO did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under s. 148 were incorrect or nonexistent. The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries (supra) and of the Rajasthan High Court in Shri Ram Singh (supra) would not be affected by the amendment brought in by the insertion of Expln. 3 to s. 147.

16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under s. 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the AO could not make an assessment or reassessment on another issue which came to his

notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explan. 3 by the Finance Act (No. 2) of 2009. However, Explan. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Sec. 147 has this effect that the AO has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under s. 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in s. 147(1) and on the basis of the precedent on the subject. We agree with the submissions which has been urged on behalf of the assessee that s. 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the AO may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explan. 3 to s. 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in *Shri Ram Singh (supra)*. Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of s. 147(1) as they stood after the amendment of 1st April, 1989 continue to hold the field.

18. In that view of the matter and for the reasons that we have indicated, we do not regard the decision of the Tribunal in the present case as being in error. The question of law shall, accordingly, stand answered against the Revenue and in favour of the assessee. The appeal is, accordingly, dismissed. There shall be no order as to costs."

14. The conclusion of the Hon'ble Bombay High Court in *CIT vs Jet Airways (I) Ltd. (supra)* was that on confirmation of reason to believe that

income chargeable to tax has escaped the assessment for Assessment Year u/s 147(1) of the Act, the Assessing Officer may assess or re-assess such income and also any other income chargeable to tax, which comes to his notice subsequently during the assessment proceedings, as having escaped assessment. It was explained that section 147 of the Act has the effect that the Assessing Officer has to assess or re-assess the income which escaped assessment, which was the basis of confirmation of belief and if he does so, he can also assess or re-assess any other income which has escaped assessment and which comes to his notice during the course of proceedings. However, if after issuing notice u/s 148 of the Act, the Assessing Officer accepts the contention of the assessee and holds that the income which he initially formed reason of belief of escapement of income, as a matter of fact not escaped assessment, then it was not open to him to independently assess the other income. In case if he intended to do so, fresh notice u/s 148 of the Act would be necessary in the accordance with law.

15. The Hon'ble Delhi High Court in *Ranbaxy Laboratories Ltd. vs CIT* (supra) relying on the ratio laid down by the Hon'ble Rajasthan High Court in the case of *CIT vs Shri Ram Singh* [2008] 306 ITR 346 (Raj.) and also referring to the decision of Hon'ble Bombay High Court in *CIT vs Jet Airways (I) Ltd.* (supra) and various other case laws finally referred to the conclusion of Hon'ble Bombay High Court in the case of *CIT vs Jet Airways (I) Ltd.* (supra) and held as under:-

18. *“We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra). We may also note that the heading of Section 147 is "income escaping assessment" and that of Section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to Section 147. Sub-section (2) of Section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof 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 has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to 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. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before 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.”*

16. Applying the principle laid down by the Hon'ble Bombay High Court in Jet Airways (I) Ltd.(supra) and Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd. vs CIT (supra), we hold that in the facts and circumstances of the case where the basis for issuing the notice u/s 148 of the Act was, on account of reasons recorded for re-opening the re-assessment u/s 147 of the Act, i.e. share application money received from VPC Financial Services Ltd. of Rs.10 Lakhs and no addition on this account has been made in the hands of the assessee, then any other addition made in the case of the assessee would not survive. Accordingly, we hold so. Thus, we decide the preliminary issue raised before us i.e. one

of the aspect of the preliminary issue raised before us, where no addition has been made on account of the reasons recorded for re-opening the assessment under the provisions of section 147/148 of the Act, then no addition can be made in the hands of the assessee on any other account. Hence, the order passed u/s 147 r.w.s. 143(3) of the Act is invalid. Accordingly, Ground No.1 raised by the assessee stands allowed and the other issues raised on the merits of addition become academic in nature.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27th April, 2020.

Sd/-

(B.R.R.KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 27th April, 2020

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi