

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

Before Sh. K. N. Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 8199/Del/2019 : Asstt. Year : 2010-11

Designarch Infrastructure Pvt. Ltd., L-7A(LGF), South Extension, Part-II, New Delhi-110049	Vs.	Income Tax Officer, Ward-7(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AACFI4218C		

Assessee by : Sh. Raj Kumar, CA

Revenue by : Sh. Jagdish Singh, Sr. DR

Date of Hearing: 12.10.2020	Date of Pronouncement: 21.10.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-15, New Delhi dated 16.09.2019.

2. Following grounds have been raised by the assessee:

"1. That in the absence of mandatory order u/s. 127(1) and for failure of its communication to assessee for transferring of jurisdiction from DCIT, Circle-7(1) New Delhi to ITO Ward-7(1) New Delhi, the assumption of jurisdiction by ITO Ward-7(1) is illegal and unsustainable, making all proceedings including impugned asstt. order is without jurisdiction, null and void, illegal and unsustainable.

2. That under the facts and circumstances, of the case the initiation of proceedings u/s. 147 is without jurisdiction, without application of mind, mechanical,

on borrowed satisfaction, and on wrong facts, thus unwarranted in law as well as on merits.

3. That in the absence of any finding in the reasons that alleged escaped income has been there on account of failure on the part of the assessee to fully and truly disclose all material facts necessary for asstt., the reopening as well as all subsequent proceeding are illegal and without jurisdiction in view of 1st proviso to sec.147, as the earlier regular asstt. already stood completed u/s.143(3).

4. That in the absence of disposing of the objections filed against initiation of reasstt. proceedings, the complete asstt. proceedings are illegal and unsustainable in law.

5. That under the facts and circumstances, the approval u/s.151 of Pr. CCIT/CIT is mechanical, non speaking and without application of mind, which approval cannot provide a valid jurisdiction to proceed u/s. 147/148.

6. That under the facts and circumstances, addition of Rs.5,00,000/- u/s. 68 for alleged accommodation entry from M/s. Aasheesh Capital Services (P) Ltd., a company alleged to be related to Sh. S. K. Jain is illegal, unjustified and unsustainable in law as well as on merits, also because no amt. whatsoever has been reed, from any such alleged company M/s Aasheesh Capital Services (P) Ltd. or any entity related to S. K. Jain.

6.1 That under the facts and circumstances Ld. CIT(A) erred in law as well as on merits in not admitting the additional evidences U/R-46A filed before him.

6.2 That in the absence of providing cross examination of relevant persons and also in the absence of confronting with all alleged adverse material, no cognize thereof can be taken for taking an adverse view.

7. That under the facts and circumstances, the Ld. A.O. erred in law and on merits in making the addition u/s. 68 for Rs.2,20,00,000/- (Rs. 17,60,000/- share capital + Rs.2,02,40,000/- share premium) received during the year from 05 companies.

7.1 That in the absence of providing cross examination of relevant persons and also in the absence of confronting with all alleged adverse material, no cognize thereof can be taken for taking an adverse view.

7.2 That without prejudice, issue of Rs.2,20,00,000/- since not a part of reasons and further no such material found during examination to justify the addition for the same, therefore this issue is outside the scope of these proceedings, therefore the A.O. exceeded his jurisdiction in examining and in making addition of Rs.2,20,00,000/-.

7.3 That without prejudice, in case the addition of Rs.5,00,000/- for which the proceedings have been initiated, stands deleted, no other issue including of Rs.2,20,00,000/- can be examined and adjudicated in impugned proceedings u/s. 147 / 148.

7.4 That Ld. CIT(A) committed grave error of law and facts in confirming the addition of Rs.2,20,00,000/- by treating the same as also being reed, from the companies related to Sh. S. K. Jain and Sh. V. K. Jain, which is incorrect, thus the addition confirmed on wrong premises cannot be sustained."

3. The ground no. 1 is not pressed.
4. Ground Nos. 3 to 5 relates to reopening u/s 147.
5. Ground No. 6 relates to addition of Rs.5,00,000/- as mentioned in the reasons recorded for reopening.

6. Ground No. 7 relates to addition of other amount in addition to the amount mentioned in the reasons recorded for reopening.

7. Heard the arguments of both the parties and perused the material available on record.

8. The reasons recorded while issuing the notice u/s 148 are as under:

"3.3 As per information received, the entry of assessee found in the seized documents of Jain brothers corroborates with the Banking channel and during the year the following entries have been taken by the assessee from the entry operators:

<i>Cheque Book date</i>	<i>From company name</i>	<i>To company/person name</i>	<i>Name of the issuing Bank</i>	<i>Cheque/ RTGS/ PO No./ Cheque Date</i>	<i>Amount (Rs.)</i>	<i>Name of the Middle Man Mediator</i>	<i>Annexure No</i>	<i>Page No.</i>
30.11.2009	Aasheesh Capital Services Pvt. Ltd.	Designarch Infrastructure Pvt. Ltd.	Axis	PO No. 030971	5,00,000	GL Gupta	A-17	Back Page-47

4. The return of income of assessee company has been downloaded from the ITD system and the same was examined in the light of information received from Investigation Wing. On comparative examination of return of income of the assessee company for A.Y. 2009-10 & 2010-11, the following has been observed with regard to the share capital and share premium of the assessee company:

<i>S. No.</i>	<i>Particulars</i>	<i>A.Y. 2009-10</i>	<i>A.Y. 2010-11</i>	<i>Increase (+)/ Decrease (-)</i>
1.	<i>Authorised Share capital</i>	<i>Rs.2,00,00,000</i>	<i>Rs.3,00,00,000</i>	<i>Rs.1,00,00,000(+)</i>
2.	<i>Issued, Subscribed and Paid up Capital</i>	<i>Rs.1,78,76,000</i>	<i>Rs.1,96,36,000</i>	<i>Rs.17,60,000 (+)</i>
3.	<i>Securities premium Account</i>	<i>Rs.5,75,00,000</i>	<i>Rs.7,77,40,000</i>	<i>Rs.2,02,40,000(+)</i>

4.2 From the above it is evident that the assessee company has increased its share capital/share premium by total amount of Rs.2,02,40,000/-. Thus the information received from the investigation wing is corroborated by the particulars shown by the assessee company in its return of income.

4.3 The company was incorporated on 13.03.2006. The assessee company in F.Y. 2009-10 relating to A.Y. 2010-11 has received Rs.1,96,36,000/- as share capital and Rs.7,77,40,000/- as securities premium. The financial figures of the company are tabulated below:

S.No.	Particulars	A.Y. 2009-10	A.Y. 2010-11
1.	Authorized Share Capital	Rs.2,00,00,000	Rs.3,00,00,000
2.	Issued, Subscribed and Paid up Capital	Rs.1,78,76,000	Rs.1,96,36,000
3.	Securities premium Account/Share Application Money	Rs.5,75,00,000	Rs.7,77,40,000
4.	Share application Money	Rs. NIL	Rs. NIL

5. I have carefully perused and analyzed the facts of the case as detailed above and the following facts emerge from the same:-

(i) Particulars of all investing companies are found recorded in the diary maintained in the regulate course, at the premises under control of Sh. S.K Jam.

(ii) The pass books/cheque books of all the investing companies who have made investments in the assessee company have been found at the premises Oj Jain and Sh. Virender Jain when these persons are not directors/shareholders of these companies.

(iii) Perusal of various seized documents, as, discussed at para 3.2 clearly shows that the name of the assessee company i.e. M/s Aasheesh Capital Services Pvt. Ltd. appears on this document has taken accommodation entry amounting to Rs.5,00,000/- from S.K. Jain group companies.

iv) The assessee has declared, in its return, of income that it has increased its share application money of such huge amounting to Rs.2,02,40,000/- which confirms the information received from Investigation Wing. It is most improbable for any investor to apply in share application money. It can be fairly concluded from the above facts that the assessee company has given its own fund to Sh. S.K. Jain to introduce it in the form of share capital and share premium through the companies being controlled by Sh. S.K. Jain Group.

6. The above facts clearly establish that the assessee company M/s Designarch Infrastructure Pvt. Ltd. has taken accommodation entries in the form of share application money and share capital from the entry providing companies being controlled by S.K. Jain group. As per information available on record i.e. ITR filed for A.Y. 2010-11, the full and true disclosure with regard to the above transactions have not been made by the, assessee company as the fact that the Share Capital and Share Premium is being introduced through these dummy companies is nowhere disclosed by the assessee company. In view of explanation 2 to clause b of proviso of section 147 of the Income Tax Act, 1961, where a return of income has been furnished by the assessee but no assessment has been made and it is noticed that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, deemed, to be cases where income chargeable to tax has escaped, assessment. Keeping in view all the above, I have reason to believe that an amount at least of Rs.5,00,000/- has escaped assessment in case of M/s Designarch Infrastructure Pvt. Ltd. for the A.Y. 2010-11 within the meaning of Section 147/148 of Income Tax Act/1961."

9. Having recorded the reasons the Assessing Officer went ahead and brought an amount of Rs.5,00,000/- to tax. The entire part of the assessment order relevant to this issue is reproduced as under:

"7. Besides as per information furnished by the Investigation Wing of the department on the basis of amount of Rs.5,00,000/- received from M/s Asheesh Capital Services Pvt. Ltd. obtained through Sh. G.L. Gupta as per reasons recorded in the form of accommodation entry and the same is fully corroborated with cheque No. and bank details, the same is also added u/s 68 of the I.T. Act."

10. During the arguments, the assessee has submitted the following certificates:

- i. Certificate dated – 04.09.2019 from Kotak Mahindra Bank
- ii. Certificate dated – 05.09.2019 from Axis Bank
- iii. Certificate dated – 03.09.2019 from CITI Bank
- iv. Certificate dated – 03.08.2019 from Bank of India

11. All the banks have categorically certified that the PO No./Cheque No. 030971 dated 30.11.2019 of Rs.5,00,000/- has not been cleared/deposited/collected by their banks.

12. The assessment order has also not mentioned anywhere as to, in which bank account of the assessee, the alleged cheque has been deposited. The Id. CIT (A) has also not given any finding as to where or in which bank account, the said amount of Rs.5,00,000/- has been deposited.

13. The Id. AR fierily and vehemently submitted before the Court and made a categorical statement that the assessee has not received and deposited any such cheque no. 030971 dated 30.11.2009 in the entire financial year 2009-10 in any bank accounts belonging to the assessee. The Id. DR argued that given an opportunity, the revenue would be filing the details regarding the deposit of the cheque in the bank account belonging to the assessee.

14. Since, as per the records available, it is not clear on the aspect of the receipt of this amount of Rs.5,00,000/- into the account of the assessee, we find it just and necessary to direct the AO to verify the fact with reference to the material. We clarify that this direction does not entitle the revenue to summon or call for any details from the assessee as the revenue has already had 120 months from the date of filing of return and 43 months from the date of issue of notice u/s 148 at their disposal to come out with the details of the deposit.

15. Our above view in respect of Rs.5,00,000/- leads to examination of applicability of Explanation-3 to Section 147 of the IT Act inserted by the Finance (No. 2 of 2009) with regard to the ground no 7 of the appeal where it was contested that addition of Rs.2.2 cr. made by the Assessing officer for which no satisfaction has been recorded at the time of reopening or during the reassessment proceedings.

16. Explanation-3 to Section 147 reads as under:

"Section 147....."

[Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]"

17. With regard to the issue whether any addition made by the AO is legally valid in the absence of a valid addition made based on the reasons recorded is examined in the context of the

judgment of the Hon'ble Jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. Vs CIT 336 ITR 136. The Hon'ble High Court held as under:

"11. Now, after the insertion of Explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2) on the basis of which he had initiated proceedings under section 147. Similar question came for consideration before the Division Bench of Bombay High Court in CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236/[2010] 195 Taxman 117. The Court held as under :—

"9. The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows: (i) The Assessing Officer 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 Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148, (iii) The Assessing Officer 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 section 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."

12. The submission of learned counsel for the revenue was that when reassessment is reopened by issuance of notice under section 148, the previous assessment is set aside and the whole assessment proceedings start afresh and the Assessing Officer has power to levy taxes on the entire income which has escaped assessment. The learned counsel relied upon the cases of Supreme Court in CIT v. Sun Engg. Works (P.) Ltd. [1992] 198 ITR 297/64

Taxman 442 and V. Jaganmohan Rao v. CIT/CEPT [1970] 75 ITR 373. On the other hand learned counsel for the assessee submitted that the words, 'and also' in section 147 signify that unless the Assessing Officer assesses the income with respect to which he has formed reason to believe within the meaning of section 147, it would not be open for 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 proceedings. Learned counsel relied upon the case of Jet Airways (I) Ltd. (supra) and also CIT v. Shri Ram Singh[2008] 306 ITR 343 (Raj.) and CIT v. Dr. Devender Gupta [2008] 174 Taxman 438 (Raj.). Reliance was also placed in the case of C.J. International Hotels Ltd. v. ITO being IT Appeal No. 2736/Del./2006 dated 24-10-2008.

13. *Similar contention was raised before the Division Bench of Bombay High Court in the case of Jet Airways (I) Ltd. (supra). The Court referred to the interpretation by Rajasthan High Court in Shri Ram Singh's case (supra) wherein it was observed as under :—*

".... it is only when, in proceedings under section 147 the Assessing Officer, 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 section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer 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 Assessing Officer 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 Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

14. *The Bombay High Court also discussed the cases of V. Jaganmohan Rao (supra) and Sun Engg. Works (P.) Ltd. (supra) of the Apex Court. In the case of Sun Engg. Works (P.) Ltd. (supra) the issue before the Supreme Court was whether in the course of 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 section 147, as they stood prior to the amendment on 1-4-1989. In this context, the Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under-assessment". The expression "assess" was defined as referring to a situation where the assessment is made for the first time under section 147, whereas "reassess" as referring to a situation where the assessment has already been made, but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds stipulated in section 147. The Supreme Court referred to the judgment in the case of V.Jaganmohan Rao (supra) wherein it was held that the object of section 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.*

15. *In Dr. Devender Gupta's case (supra), learned Tribunal has relied upon the judgment of the Punjab & Haryana High Court, in CIT v. Atlas Cycle Industries [1989] 180 ITR 319/46 Taxman 315, and concluded that the basic condition is, that the Assessing Officer has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found, that the section puts no bar on the powers of the Assessing Officer, to put to tax, any other income, chargeable to tax, which has escaped assessment, and which subsequently comes to his notice, in the course of the proceedings, but then, the prefixing words "and also", which succeeded "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". This expression was found to be making clear, that existence of the income, for which the Assessing Officer formed belief, to have escaped assessment, is a precondition, for including any other income chargeable to tax, escaping assessment, and*

coming to the notice of the Assessing Officer subsequently, in the course of the proceedings. Thus, unless and until such income, as giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject-matter of assessment, under section 147 "no other income" coming to the notice of the Assessing Officer, during the course of the proceedings, can be roped in.

16. *In the case of C.J. International Hotels Ltd. (supra) before the Tribunal, the facts were almost similar as in the present case. The Tribunal relied upon the case of Shri Ram Singh (supra) while holding that the Assessing Officer was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction, to put to tax, any other income which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.*

17. *Now, coming back to the interpretation which was given by the Bombay High Court to sections 147 and 148 in view of the precedent on the subject. The Court held as under:—*

"11. ... 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 section 147 and following the issuance of a notice under section 148, the Assessing Officer 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."

Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 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 Assessing Officer 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 Assessing Officer 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 section 148(2), the Assessing Officer 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 section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer 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 the former, he cannot independently assess the latter."

Section 147 has this effect that the Assessing Officer 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 section 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 section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.***"

18. Further, the Hon'ble High Court of Mumbai in the case of CIT Vs Jet Airways Ltd. 331 ITR 236 held as under:

"12. In CIT v. Sun Engg. Works (P.) Ltd. [1992] 198 ITR 297, 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 section 147, as they stood prior to the amendment on 1-4-1989. The Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under assessment". 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 section 147. The expression "reassess" refers to a situation where an assessment has already been made but the Assessing

Officer has reason to believe that there is under assessment on account of the existence of any of the grounds contemplated by Explanation 1 to section 147. The Supreme Court adverted to the Judgment in V. Jaganmohan Rao v. CIT [1970] 75 ITR 373, which held that once an assessment is validly reopened, the previous under assessment is set aside and the Income-tax Officer 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 section 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's case (supra) dealt with the language of sections 22(2) and 34 of the Act of 1922 while the judgment in Sun Engg. Works (P.) Ltd.'s case (supra) interprets the provisions of section 147 as they stood prior to the amendment on 1-4-1989.

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 Assessing Officer has formed a reason to believe that income has escaped assessment and has issued a notice under section 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 section 148. This view was adopted in the Judgment of the Punjab and Haryana High Court in Vipin Khanna's case (supra) and in the judgment of the Kerala High Court in Travancore Cements Ltd.'s case (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 Explanation 3 to section 147 by Finance (No. 2) Act of 2009. The effect of the Explanation is that once an Assessing Officer has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice under section 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 section 148(2).

14. *The second line of precedent is reflected in a judgment of the Rajasthan High Court in CIT v. Shri Ram Singh [2008] 306 ITR 343 . The Rajasthan High Court construed the words used by Parliament in section 147 particularly the words that the Assessing Officer '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 section 147. The Rajasthan High Court held as follows:*

". . . if is only when, in proceedings under section 147 the Assessing Officer, 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 section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 Explanation (3) to section 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 Explanation 3 to section 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer 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 Explanation 3 consequently provides that the Assessing Officer 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 section 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd.'s case (supra) and of the Punjab & Haryana High Court in Vipan Khanna's case (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's case (supra), Explanation 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 v. Atlas Cycle Industries [1989] 180 ITR 319. The decision in Atlas Cycle Industries' case (supra) held that the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under section 148 were incorrect or non-existent. **The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries' case (supra) and of the Rajasthan High Court in Shri Ram Singh's case (supra) would not be affected by the amendment brought in by the insertion of Explanation 3 to section 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 section 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 Assessing Officer 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 Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 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. Section 147 has this effect that the Assessing Officer 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 section 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 section 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 section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 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 Assessing Officer 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 Explanation 3 to section 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's case (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 section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field."

19. Hence, keeping in view the judgments of the above mentioned cases, we hold that the other addition made by the AO depends upon the view to be taken by the AO in respect of the addition of Rs.5,00,000/- as mentioned in the reasons.

20. To sum up, we hereby hold that,

- a. The addition of Rs. 5,00,000/- as mentioned in the reasons recorded is being sent for verification owing to absence of proof of deposit in the assessee's bank account.
- b. The issue of the addition of Rs.2.20 cr. made by the AO for which reasons have not been recorded since linked to the point (a.) above will have a contemporaneous effect on the outcome of the verification by the revenue.
- c. In view of the above, any adjudication on the ground nos. 3 to 5 becomes academic in nature, hence not resorted.

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

Order Pronounced in the Open Court on 21/10/2020.

Sd/-

(K. N. Chary)
Judicial Member

Dated: 21/10/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR