

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-1' BENCH,
NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 8946/DEL/2019
[Assessment Year: 2012-13]

Dua Health Care Pvt Ltd
RR-11, 2nd Floor, Mianwali Nagar
Main Rohtak Road, Paschim Vihar
New Delhi

Vs.

The Dy. C.I.T
Circle- 11(1)
New Delhi

PAN: AADCD 8448 F

[Appellant]

[Respondent]

Date of Hearing : 18.03.2021
Date of Pronouncement : 18.03.2021

Assessee by : Shri Ved Jain, CA
Shri Ashish Goel, CA

Revenue by : Ms. Ranu Mukherjee, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] -15, Delhi dated 25.10.2019
pertaining to Assessment Year 2012-13.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in confirming the order of the Assessing Officer rejecting the contention of the assessee that reopening of the assessment u/s 147 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.

3. On merits, the assessee is also aggrieved by the addition of Rs. 2 lakhs made by the Assessing Officer on account of share application money.

4. Representatives of both the sides were heard at length. Case records carefully perused.


5. Briefly stated, the facts of the case are that the assessee is engaged in the business of wholesale and trading of medicine. For the year under consideration, return of income was filed on 03.09.2012 declaring an income of Rs. 8,650/-. Search and seizure operation was carried out on the premises of Dera Sacha Sauda by the ADIT, Investigation, Rohtak and vide letter dated 25.01.2018, it was

informed to the Assessing Officer that the assessee company is a company closely associated with Dera Sacha Sauda and Saint Gurmeet Ram Rahim Singh and has failed to explain the source of credits appearing in the bank statements as well as source of acquisition of movable and immovable assets of the company.

6. Notice was issued u/s 148 of the Act and alongwith reasons for reopening assessment. The reasons for initiating proceedings u/s 148 of the Act read as under:

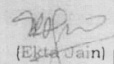
**FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER
SECTION 148 AND FOR OBTAINING APPROVAL IN THE CASE OF
M/S DUA HEALTH CARE PRIVATE LIMITED FOR AY 2012-13**

1	Name & Address of the Assessee	M/s Dua Health Care Private Limited RR-11, Mianwali Nagar, Main Pashchim Vihar Rohtak Road, Delhi-110087
2	PAN No.	AADCD8448F
3	Status	Company
4	Ward/Circle	Circle-11(1), New Delhi
5	Assessment year in respect of which it is proposed to issue notice u/s 148	2012-13
6	The quantum of income which has escaped assessment	Rs. 8,52,914/-
7	Whether the provisions of section 147 applicable	Yes, clause (b) of explanation 2 to section 147 is applicable. (where a return of income has been furnished by the assessee but no assessment has been made and it is notice by the Assessing office that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.)
8	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, please state	Yes
	(a) Whether any voluntary return has already been filed, and	Yes
	(b) If so, the date of filing the said return	03.09.2012
9	If the answer to item 8 is in the negative please state (a) The income originally assessed (b) Whether it is a case of under assessment, assessment at too low rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation	NA
10	Whether the provisions of section 150(1) are applicable. If the reply is in affirmative the relevant facts may be stated against item no. 11 and it may also be brought out that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147.	No

11. Reasons for the belief that income has escaped assessment	<p style="text-align: right;">(90)</p> <p style="text-align: right;">As per Annexure "A"</p> <p style="text-align: right;">  (Shelendra Srivastava) Dy. Commissioner of Income Tax, Circle-11(1), New Delhi. </p> <p style="text-align: right;">Dated</p>
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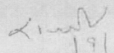
12. Whether the Addl. Commissioner of Income Tax is satisfied on the reasons recorded by the DCIT/ACIT that it is a fit case for the issue of notice u/s 148 of the Act.

Source of credits in the bank a/c of the assessee of Rs 8,52,914 remained unexplained during departmental enquiries. Issuance of notice u/s 148 is recommended.


 (Ekta Jain) 14/3/18
 Addl. Commissioner of Income Tax,
 Range-11, New Delhi

13. Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the DCIT/ACIT that it is a fit case for the issue of notice u/s 148 of the Act.

Yes, I am satisfied because of the reasons furnished as the source of credits in bank account of the assessee remain unexplained.


 (Rajeev Agarwal) 14/3/18
 Pr. Commissioner of Income Tax-4,
 New Delhi.

(91)
Annexure 'A'

OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-11(1), NEW DELHI

Name of the assessee	M/s Dua Health Care Private Limited
Address	RR-11, Mianwali Nagar, Main Pashchim Vihar Rohtak Road, Delhi-110087
PAN	AADCD8448F
Assessment Year	2012-13
Jurisdiction	Dy. CIT, Circle-11(1), New Delhi

**Reasons for re-opening of the assessment in the case M/s Dua Health Care
Private Limited for AY 2012-13 u/s 147 of the IT Act, 1961**

Brief details of the Assessee: In this case, the return of income for AY 2012-13 was filed on 03.09.2012 at an income of Rs. 8,650/-. The returned income was assessed u/s 143(1) vide order dated 22.02.2013.

2. **Brief details of information collected/received by the AO:** An information has been received from ADIT(Inv.), Rohtak vide letter dated 25.01.2018 in the F. No. ADIT/RTK/DSS/2017-18/1316 vide which it is informed that M/s Dua Health Care Private Limited is a company closely associated with Dera Sacha Sauda and Sant Gurmeet Ram Rahim Singh. This fact was also confirmed from the list of companies which was found in Pen Drive-2 (Seized by the Sirsa Police during the course of search operation at Dera Sacha Sauda) wherein name of the company and its directors are appearing. Furthermore, the company has also shown the address of its corporate office at RR11, Mian Wali Nagar, Paschim Vihar, New Delhi which is actually the residential address of Saint Gurmeet Ram Rahim Singh in Delhi. During the proceedings with ADIT(Inv.), Rohtak, it is found that the assessee company has failed to substantiate the source of credits (including cash deposit) as well as the source of acquiring movable/immovable assets of the company. The assessee company also failed to disclose any documentary evidence with respect to the source of credits in the bank accounts of the company and also the sources of acquiring/construction of immovable assets.

3. **Analysis of information collected/ received:** I have also perused various materials and report from Investigation Wing and on that basis it is observed that the assessee company has received huge deposits in its bank accounts during the period F.Y. 2011-2012.

4. **Enquiries made by the AO as sequel to information collected/ received:** After analysis of the data and bank account statements maintained by the assessee company, it was found that the credit deposits of the company in the following banks during F.Y. 2011-12 as under:

A/c No. 9891131001353, with OBC Bank, Sirsa			
S.No.	F.Y.	Total deposit (Rs.)	Cash Deposit (Rs.)
1	2011-12	8,52,914/-	12,000/-

(12)

5. **Finding of the AO:** I have perused the bank statements of the company as mentioned above and has found that the company has deposited Rs. 8,52,914/- which includes cash deposits of Rs. 12,000/- during the AY 2012-13. It is worthwhile to mention here that the assessee company has failed to furnish the facts as well as documentary evidences regarding the source of credits before the investigation proceedings made by ADIT(Invt), Rohtak. The case was never subjected to any detailed scrutiny, and hence, the source of credits were not verified at any stage. The allegation about true nature of the transactions, undertaken by the assessee company during the year, has come to light only after the investigation carried by the Investigation Wing, Rohtak, as discussed in the preceding paragraphs. For the above said /obvious reasons, the same have neither been offered to tax by the assessee in its return of income, nor assessed by the department till date.

6. **Basis of forming reason to believe and details of escapement of Income:** In view of the above, it is clear that the source of credits were not verified at any stage. Moreover, the assessee company has failed to substantiate the source of credits before the investigation proceedings made by ADIT(Invt), Rohtak. I am satisfied and have reason to believe that the income of the assessee company amounting to Rs. 8,52,914/- has escaped assessment for A.Y. 2012-13. Thus it is fit case for initiation of proceeding u/s 147 of the Income Tax Act, 1961. Accordingly, necessary approval u/s 151 of the I.T. Act, 1961 is solicited to issue notice u/s 148 of the I.T. Act to re-open the assessment u/s 147 of the I.T. Act, 1961.

7. **Applicability of the provisions of section 147/151 to the facts of the case:** In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded in above para no. 6.

This case is more than four years from the end of the assessment year under consideration and income escaping assessment is more than 1 lakh. Hence necessary sanction to issue the notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax-4, New Delhi as per the provisions of section 151 of the Act.

(Shelendra Srivastava)
Dy. Commissioner of Income Tax,
Circle-11(1), New Delhi

7. A perusal of the reasons recorded for reopening the assessment mentioned hereinabove show that the re assessment proceedings were initiated for quantum of income which has escaped assessment amounting to Rs. 8,52,910/- and perusal of the assessment order shows that the Assessing Officer has made addition u/s 68 of the Act in respect of some share application money amounting to Rs. 2 lakhs.

8. This means that no addition has been made by the Assessing Officer in respect of the amount which the Assessing Officer had alleged in the reasons recorded to have escaped assessment and the Assessing Officer went on to independently assess some other income.

9. This issue is no more *res integra* in view of the settled position of law in the case of Ranbaxy Laboratories Ltd 336 ITR 136 wherein the Hon'ble High Court of Delhi has held that if after issuing a notice under **Section 148 of the Act**, the Assessing Officer accepts 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.

10. The relevant findings of the Hon'ble High Court of Delhi read as under:

"Section 147 has this effect that the Assessing Officer has to assessee 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."

11. This judgement of the Hon'ble High Court was again followed by the Hon'ble High Court of Delhi in the case of Monarch Education Society 387 ITR 416 wherein it was held as under:

"6. However, in the course of the reassessment proceedings, as is evident from the assessment order dated December 10, 2010 passed by the Assessing Officer, the sum that was sought to be

added to the income of the assessee was not the aforementioned sum of ₹ 16,61,000 but a sum of 26,10,000 which according to the Assessing Officer represented the unsecured loans that were unable to be explained by the assessee. In other words, the addition sought to be made to the income of the assessee was not based on the accommodation entries which formed the subject matter of the reasons to believe for issuance of the notice under section 148 of the Act."

12. The facts of the case in hand and in light of the judgment of the Hon'ble High Court of Delhi [supra] we do not find any merit in the assessment order and accordingly, we quash the assessment order and allow the appeal of the assessee.

13. In the result, the appeal filed by the assessee in ITA No. 8946/DEL/2019 is allowed.

The order is pronounced in the open court on 18.03.2021.

(BHAVNESH SAINI)
JUDICIAL MEMBER

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 18th March, 2021.

VL/

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	