

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 3145/DEL/2018 (A.Y 2008-09)**

**I.T.A. No. 3146/DEL/2018 (A.Y 2009-10)**

**I.T.A. No. 3147/DEL/2018 (A.Y 2010-11)**

**(THROUGH VIDEO CONFERENCING)**

Nitin Gupta Shree Ji Jewellers, Shop No. 1168/3 and 4, Kucha Mahajani, Chandni Chowk Delhi PAN: AGKPG9650L <b>(APPELLANT)</b>	Vs	ITO Ward-47(4) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Pradeep Jindal, CA</b>
<b>Respondent by</b>	<b>Sh. Gaurav Pundir, Sr. DR</b>

<b>Date of Hearing</b>	<b>26.07.2021</b>
<b>Date of Pronouncement</b>	<b>23.08.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These three appeals are filed by the assessee against the order dated 27/03/2018 passed by CIT(A)-16, New Delhi for assessment year 2008-09, 2009-10 & 2010-11 respectively.

2. The grounds of appeal are as under:-

**I.T.A. No. 3145/DEL/2018 (A.Y 2008-09)**

*That on facts and in law, the Hon'ble Commissioner of Income Tax (Appeals) - 16 erred in upholding the addition made by the AO without fully appreciating the facts and contention of the appellant and therefore, the Order of the Ld.*

*Commissioner of Income Tax (Appeals) is bad in law.*

1.1. *That the learned CIT (A), has erred in affirming the jurisdiction of the AO under section 147, and ignoring that there was neither any satisfaction of the AO nor quantification of escaped assessment at the time of recording of reasons as there was no cogent or definite material on record in support of his reasons to believe that certain income has escaped assessment.*

1.2. *That CIT (A) has failed to appreciate that the AO has solely relied on the vague and scanty report of the Investigation Wing for assuming jurisdiction under section 147 without making any independent enquiry and judicious application of mind. The reasons recorded were wrong; without application of mind; and there was no tangible evidence, which indicated that income of the Assessee had escaped assessment.*

2. *That the learned assessing officer erred in law in initiating the assessment proceedings under camouflage of section 147 of the Act without having any bonafide or definite 'reason to believe' that certain income has escaped assessment for the assessment year under consideration as contemplated under section 147, as the basis of addition made in the assessment order are contrary to the reason recorded. Hence, the addition so made by the learned assessing officer is without jurisdiction and the assessment is liable to be quashed.*

3. *That the learned assessing officer erred in law in initiating and completing reassessment proceedings under section 147/148 of the Income Tax Act, 1961 by disposing the objection for initiation of assessment proceedings in mechanical manner without passing a speaking order. Hence, the initiation and completion of reassessment proceedings under section 148 of the Act is bad in law and liable to be quashed.*

4. *That the learned assessing officer erred both in law and fact in making addition of Rs. 3,35,164/- on account of purchases made from undisclosed sources only on the basis of statements of proprietors of the firm recorded*

during the course of search and seizure operation without affording the appellant an opportunity to cross examine the deponents even though specific request has been made by the appellant during the course of assessment proceedings, which is gross violation of the principle of natural justice. The Hon'ble CIT (Appeal) further enhanced the addition by Rs. 4,40,679/- arbitrarily without affording any opportunity of being heard and to explain. Hence, the addition of Rs. 7,75,843/- on account of purchases made from undisclosed sources is bad in law and liable to be deleted.

5. The Hon'ble CIT (Appeal) has erred in confirming and enhancing the addition of Rs. 7,75,843/- as bogus purchases in trading account without rejecting the books u/s 145, and without the authority of any specific section of Income Tax Act, which is illegal and not valid in law.

**I.T.A. No. 3146/DEL/2018 (A.Y 2009-10)**

That on facts and in law, the Hon'ble Commissioner of Income Tax (Appeals) - 16 erred in upholding the addition made by the AO without fully appreciating the facts and contention of the appellant and therefore, the Order of the Ld. Commissioner of Income Tax (Appeals) is bad in law.

1.1 That the learned CIT (A), has erred in affirming the jurisdiction of the AO under section 147, and ignoring that there was neither any satisfaction of the AO nor quantification of escaped assessment at the time of recording of reasons as there was no cogent or definite material on record in support of his reasons to believe that certain income has escaped assessment.

1.2 That CIT (A) has failed to appreciate that the AO has solely relied on the vague and scanty report of the Investigation Wing for assuming jurisdiction under section 147 without making any independent enquiry and judicious application of mind The reasons recorded were wrong; without application of mind; and there was no tangible evidence, which indicated that income of the Assessee had escaped assessment.

2. That the learned assessing officer erred in law in initiating the assessment

*proceedings under camouflage of section 147 of the Act without having any bonafide or definite 'reason to believe' that certain income has escaped assessment for the assessment year under consideration as contemplated under section 147, as the basis of addition made in the assessment order are contrary to the reason recorded. Hence, the addition so made by the learned assessing officer is without jurisdiction and the assessment is liable to be quashed.*

*3. That the learned assessing officer erred in law in initiating and completing reassessment proceedings under section 147/148 of the Income Tax Act, 1961 by disposing the objection for initiation of assessment proceedings in mechanical manner without passing a speaking order. Hence, the initiation and completion of reassessment proceedings under section 148 of the Act is bad in law and liable to be quashed.*

*4. That the learned assessing officer erred both in law and fact in making addition of Rs. 9,89,575/-- on account of purchases made from undisclosed sources only on the basis of statements of proprietors of the firm recorded during the course of search and seizure operation without affording the appellant an opportunity to cross examine the deponents even though specific request has been made by the appellant during the course of assessment proceedings, which is gross violation of the principle of natural justice. The Hon'ble CIT (Appeal) further enhanced the addition by Rs. 12,15,585/-- arbitrarily without affording any opportunity of being heard and to explain. Hence, the addition of Rs. 22,05,342/- on account of purchases made from undisclosed sources is bad in law and liable to be deleted.*

*5. The Hon'ble CIT (Appeal) has erred in confirming and enhancing the addition of Rs. 22,05,342/-- as bogus purchases in trading account without rejecting the books u/s 145, and without the authority of any specific section of Income Tax Act, which is illegal and not valid in law.*

**I.T.A. No. 3147/DEL/2018 (A.Y 2010-11)**

*That on facts and in law, the Hon'ble Commissioner of Income Tax (Appeals) -*

*16 erred in upholding the addition made by the AO without fully appreciating the facts and contention of the appellant and therefore, the Order of the Ld. Commissioner of Income Tax (Appeals) is bad in law.*

*1.1 That the learned CIT (A), has erred in affirming the jurisdiction of the AO under section 147, and ignoring that there was neither any satisfaction of the AO nor quantification of escaped assessment at the time of recording of reasons as there was no cogent or definite material on record in support of his reasons to believe that certain income has escaped assessment.*

*1.2 That CIT (A) has failed to appreciate that the AO has solely relied on the vague and scanty report of the Investigation Wing for assuming jurisdiction under section 147 without making any independent enquiry and judicious application of mind. The reasons recorded were wrong; without application of mind; and there was no tangible evidence, which indicated that income of the Assessee had escaped assessment.*

*2. That the learned assessing officer erred in law in initiating the assessment proceedings under camouflage of section 147 of the Act without having any bonafide or definite 'reason to believe' that certain income has escaped assessment for the assessment year under consideration as contemplated under section 147, as the basis of addition made in the assessment order are contrary to the reason recorded. Hence, the addition so made by the learned assessing officer is without jurisdiction and the assessment is liable to be quashed.*

*3. That the learned assessing officer erred in law in initiating and completing reassessment proceedings under section 147/148 of the Income Tax Act, 1961 by disposing the objection for initiation of assessment proceedings in mechanical manner without passing a speaking order. Hence, the initiation and completion of reassessment proceedings under section 148 of the Act is bad in law and liable to be quashed.*

*4. That the learned assessing officer erred both in law and fact in making*

*addition of Rs. 24,48,452/-/-- on account of purchases made from undisclosed sources only on the basis of statements of proprietors of the firm recorded during the course of search and seizure operation without affording the appellant an opportunity to cross examine the deponents even though specific request has been made by the appellant during the course of assessment proceedings, which is gross violation of the principle of natural justice. The Hon'ble CIT (Appeal) further enhanced the addition by Rs. 29,73,272/- arbitrarily without affording any opportunity of being heard and to explain. Hence, the addition of Rs. 54,21,727/-/- on account of purchases made from undisclosed sources is bad in law and liable to be deleted.*

*5. The Hon'ble CIT (Appeal) has erred in confirming and enhancing the addition of Rs. 54,21,727/--- as bogus purchases in trading account without rejecting the books u/s 145, and without the authority of any specific section of Income Tax Act, which is illegal and not valid in law.”*

3. We are taking up the appeal for Assessment Year 2008-09 as the issues are identical in all these appeals. The assessee is an individual and running the proprietorship concern namely M/s Shree Ji Jewellers which deals in Gold and Diamond Jewellery. The return declaring an income of Rs. 2,11,460/- was filed on 24/09/2008 by the assessee. During the relevant Financial Year, the assessee derived income from business and other sources. During the course of search operation carried out on 3/10/2013 by Investigating Wing, Mumbai, various evidences were collected and statements of various person were recorded including Shri Rajendra Jain, Surendra Jain, and Shri Mudit P. Karnawar who have admitted that all the concern controlled and managed by them are not doing in really trading but indulge in paper transaction in respect of accommodation entry. The Assessing Officer observed that the assessee was one of the entry provider of accommodation entry and provided entries in the nature of bogus transaction in the form of sales/purchases and unsecured loans. The Assessing Officer observed that the assessee had made purchases

amounting to Rs.31,53,093/- from M/s AVI Exports a concern control by Shri Rajendra S. Jain. After taking cognizance of the statements and the evidences the Assessing Officer made addition of Rs. 3,35,164/- thereby holding that the assessee has already offered G. P at 16.18% at G.P of the whole business. Therefore, the net of both the GPS (as estimated and declared amount of Rs. 3,35,164/-).

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) erred in upholding the addition made by the AO without fully appreciating the facts and contention of the assessee and therefore, the Order of the CIT(A) is bad in law. The Ld. AR submitted that the CIT(A) erred in affirming the jurisdiction of the AO under section 147, and ignoring that there was neither any satisfaction of the AO nor quantification of escaped assessment at the time of recording of reasons as there was no cogent or definite material on record in support of his reasons to believe that certain income has escaped assessment. The Ld. AR submitted that the CIT(A) failed to appreciate that the AO has solely relied on the vague and scanty report of the Investigation Wing for assuming jurisdiction under section 147 without making any independent enquiry and judicious application of mind. The reasons recorded were wrong; without application of mind; and there was no tangible evidence, which indicated that income of the Assessee had escaped assessment. The Ld. AR submitted that the Assessing Officer erred in law in initiating the assessment proceedings under camouflage of section 147 of the Act without having any bonafide or definite 'reason to believe' that certain income has escaped assessment for the assessment year under consideration as contemplated under section 147, as the basis of addition made in the assessment order are contrary to the reason recorded. Hence, the addition so made by the learned assessing officer is without jurisdiction and the assessment is liable to be quashed. The Ld. AR further

submitted that the Assessing Officer erred in law in initiating and completing reassessment proceedings under section 147/148 of the Income Tax Act, 1961 by disposing the objection for initiation of assessment proceedings in mechanical manner without passing a speaking order. Hence, the initiation and completion of reassessment proceedings under section 148 of the Act is bad in law and liable to be quashed. The Ld. AR submitted that the Assessing Officer erred both in law and fact in making addition of Rs. 3,35,164/- on account of purchases made from undisclosed sources only on the basis of statements of proprietors of the firm recorded during the course of search and seizure operation without affording the assessee an opportunity to cross examine the deponents even though specific request has been made by the assessee during the course of assessment proceedings, which is gross violation of the principle of natural justice. The CIT (A) further enhanced the addition by Rs. 4,40,679/- arbitrarily without affording any opportunity of being heard and to explain. Hence, the addition of Rs. 7,75,843/- on account of purchases made from undisclosed sources is bad in law and liable to be deleted. The Ld. AR submitted that the CIT(A) erred in confirming and enhancing the addition of Rs. 7,75,843/- as bogus purchases in trading account without rejecting the books u/s 145, and without the authority of any specific section of Income Tax Act, which is illegal and not valid in law. The Ld. AR further submitted that in assessee's own case for Assessment Year 2007-08 being ITA No. 2266/Del/2017 order dated 6/4/2018, the similar addition was deleted.

6. The Ld. DR submitted that the mere retraction of the statement does not exonerate the assessee from its records wherein the physical stock was not properly demonstrated by the assessee as per the assessee's contention before him. The Ld. DR further submitted that the assessee could not produce from R. S. Jain for confirming.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that all the documents were before the Assessing

Officer and the Assessing Officer has merely relied upon the statement of Sh. Rajendra Jain which was later on retracted. The assessee has given the details of purchase bills, sales bills, stock register and bank statements and after going through the evidences which was before the Assessing Officer and before us , it is found that the same is tallying with, with the transaction which was allegedly held as bogus transaction by the Assessing Officer . Thus, as per the documents provided by the assessee transaction is genuine, parties were before the search/investigation wherein and there statements on record which does not reflect that the assessee is actual for the of the accommodation entry. The statements were also retracted later on. Thus, the sanctity of the statement cannot be the sole basis for making an addition. The search operation was already looked into by the Tribunal for Assessment Year 2007-08 of the Tribunal held as under:-

*“ 9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO made the addition only on relying the statement of one Shri Rajendra S. Jain. The assessee to prove the genuineness of the transactions, furnished the copies of purchase bills, sales bills, stock register and bank statements. In the instant case, the AO also issued the notice u/s 133(6) of the Act, in response the proprietors of the aforesaid firms furnished the confirmations alongwith copies of their ITR, bank statements. The assessee furnished copies of returns of the said parties, their PAN numbers, relevant bank accounts, copy of invoices, sales tax registration number etc. This fact has been admitted by the AO at page no. 8 of the assessment order dated 27.03.2015. In the present case, the assessee made the entry of the purchases in the stock register and also furnished the copies of sales bills to the AO. The amount was received against the sales through banking channels and the payments for the purchases were also made through banking channels. In my opinion, when the AO had accepted the sales of the same*

*items purchased by the assessee than there was no occasion to doubt the purchases. Moreover, the AO only doubted 90% of the purchases and made the addition to that extent. I am of the view that if the purchases were not genuine, the addition ought to have been made of the whole amount and not only of 90% and when the sales of the same items were accepted as genuine than the addition could not have been made for the purchases. I, therefore, considering the totality of the facts, delete the addition made by the A.O and sustained by the Ld.CIT(A) Since, the issue has been decided on merit in favour of the assessee, therefore, no findings are given on the legal issue which was also not argued by both the parties.”*

The transaction in the present Assessment Year i.e. Assessment Year 2008-09 is genuine, identity and the credibility has also been established by the assessee. Therefore, Section 68 will not attract and the additions made by the Assessing Officer which was confirmed by the CIT(A) is not just and proper. Therefore, ITA No. 3145/Del/2018 for Assessment Year 2008-09 is allowed. As regards ITA No. 3146 & 3147/Del/2018, the facts are identical and emerging from the same search. Therefore, there is no need to give separate finding as the observations made in the above said paragraph in this order are applicable in these two Assessment Years i.e. 2009-10 & 2010-11 as well. Thus, ITA Nos. 3146/Del/2018 & 3147/Del/2018 are also allowed.

8. In result, all the appeals are allowed.

**Order pronounced in the Open Court on this 23rd Day of August, 2021.**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 23/08/2021

R. Naheed \*

Copy forwarded to:

1. Appellant

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI