

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5704/Del/2018

Asstt. Year 2010-11

ITO, Ward-8(1), Room No. 143, 1 st Floor, C.R. Building, New Delhi-110002	Vs.	M/s. Ekkta Buildwell P.Ltd. D-96, 2 nd Floor, D-Block, Freedom Fighter Enclave, New Delhi – 110 068 PAN AABCE7793E
(Appellant)		(Respondent)

ITA No. 5809/Del/2018

Asstt. Year 2010-11

M/s. Ekkta Buildwell P. Ltd. D-96, 2 nd Floor, D-Block, Freedom Fighter Enclave, New Delhi – 110 068 PAN AABCE7793E	Vs.	ITO, Ward-8(1), Room No. 143, 1 st Floor, C.R. Building, New Delhi-110002
(Appellant)		(Respondent)

Assessee by:	Shri Amitosh Moitra, CA
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	Ms. Roli Chaubey, AR
Department by :	Shri Jagdish Singh, Sr.(DR)
Date of Hearing	11/11/2021
Date of pronouncement	26/11/2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee as well as revenue against the order dated 28.6.2018 passed by the CIT(A) 3 Delhi for Assessment Year 2010-11.

2. The grounds of both the appeals are as under :-

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“1. Ld. CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 4,15,00,000/- made by the AO on account of unexplained cash credits u/s 68 of the IT Act.

2. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal

3. Limitation for filing appeal before the Hon’ble ITAT expires on 10.9.2018.”

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1. *“That the notice issued under Section 148 and reassessment order passed under Section 147 r.w.s. 143(3) are illegal, bad in law and without jurisdiction.*
2. *That there has been no application of mind or investigation on the basis of tangible material which has live nexus to the income by the Learned Assessing Officer in recording his reasons to believe escapement of income and he has mainly relied on the information received from Investigation Unit, Kolkatta which is vague, insufficient and irrelevant and hence the proceedings initiated are illegal, bad in law and without jurisdiction.*
3. *That the case of the assessee has been reopened on fanciful and baseless reasons which have been framed without consideration of the records and documents of the assessee available with the Department and has been reopened merely on the basis of a change in opinion of the Department on the facts and records of the assessee which were always available with it.*
4. *That, in view of the facts and circumstances and in view of the intent and provisions of the law and of the rulings of various courts in this regard, no legal satisfaction can be said to have been recorded by the Learned Assessing Officer as is required by section 148 of the Act prior to issuing the notice under section 148 of the Income Tax Act, 1961 making the opening unlawful and without the authority of law.*
5. *That the Learned CIT (Appeal) is erred in confirming the re-opening of the case and has done so without correctly understanding the facts and circumstances of the case and without correctly applying the provisions of law regarding the same.*

Based on the above, it is prayed that the reopening of the case be declared illegal and the re-assessment be declared void ab initio by

the Hon'ble ITAT on the grounds of the same being unlawful in view of the facts and circumstances of the case and of the intention of law.”

3. The assessee is a Private Limited Company incorporated under the Companies Act, 1956. The assessee company filed its Return of income for the Assessment Year 2010-11 on 16/08/2010 declaring total loss of (-) Rs. 23,754/-. The assessee's case for assessment year 2010-11 was reopened u/s 147. After assessment proceedings, the Ld. Assessing Officer passed an order u/s 143(3)/147 of the Income Tax Act, 1961 by making the following addition :

a) U/s 68 as unexplained credits u/s 68 Rs. 3,00,00,000.00

b) U/s 68 as unexplained credits u/s 68 Rs. 1,15,00,000.00

Rs. 4,15,00,000.00

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

5. Since the issue contested in the assessee's appeal is that of jurisdiction related to Section 148, the Ld. AR requested that the same may be taken up. The Ld. AR submitted that the reasons recorded were not justifiable. The Ld. AR further submitted that the re-opening was not proper. The Ld. AR submitted that the

notice issued under Section 148 and reassessment order passed u/s 147 r.w.s. 143(3) are illegal, bad in law and without any jurisdiction. The Ld. AR further submitted that in the reopening all the reference is that of information of investigation wing. The Ld. AR submitted that the mention of the bank account in the reasons for re-opening was that of personal bank account of the Director of the assessee company which has nothing to do with the assessee. The Ld. AR pointed out that the bank statements which was produced at the time of assessment proceedings shows that the cash withdrawal was nil. There were no scrutiny proceedings. It's first year of the business of the assessee company and therefore loans were taken for the purpose of purchasing properties i.e. for business purpose. No refunds was with the assessee at any point of time.

6. Ld. DR submitted that the reasons were properly recorded for reopening the assessment proceedings u/s 147 and the CIT(A) has rightly rejected the contention of the assessee.

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has given a categorical finding in para 2.2 related to reasons recorded for reopening proceedings u/s 147 and there is no discrepancy in the reasons. Hence assessee's appeal is dismissed. It is seen that the information received from investigation wing was part of the re-opening, yet the reopening was based on the records and facts of the assessee's case. It was observed in the reasons for reopening

that certain cash withdrawals was seen in respect of assessee company's records. The CIT(A) has correctly stated that the information on the basis of which Assessing Officer had initiated proceedings under Section 147 was certain and it could be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. Therefore, the reassessment proceedings initiated by the Assessing Officer under Section 147/148 is valid and rightly upheld by the CIT(A). There is no need to interfere with the findings of the CIT(A). Hence, Ground No.1 to 4 in assessee's appeal are dismissed.

8. As regards revenue's appeal is concerned, Ld. DR relied upon the assessment order.

9. Ld. AR submitted that the CIT(A) has rightly deleted the addition on merit. The Ld. AR further submitted that all the relevant material relied on unsecured loans were present before the Assessing Officer during assessment proceedings. The identity, creditworthiness and genuineness of the lenders were established by the assessee with the documentary evidence before the AO. The Ld. AR submitted that source of source is not relevant. The audited balance-sheet of those parties were submitted before the Assessing Officer.

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in respect of addition on account of unexplained cash credits u/s 68 of the Income Tax Act, 1961, the AO has given a categorical finding that evidences were not produced related to creditworthiness and genuineness of the sources of funds and the parties thereon. Though the CIT(A) has mentioned in general statement that evidences were put up, but from the records it is seen that these are general statements and the source of the funds upon which the creditworthiness is depended has not been established by the assessee through any document and the condition of creditworthiness was not satisfied. From the perusal of records it can be seen that the assessee has also not given plausible explanation in respect of genuineness of the transactions. As regards, the unsecured loan taken from Shri Sanjeev Dhingra, no bank statement was filed before the Revenue authorities. Hence, it deems appropriate to remand back both the issues to the file of the Assessing Officer for proper adjudication on verification of the evidences. Needless to say the assessee be given opportunity of hearing by following principles of natural justice.

11. In the result the appeal of the revenue is partly allowed for statistical purposes and the appeal of the assessee is dismissed.

Order pronounced in the open court in presence of both the parties on 26th November, 2021.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 26/11/2021

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Veena /R.N

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi