

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 6402/DEL/2016 [A.Y 2007-08]

The A.C.I.T
Circle - 24(1)
New Delhi

Vs.

M/s South Delhi Promoters Ltd
DC Chowk, Community Centre
Sector 9, Rohini, New Delhi

PAN: AABCS 7899 H

CO No. 175/DEL/2020
(A/o ITA No. 6402/DEL/2016 [A.Y 2007-08])

M/s South Delhi Promoters Ltd
DC Chowk, Community Centre
Sector 9, Rohini, New Delhi

Vs.

The A.C.I.T
Circle - 24(1)
New Delhi

PAN: AABCS 7899 H

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv

Department By : Shri H.K. Choudhary, CIT-DR

Date of Hearing : 13.12.2021

Date of Pronouncement : 16.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue and cross objection by the assessee are preferred against the order of the Commissioner of Income Tax [Appeals] - 14, New Delhi dated 28.10.2016 pertaining to Assessment Year 2007-08.

2. The substantive grievances of the Revenue read as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 16,88,65,000/- made by the AO u/s 68 of the I.T. Act, 1961 on account of unexplained share premium.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee has established the identity and existence of the entities from whom huge share premium received by it. Enquiry report of the Inspector of Income tax also revealed that no such entity ever existed on the given address."

3. The cross objections of the assessee read as under:

Ground No.	Grounds of Cross Objection	Tax Effect
1	That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.	Jurisdictional Ground
11	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.	—do—
1.2	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that section 153C of the Act was applicable to the facts of the case of the appellant company and not section 147 of the Act and therefore the AO was illegal, invalid and untenable	—do—
13	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that even otherwise there was no failure on the part of assessee to disclose fully and truly all material facts necessary for assessment and as such action u/s 147 was in excess of jurisdiction;	—do—
1.4	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act	—do—
1.5	That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.	—do—
2	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that addition made and sustained on the basis of material seized as a result of search u/s 132(1) of the Act could be brought to tax only in order of assessment u/s 153C of the Act and not in an order u/s 143(3) of the Act and hence the instant addition made is not in accordance with law and beyond jurisdiction and therefore may kindly be deleted as such."	—do—

4. Since the cross objections of the assessee go to the root of the matter, we decided to proceed with the adjudication of cross objections.

5. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences/judicial decisions brought on record in the form of Paper Book in light of Rule 18(6) of the ITAT Rules.

6. Briefly stated, the facts of the case are that the assessee is a limited company and is being assessed to tax vide PAN: AABCS 7899 H. Return of income for the Assessment Year under consideration was filed on 31.10.2007. The said return was selected for scrutiny assessment and the assessment was completed under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] vide order dated 24.10.2009. Vide Notice dated 12.06.2014, issued under section 148 of the Act, the AO sought to reopen the completed assessment.

7. Reasons for reopening the assessment read as under:

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INCOME TAX DEPARTMENT (ANNEXURE- A)

3/2014

Reasons for reopening the case of M/s South Delhi Promoters Pvt Ltd., A.Y. 07-08, u/s 147/148 of the Income tax Act, 1961:-

1. Information/documents alongwith relevant details have been received from the office of Director of Income Tax (Investigation), New Delhi vide their letter F.No. DIT(Inv.)-II/U/s 148/2012-13/196 dated 12.3.2013 and through Addl. CIT, Range-9, New Delhi vide their letter F.No. Addl.CIT/Range-9/2013-14/ dated 22.10.2013 that the above assessee, M/s South Delhi Promoters Pvt Ltd, has received and is a beneficiary of accommodation entries provided by certain entry operators. The Investigation Wing of the Department had carried out search and seizure operations against the various groups of entry operators which included Surendra Kumar Jain Group to various beneficiary companies alongwith hundreds of bogus companies of the group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assesseees who were rerouting their unaccounted cash through these accommodation entries. The assesseees would pay cash to the entry providers. This cash would then be deposited in the accounts of various bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many account which would be given the colour of share application money or share capital or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigation Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.

2. In the case of the above assessee, the following accommodation entries have been taken:-

Sr No.	Beneficiary	PAN	Amount	Total
1	South Delhi Promoters Pvt. Ltd.	AAICSI678R	56500000/-	56500000/-

No details

I have gone through the material furnished by Investigation Wing. The assessee was asked to give reply on the above vide letter F No. DCIT/Circle-9 (1)/2013-14/918 dated 21.02.2014. However, no reply was submitted by assessee. There is prima facie material that income has escaped assessment.

In view of the above discussed factual matrix, additional information/documents received from the Investigation Wing of the Income Tax Department and perusal of the same, I am satisfied and I have reason to believe that income of Rs 5,65,00,000/- chargeable to tax has escaped assessment for A.Y. 07-08, within the meaning of section 147 of the Income-tax Act, 1961.

26/03/14
(M.K Das)
Copy I, Circle-9(1)

Certified True Copy

8. As the original assessment was completed on 24.12.2009 and completed assessment was reopened vide notice dated 12.06.2014 which makes it clear that the reopening was done after four years from the end of the relevant A.Y. Therefore, proviso to section 147 of the act squarely applies.

9. Before proceeding further, let us consider the proceedings which took place during the original proceedings. Relevant order sheet entries read as under:

"20.10.2009: Present Sh. Madhu Mohan CA, he has been further asked to file complete details, evidences and genuineness in r. o. fresh Share capital, Share application money and unsecured loan,

- confirmation of secured loans
- complete details of other liabilities
- detail of construction const incurred during the year
- basis of valuation of closing stock

18.11.2009- Present Sh. Madhu Mohan CA. he has filed letter. He has been reminded that primary onus regarding the share application money/share capital/premium received has not been discharged and once again asked to prove the genuineness and also file a chart of all such person and evidences as filed by the assessee till date.

2. Similarly once again asked to prove genuineness of advances received from customers, unsecured loans and security deposit from ICICI showing Rs.83,79,924/- by furnishing all necessary details of advances.

3. Details and partywise opening balances and closing balance of unsecured loan showing in the, balance sheet and copies of account of all parties/persons.

4. Names of the person from whom squared up unsecured loans taken during the year.

04.12.2009: Sh. Madhu Mohan CA. present he has file a letter with details. Asked to show cause as to why % completion method be not applied to booking of sales. Once more asked to prove genuineness in respect of U. Loans, share application money.

10.12.2009: Present Sh. Madhu Mohan CA,. He has filed a letter with details. Asked to file transaction of sale/purchase property at Gurgaon. Copy of map approving project completion. The AR has requested to allow one more opportunity to file documents in support of share capital and unsecured loans which are awaited from the concerned parties. Sufficient time has already been allowed. Still final opportunity allowed till 15.12.2009. In future no further date will be granted and in case proper compliance not made the case will be decided on merit.

15.12.09: Present Sh. Madhu Mohan CA. He has filed letter with details Case partly examined. Complete books of account to be produced.

18.12.09: Present Sh. Madhu Mohan CA. He has filed a letter with details. Books of accounts are produced. The AR of the company has been asked to produce the following persons/parties for verification of amounts received from them on *21.12.09*:-

1. GRJ Distributors as per detail: Advances received
Rs.3.51 Crore .
2. Shukal Kapoor: Share capital Rs.41 Lacs
3. Mrs. Vinie Kapoor: Share capital Rs.64 Lacs
4. Tirupati Venkateshwar colonisers Pvt. Ltd.: U. Loan
Rs.3.16 crores

Share capital Rs. 1.96 crores
5. Rajesh Projcets: Squared up loan Rs.3.80 Cores

21.12.09: Present Sh. Madhu Mohan CA. He has produced AR of M/s GRJ Distributor and M/s Tirupati Venketeshwar. Statements recorded. The Ld. AR has stated that the remaining parties will be produced on *22.12.2009*.

22.12.09: Present Sh. Madhu Mohan CA. He has produced the AR of Rajesh Projects, Shukal Kapoor, their statements are recorded. Case discussed."

10. A perusal of the aforesaid order sheet entries clearly show that during the course of original assessment proceedings, the assessee has furnished complete details alongwith evidences in respect of share capital, share application money and unsecured loans. At the behest of the AO, three of the share applicants were produced, namely, Shukul Kapoor, Ms Vinie Kapoor and representatives of M/s Tirupati Venkateswara Colonisers Private Limited. These persons were produced on 21.09.2009 and 22.09.2009 and their statements were recorded by the Assessing Officer who found all the details and enquiries satisfactory.

11. Proviso to section 147 reads as under:

"Provided that where an assessment under sub- section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub- section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

12. A perusal of the reasons recorded for reopening the assessment exhibited elsewhere clearly show that there is no mention by the Assessing Officer that there was failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. In our understanding of law, this is the pre-requisite condition for reopening the assessment after the expiry of four years from the end of the relevant Assessment Year.

13. The Hon'ble Jurisdictional High Court of Delhi in the case of Wel Inter Trade (P) Ltd 308 ITR 22 has made the following observations, which are very relevant to the facts of the case in hand:

"A plain reading of the said proviso makes it more than clear that where the provisions of [Section 147](#) are being invoked after the period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income chargeable to tax has escaped assessment, it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee failing to make a return under [Section 139](#) etc. or by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year. In the present case, the

question of making of a return is not in issue and the only question is with regard to the second portion of the proviso, which relates to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Insofar as this precondition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer."

14. As mentioned elsewhere, during the course of original assessment proceedings, the Assessing Officer had made specific enquiries relating to share capital, share application and share premium, along with unsecured loans taken by the assessee during the year under consideration and the assessee has furnished specific reply with documentary evidences to the satisfaction of the Assessing Officer.

15. However, there is not even a whisper of allegation that income has escaped assessment and escapement has occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

16. In our considered opinion, this is sine qua non for assuming jurisdiction under section 147 of the Act in a case falling under Proviso to Section 147 of the Act. The Hon'ble Jurisdictional High Court of Delhi in the case of Usha International Ltd 348 ITR 485 has held that where there was no failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment, then provisions of Section 147 of the Act cannot be invoked even before expiry of four years from the end of the relevant Assessment Year. The relevant findings of the Hon'ble High Court read as under:

"The first proviso to section 147 can be resorted to only if the assessee has not discharged the duty. Where the assessee has discharged his duty and the assessment completed under section 143(3) is reopened within the period of 4 years from the end of the assessment year, the assessing officer has to either show that the disclosure is not full and true or he has come into possession of some "tangible material"⁴, to borrow with respect the expression used by the supreme court in Kelvinator (supra), to come to the conclusion that there is escapement of income. When there is no failure on the part of the assessee to furnish fid I and true particulars and there is no tangible material on the basis of which the assessing officer can allege escapement of income, the only consequence would be that the assessing officer was exercising the power of review on the very same

materials which he is presumed to have examined This would amount to abuse of power to reassess and has to be checked.

17. As per the facts mentioned elsewhere, original assessment was completed under section 143(3) of the Act and during the course of assessment proceedings, the assessee has disclosed all material facts necessary for its assessment and the same were duly verified and taken on record by the Assessing Officer at that time. Therefore, in our considered view, if later on, any other point comes to the notice of the Assessing Officer which changes his opinion on the issue already discussed during the original assessment proceedings, would amount to change of opinion and that cannot be the basis for reopening concluded assessment.

18. Even the reasons given for reopening of the assessment mentioned elsewhere show that there is no independent application of mind by the Assessing Officer and he has simply borrowed observations made by the INV Wing. In the reasons recorded, the Assessing Officer has mentioned the amount of accommodation entries received by the assessee S. K. Jain Group amounting to Rs.5.65 crores.

19. However, there is no mention of any name of the entry provider and link of accommodation entry taken by the assessee. In fact, a perusal of the assessment order itself shows that there are 99 share applicants and there is no whisper of the name of the share applicants in the list of entry providers. This clearly shows that neither there was application of mind before issuing notice under section 148 of the Act nor at the time of recording reasons for reopening the assessment.

20. Again in the reasons, modus operandi of the entry providers have been mentioned but nowhere the Assessing Officer has mentioned as to how the assessee company has actually managed the so called accommodation entry providers. Moreover, since the assessment of the assessee was completed under section 143(3) of the Act, the AO had complete material evidence on his assessment record from which he could have found out who are the accommodation entry providers to the assessee.

21. In fact, other than the report of the INV Wing, there is not even a reference to any document on the basis of which the AO was satisfied that the assessee company has taken accommodation entry. As

mentioned elsewhere, the names of the 99 share applicants, as mentioned in the assessment order, do not find any place in the list of accommodation entry providers.

22. We further find that while recording the reasons for reopening the assessment, the AO did not even care to look into the assessment records. Had the AO seen the assessment record, then he would have found that during the year under consideration, the assessee had issued share capital to the tune of Rs.16.88 crores including share premium to various parties and has also received sufficient unsecured loans amounting to Rs.10.63 crores from various parties and details of share application money and unsecured loans were already submitted during the course of assessment proceedings. In our considered view, the case was reopened only on the directions of the DIT, INV - II, New Delhi and no reason to believe was formed for reopening of the assessment.

23. For the sake of repetition and since this is very pertinent, we have to again mention that in the reasons to believe, there is no mention of any party/concern and the amount thereof from whom the assessee has taken accommodation entries.

24. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we hold that assumption of jurisdiction by issuing notice under section 148 of the act is bad in law which makes the notice under section 148 liable to be quashed thereby annulling the assessment order framed under section 147 of the Act. Cross objections of the assessee are allowed.

25. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case. Appeal of the Revenue becomes infructuous and is dismissed.

26. In the result appeal of the revenue in ITA No. 6402/DEL/2016 is dismissed whereas the Cross objections of the assessee is allowed.

The order is pronounced in the open court on 16.12.2021 in the presence of both the representatives.

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 16th December, 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	