

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.As. No.3456/DEL/2019, 5870/DEL/2018 & 5871/DEL/2018
Assessment Years 2010-11, 2011-12 & 2012-13

Garg Acrylics Ltd., A-50/1, Wazirpur Industrial Area, New Delhi.	v.	Addl. CIT, Special Range-4, New Delhi.
TAN/PAN: AAACG3332N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, CA		
Respondent by:	Shri Mithun Shete, Sr.D.R.		
Date of hearing:	15	03	2022
Date of pronouncement:	25	05	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned Appeals arises from the respective order of CIT(A) for different assessment years tabulated hereunder:

ITA No.	A.Y.	Assessee	Assessment order date	CIT(A) Order	Appeal by
3456/Del/2019	2010-11	Garg Acrylics	31.03.2010	CIT(A)- 35, New Delhi, order dated 18.03.2019	Assessee
5870/Del/2018	2011-12	Garg Acrylics	30.12.2017	CIT(A)- 35, New Delhi order dated 24.07.2018	Assessee
5871/Del/2018	2012-13	Garg Acrylics	31.12.2017	CIT(A)- 35, New Delhi order dated 24.07.2018	Assessee

2. As pointed out on behalf of the assessee, the assessee being same and the

facts are also inter-relatable to various appeals, all the appeals were heard together and are being disposed of by this common order.

3. To begin with, we shall take up ITA No.3456/Del/2019 concerning Assessment Year 2010-11 in question for adjudication.

ITA No.3456/Del/2019 (A.Y. 2010-11 – Assessee Appeal)

4. Briefly stated, the assessee-company filed its original return of income on 28.09.2010 declaring total income of Rs.3,20,64,950/-. The return of income filed was subjected to scrutiny assessment under Section 143(3) vide assessment order dated 21.03.2013. Thereafter, a notice under Section 148 of the Act was issued on 17.03.2017 seeking to reopen the completed assessment. The re-assessment order was consequently finalized after making additions/disallowances on account of bogus purchases amounting to Rs.9,17,83,845/-. The impugned re-assessment order dated 30.12.2017 was thus framed determining the revised/re-assessed income at Rs.12,38,48,800/- as against regular assessment under Section 143(3) dated 21.03.2013 at Rs.320,64,950/-.

5. The assessee challenged the re-assessment order before the CIT(A) on two counts, namely, (i) validity of jurisdiction assumed under Section 148 of the Act and (ii) merits of the additions so made in the re-assessment proceedings. The CIT(A) affirmed the action of the Assessing Officer on both counts, i.e., jurisdiction under Section 147/148 as well as merits of the addition towards bogus purchases. However, CIT(A) granted some partial relief and scaled down the estimated disallowances out of bogus purchases to 16.26% having regard to the average gross profit ratio earned in the past. The additions on account of bogus purchase was thus eventually sustained at Rs.2,66,13,417/-.

6. Aggrieved by the impugned order of the CIT(A), the assessee has preferred appeal before the Tribunal. The assessee has challenged (i) the usurpation of jurisdiction to issue notice under Section 148 and frame

reassessment (ii) the correctness of addition/disallowance towards bogus purchases on merits. The grounds of appeal raised by the assessee read as under:

1. *That the Ld. CIT(A) has erred in rejecting the following grounds of appeal raised by the appellant.*

(a) *The facts and reasons recorded for u/s 148 of the Act are in contradiction.*

(b) *The reasons recorded for reopening of assessment has been solely on the basis of change of opinion as full and true particulars has been furnished during the original assessment proceedings.*

(c) *The Ld. AO has assumed jurisdiction for reopening of assessment and recording of reasons simply based on the information received from investigation wing and without applying his independent mind and without making proper enquiry.*

(d) *The reasons have been recorded without appreciating the fact that how the immediate withdrawal of cash by the seller has proved that assessee company has taken accommodation entries in the form of bogus purchases.*

(e) *Without providing an opportunity to assessee to cross examine the person, whose statement has been used against the assessee for making additions.*

2. *That the Ld. CIT(A) has erred in confirming the additions to the tune of Rs. 1,46,11,705/- calculated at Average G.P. Rate @ 16.26% of Rs.8,98,62,887/- being alleged bogus purchases made from the concerns of Sh. R. P. Bhatia, in spite of the following facts & submission made before her.*

(a) *That payments to the suppliers have been made through RTGS, banking channels;*

(b) *That the assessee has paid Entry Tax of these purchases, while entering goods in Punjab;*

(c) *That the goods so purchased are duly entered in Stock Inward Register;*

(d) *That all such purchases were duly supported by way bills, Bilty Etc.*

(e) *That all purchases, when sold are duly entered in Sale Register;*

(f) *That assessee company is an excisable unit & excise duty has also been paid on Sales thereof;*

(g) *That Quantitative Details of Opening Stock, Purchases, Sales, Work In Progress & Closing Stock, if OK, how the purchases can be bogus;*

(h) *That the Ld. AO have not pointed out any discrepancy in the books of accounts;*

(i) *That the assessee was not provided opportunity to cross examine Sh. R.P. Bhatia, whose statements have been used for making additions in the hands of assessee;*

(j) *That the principle of natural justice has not been followed, while passing the assessment order and making the additions in the hands of assessee.*

3. *That the Ld. CIT(A) has erred in confirming the additions to the tune of Rs.1,20,01,712/- calculated at Average G.P. Rate @ 16.26% of Rs.7,38,11,268/- being alleged bogus purchases from M/s Ramesh Kumar Tarun Kumar, inspite of the following facts & submission made before her.*

(a) *That payments to the suppliers have been made through RTGS, banking channels;*

(b) *That the assessee has paid Entry Tax of these purchases, while entering goods in Punjab;*

(c) *That the goods so purchased are duly entered in Stock Inward Register;*

(d) *That all such purchases were duly supported by way bills, Bilty Etc.*

(e) *That all purchases, when sold are duly entered in Sale Register;*

(f) *That assessee company is an excisable unit 86 excise duty has also been paid on Sales thereof;*

(g) *That Quantitative Details of Opening Stock, Purchases, Sales, Work In Progress & Closing Stock, if OK, how the purchases can be bogus;*

(h) *That the Ld. AO have not pointed out any discrepancy in the books of accounts;*

(i) *That the principle of natural justice has not been followed, while passing the assessment order and making the additions in the hands of assessee.*

7. When the matter was called for hearing before the Tribunal, ld. counsel for the assessee at the outset submitted that the Assessing Officer has wrongfully assumed jurisdiction to make re-assessment by issuing notice under Section 148 of the Act on the basis of perfunctory reasons without any definite tangible material and without applying his independent mind and without making any sort of inquiry on the correctness of information received. Ld. counsel for the assessee further submitted that apart from non-adherence to fundamental and preminent premise of jurisdiction enjoined under main provisions of Section 147 of the Act, stringent requirement of 1st proviso thereto has also not been satisfied in the present case. Ld. counsel raised wide ranging objections to assail the assumption of jurisdiction by issuance of notice under Section 148 of the Act which we shall deal with appropriately in the succeeding paragraphs.

7.1 On merits, ld. counsel pointed out that the estimated additions towards unverified purchases is totally unjustified in the light of tell-tale evidences furnished before the Assessing Officer in support of genuineness of purchases recorded such as purchases invoices, material receipt note linked with invoice, ledger account showing payments, weight bridge and inspection note with Bale wise weight slip, Form VAT 3D challan outward of Haryana Government, copy of transport GR, test report, receipts issued by Excise and Taxation Department Punjab, all entry tax deposit receipts, VAT-19 returns the stock register – Excise Register Form-IV showing purchase quantity etc. The Ld. counsel further contended that the sole basis for reopening the concluded assessment and holding impugned purchases to be unverifiable is the statement recorded on oath under Section 131(1A) of one Shri Ram Prakash Bhatia in a survey operation on him carried out by the Investigation Wing wherein the impugned witness allegedly confessed that he is engaged in providing accommodation entries to different entities in relation to food grain bills.

7.2 Ld. counsel contended that the said Shri Ram Prakash Bhatia stated to be allegedly connected to suppliers, i.e., Choudhry & Co. and Shri Bajrang Foods is

the witness of the Department and the statement given by him against the third party, i.e., purchasers/Assessee conveniently exonerates the witness with meager taxation liability to the detriment of the purchasers. The person is not the supplier *per se* and being witness of the Department, the onus is always on the Revenue to confront the witness to the assessee before using the statement against third party, i.e., assessee herein. Despite specific demand, the cross-examination was not provided to the assessee. The onus which lay upon the revenue thus is not discharged at all. Referring to the statement as reproduced in paragraph 7 of the assessment order, Id. counsel adverted our attention to question no.5 of the statement wherein the said witness have stated that they approach various mill owners who supposedly take different food grain bills from it. The Ld. Counsel paused here to submit that the assessee is not engaged in food grain business at all. Significantly, the assessee is engaged in manufacturing and trading of yarn and manufacturing and trading of garments. It was thus emphatically submitted that the alleged adverse remarks in the statement of supplier would not apply to the assessee herein for variety of reasons, namely;

- (i) the assessee is not a beneficiary of any food grain bill from the concerns allegedly connected to Ram Prakash Bhatia.
- (ii) the witness has not expressly implicated the assessee anywhere.
- (iii) no cross examination of witness was provided to assessee despite requests.
- (iv) The overwhelming documentary evidences to corroborate the purchases made has not been dislodged by any adverse material.

7.3 The Ld. counsel submitted that other than the sketchy and unproved statement of so called witness, there is no credible adverse material in possession of the Revenue to dislodge the objective documentation available with the assessee showing purchases.

7.4 As regards another addition of Rs.7,38,11,268/- attributable to purchases

from M/s. Ramesh Kumar Tarun Kumar by the Assessing Officer and scaled down by CIT(A) in tune with GP ratio, it was pointed out that the aforesaid addition did not emanate from the reasons recorded under Section 148(2) of the Act. The aforesaid addition was carried out on the basis of certain information received from Investigation Wing dated 08.03.2017 for which barely four working days were made available to the assessee to counter the allegations made at the fag end of the assessment. The addition of whole of amount of Rs.7,38,11,268/- towards purchases was made by the Assessing Officer without any meaningful opportunity. The CIT(A) in first appeal has restricted the addition to 16.26% of the aforesaid purchases made from M/s. Ramesh Kumar Tarun Kumar. The Ld. counsel submitted that the action of the CIT(A) in assuming element of undisclosed profit in the aforesaid transaction with M/s. Ramesh Kumar Tarun Kumar is contrary to copious evidences filed before him and is thus unsustainable in law in the absence of any contrary evidence of cogent nature.

7.5 Ld. counsel thus submitted that the estimated and *ad hoc* additions towards unverified/bogus purchases has no leg to stand on facts and requires to be struck down even on merits.

8. Per contra, the ld. DR for the Revenue resisted the challenge to jurisdiction and justified the reopening for the reasons mentioned in the order of the Assessing Officer and the first appellate order. It was submitted that the invocation of jurisdiction under Section 147 meets the pre-requisites of Section 147 and cannot be faulted in the present case where the supplier of goods to the assessee connected through his two firms, namely, Chaudary and Co. and Shri Bajrang Food have categorically stated that he is engaged in providing accommodation entries to different entities as per needs and is merely providing fictitious bills to the purchasers and not actual goods. Ld. DR for the Revenue submitted that the information note received from the Investigation Wing together with the statement of the deponent alleging bogus/accommodation entries provided sufficient basis in law to the Assessing Officer to act upon such

prima facie information. It was submitted that the information received pointing out escapement of income were relevant and need not be pin-point accurate or complete in all respect at the stage of issuance of notice. It was thus submitted that the action of the Assessing Officer in assuming jurisdiction under Section 147 of the Act by issuance of notice under Section 148(2) of the Act was within the authority of law and thus cannot be interfered. It was next submitted by the Id. DR for the Revenue that once the Assessing Officer has exercised valid jurisdiction under Section 147 of the Act, the onus shifted upon the assessee to prove the genuineness of the purchases made to the satisfaction of the Assessing Officer. The Ld. DR for the revenue thus submitted that no interference with the appellate order of the CIT(A) is called for.

9. We have considered the rival submissions and the orders of the lower authorities together with the material referred to and relied upon in the course of the hearing and case law cited.

9.1 The assessee *inter alia* has challenged the assumption of jurisdiction under Section 147 of the Act which is fundamental and goes to the root of the matter. Hence, to start with the legal issue of validity of assumption of jurisdiction under Section 147/148 on the contours of factual matrix is dealt with hereunder;

9.2 The reasons recorded under Section 148(2) towards escapement of income giving the cause for issuance of notice under Section 148(1) is the foundation for determination of jurisdiction issue. Accordingly, the reasons so recorded by the Assessing Officer are reproduced herein for easy reference.

" The assessee company filed return of income on 28.09.2010 declaring a total income of Rs. 3,20,64,953/-. The return was later selected for scrutiny and the scrutiny assessment was completed on 21.03.2013 accepting the returned income.

2. *Information vide letter dated 21.09.2016 is received from Investigation Wing, Unit-5(2), Delhi that a survey was carried out at the*

premises of Sh. Ram Prakash Bhatia at C-48/3A, 2nd Floor Lawrence Road Industrial Area, Delhi, During survey proceedings Sh. Ram Prakash Bhatia has confirmed that he is engaged in providing accommodation entries to different entities. In his statement he admitted that he used to provide the bills to the various mills owners without supplying any goods. He also admitted that he used to receive the payments in cheque/RTGS and after withdrawing cash from bank account, he used to return the cash to these mill owners. For the purpose of providing entries, he was managing a number of concerns through his family members. Further, the Investigation Wing identified beneficiaries from the bank account statements of concerns managed by Sh. R.P. Bhatia and the material impounded during survey. The details of purchases made by M/s Garg Acrylics Ltd. with the concerns managed by Sh. R.P. Bhatia during the assessment year 2010-11 are as under:

<i>S. No.</i>	<i>Name of the concerns of Sh. Bhatia</i>	<i>Amount (in Rs.)</i>
<i>1.</i>	<i>Chaudhary & Co.</i>	<i>1,29,14,170/-</i>
<i>2.</i>	<i>Shree Bajrang Foods</i>	<i>7,69,48,717/-</i>
	<i>Total</i>	<i>8,98,62,8877-</i>

3. It may also be mentioned that the case of the assessee for AY 2009-10 was reopened u/s. 147/148 of the Act and the said reassessment was completed in the month of December, 2016. During these reassessment proceedings, the genuineness of assessee's claim for purchases made from the concerns managed by Shri Ram Prakash Bhatia was examined and it was found that the assessee had obtained accommodation entries in the form of bogus purchase bills from Shri Ram Prakash Bhatia.

4. The assessment records of M/s Garg Acrylics Ltd has been perused along with the information and documents provided by the investigation wing and it is noticed that the information as mentioned in paragraph 2 and 3 above was not available at the time of completion of original assessment proceedings. Further, there has been a failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above assessment year

2010-11. Hence, I have reason to believe that for AY 2010-11, an income of Rs. 8,98,62,887/- corresponding to accommodation entries in the form of bogus purchase bills has escaped assessment within the meaning of section 147 of the Act.

1. As per the provisions of Section 147 of the Act, for reopening of assessment within a period of 4 years from the end of assessment year, the only requirement is "reason to believe". For a period beyond 4 years in cases where an original assessment was made u/s 143(3), Further requirement is the non-disclosure of material facts necessary for assessment by the assessee. A perusal of assessment records suggests that the assessee did not made a full and true disclosure of all material facts necessary for assessment for above assessment year 2010-11. Here it is important to mention that as per the provisions of section 147 of the Act, mere production of books of accounts or other evidence from which material evidence could with due diligence have been discovered will not necessarily amount to disclosure within the meaning of first proviso to section 147 of the Act.

2. In this case, four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lakh, necessary sanction to issue notice u/s 148 of the Act is being obtained separately from the Pr. Commissioner of Income Tax, Delhi-4, New Delhi under amended provision of Section 151 of the Act w.e.f. 01.06.2015.

*Additional Commissioner of Income Tax
Special Range-4, New Delhi."*

9.3 As gathered, the basis for formation of believe appears to be information disseminated to the Assessing Officer on the basis of statement testified by one Shri Ram Prakash Bhatia who claims to be engaged in providing accommodation entries through his connected entities including Chaudhry & Co. and Shri Bajrang Foods to different entities. It would thus be apposite to reproduce the relevant

portion of the statement of Shri Ram Prakash Bhatia before Investigation Wing, (as quoted in paragraph no.7 of the assessment order) for ready reference;

“7. The facts of the case are that a survey operation was carried out on 8.2014 by Investigation Wing, Delhi in case of Shri Ram Prakash Bhatia at C- 48/3A, 2nd Floor, Lawrence Road Industrial Area, Delhi. In the statement u/s 131(1 A) recorded on oath on the date of survey proceedings, Sh R P Bhatia confessed that he is engaged in providing entries to different entities on demand. He also confirmed that he used to provide bills to the various mill owners against the goods supplied by some other traders. Further, he used to receive the payments in cheque/RTGS and after withdrawing cash from bank account, he used to return the cash to beneficiaries. The relevant portion of his statement is as under: (The statement of Shri Ram Prakash Bhatia was recorded in Hindi and below is a translated version.)

Q.3 Please provide the sources of income for you and your family members.

Ans: I am engaged in the business of billing. I earn commission on this and besides this, I also have rental income.

Q4 Please provide the names of all your firms registered on this address.

Ans: The following concerns are registered on this address as well as on other address. All these concerns are either my proprietary concerns or are in the name of my family members. But I manage all these firms:

Working Firms

- 1. Delhi Traders*
- 2. Jai Bharat Foods*
- 3. Rishabh Foods*
- 4. Mohit Trading*
- 5. Chaudhary & Co (in my wife's name)*
- 6. Choudhary Traders*
- 7. Ganesh Trading Co*
- 8. Rama Traders*

9. *Ram Prakash Enterprises*
10. *Ram Prakash Bhatia .*
11. *Neha Enterprises*

Some firms which have been closed down are as under:

- 1 *Prakash foods*
2. *Shree Bajrang Foods*
3. *Punjab foods*
4. *Bajrang Corporation*
5. *Shiva Store*
6. *Pankaj Mart Limited*

Q5. In response to Q 3 you stated that you are doing the business of billing. What do you mean by 'billing', please explain in detail

Ans: There are different types of entries in billing work which is explained in detail as under:

1. We approach various mills owner who take different food grains bills from us. We provide them bills as per their requirements. They pay us through cheques. We withdraw cash and return the same. It is not necessary that the cash is withdrawn from banks, because, there are few entry operators who gives Bank cheque or RTGS in lieu of cash. We call them as RTGS Operator. These RTGS operators have cash which is to be converted and to be returned through banking channels to those persons from whom the cash was received by them. We take this cash from these RTGS operators and return the same to mills owner and transfer the amount received through cheque (received from mills owner) to the concerns as told by these RTGS operators. In this manner, the transaction gets settled without depositing cash in the bank account.

I also want to clarify that we do not supply any food grains to mill owners in lieu of the bills provided by us because we do not have any physical stock. Neither do we have any place to store the stock.

2. Another type of entry is for those traders who makes cash sales. These traders sale their goods on our bills and we receive the payment in our account. Either

we withdraw cash and settle the transaction by giving cash to these traders or settle it through some RTGS operator as explained earlier.

Q6 Do you mean to say that you only do the work of transferring the money received from mill owners through banking channels to the beneficiaries of RTGS operators and transferring of cash received from RTGS operators to mill owners?

Ans: Yes, this is correct. Besides this, the amount received from Mills as well as sale consideration on behalf of Traders (who do not want to declare sales in their accounts) is also transferred to the beneficiaries of RTGS operators and the cash received from RTGS operators is returned to Mills owners and traders.

Q7 How much commission do you get for this work?

Ans: The mills owners give me commission on the basis of per bag. I receive 1 rupee per bag as commission. On the other hand, RTGS operators give Rs. 150 on every one lakh. I receive this commission in cash.

Q10. In reply to earlier questions you explained the manner in which cash of RTGS operators is transferred to Mills owners and traders. Please through some light on the manner of actual cash delivery.

Ans: Smaller cash amounts are received in my office and settled. This cash delivery is by way of matching the delivery token (number of any currency note). Larger cash amounts are transferred through tokens by the persons giving cash to the person who is to receive cash, directly.

Q11 Please explain the token system in detail.

Ans: We use the token system for cash transactions. Token is number of currency note valuing Rs. 2 to Rs 10. We do not use token system in cash transactions with a known person but whenever any party ask to send cash to an unknown person in that case the party takes the currency note number as token from said unknown person and give to me over telephone. Whenever any person brings the currency note of that number, we give cash to him. Similarly, we use token

system in receiving cash from unknown persons.

Q18 How do you manage the signatures of different signatories of bank accounts of various firms for RTGS?

Ans: All signatories are my family members or my friends who lives in my neighborhood. I get signed 3-4 cheques daily in the morning and use these for circulating entries. ”

(underline is ours)

10. Before we objectively look at the reasons under challenge, it will be pertinent to observe that the instant case pertains to Assessment Year 2010-11 where notice under Section 148(2) for reopening a completed assessment was issued beyond 4 years from the end of relevant assessment year. Hence, in addition to requirement of main provisions of Section 147 of the Act, the stringent embargo placed by the 1st proviso to the erstwhile provisions of Section 147 is also required to be strictly complied with to overcome bar of limitation.

10.1 In this backdrop, we proceed to examine the challenge to the reasons recorded and consequential availability of jurisdiction under Section 147 of the Act.

10.2 As pointed out on behalf of the assessee, the solitary basis for reopening the completed assessment is a statement of one Shri Ram Prakash Bhatia recorded in the course of survey proceedings wherein he statedly confessed to have provided the accommodation bills to different entities through firms / concerns connected to him and belonging to his family members. The Investigation Wing *inter alia* identified two concerns, namely, Choudhry & Co. and Shri Bajran Foods to be connected to Shri Ram Prakash Bhatia and alleged that the assessee is beneficiary of accommodation bill through these concerns. Based on such information received from Investigation

Wing, the Assessing Officer proceeded to reopen the completed assessment under Section 147 of the Act for the reasons recorded as reproduced in paragraph 9.2 above.

11. In this background, the contentions of the assessee are broadly summarized as under:

(i) A mere transaction of purchase through the two concerns, namely, Shri Bajrang Foods and Choudhry & Co. by itself would not tantamount to accommodation entries particularly where the transaction of purchases are corroborated by exhaustive documentations coupled by documents generated by the State Authorities.

(ii) The Assessing Officer has failed to apply its mind to the so called information received from the Investigation Wing and has mechanically acted on the dotted line as dictated by the Investigation Wing. For this contention of lack of application of mind, the statement of the witness of the department, i.e., Shri Ram Prakash Bhatia was adverted to. It was pointed out that evidently Shri Ram Prakash Bhatia had confessed for providing accommodation entries as against real supply only with reference to 'food grains bills'. The response to the question no.5 of the statement (9.3 of this order) would show that Shri Ram Prakash Bhatia has merely asserted that they approach various mill owners to provide bogus food grain bills as accommodation entries in lieu of cash without any real supply. Contextually, it was asserted that the assessee is engaged as dealers in cotton and not in food grains. The case of the assessee is thus clearly ousted from the aspersions cast by the third party through its general statement. It is contended that the assessee is not a beneficiary of any food grain accommodation bills from two concerns named in the statement. The Assessing

Officer has failed to apply its mind to the facts of the case and perfunctorily reopened the completed assessment without assessing the glaring fact situation emerging from the records.

(iii) It is not known at to how Shri Ram Prakash Bhatia is connected to the concerns named in the statement and what is his *locus standi* in the matter of governing these firms/concerns to assign any weight to his assertions.

(iv) the allegation in the reasons recorded under Section 148(2) towards failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment is sketchy and obscure. An ominous information extracted from third party who is not even owner of the supplier firms and does not implicate the assessee directly for any accommodation bill has been relied upon as a gospel truth without showing what material facts have not been disclosed in the original assessment.

12. On browsing the reasons recorded, we notice that the statement extracted by the Investigation Wing have, in turn, been relied upon by the Assessing Officer for the purposes of holding believe towards escapement. Ostensibly, the statement of the RPB is in the nature of general statement without identifying the beneficiaries in general and assessee in particular. Secondly, the scope of statement adverse to the corresponding beneficiaries is narrow and restricted to supply of food grains bills to the mill owners. The assessee admittedly is not engaged in the food grain business. Hence, as a corollary, the adverse remarks in the statement does not relate to the assessee by implication. This being the factual position, the statement of Shri Ram Prakash Bhatia is not capable of triggering belief towards any possible escapement attributable to assessee. The very basis of the information and consequent formation of believe adverse to assessee

is thus a *damp squib* and without any sound basis. Such general and sweeping statement, on a standalone basis, cannot possibly give rise to 'reason to believe' on the face of the manifestation that the assessee is not engaged in food grain business at all and is not a recipient of any accommodation bills on food grain. This apart, the action of the Assessing Officer is centered around the testimony which is in the nature of a fleeting statement.

13. In this backdrop, we find sufficient basis for plea of the assessee that even the conditions of 1st proviso to Section 147 is not complied with. It is not shown as to how the assessee has failed to disclose material facts fully and truly in the original statement. The assessee is not expected to 'disclose' something which he is not privy to. In the absence of any food grain bills received by the assessee from the suppliers named in the statement, we are unable to understand the basis for alleging any failure on the part of the assessee as perceived in the reasons recorded. In these peculiar facts, we are of the firm opinion that neither the strict condition of main provision of Section 147 is fulfilled nor the additional conditions embedded in 1st proviso has been complied with. The twin conditions of formation of belief towards escapement of income and such escapement attributable to failure on the part of the assessee are solely missing in the instant case.

14. Without scrupulous compliance of jurisdictional parameters, the Assessing Officer was obviously not competent to invoke the provision of Section 147 of the Act which are drastic in nature. The assumption of jurisdiction under Section 147 is thus clearly without sanction of law and *void ab initio*. The consequent reassessment order is thus clearly bad in law. In this view of the matter, the reassessment order framed in consequence of invalid notice issued

under Section 148 is requires to be quashed. Having held the impugned re-assessment order framed without fulfilling pre-requisites of Section 147 of the Act to be bad in law, we do not consider it expedient to deal with the challenges raised by the assessee on merits of additions, being an infructuous exercise.

15. The order of the CIT(A) is thus set aside and the re-assessment order is quashed.

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

ITA No.5870/Del/2018 (Assessment Year 2011-12)

17. In the instant case also, the assessee has challenged the re-assessment order on both counts, namely, validity of jurisdiction assumed under Section 148 of the Act and merits of the addition so made in the re-assessment proceedings. In the instant case also, the reasons recorded are broadly identical and the notice u/s.148 was issued beyond four years from the end of relevant assessment year where the original assessment was completed under Section 143(3) of the Act. Consequently, the process of reasoning adopted in ITA No.3456/Del/2019 concerning Assessment Year 2010-11 shall apply *mutatis mutandis* in the absence of any changed circumstances. In parity with the findings in ITA No.3456/Del/2019 for Assessment Year 2010-11, the jurisdiction usurped by Assessing Officer cannot be countenanced in law and hence the appeal of the assessee for the Assessment Year 2011-12 in ITA No.5870/Del/2018 is also required to be allowed in identical terms.

18. In the result, the appeal of the assessee in ITA No.5870/Del/2018 is allowed.

ITA No.5871/Del/2018 (Assessment Year 2012-13)

19. Briefly stated assessee company filed its original return of income for Assessment Year 2012-13 on 27.09.2012 declaring total income of Rs.6,84,31,560/-. The assessment was completed under Section 143(3) of the Act earlier. Thereafter, a notice under Section 148 of the Act on 17.03.2017 was issued seeking to reopen the completed assessment. The re-assessment order was consequently finalized after making additions on account of bogus purchases amounting to Rs.52,17,611/-.

20. The assessee challenged the impugned re-assessment order dated 30.12.2017 concerning Assessment Year 2012-13 before the CIT(A) on two counts, namely, (i) validity of jurisdiction under Section 148 of the Act. (ii) merits of the additions so made in the re-assessment proceedings.

21. The facts and issue in the instant case are broadly identical only significant difference between the present case *qua* the re-assessment orders in Assessment Years 2010-11 and 2011-12 being;

(i) the name of the concern connected to Shri Ram Prakash Bhatia in the instant case is Ganesh Trading Company from whom a supply of Rs.2,60,88,054/- was received which is stated to be bogus purchases in the hands of the assessee and where the CIT(A) has confirmed the addition to the extent of Rs.42,41,917/- (average GP 16.26% to Rs.2,60,88,054/-]

(ii) action by way of notice under Section 148 of the Act was taken under Section 147 of the Act before the expiry of four years from the end of the relevant Assessment Year 2012-13 in question and thus bar of limitation under first proviso is not applicable in the instant case.

22. Barring these two dissimilarities, observations made in the preceding two assessment years squarely applies in the factual matrix.

23. In other two preceding assessment years, it was delineated that the information received by the Assessing Officer from the Investigation Wing which, in turn, emanates from the statement of Shri Ram Prakash Bhatia does not give rise to the requisite belief towards escapement of income primarily on the ground that the assessee is not beneficiary of food grain bills from the suppliers connected to Shri Ram Prakash Bhatia and secondly the statement of Shri Ram Prakash Bhatia is generic and does not pin point the name of the assessee to be beneficiary of any accommodation entry so as to crucify the assessee herein. The absence of application of mind of the Assessing Officer regarding reasons for reopening the completed assessment was thus found demonstrable in preceding assessment years. As a necessary concomitant, the pre-requisites of holding reason to believe enshrined in main provisions of Section 147 of the Act was found to be absent. Identical reasoning for lack of jurisdiction under main provisions of Section 147 are vehemently present in the instant case too. Consequently without going into the objective details yet again, we find that the pre-requisites on the contours of main provision of Section 147 of the Act are not fulfilled in the instant case as well. In consonance, the re-assessment order framed as a sequel to the invalid re-assessment notice thus deserves to be quashed. Having noted that the impugned re-assessment order framed without jurisdiction to be bad in law, the claim of the assessee on merits is not being dealt with being an unnecessary exercise. The order of the CIT(A) is thus set aside and the impugned re-assessment order is quashed.

24. In the result, the appeal of the Assessee in ITA No.5871/Del/2018 is allowed.

25. In the combined result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 25/05/2022.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER