

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 639/DEL/2017 [A.Y 2007-08)

M/s Raj Metal Company
4962, Sadar Bazar
Delhi

Vs.

The I.T.O.
Ward 63(2)
New Delhi

PAN: AAAGR 3947 F

[Applicant]

[Respondent]

Assessee By : Shri Rohit Jain, Adv
Shri Deepesh Jain, Adv

Department By : Shri Om Prakash, Sr. DR

Date of Hearing : 13.10.2022

Date of Pronouncement : 17.10.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) -20, New Delhi dated 09.12.2016 pertaining to Assessment
Year 2007-08.

2. The grievances of the assessee read as under:

"1. That on the facts and circumstances of the case and In Law, the Assessing Officer was not justified in reopening the assessment of the appellant u/s. 147 of the Act. The Assessment order Passed On the basis of invalid notice may kindly be annulled.

2. That on the Facts and Circumstances of the Case and in Law, the Assessing Officer erred in treating the purchase of Rs. 21,00,498/- made by the appellant in normal course of business from (i)M/S Om Agency,(ii) M/S. Vishu Trading Co.(iii)M/S. Shree Goverdhan International as bogus purchase and adding the same to the income of the assessee.

3. That on the Facts and Circumstances of the Case and in Law, the Assessing Officer erred in not giving the appellant Opportunity to Cross Examine Shri Vishesh Gupta, whose statement has been used against the appellant and additions have been made.

4. That on the Facts and Circumstances of the Case and in Law, the Assessing Officer erred & not giving the Opportunity to Assessee to saw Books of Accounts of the Appellant.

5. That The A.O has failed to appreciate That In Page No. 11 & 16

Sh. Rakesh Gupta & Sh. Vishesh Gupta have admitted in Assessment Proceedings before ACIT, central circle 10, New Delhi on 04.02.2013 and 12.02.2013 resp. Submitted that they were making actual sales 10 % of their Total Sales."

3. Briefly stated, the facts of the case are that the assessee is a partnership firm engaged in the business of trading in ferrous and non ferrous metals etc. filed return of income on 19.09.2007 declaring income of Rs. 94,810/- which was processed u/s 143(1) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] and return was accepted as such.

4. Thereafter, reassessment proceedings were initiated u/s 148 of the Act and statutory notices were issued and served upon the assessee. Reassessment order was made after making addition of Rs. 21,00,498/- u/s 69C of the Act. The Assessing Officer treated certain purchases made by the assessee as bogus/non genuine.

5. Assessment was challenged before the Id. CIT(A) and the appeal was dismissed exparte.

6. The assessee is in appeal against this dismissal by the first appellate authority.

7. The representatives of both the sides were heard at length, the case records carefully perused and judicial decisions relied upon duly considered.

8. I find that in the first round of litigation, this Tribunal had remanded the matter back to the file of the ld. CIT(A) with a direction to decide the issue on merits. Thereafter, this Tribunal, vide order dated 24.05.2019, recalled its earlier order dated 17.07.2017 holding that the issue shall be decided on merits by this Tribunal.

9. Reasons for reopening the assessment have been extracted by the Assessing Officer in the assessment order itself and for the sake of convenience the same is also extracted hereunder:

"Subsequently a letter bearing F. No. Addl. CIT(HQ.)/(Coord.) /Accommodation entry/2012- 13/15016 dated 26.03.2012 was received from the office of the Chief Commissioner of I. Tax, Delhi-1, New Delhi therein forwarding letter bearing F. No. CIT(C)-II/2012-13/3898 dated 19.03.2013 received from the Commission of Income Tax, Central-II, New Delhi along with a CD containing the

details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain and directing *This office* to take *necessary action as per section 148* in respect of entries pertaining to A. Y. 2007-08, which is time barring on 31.03.2015.

The information provided by the CIT, Central-II, New Delhi vide his letter dated 19/03/2013 reads as under:-

"Kindly find enclosed herewith letter dated 13.03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above.

2. The assessment of search cases of Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry.

3. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

4. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty seven paper entries. The list of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients has been obtained from Sh.

Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list 'C'.

5. The soft copy of the information in respect to annexure A, B & C is also enclosed.

6. The information of accommodation entry includes A. Y. 2007-08 also, which is a time barring year for taking action u/s 148.

7. The information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)"

On examining the list of accommodation entries provided by Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A. Y. 2007-08, it is noticed that the following entries have been taken by the assessee namely:-

<i>Sl. No.</i>	<i>Accommodation entry provided by</i>	<i>Name of party to whom accommodation entry is provided</i>	<i>Amount of Accommodation entry.</i>
1	<i>Shree Goverdhan International</i>	<i>M/s Raj Metal Company</i>	<i>Rs. 12,19,630/-</i>
2	<i>Om Agencies</i>	<i>M/s Raj Metal Company</i>	<i>Rs. 4,40,825/-</i>
3.	<i>Vishu Trading Co</i>	<i>M/s Raj Metal Company</i>	<i>Rs. 4,40,043/-</i>
		<i>Total</i>	<i>Rs. 21,00,498/-</i>

Since Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of assessment proceedings u/s 153A of I.Tax Act have admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle-10, New Delhi, therefore, *it is fair to conclude* that Naveen Jain Metal Udyog, whose name is appearing in the said list, has taken accommodation entries from Sh. Rakesh Gupta SVishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A. Y. 2007 08.

In view of the above, the case for the above mentioned assessee for the A.Y. 2007-08 was reopened u/s 148 of the Income Tax Act after obtaining necessary approval from the JCIT, Range-39, and New Delhi and after framing the reasons for reopening the case. Accordingly notice u/s 148, dated 14.03.2014 was issued and served on the assessee."

10. A bare perusal of the aforementioned reasons clearly show the non-application of mind by the Assessing Officer in as much as he has misguided himself by information provided by the CIT, Central-2, New Delhi relating to the details of accommodation entries provided by S/Shri Rakesh Gupta, Vishesh Gupta, Navneet Jain and Vaibhav Jain and by which the Assessing Officer was directed to take necessary action as per section 148 of the Act.

11. I further find from the reasons mentioned hereinabove that the Assessing Officer was influenced by the information that S/Shri Rakesh Gupta, Vishesh Gupta, Navneet Jain and Vaibhav Jain have admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle -10, New Delhi. Therefore, it is fair to conclude that N.J. Metal Udhdyog whose name is appearing in the said list has taken accommodation entries from S/Shri Rakesh Gupta, Vishesh Gupta, Navneet Jain and Vaibhav Jain pertaining to Assessment Year 20017-08.

12. These facts culminate into issuance of notice u/s 148 of the Act clearly show the non application of mind by the Assessing Officer in as much as the name of the appellant is Raj Metal Company whereas the information relates to N.J. Metal Udyog.

13. The Hon'ble Supreme Court in the case of Sheo Nath Singh 82 ITR 148 had the occasion to construe the expression "Reason to believe" and the Hon'ble Supreme Court observed as under:

"There can be no manner of doubt that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the

Income-tax Officer may act on direct and circumstantial evidence but not on mere suspicion gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for this belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court."

14. On identical facts, assessment of Unique Metal Industries was reopened and quarrel travelled upto this Tribunal and the co-ordinate bench in ITA No. 1372/DEL/2015 order dated 28.10.2015 after considering the identical reasons recorded for reopening the assessment, held as under:

"8. On going through the above reasons it is evident that this assessment has been reopened on the basis of the letter received from Ld. CIT, Central - 2, New Delhi with the direction to take necessary action as per section 148 of the Act. As per this, accommodation entries were obtained by various persons from Sh. Rakesh Gupta and Sh. Vishesh Gupta as well as Sh. Navneet Jain and Sh. Vaibhav Jain. Copy of this list was forwarded in a CD to the Assessing Officer. Thus this list contained the name of the assessee. The Assessing Officer reopened the assessment on the basis of this information. The basis given by the Assessing Officer in the reasons is that these persons have admitted that they have given accommodation entries to the parties whose lists have been provided by them. From the above facts it is apparent that the

Assessing Officer at that point of time when he recorded the reasons was not having the copy of the statement or any other material in which these people have alleged to have provided accommodation entries to the assessee. This position gets also corroborated from the facts stated by the Assessing Officer himself in the reassessment order in para 3 page 5 which read as under: -

"Here it is pertinent to mention that in the intervening period, this office had conversations with the ACIT, Central Circle-10, New Delhi from whom vide this office's letter dated 23.07.2013, 02.09.2013, 14.10.2013, 06.11.2013, 22.11.2013, 09.12.2013 & 24.12.2013 and vide Joint CIT, Range-39, New Delhi's letter dated 16.12.2013, the following details/documents were sought:-

- (i) Copies of the statements recorded of Sh. Rakeh Gupta & Sh. Vishesh Gupta dn Sh. Navneet Jain & Sh. Vaibhav Jain in search/post search/assessment proceedings.
- (ii) Soft copies of the tatements recorded of Sh. Rakeh Gupta & Sh. Vishesh Gupta dn Sh. Navneet Jain & Sh. Vaibhav Jain in search/post search/assessment proceedings.
- (iii) Hard copy of assessment orders passed in these cases for A. Y. 2006-07
- (iv) Soft copy of assessment orders passed in these cases for A. Y. 2006-07
- (v) Any other detail/document you may deem fit that need to be confronted with the parties whose cases have been reopened u/s 148 of I. Tax Act.

4. In response to these letters, the ACIT, Central Circle-10,

New Delhi vide his letter dated 20.12.2013, received by this office on 27.12.2013, forwarded his reply along with supporting documents, which were running into 92 pages. After going through the reply forwarded by the ACIT, Central Circle-10, New Delhi and the annexure enclosed therein, this office was of the view that the purchase bills provided by the 11 firms/concerns controlled and managed by Sh. Rakesh Gupta and Sh. Vishesh Gupt or their family members is nothing but bogus purchase bills/accommodation bills. "

9. The above facts stated by the Assessing Officer makes it abundantly clear that at the time of formation of the belief to reopen assessment the Assessing Officer not having the above said information. Only that he was having the letter along with list which was forwarded by the CIT, Central-2, New Delhi.

10. The above observation of the Assessing Officer also shows that it was letter dated 20.12.2013 received by him on 27.12.2013 on the basis of which the Assessing Officer could make a view that the purchase bills provided by these persons or their family members is nothing but bogus purchase bills. At the time of recording of the reasons the Assessing Officer apparently was not having any idea about the nature of the transactions entered into by the assessee. In the reasons recorded there is no mention about the nature of the transactions. As per provision of section 147 an assessment can be reopened if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment. The reasons to believe has to be that of the

Assessing Officer and further there have to be application' of mind by the Assessing Officer though the reasons to believe does not mean that the Assessing Officer should have finally ascertained the fact that income has escaped assessment but at the same time, it also means that the Assessing Officer is required to examine the facts on the basis of the information and satisfy himself that the taxable income has escaped assessment. In the present case on going through the reasons it is quite evident that the Assessing Officer was also not aware of the nature of the accommodation entries. In the reasons recorded he has simply mentioned the name of the party and the amount and nowhere has stated the nature of such entry. This also shows that the Assessing Officer has made no effort to look into the return of the assessee which was available with him. This fact gets further supported from the sheet appended to the reasons and quoted on page 4 of the assessment order whereby against Item no. 7, whether the assessment is proposed to be made for the first time, the Assessing Officer has stated 'Yes', and in Column no. 7(a), whether any voluntary return had already been filed and in Column no. 8 (b), date of filing the said return 'NA' has been stated. Thus this is a clear case of non-application of mind by the Assessing Officer. It may also be relevant that on page 2 of the assessment order, the Assessing Officer himself has stated that in this case the return of income for the year under consideration was filed with this ward on 27.09.2006. These facts clearly demonstrate that the return was with the same ward and at the time of recording of the reasons for reopening the assessment, the Assessing Officer has not looked at the return and in a mechanical way, on receipt of the letter from the CIT, Central - 2, New Delhi the assessment has been reopened. It is a settled position of law that there must be material for formation of a belief that income

has escaped assessment. Further reasons referred to must disclose process of reasoning by which the Assessing Officer holds reason to believe. There must be nexus between such material and belief. Further and most importantly the reasons referred to must show application of mind by the Assessing Officer. It is also a settled law that the validity of the initiation of the reassessment proceeding is to be judged with reference to the material available with the Assessing Officer at the point of time of the issue of notice under section 148. In the present case, as is evident from the assessment order, the Assessing Officer was having nothing except the list provided by the CIT, Central-2, New Delhi about the list of accommodation entries. Beyond that he was not having the copies of the statement of any of these persons. He was not having copy of the assessment orders and other details or document which would have enabled the Assessing Officer to apply his mind and form a belief that income has escaped assessment. In fact this information was not with the Assessing Officer till the end of the reassessment proceedings, a fact admitted by the Assessing Officer himself in the assessment order. The judgment relied upon by the Learned AR also supports the case of the assessee. In the case of Sarthak Securities Pvt. Ltd. vs Income Tax Officer (2009) 329 ITR 110 the Hon'ble jurisdictional High Court has held that under the circumstances narrated hereinabove the reopening cannot be said to be a valid reopening. The Hon'ble Court has held as under

"In the case at hand, as is evincible, the AO was aware of the existence of four companies with whom the assessee had entered into transaction. Both the orders clearly exposit that the AO was made aware of the situation by the Investigation Wing and there is

no mention that these companies are fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind. True it is, at that stage, it is not necessary to have the established fact of escapement of income but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To 'Waborate, the conclusive proof is not germane at this stage but the formation of belief must be on the base or foundation or platform of prudence which a reasonable person is required to apply. As is manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence is not disputed. What is mentioned is that these companies were used as conduits. The same has not been referred to while passing the order of rejection. The assessee in his objections had clearly stated that the companies had bank accounts and payments were made to the assessee company through banking channel. The identity of the companies was not disputed. Under these circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It is totally unwarranted. Resultantly, the initiation of proceedings under s. 147 and issuance of notice under s. 148 are hereby quashed."

11. Similarly in *Signature Hotels (P) Ltd. vs. ITO* (2011) 338 ITR 51 (Del) the Hon'ble Court as also quashed the reopening of the assessment on the ground that the AO did not independently apply his mind to the information received from the Director of Income Tax (Inv.). The relevant observation of the Court reads, as under:-

"The first sentence of the reasons states that information had been received from Director of IT (Inv.) that the petitioner had introduced money amounting to Rs. 5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure relates to a cheque received by the petitioner on 9th Oct., 2002 from SS Ltd. from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary. The aforesaid reasons do not satisfy the requirements of s. 147. The reasons and the information referred to its extremely scanty and vague. There is no reference to any document or statement, except Annexure, Annexure cannot be regarded as a material or evidence that prima facie shows or established nexus or link which discloses escapement of income. Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the AO did not apply his own mind to the information and examine the basis and material of the information. The AO accepted the plea on the basis of vague information in a mechanical manner. The CIT also acted on the same basis by . mechanically giving his approval. The reasons recorded reflect that the AO did not independently apply his mind to the information received from the Director of IT (Inv.) and arrive at a belief whether or not any income had escaped assessment. Company SS Ltd. had applied for and was allotted shares in the petitioner company on payment by cheque of Rs. 5 lacs. SS Ltd. is an incorporated company and the petitioner has pleaded and stated that the said company has a paid-up capital of Rs. 90 lacs. The company was incorporated on 4th Jan., 1989 and

was also allotted PAN in September, 2001. The facts indicated above do not show that SS Ltd. is a non-existing and a fictitious entity/person. For the reasons stated above, writ of certiorari is issued quashing the proceedings under s. 148"

12. In the case of CIT vs. SFIL Stockbroking Co. (2010) 325 ITR 285 (Del) also the Hon'ble High Court has quashed the reopening proceedings on the ground that from the reasons it is not discernible as to whether the Assessing Officer has applied his mind to the information and independently arrived at a belief that income has escaped assessment. The Hon'ble Court has held as under:-

"The first sentence of the so-called reasons recorded by the AO is mere information received from the Dy. Director of IT (Inv.). The second sentence is a direction given by the very same Dy. Director to issue a notice under s. 148 and the third sentence again comprises of a direction given by the Addl. CIT to initiate proceedings under s. 148 in respect of cases pertaining to the relevant ward. These three sentence are followed by the following sentence, which is the concluding portion of the so-called reasons : "Thus, I have sufficient information in my possession to issue notice under s. 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of reasons recorded as above. " From the above, it is clear that the AO referred to the information and the two directions as 'reasons' on the basis of which he was proceeding to issue notice under s. 148. These cannot be the reasons for proceeding under s. 147/148. The first part is only an information and the second

and the third parts of the beginning para of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the, AO had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, the Tribunal has arrived at the correct conclusion on facts. There is no substantial question of law, which arises for consideration."

13. In view of the above discussed facts of the present case, the reopening of the assessment is without application of mind and examination of the facts and accordingly the reopening is held to be invalid and accordingly the same is quashed. Accordingly the reopening is held to be bad in law and ground Nos.2 and 3 are allowed."

15. Similar view was taken by this Tribunal in ITA No. 1429/DEL/2015 order dated 30.11.2015 in the case of Radhey Shyam and Company wherein also, reasons recorded for reopening the assessment are identically worded as in the case of the present appeal and the co-ordinate bench held as under:

"5. I found that the issue regarding the validity of the reassessment is duly covered by the decision of this Bench in the case of Unique Metal Industries Vs. ITO in ITA no. 1372/Del/2015 in which this Tribunal vide its order dated 28-1-2015 quashed the

reassessment. I noted that in that case also similar type of reasons were recorded, as reproduced below:

"Reasons for the belief that the income has escaped assessment in the case of M/s Radhay Shyam & Co. for the assessment year 2006-07 A letter bearing F.No. AddI.CIT/(Hq)/(Coord.)/ Accommodation entry/2012-13/15016 dated 26-03-2013 was received from the Office of the Chief Commissioner of I. Tax, Delhi-I, New Delhi therein forwarding letter bearing F. No. CIT(C)-1I/2012-13/3898 dated 19.03.2013 received from the Commissioner of I. Tax, Central-II, New Delhi along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Vaibhav Jain and directing this office to take necessary action as per section 148 in respect of entries pertaining to A.Y. 2006-07, which is time barring on 31.03.2013.

The information provided by the CIT, Central-II, New Delhi vide his letter dated 19.03.2013 reads as under :-

"Kindly find enclosed herewith letter dated 13.03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above.

2. The assessment of search cases of Sh. Rakesh gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding

accommodation entries given by the above entry providers has been obtained by the A.O.

3. The list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh. Vishesh Gupta. Hard copy of the list is enclosed as Annexure A, duly signed by Sh. Vishesh Gupta. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

4. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty-seven paper entities. The list of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list 'C'.

5. The soft copy of the information in respect to annexure A, B & C is also enclosed.

6. The information of accommodation entry includes A.Y. 2006-07 also, which is a time barring year for taking action u/s 148.

7. This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)."

On examining the list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A.Y. 2006-07, it is noticed that the following accommodation entries have been taken by the assessee namely M/s Unique Metal Industries:-

Sl. Accommodation entry provided by	Amount,
1. Shree Shyam Trading Co.	
M/s Unique Metal Industries	Rs. 2,44,399/-
2. Vishnu Trading Co.	Rs. 8,12,542/-
3. Shree Bankey Bihari	Rs. 3,28,368/-
Total amount of entries =	Rs. 13,85,309/-

Since Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Valbhav Jain during the course of assessment proceedings u/s 153A of I. Tax Act have admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle-10, New Delhi, therefore, it is fair to conclude that M/s Radhay Shyam & Co., whose name is appearing in the said list, has taken accommodation entries from Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to AY. 2006-07.

In view of the above, I have reasons to believe that income chargeable to tax of M/s Radhay Shyam & Co. amounting to Rs. 4,73,855/- for the F.Y. 2005-06 relevant to AY. 2006-07 has

escaped assessment and it is a fit case for initiation of proceedings u/s 147 of the Act.

Proposal in the prescribed form for the AY. 2006-07 (F. Y. 2005-06) is submitted herewith for kind consideration and necessary approval u/s 151(2) of the I. Tax Act, 1961 as the same is getting barred by limitation on 31/3/2013.

If approved, notice u/s 148 of the act may be issued.

Sd/-

28.3.20

(Pawan Kumar Vashist)
Income Tax Officer
Ward-39(3),New Delhi.

6. Since in the case of Unique Metal Industries (supra), similar reasons were recorded, as have been recorded in the case of the assessee and the party from which the assessee made the purchases were Shri Bankey Bihari Trading Co., which is a party in the case of the assessee, therefore, respectfully following the decision of this Tribunal dated 28-1-2015 in the case of Unique Metal Industries (supra), I quash the reassessment.

7. Now coming to the merit about the sustenance of the addition by the CIT(A) @ 20% of the purchases made by the assessee from Shri Bankey Bihari Trading Co., after hearing the rival submissions and going through the order of the Tribunal, I noted that this Tribunal vide its order dated 28-10- 2015 in the case of Unique

Metal Industries (supra), deleted similar addition by observing in para 27 as under:

"27. As regards the addition of 20% sustained by the learned CIT(A) I am of the view that since purchases are not bogus the addition on this account cannot be sustained. Even otherwise the addition of 20% on the facts and circumstances is apparently too high. The learned CIT(A) having held that tax has to be levied on real income and the profit cannot be ascertained without deducting the cost of purchases from the sales as otherwise it amounts to levy of tax on gross receipt, she ought to have applied 'profit rate in this nature of trade. Estimating profit at the rate of 20% by taking into consideration the provisions of section 40A(3) will not lead to determination of correct real income. Section 40A(3) is meant for a different purpose when the assessee has made purchases in cash. This provision cannot be applied in such cases. Once the purchases are held to be bogus then the trading results declared by the assessee cannot be accepted and right course in such case is to reject books of accounts and profit has to be estimated by applying a comparative profit rate in the same trade. Though there can be a little guess work in estimating profit rate but such profit rate cannot be punitive.

8. Ld. DR even though vehemently relied on the order of CIT(A) as well as that of the AO, but could not bring to our knowledge any cogent material or evidence which may compel us not to follow the

decision of this Bench in ITA no. 1372/Del/2015 (supra). I, therefore, respectfully following the decision of this Tribunal in the case of Unique Metal Industries (supra), delete the addition as sustained by the Id. CIT(A) amounting to Rs.94,771/-.

9. In the result, the appeal filed by the assessee is allowed."

16. On finding parity of facts, I have no hesitation in holding that the assessment framed u/s 143(3) r.w.s 147 of the Act is based upon wrong assumption of jurisdiction and, therefore, the same is liable to be quashed.

17. Since I have quashed the assessment order, I do not find it necessary to dwell into the merits of the case.

18. In the result, the appeal of the assessee in ITA No. 639/DEL/2017 is allowed.

The order is pronounced in the open court on 17.10.2022.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 17th October, 2022.

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	