

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before N. K. Choudhary, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2845/Del/2018 : Asstt. Year : 2010-11**

Income Tax Officer, Ward-14(1), New Delhi-110002	Vs	Kabir Foods Pvt. Ltd., 1109, 11 <sup>th</sup> Floor, D-Mall, Pitampura, New Delhi-110034
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADCK0595J</b>		

**CO No. 123/Del/2018 : Asstt. Year : 2010-11**

Kabir Foods Pvt. Ltd., 1109, 11 <sup>th</sup> Floor, D-Mall, Pitampura, New Delhi-110034	Vs	Income Tax Officer, Ward-14(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADCK0595J</b>		

**Assessee by : Sh. Subham Sharma, Adv.**

**Revenue by : Sh. Ravi Kant Choudhary, Sr. DR**

**Date of Hearing: 01.09.2022**

**Date of Pronouncement: 17.11.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal filed by the Revenue and the Cross Objection by the assessee are directed against the order of the Id. CIT(A)-5, New Delhi dated 22.02.2018.

2. Following grounds have been raised by the Revenue:

*"1. Whether on the facts and circumstances of the case, Id. CIT(A) has erred in deleting the additions made by the AO by treating the reopening u/s 147 as in fructuous by ignoring the fact that the sufficiency*

*and correctness of material is not to be considered at the stage of reopening of assessment u/s 147."*

3. The assessee filed return of income on 09.09.2010 declaring business income of Rs.5,82,203/-. Based on the information received from Directorate of Income Tax (I&CI) Bombay, with regard Client Code Modification the case of the assessee has been reopened for escapement of income assessed vide notice u/s 148 dated 25.03.2015. In reply to the notice issued, the assessee submitted that the e-return filed on 21.04.2015 can be treated as return filed in response to notice u/s 148. The assessment has been completed on 29.03.2016.

4. During the proceedings before the Id. CIT(A), the assessee has taken up objection that the AO did not have any details which could result in the AO come to a satisfaction that income had escaped assessment.

5. The assessee had inspected the file of AO on 01.03.2017 and has pointed out that vide letter dated 27.02.2015, the DIT (I & CI) had conveyed a list of 4 brokers who had misused the Client Code Modification facility. It was submitted that the name of the appellant or his broker was not mentioned in the said communication or reason. In support of the above contention the appellant has furnished the copy of a letter of the assessing officer wherein the Assessing Officer has written to DIT (I & CI), Mumbai requesting him to provide the name and particulars of the broker who admitted -transferring a loss of Rs. 47,73,470/- to the assessee and also to provide the basis on which the case of the assessee was reopened, this letter of the AO is dated 20.01.2016.

6. The letter dated 20.01.2016 reads as under:

*"On the basis of information received from DIT(I & CI), Mumbai vide letter No.: DIT(I&CI)/CCM/2014-15 dated 27.02.2015 received through the O/o Pr. CIT, Delhi-05, New Delhi vide F.No. Pr.CIT/Delhi-05/Misc./Tax evas. throu.CCM/2014-15/778 dated 23.03.2015, the case of M/s Kabir Foods Ltd. of this Ward was subjected to 147/148 of the Income Tax Act, 1961.*

*The assessment proceedings in the case of M/s Kabir Foods Pvt. Ltd. (PAN - AADCK0595J) for the A.Y. 2010-11 u/s 147/148 are in progress getting barred by limitation on 31.03.2016. The A.R. in the said case time and again and vide his submissions is challenging the reasons recorded for re-opening of the case particularly in view of the fact that the reason recorded does not contain the name of the shares, name of share broker, information from whom any share, if any at all, which persuaded the A.O. to prima-facie come to the conclusion of escapement of income. He has further stated that not even vaguely mentioned in the reason of inference, as to whether the assessee-company has booked fictitious profit or fictitious loss, due to the alleged accommodation entries taken from share broker. The reason simply states that the total of accommodation entry is Rs. 47,73,470/-, not specifying whether this amount represents, in the opinion of the Assessing Officer, fictitious profit or fictitious loss, which persuaded the Assessing Officer to prima facie come to conclusion of escapement of income.*

*Keeping in view the above, this office requested DIT(I & CI), Mumbai through proper channel vide this office letter F. No. /ITO-Ward-14-(1)/2015- 16/246 dated 30.12.2015 followed by reminder dated 20.01.2016 to kindly provide the following for confronting the assessee and incorporating the same in the Assessment order to make the order stand the test of appeal:*

a) *The list and statement of the brokers covered u/s 131(1A) of the Income Tax Act, 1961 confirming having misused the Client Code Modification in order to create fictitious losses/profits during the F.Y. 2009-10. The receipt of commission @ varying from 0.5% to 2% on the amount of losses/profits for transferring the same to their clients (beneficiaries).*

b) *The statement of brokers where independent enquiries were conducted in few cases of beneficiaries / clients and its confrontation to clients admitting receipt of fictitious losses from the brokers and consequently revising their ITR(s).*

c) *Any other connected material/evidence.*

*The aforesaid information is yet awaited. It is worth mentioning here that the same material is required in 13 other cases pertaining to the charge of Pr. CIT, Delhi-05, New Delhi. Since limitation is involved in my case as well as other cases of the charge, it is kindly proposed to order the official tour of undersigned to the office of DIT (I & CI), Mumbai to collect the above mentioned details w.e.f. the afternoon of 11<sup>th</sup> February, 2016 and return on 12<sup>th</sup> February, 2016.*

7. It is clear from the aforesaid letter that the AO after the initiation of reopening the case is seeking the basis from the DIT (I & CI), Mumbai. This implies that the AO had no clear information or basis on 23.03.2015 for reopening the said case. The satisfaction for reopening is an inherent and essential component of all the proceedings u/s 148. It is clear that the AO did not have any substantive material through which he could record a satisfaction of income having escaped assessment in the hands of the assessee. In view of this basic fact that the AO has sought information from the DIT(I&CI) on

specifics related to the reasons which were supposed to form the basis of the satisfaction vitiates the satisfaction . Therefore the Id. CIT (A) held that the reopening of the said assessment is bad in law.

8. The pertinent facts that the notice u/s 148 was issued on 25.03.2015 based on the information of the DIT(I&CI) dated 27.02.2015 and the AO sought details regarding the Client Code Modification pertaining to the assessee from DIT(I&CI) on 30.12.2015 and on 20.01.2016 and also proposed an official tour to the office of DIT(I & CI), Mumbai to collect information in February, 2016. These facts on record are not in dispute. This proves that the AO has no cogent material at the time of issue of notice u/s 148. Hence, we decline to interfere with the decision of the Id. CIT(A) holding that the reopening of the instant case for re-assessment is bad in law.

9. In the result, the appeal of the Revenue is dismissed and the CO is treated as infructuous.

Order Pronounced in the Open Court on 17/11/2022.

Sd/-

**(N. K. Choudhary)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/11/2022**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**