

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.79/Del./2022  
(ASSESSMENT YEAR : 2011-12)**

DCIT, Central Circle 6,  
New Delhi.

vs. M/s. Jaguar Buildcon Pvt. Ltd.,  
30, Community Centre, Saket,  
New Delhi – 110 017..

**(PAN : AACCCJ2199J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Joshi, CA

REVENUE BY : Mohd. Gaysuddin Ansari, CIT DR

Date of Hearing : 06.04.2023

Date of Order : 13.04.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the Revenue is directed against the order of Id. CIT

(Appeals)-24, New Delhi dated 18.03.2021 pertaining to AY 2011-12.

2. The grounds of appeal taken by the Revenue read as under :-

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 58,18,50,000/- u/s 68 of the Act on concluding that when on the ground on which the reopening of assessment is based, no additions are made by the Assessing Officer in the order of assessment, he cannot make additions on some other grounds which did not form part of the reasons recorded by him.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in not appreciating the explanation 3 of section 147 of the IT Act, 1961 in which it is provided that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.”
3. In this case, in an order passed under section 147/153A of the Income-tax Act, 1961 (for short 'the Act'), the AO made an addition of Rs.59,18,50,000/-. Assessee appealed before the Id. CIT (A) and put forward a ground that since no addition has been made on the subject on which reopening was done, the other addition made in this case is not sustainable inasmuch as the issue is covered by the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 and Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom.). Ld. CIT (A) passed an elaborate order and the same may be gainfully read as under :-

“4.7 From perusal of the assessment order as well as above facts, it is observed that the Assessing Officer recorded reasons for reopening this case on the ground of unexplained capital receipts from M/s TVH Trading Company Pvt. Ltd. of Rs. 26,40,00,000/-. However, no addition on this account was made in the assessment order. Post to recording the reasons and sending the notice u/s 148, another information was received by the Assessing Officer from DDIT(Inv) Unit3(1), Kolkatta vide letter F.No. DDIT/Unit-3(1)/Kol/Information /18-19/11525 dated 16.03.2018 & ADIT(Inv.), Unit-4(1), Kolkatta vide letter F.No. ADIT/U-4(1)/S-Deb/Ko1/2017-18/10061-10075 dated 12.03.2018. As per this information, the appellant had received

accommodation entry of Rs.58,18,50,000/- from five persons which was finally added back u/s 68 of Income Tax Act in the assessment order.

4.8 Explanation 3 to section 147 was inserted by Finance (No.2) Act, 2009 w.r.e.f 01.04.1989 to clarify that the Assessing Officer could assess or reassess the income in respect of any issue which came to his notice subsequently in the course of the proceedings. Explanation 3 is reproduced below:

"Explanation 3.-For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148. "

4.9 Hon'ble Bombay High Court considered Explanation 3 to section 147 in the case of CIT v. Jet Airways (1) Ltd. [2011] 331 ITR 236 (Bombay) where it was held that if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee. The operative part of the judgment is reproduced below:

"15. Parliament, when it enacted the Explanation (3) to section 147 by the Finance (No. 2) Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Explanation 3 to section 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective

exercise embarked upon by "Parliament in the form of Explanation 3 consequently provides that the Assessing Officer may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under section 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd. 's case (supra) and of the Punjab & Haryana High Court in Vipin Khanna's case (supra) would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh's case (supra), Explanation 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana High Court in CITv. Atlas Cycle Industries [1989] 180 ITR 319. The decision in Atlas Cycle Industries' case (supra) held that the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under section 148 were incorrect or non-existent. The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries' case (supra) and of the Rajasthan High Court in Shri Ram Singh's case (supra) would not be affected by the amendment brought in by the insertion of Explanation 3 to section 147.

16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No.2) of 2009.

However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income ") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment. has as a matter of fact not escaped assessment. it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary. the legality of which would be tested in the event of a challenge by the assessee.

17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's

case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field.

18. In that view of the matter and for the reasons that we have indicated, we do not regard the decision of the Tribunal in the present case as being in error. The question of law shall, accordingly, stand answered against the revenue and in favour of the assessee. The appeal is, accordingly, dismissed."

4.10 Hon' ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. V s CIT [2011] 336 ITR 136 (Delhi) relied upon above judgment of Hon'ble Bombay High Court in the case of CIT v. Jet Airways (I) Ltd. [2011] 331ITR 236 (Bombay) and took a similar view. The operative part of the judgment is reproduced below:

"11. Now, after the insertion of Explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2) on the basis of which he had initiated proceedings under section 147. Similar question came for consideration before the Division Bench of Bombay High Court in CIT v. Jet Airways (1) Ltd. [2011]331ITR 236. The Court held as under :-

"9. The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows: (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148, (iii)

The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course, of the proceedings under the section. "

4.11 Hon'ble Delhi High Court in the case of CIT Vs. Software Consultants [2012] 341 ITR 240 (Delhi) held that where Assessing Officer did not make any addition on issue in respect of which reasons were recorded at time of issuing notice under section 148, sequitur is that Assessing Officer could not have made an addition on account of said issue and, thus, Commissioner could not have exercised revisional jurisdiction. The operative part of the judgment is reproduced below:

"12. The Division Bench in Ranbaxy Laboratories Ltd. (supra) considered the judgment of the Supreme Court in the case of V Jagamohan Rao v. CIT EPT, 1970} 75ITR 373 and CITv. Sun Engg. Works (P.) Ltd. [J992] 198ITR 297 and has then elucidated:

"18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CITv. Jet Airways (I) Limited [2011] 331ITR 236 (Bom). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess,

reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items, viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which as per our discussion was not permissible. Had the Assessing Officer proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-I as well.”

4.12 Hon'ble Delhi High Court in the case of CIT Vs Monarch Educational Society [2016] 387 ITR 416 (Delhi) held that if no addition is made in respect of issues recorded by Assessing Officer for reopening assessment, Assessing Officer cannot make addition on any other issue in reassessment proceedings. The operative part of the judgment is reproduced below:

"8. The issue urged by the Revenue stands covered in favour of the Assessee by the decision of this Court in Ranbaxy Laboratories Ltd. v. CIT [2011] 336 ITR 136 (Delhi) which has been followed in CIT v. Software Consultants [2012] 341 ITR 240. In sum, if no addition is made on the basis of the reasons to believe recorded by the AO for reopening the assessment under Section 148 of the Act, resort cannot be had to Explanation 3 to Section 147 of the Act to make an addition on any other issue not included in the reasons to believe for reopening the assessment. No substantial question of law arises. The appeal is dismissed."

4.13 Hon'ble Bombay High Court in the case of PCIT Vs Lark Chemicals (P.) Ltd. [2018] 99 taxmann.com 311 (Born.) held that the question as formulated becomes academic as our Court in CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236/[2010] 195 Taxman 117 (Bom.) while examining Explanation 3 to Section 147 of the Act has held that the Assessing Officer has to

necessarily assess/re-assess the income which escaped assessment on the basis of the formation of the reasonable belief for opening the assessment. It is only on assessing/reassessing such income which has escaped assessment in the reasons recorded, would it be open to the Assessing Officer to assess/reassess any other income, which came to his notice during the reassessment proceedings. However, in the absence of reassessing the income which escaped assessment and which was the basis for formation of belief in issuing the notice, the order passed on reassessment is bad in law. The operative part of the judgment is reproduced below:

"4. In the above view, the question as formulated becomes academic as our Court in CIT v. Jet Airways (I) Ltd.[2011] 331 ITR 236 (Bom.) while examining Explanation 3 to Section 147 of the Act has held that the Assessing Officer has to necessarily assess/re-assess the income which escaped assessment on the basis of the formation of the reasonable belief for opening the assessment. It is only on assessing/reassessing such income which has escaped assessment in the reasons recorded, would it be open to the Assessing Officer to assess/reassess any other income, which came to his notice during the reassessment proceedings. However, in the absence of reassessing the income which escaped assessment and which was the basis for formation of belief in issuing the notice, the order passed on reassessment is bad in law. "

Hon'ble Supreme Court dismissed SLP against above judgment in the case of PCIT Vs Lark Chemicals (P.) Ltd. in [2018] 99 taxmann.com 312 (SC).

4.14 It is observed that notice u/s 148 of Income Tax Act was issued by the Assessing Officer on 29.03.2018. As per para 4 of the assessment order, post to recording the reasons and sending the notice u/s 148, another information was received from DDIT(Inv) Unit3(1), Kolkata vide letter F .No. DDIT/Unit-3(1)/Kol/Information/18-19/11525 dated 16.03.2018 & ADIT(Inv.), Unit-4(1), Kolkata vide letter F.No. ADIT/U-4(1)/S-Deb/Ko1/2017- 18/10061-10075 dated 12.03.2018 wherein it was found that assessee had also taken

accommodation entries from five other companies. As per details available on record, this information was first confronted to the appellant vide notice u/s 142(1) dated 19.12.2018 i.e beyond a period of six years from end of the assessment year. The assessment was completed on 29.12.2018. If the information was received prior to 29.03.2018, it should have been made part of the reasons for reopening the case. If the information was received after 29.03.2018 in FY 2018-19, the information was received beyond a period of six years from end of the relevant assessment year. To this extent, case of the appellant is on an even stronger footing than the above decisions as claimed by the appellant.

4.15 In view of above facts of the case, it is held that the case of the appellant was reopened on the basis of information relating to accommodation entry received from TVH Trading Company Pvt. Ltd. of Rs.26,40,00,000. No addition was made in the assessment order on this account since the amount had already been added back in the order u/s 153A dated 30.03.2014. Addition of Rs.58,18,50,000/- was made u/s 68 of Income Tax Act in respect of amount received from five persons which did not form part of the reasons recorded for reopening the case. Respectfully following the judicial decisions cited above, it is held that if no addition is made in respect of issues recorded by Assessing Officer for reopening assessment, Assessing Officer cannot make addition on any other issue in reassessment proceedings. If after issuing a notice under section 148, the Assessing Officer accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income. Hence, addition of Rs.58, 8,50,000/- is hereby deleted and above Additional Ground of appeal is allowed.”

4. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the records.
5. Ld. DR could not controvert the submission that no addition has been made in this case on the issue on which reopening was done. He

also could not controvert that the Hon'ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. (supra) has upheld the proposition that if no addition is made for the reason on which reopening was done, other additions could not survive.

6. Per contra, Id. Counsel of the assessee submitted that the issue is squarely covered by the decisions of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. (supra) and Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra).

7. Upon careful consideration, we note that assessee's case was reopened on the basis of information relating to accommodation entry received from TVH Trading Company Pvt. Ltd. of Rs.26,40,00,000/-. No addition was made in the assessment order on this account since the amount had already been added in the order u/s 153A dated 30.03.2014. The addition of Rs.58,18,50,000/- was made u/s 68 of the Act in respect of the amount received from 5 persons which did not form part of the reasons recorded for reopening of the case. In these circumstances, the case laws of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. (supra) and Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra) are fully applicable and there is no infirmity in the well-reasoned order of Id. CIT (A). Ld. DR tried to submit that there are some other High Courts who have taken a contrary view. But,

in our considered view, this is not an acceptable proposition in view of the decision of the Hon'ble jurisdictional High Court which is a binding. Hence, respectfully following the decision of Hon'ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. (supra), we uphold the order of ld. CIT (A).

8. In the result, this appeal filed by the Revenue stands dismissed.

**Order pronounced in the open court on this 13<sup>th</sup> day of April, 2023.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 13<sup>th</sup> day of April, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-24, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**