

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.806/DEL/2014
Assessment Year 2003-04

SFS Infinite Ltd. 3406 Third Floor D.B. Gupta Road Karol Bagh New Delhi	Vs.	DCIT Circle-8(1) New Delhi
TAN/PAN: AABCS2473H (Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	30	05	2023
Date of pronouncement:	31	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-X, New Delhi ('CIT(A)' in short) dated 26.06.2013 arising from the assessment order dated 16.12.2010 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2003-04.

2. As per the grounds of appeal, the assessee has challenged the assumption of jurisdiction under Section 147 as well as additions of Rs.2,15,220/- under Section 68 of the Act on merits.

3. Having perused the case records, we shall address ourselves to the challenge of jurisdiction under Section 147 of the Act.

3.1 The reasons recorded under Section 148(2) for invoking jurisdiction under Section 147 of the Act read as under:

“Information has been received from DIT(Inv.) that M/s. SFS Infinite Ltd., New Delhi has been beneficiary of accommodation entries being provided by certain entry operators. On the basis of the information chart forwarded by the DIT(Inv.), New Delhi it is seen that the assessee is involved in the following bogus transactions detailed in the chart forwarded by the DIT(Inv.), New Delhi.

<i>Beneficiary's name</i>	<i>M/s. SFS Infinite Ltd.</i>
<i>Beneficiary bank name</i>	<i>BOI</i>
<i>Beneficiary bank branch</i>	<i>Karol Bagh</i>
<i>Value of entry taken</i>	<i>Rs.2,15,220/-</i>
<i>Instrument No. by which entry taken</i>	
<i>Date on which entry taken</i>	<i>03/04/02</i>
<i>Name of account holder of entry giving account</i>	<i>S.J. Capital Ltd.</i>
<i>Bank of entry given bank</i>	<i>SBP</i>
<i>Account no. entry giving account</i>	<i>50097</i>

I have therefore reason to believe that an amount of Rs.2,15,220/- has escaped assessment within the meaning of Section 147(a) of the IT Act, 1961.”

4. On perusal of the reasons recorded, it is observed that the assessment was reopened after a gap of nearly seven years from the end of relevant financial year. As per the recorded reasons under Section 148(2) of the Act, the action under Section 147 has been taken on the basis of some alleged information that a receipt of Rs. 2,15,220/- has been obtained by the assessee from S.J. Capital Ltd. on 03.04.2002 and that such receipt is an accommodation entry. Based on such alleged information, the Assessing Officer has invoked the reopening provisions.

4.1 Apparently, the Assessing Officer has acted on some obscure, vague and innocuous information without reference to any material or content of information to support the so called information. Needless to say, holding of ‘reason to believe’ must be reflected and supported by reasons recorded in writing. This is totally absent here. To reiterate, no substantive material or any content has been referred to support the alleged information that impugned receipt is

an accommodation entry. The allegation is thus bald and unsubstantiated. The tabulated information of the other officer of the Department reeks of opinion of other officer. It appears that the purported believe is that of the person sending the information and not that of Assessing Officer. There is no reference to any cogent information either which may possibly give birth to believe. There appears to be no tangible nexus or rational connection between so called reasons and believe thereon.

4.2 It is trite that formation of believe is a statutory function which cannot be relegated. Also, the formation of believe being statutory power and quasi judicial function cannot be exercised without application of mind.

4.3 Hence, action of the Assessing Officer in resorting to Section 147 has trampled the inbuilt safeguard of expression 'reason to believe'. We are thus of the view that the Assessing Officer has purported to usurp jurisdiction under Section 147 without legal foundation.

5. The challenge to usurption of jurisdiction under Section 147 thus succeeds.

6. In view of the lack of very jurisdiction assumed under Section 147, we do not consider it necessary to examine the additions on merits.

7. In the result, the appeal of the assessee is allowed *ex-parte*.

Order pronounced in the open Court on 31/05/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /05/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**