

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 3877/DEL/2019 [A.Y. 2011-12]

Ujjwal Microfinance Pvt Ltd
241, Okhla Industrial Estate
Phase - III, New Delhi

Vs.

The I.T.O
Ward - 27(2)
New Delhi

PAN - AAACM 2200 K

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Saksham Agrawal, CA

Department By : Shri Rajendra Jha, Sr. DR

Date of Hearing : 05.06.2023

Date of Pronouncement : 09.06.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 9, New Delhi dated 22.02.2019 pertaining to Assessment
Year 2011-12.

2. The grievances of the assessee read as under:

“1. Because the Ld. CIT (Appeals) has erred in law and on facts in confirming the assumption of jurisdiction by the learned AO under S. 147 r.w.s 148 of the Income Tax Act without making any enquiry to at least find out the fact of any transaction been entered or not by M/s While Collar Management Pvt. Ltd. with the assessee company.

2. Because the Ld. CIT (Appeals) has erred in law and on facts in confirming the re-assessment proceedings on the basis of vague information, without forming AOs own opinion and only on the basis of report of Investigation Wing and mechanical opinion of higher authorities.

3. Because the Ld. CIT (Appeal) has erred in law and on facts in confirming ex - parte assessment Oder u/s 144 of the Act without service of proper notice u/s 142(1)/144 of the Act and any show cause notice.

4. Because the Ld. CIT (A) has erred in law and on facts in confirming an addition of Rs. 1,7500,000/- even though no addition has been made in respect of alleged transaction with M/s While Collar Management Pvt. Ltd. which was the subject matter of initiation of reassessment proceedings.

5. Because the Id. CIT (A) has erred in law and on facts in making an addition of Rs. 1,75,00,000/- without appreciation of the evidences produced on record and non- admission of evidences without proper opportunity to the assessee company.

6. *Such other relief as may crave in during the appellate proceedings.”*

3. Representatives of both the sides were heard at length. Case records carefully perused and relevant documentary evidences duly considered in light of Rule 18(6) of the ITAT Rules.

4. Reasons recorded for reopening the assessment read as under:

“Reasons recorded in the case of M/S UJJWAL MICROFINANCE PVT. LTD.A.Y. 2011-12 for initiating proceedings u/s 147/148 of the Income- tax Act, 1961

Information was received from the Asst. Director of Income Tax (In v.), Unit - 6(3), New Delhi vide letter F.No. . ADIT(Inv.)/Unit-6(3)/2017-18/293 dated 18-09-2017 regarding the beneficiaries of the accommodation entries provided by the Mr. Himanshu Verma group of entities. The name of the assessee company, M/S Ujjwal Microfinance Pvt. Ltd., appears at S.No. 505 of the list of beneficiaries :

<i>Sl No</i>	<i>Name of the beneficiary/ entity</i>	<i>PAN</i>	<i>Amount</i>	<i>Name of Himanshu Verma Group Company</i>	<i>F.Y</i>
<i>505</i>	<i>Ujjwal Microfinance Pvt Ltd</i>	<i>AAACM2200K</i>	<i>2,65,00,000</i>	<i>White Collat management Pvt Ltd</i>	<i>2010-11</i>

Search and seizure operations had been conducted on the Mr. Himanshu Verma group of entities on 29-03-2012. It was gathered from the investigations that Mr. Himanshu Verma was engaged in the activities of providing accommodation entries to beneficiaries in lieu of commission. This done through an elaborate web of numerous corporate and non corporate paper entities whose directors / partners / proprietors were the employees or close associates of Mr. Himanshu Verma.

The assessee company has filed its return of income for the year under consideration i.e. A.Y. 2011-12 on 28-09-2011 vide e-acknowledgement no. 295910911280911 declaring income of Rs.65,850/-.

In-view of the new information-received from the Asst. Director-of-to-come-Tax (Inv Unit 6(3), New-Delhi,-I am satisfied-that the assessee-Company has-not-disclosed complete "acts w.r.t. the receipts/amount credited in its account. Hence, I am of the view that income amounting to a sum of Rs.2,65,00,000/- has escaped assessment within the meaning of Section 147/148 of the Act has escaped assessment owing to the failure of the assesses company to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Since more than four years have been elapsed from the end of the relevant A.Y. i.e. A.Y. 2011-12 necessary statutory approval u/s 151(1) of the IT Act may kindly be accorded to issue notice u/s 148 .for the AY 2011-12 for the purpose of opening of the case u/s 147 of the IT Act, 1961. The limitation for issuing the notice is expiring on 31.03.2018.

Submitted for kind perusal and approval."

5. In compliance to the aforesaid notice, the assessee raised objections which are exhibited at pages 23 to 27 of the Paper Book wherein the assessee had very specifically mentioned as under:

“(a) Your good self without verifying the fact whether the assessee has actually taken any accommodation entries amounting to Rs. 2.65 crores from White Collar Management Ltd., has, merely on suspicion, reopen the assessment proceedings. Whereas the facts remain that the assessee has not entered into any transaction of whatsoever nature with White Collar Management Ltd. during the year under consideration.

(b) We state that the report of the investigation wing is based on the wrong fact and confirm that we have not entered into any transaction with White Collar Management Ltd. during the year under consideration and the transaction of receipts of money aggregating to Rs. 2.65 crores from the above mentioned party as alleged by you is wrong as no such money was received by us from the party during the year under consideration.”

6. These specific objections being part of the objections raised by the assessee against the said notice u/s 148 of the Act were disposed of by the order exhibited at pages 29 to 33 of the Paper Book. But, surprisingly, the Assessing Officer has not touched upon the specific objections that no such transactions were done by the assessee with the said White Collar Management Ltd.

7. The same was reiterated before the Id. CIT(A) and even the Id. CIT(A), in his wisdom, chose not to comment on such specific objections and evidences.

8. This demonstrative fact shows that the Assessing Officer has reopened the assessment based upon wrong facts, wrong appreciation of facts and without any application of mind, in as much as, the assessee has not taken any credit entry from White Collar Management Ltd. However, we find that the Assessing Officer has gone one step further and has made addition of Rs. 1.75 crores being the increase in share capital from Rs. 25 lakhs to Rs. 2 crores, which has nothing to do with the reopening of the assessment, which means that on the one hand the Assessing Officer has reopened the assessment on wrong facts and on the other hand, the Assessing Officer has completed assessment

on totally irrelevant facts which were never confronted to the assessee.

9. A perusal of the reasons recorded, extracted hereinabove, for reopening of assessment clearly shows that the Assessing Officer has reasons to believe that the assessee was beneficiary of accommodation entry from White Collar Management Ltd.

10. Strictly keeping in mind the reasons for reopening, assessment has been concluded by making addition of Rs. 1.75 crores on account of increase in share capital being share capital issued by the company to Shri Gautam Goyal, Shri Gaurav Goyal and Saraswati Properties, Goyal Investment and Shudd Edible Products Ltd. Individuals are directors of the assessee company and corporate investors are part of the group.

11. Since the additions have been made other than the reasons recorded for reopening assessment, in our considered view, the Assessing Officer has drawn support from Explanation 3 to section 147 of the Act which was inserted by the Finance [No. 2] Act, 2009 w.r.e. 01.04.1989 and the same reads as under:

"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."

12. This insertion of Explanation 3 to Section 147 of the Act has been examined and interpreted by the Hon'ble High Court of Bombay in the case of CIT Vs. Jet Airways [I] Ltd 331 ITR 236. The relevant part of the judgment is extracted as under:

"5. The condition precedent to the exercise of the jurisdiction under section 147 is the formation of a reason to believe by the Assessing Officer that any income chargeable to tax has escaped assessment. Upon the formation of a reason to believe, the Assessing Officer, before making the assessment, reassessment or recomputation under section 147 has to serve on the assessee a notice requiring him to furnish a return of his income. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the Assessing Officer is empowered to assess or reassess such income "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 section 147.

6. The effect of *Explanation 3* which was inserted by the Finance (No. 2) Act of 2009 is that even though the notice that has been issued under section 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. The reasons for the insertion of *Explanation 3* are to be found in the Memorandum explaining the provisions of Finance (No. 2) Bill of 2009. The Memorandum treats the amendment to be clarificatory and contains the following *Explanation* :

"Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an *Explanation* in section 147 to provide 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 this section, notwithstanding that the reason

for such issue has not been included in the reasons recorded under sub-section (2) of section 148."

7. In order to appreciate the reasons for the amendment inserting *Explanation 3*, it would be necessary to advert to some of the judgments of the High Courts, prior to the amendment.

The Punjab and Haryana High Court, in its decision, in *Vipan Khanna v. Asstt. CIT* [2002] 255 ITR 2201 dealt with the question as to whether, after initiating proceedings under section 147 on the ground that the petitioner had claimed depreciation at a higher rate, the Assessing Officer would be justified in launching an inquiry into issues which were not connected with the claim of depreciation. This question was answered in the negative.

A Division Bench of the Kerala High Court held in *Travancore Cements Ltd. v. CIT* [2008] 305 ITR 1701, that upon the issuance of a notice under section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment, or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated and which came to his knowledge during the course of the proceedings. The Division Bench held that in respect of an issue which is totally unconnected to the basis on which the Assessing Officer formed a reason to believe that income escaped assessment and issued a notice under section 148, it was open to him to issue a fresh notice

by following sub-section (2) of section 148 with regard to the escaped income which came to his knowledge during the course of the proceedings. The Kerala High Court held as follows:

"...The Assessing Officer gets jurisdiction under section 148 to assess or reassess the income which has escaped assessment only after sub-section (2) of section 148 is complied with. The question is whether sub-section (2) of section 148 has to be complied with if any other income chargeable to tax has escaped assessment, or which comes to his knowledge subsequently in the course of the proceedings. In other words, when proceedings are already on in respect of one item in respect of the income for which he had already recorded reasons is it necessary that he should record reasons for assessing or reassessing any of the items which are totally unconnected with the proceedings already initiated. Suppose under two heads income has escaped assessment and those two heads are inter-linked and connected, the proceedings initiated or notice already issued under sub-section (2) of section 148 would be sufficient if the escaped income on the second head comes to the knowledge of the officer in the course of the proceedings. But if both the items are unconnected and totally alien then the assessing authority has to follow sub-section (2) of section 148 with regard to the escaped income which comes to his knowledge during the course of the proceedings."

Hence, the view of the Punjab and Haryana High Court and the Kerala High Court was that, once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment

and proceeds to issue a notice under section 148, it is not open to him to assess or, as the case may be, reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

8. Parliament stepped in to correct what it regarded as an incorrect interpretation of the provisions of section 147. The Memorandum explaining the provisions of Finance (No. 2) Bill of 2009 states in this background that some courts had held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which reasons have been recorded for reopening the assessment and that it was not open to him to touch upon any other issue for which no reasons have been recorded. This interpretation was regarded by Parliament as being contrary to legislative intent. Hence, *Explanation 3* came to be inserted to provide 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).

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 undersub-

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.

10. XXX

11. The rival submissions which have been urged on behalf of the revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax

which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and", as well as "also" have been used together and in conjunction.

The *Shorter Oxford Dictionary* defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) 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. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed

or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter."

13. If the above judgment is applied on the facts of the case in hand, we find that the Assessing Officer has accepted the objections of the assessee, and has not assessed or reassessed the income, which was the basis of the notice. Therefore, in light of the judgment of the Hon'ble High Court of Bombay [supra] it would not be open to the Assessing Officer to assess income under some other issue independently.

14. Similar issue had arisen before the Hon'ble Jurisdictional High Court in the case of Ranbaxy Laboratories Limited versus CIT, (2011) 336 ITR 136 (Delhi). In the said case, the Division Bench had also examined Explanation 3 to [Section 147](#), which was inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1989. Reference was made to the decision of the Bombay High Court in CIT versus Jet Airways India Limited, (2011) 331 ITR 236 (Bom) in which it has been held as under:

"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 none the less, 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."

15. Thereafter, the High Court referred to the decision of the Rajasthan High Court in the case of CIT versus Shri Ram Singh, (2008) 306 ITR 343 (Raj.) in which it has been observed as under:

"It is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under [section 147](#).

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under [section 147](#), the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his 'reason to believe', had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would

not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under [section 147](#)."

12. The Division Bench in Ranbaxy Laboratories Limited (supra) considered the judgment of the Supreme Court in the case of V. Jagmohan Rao versus CIT and EPT, (1970) 75 ITR 373(SC) and CIT versus Sun Engineering Works Private Limited, (1992) 198 ITR 297 (SC) 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 CIT v. Jet Airways (I) Limited [2011] 331 ITR 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-I](#) 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-I](#) 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."

16. Considering the facts of the case in totality, in light of the judgment of the Hon'ble Jurisdictional High Court and Hon'ble High Court of Bombay [supra], we do not find any merit in the re assessment proceedings initiated by the Assessing Officer on wrong facts and therefore, the said assessment order deserves to be quashed. We accordingly, quash the assessment order and since the assessment has been quashed, we do not find it necessary to dwell into the merits of the case.

17. Before parting, we would be failing in our duties if we do not bring to the notice the attitude of the Departmental Representative. The authorized representative for the assessee Dr. Rakesh Gupta concluded his arguments and then the ld. DR stated that he wants to look into the Investigation Wing's report which is the reason for reopening the assessment.

18. The Bench pointed out that he should have taken this stand at the beginning of the hearing and not after the conclusion of the arguments of the ld. counsel for the assessee Dr Rakesh Gupta. The ld. DR accused the Bench of denying the right of hearing. We fail to understand as to how the ld. DR can make such an accusation, when what he is asking for has nothing to do with the facts of the case in hand.

19. The ld. DR went on to say that he received the file only on Friday and since he is on rotational duty, he did not have time to go through the records. Such pathetic state of the representation from the department's side is condemned and, whosoever is in charge should take notice of such attitude of the ld. Departmental Representatives before the Highest Fact Finding Forum.

20. In the result, the appeal of the assessee in ITA No. 3877/DEL/2019 is allowed.

The order is pronounced in the open court on 09.06.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th JUNE, 2023.

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	