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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 71/DEL/2021 [A.Y. 2003-04]

K.R. Packaging (P) Ltd D – 1, Pandav Nagar, Near Mother Diary, New Delhi	Vs.	The A.C.I.T Circle – 5(1) New Delhi

PAN: AACCK 2506 J

(Applicant) (Respondent)

Assessee By	:	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Department By	:	Shri Om Prakash, Sr. DR

Date of Hearing	**:**	**03.07.2023**
Date of Pronouncement	**:**	**07.07.2023**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the ld. CIT(A) – 5, Delhi dated 29.07.2015 pertaining to Assessment Year 2003-04.

2. The grievances of the assessee read as under:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order and that too without providing the opportunity of being heard and in violation of principles of natural justice.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order without assuming jurisdiction as per law and without serving the mandatory notices U/S 143(2), 142(1) and 148 of Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order and that too without complying the mandatory conditions as envisaged under section 147 to 151 of Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, the impugned assessment order is beyond jurisdiction, bad in law, illegal, unjustified, against the principles of natural justice and void ab initio.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the

action of Ld. AO in making aggregate addition of Rs.14,OO,OOO/- on account of alleged unexplained cash credit u/s 68 and that too by recording incorrect facts and findings and in violation of principles of natural justice.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO making addition of RS.7000/- on account of alleged commission paid.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition and framing the impugned assessment order is contrary to law and facts and without providing adequate opportunity of being heard and without confronting the entire adverse material to the assessee and by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging the interest u/s 234B, 234C and 234D of Income Tax Act, 1961.

9. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. The representatives of both the sides were heard at length, the case records carefully perused. We have also considered the documentary evidences brought on record in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee filed its return of income on 28.11.2003 declaring loss of Rs.81, 500/-. On the basis of information, notice under section 148 of the ITXA was issued and served upon the assessee. In response to the notice, the assessee filed a letter stating that the return filed on 28.11.2003 may be treated as return filed in response to notice under section 148 of the Act.

5. The reasons recorded for reopening assessment are as under:

> **"Investigations were conducted by the Investigation wing of the Department on certain persons engaged in providing accommodation entries to beneficiaries of their services, in return of commission. It has been revealed that many persons were using services of accommodation entry operators to channelize their own unaccounted money in their regular books of accounts by routing the same through the accounts of Accommodation entry providers.**

2. The modus operandi of these entry providers and beneficiaries of their services, was detected to be as under:

2.1 Entries were being broadly taken for two purposes:

01. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.

02. To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

2.2 The assessees who had unaccounted money (called as entry takers or beneficiaries) and wanted to introduce the same in the books of accounts without paying tax, approached another person (called as entry operator) and handed over the cash (plus commission) and had taken cheques/DDs/POs. The cash was being deposited by the entry operator in a bank account either in his own name or in the name of relative/friends or other person hired by him, for the purpose of opening bank account. In most of these bank accounts the introducer was the main entry operator and the cash deposit slips and other instruments were filled by

him. The other persons (in whose name the A/c is opened) only used to sign the blank cheque book and hand over the same to the main entry operator. The entry operator then used to issue cheques/DDs/Pos in the name of the beneficiary from the same account (in which the cash is deposited) or another account in which funds were transferred through clearing in two or more stages. The beneficiary in turn deposited these instruments in his bank accounts and the money came to his regular books of account in the form of gift, share application money, loan etc through banking channels.

2.3 The operators gave the account holders amounts ranging from Rs 1000 to 2000 per month. These account holders were masons, plumbers, electricians, peons, drivers etc, whose earnings are not sufficient for a living. They earned normally Rs 3 to 5 thousand per month in their normal work and by working for the entry operators earned extra income of Rs 2 to 4 thousand per month. Their signatures were taken on blank gift deeds, cheque books, share application money etc. In fact these persons signed all types of papers they were asked to sign. They were made directors of companies, partners of firms and proprietor of different concerns solely for operation of these accounts. Actually, many of them were not even aware of the tax implications etc. Their only concern was with the few thousand rupees given to them by the entry operators.

3. Summing up, the report as a result of these extensive enquiries carried out by the D.I.T. (Inv.), New Delhi has established the non-genuineness of transactions, whether shown by beneficiaries as inflow of Share Capital or receipt of Gifts or consideration for sale-purchase. The creditworthiness of the persons/persons controlling the concerns who have given these credit entries/share capital/gifts/sale consideration has also not been established as they have been seen to be man of no means.

4. The said report of Investigation wing of the Department, on the investigations conducted in the case of various accommodation entry providers along with the list of the beneficiaries of their services, was forwarded to this office through Addl.CIT, Range-5, vide letter F.No. Addl. CIT/Range-5/2005-06/759, dated 13.3.2006.

5. In the instant case of the assessee, M/s.K.R. Packaging (P) Ltd. information has been received that the assessee has taken accommodation entries as noted below:-

BENEFICIARY BANK NAME	BENEFICIARY BANK BRANC H	VALUE OF ENTRY TAKEN	INSTRUMETN No. BY WHICH ENTRY TAKEN	DATE ON WHICH ENTRY TAKEN	NAME OF ACCOUNT HOLDER OF ENTRY GIVING ACCOUNT
SBI	BALLABGARH	**300000**	**259071**	**4.7.02**	Winsome Port Folio P Ltd

SBI	BALLABGARH	**300000**	**511537**	**20.7 .02**	Weal Iron and Steel Co. P Ltd
SBI	BALLABGARH	**300000**	**To *CLG*: 00897050**	**22.1 1.02**	Rahul Finlease P. Ltd
SBI	BALLABGARH	**300000**	**To *CLG*: 00897050**	**22.1 1.02**	Sekhawati Finance P. Ltd
SBI	BALLABGARH	**300000**	**To *CLG*: 00897050**	**22.1 1.02**	SRS Vijay Sa;es P. Ltd
SBI	**BALLABGARH**	**300000**		**22.1 1.02**	Rahul Finlease P. Ltd
SBI	**BALLABGARH**	**300000**		**22.1 1.02**	Sekhawati Finance P. Ltd
SBI	**BALLABGARH**	**300000**		**22.1 1.02**	SRS Vijay Sales P. Ltd

6. As per the findings of the investigation report, the creditworthiness of the lenders has not been established and these transactions seem to be non genuine. I therefore have reasons to believe that this amount of Rs. 18,00,000/- represents income of the assessee chargeable to tax which has escaped assessment for A.Y. 2003-04."

6. We have given thoughtful consideration to the aforementioned reasons. It can be seen that the aforementioned reasons nowhere mention the persons who were investigated by the investigation wing. In fact, the entire report has used general and vague terms, like

“certain persons engaged in providing accommodation entries to beneficiaries. The reasons have also given modus operandi at para 2.2 and again in general terms “operator gave account holders amounts ranging from Rs.1000 to 2000 per month.

7. There is not even a single name mentioned. It is not known who were providing accommodation entries, who were running cartel and who were operating bank account. Without mentioning the names at para 5 name of the assessee has been mentioned alleging that it has taken accommodation entries. It can be seen that there are repetitive entries and on the basis of aforementioned reasons with repetitive entries, the Assessing Officer assumed jurisdiction and issued a notice under section 148 of the Act. In our considered opinion, the entire exercise of the Assessing Officer is devoid of any application of mind.

8. The Hon'ble Delhi High Court was seized with a similar situation in the case of RMG Polyvinyl [I] Ltd 29/2017 and CM No. 1009/2017, order dated 07.07.2017. The relevant part of the judgment reads as under:

“9. However, in neither of the above cases are the facts similar to those in the present case. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs.78 lakh and not Rs.1.56 crore would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.

10. In this context the following observations of this Court in CIT v. Suren International (2013) 357 ITR 24 (Del)are relevant:

"....In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded."

11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."

9. The Hon'ble Delhi High Court, again, in the case of Syfonia Trade Links Pvt Ltd in WT(C) 12544/2018 order dated 26.03.2021 considered similar issue and held has under:

"9. We have heard the learned counsel for the parties and perused the record. Before we proceed further, it would be helpful if we were to set forth certain well-established principles enunciated by the courts over the years vis-à-vis initiation of proceedings under Section 147 of the Act. (i) The reasons which lead to the formation of opinion or belief that the assessee's income chargeable to tax has escaped assessment should be inextricably connected. In other words, the reasons for the formation of opinion should have a rational connection with the formation of the belief that there has been an escapement of income chargeable to tax (See: ITO v. Lakhmani Mewal Das, 1976 3 SCC 757] (ii) The expression "reason to believe" is stronger than the word "satisfied". The belief should be based on material that is relevant and cogent. (See: Ganga Saran & Sons Pvt. Ltd. v. ITO, 1981 3 SCC 143]. (ii) (a) The assessing officer should have reasons to believe

that the taxable income has escaped assessment. The process of reassessment cannot be triggered based on a mere suspicion. The expression "reason to believe" which is found in Section 147 of the Act does not have the same connotation as "reason to suspect". The order recording reasons should fill this chasm. The material brought to the knowledge of the assessing officer should have nexus with the formation of belief that the taxable income of the assessee escaped assessment; the link being the reasons recorded, in that behalf, by the assessing officer. www.taxguru.in W.P. (C) 12544/2018 Page 11 of 21 (iii) The AO is mandatorily obliged to record reasons before issuing notice to the assessee under Section 148(1) of the Act. This is evident from the bare perusal of sub-section (2) of Section 148 of the Act. (iv) No notice can be issued under Section 148 of the Act by the A.O. after the expiry of four years from the end of the relevant AY unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner arrives at a satisfaction based on the reasons recorded by the A.O. that it is a fit case for issuance of a notice under Section 148 of the Act. [See: Section151(1) of the Act]. (v) The limitation for issuance of notice under Section 148 as prescribed under Section 149 of the Act commences from the date of its issuance while the time limit for passing the order of assessment, reassessment, computation and re-computation as prescribed under Section 153 of the Act commences from the date of service [See: R.K. Upadhyay v. Shanab Bhai P. Patel, (1987) 3 SCC 96]. (vi) A jurisdictional error would occur, which can be corrected by a writ court, if reasons to believe are based on grounds that are either arbitrary and/or irrational. (See: Sheo Nath Singh v. Appellate ACIT, Calcutta (1972) 3 SCC 234]. 9.1. Thus, if one were to apply the

aforestated principles, it would be clear as daylight that the order recording reasons discloses complete non-application of mind."

9. The Hon'ble High Court of Delhi, again in the case of PCIT Vs. G & G Pharma, 384 ITR 0147, reiterated that the Assessing Officer must apply his mind to material in order to have reasons to believe that income of the assessee escaped assessment was missing, reopening of assessment, not justified. If the facts of the case in hand are considered in light of the decisions mentioned here in above, it can be concluded that the action for reopening has been taken mechanically on the information received from the Investigation Wing mentioned in the reasons elsewhere, wherein it was informed that some persons have indulged in providing accommodation entries to some beneficiaries without mentioning the names of the service provider.

10. Undoubtedly, the Assessing Officer has blindly relied upon the report of the Investigation Wing, which itself is vague and devoid of any application of mind, as there are repetitive entries. In our considered opinion, mere recording of reasons on the basis of information from the Investigation Wing and issuing notice for initiation of reassessment proceedings does not constitute application

of mind, much less independent application of mind. Therefore, the proceedings are without jurisdiction.

11. Considering the totality of the facts, we are of the considered view that assumption of jurisdiction by issue of notice u/s 148 is bad in law and therefore, assessment, pursuant to such notice deserves to be set aside. Since we have held that the assumption of jurisdiction is bad in law, we do not find it necessary to dwell into the merits of the case.

12. Before parting, the ld. DR has relied upon various judicial decisions in 148 taxmann.com, 440, 392 ITR 444 and 250 Taxmann.com 102, which have been duly considered by us but found to be not relevant on the peculiar facts of the case in hand.

12. In the result the appeal of the assessee in ITA No. 71/DEL/2021 is allowed.

The order is pronounced in the open court on 07.07.2023.

Sd/-	Sd/-
[ASTHA CHANDRA] **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 07th JULY, 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	