IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.405/Bang/2023 S.P No.29/Bang/2023
Assessment Year: 2017-18

M/s Crystal Granite and Marble Pvt. Ltd., 41 KM, Bangalore-Mysore Road, Village Madapura, Ramanagaram-571 511. **PAN No. – AAACC 1661 J**	**Vs.**	The Dy. Commissioner of Income Tax, Circle-2(1)(1), Bengaluru.
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Rajgopal, C.A
Respondent by	:	Smt. Vidya K, JCIT (DR)

Date of Hearing	:	10.08.2023
Date of Pronouncement	:	17.08.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order dated 17.03.2023 passed u/s 250 of the Income-tax Act, 1961 by the NFAC Delhi DIN & Order No. ITBA/NFAC/S/250/2022-23/1050883261(1) for the assessment year 2017-18 on the following grounds of appeal:-

"1. The impugned order passed by the learned CIT(A), NFAC to the extent which is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The order of the learned assessing officer in so far it is prejudicial to the interest of the appellant is bad, erroneous in law and contrary to the facts

and circumstances of the case and the Ld. Commissioner (Appeals) erred in upholding the same.

3. As regards invalidity of the proceedings initiated u/s 148 of the Income Tax Act, 1961:

i. The learned AO in law and in facts erred in commencing the proceedings u/s 148 of the Act when the notification bearing No. 20/2021 F.no.370142/35/2020-TPL dated 31.03.2021 and notification No.38/2021/ F.No.370142/35/2020-TPL dated 27.04.2021 issued by Central Board of Direct Taxes, as ultra wires the provisions of Income Tax Act,1961 and other laws (Relaxation and Amendment of certain provisions) Act, 2020.

ii. The learned AO has failed to recognise that the extension of time limit by the other laws (Relaxation and Amendment of certain provisions) Act, 2020 does not apply to notices issued under erstwhile section 148 of the Act after 01.04.2021.

iii. The learned AO failed to follow the amended provisions of the Act with respect to the enquiry u/s 148A. The notice issued u/s 148 was also invalid on the ground that no tangible basis was mentioned for reopening the assessment.

iv. The learned CIT(A), NFAC has failed to consider that the impugned notices u/s 148 are barred by limitation and the Ld. AO, before issuing the impugned notices under section 148 of the Income-tax Act, has failed to observe the statutory formalities under section 148A of the Income-tax Act as prescribed by the Finance Act, 2021 which are applicable w.e.f 15` April, 2021 before issuance of notices under section 148 of the Act on or after 1st April, 2021.

v. The learned CIT(A), NFAC has failed to consider that in the appellant's case the earlier re-assessment proceedings and order u/s 147 dated 31.03.2022 were set aside vide Hon'ble Supreme Court order dated 04.05.2022 in the case of Ashish Agarwal Vs. Union of India.

vi. The learned appellate authority, in law and in facts, erred in considering that fresh re-assessment proceedings under the amended provision of section 147 are already under way and the issue is under consideration by the learned Authorities below.

vii. The learned appellate authority has erred, in law and in facts, by failing to consider that since the notices are issued under the old provisions which have already been substituted by amended provisions and legal pronouncements, the notices are invalid and hence bad in law.

4. As regards the absence of justification with regards to the addition of Rs. 81,00,000/- on the grounds of income escaping assessment.

i. The learned AO has failed to provide any cogent reasons regarding the escapement of income. The learned AO has erred in treating the genuine advance received as a bogus entry merely because the payer belonged to a group of companies where certain irregularities were noticed, without actually examining the other party who had advanced and to whom the advance is returned due to cancellation of the order.

ii. The learned AO has neither cross verified with the other party who has given the advance nor made any enquiries nor allowed to cross verify the other party and thus, concluded the assessment without giving adequate opportunity of being heard and cross verification.

iii. Without prejudice to the above, the learned AO has erred in holding that the appellant has failed to respond to the notice u/s 148 dated 30.06.2021 where the return of income was duly submitted. The delay in fllinthreturn was due to the technical issues in the new Income Tax portal due to migration which was beyond the control of the appellant.
iv. Without prejudice to the above, the learned Assessing Officer has failed to discharge his duty of rebutting the evidences produced and also failed in bringing any assessee specific evidence on record to prove the case wherein additions made under section 68 could be justified.
v. The learned AO has failed in recognising that the amount received was towards the advances against sales and the amount was partly repaid to the party on the same financial year and hence the question of unexplained cash credit u/s 68 does not anse.
vi. On the facts and circumstances of the case the learned assessing officer erred in taxing the amount received from M/s Aneri Fincaps Limited as unexplained cash credit u/s 68 when all ingredients contemplated under section 68 had been duly satisfied on aspect of identity of creditors and genuineness of transactions. Moreover, loans had been granted through banking channels and copy of bank statements also had been provided.
vii. The learned AO has failed to appreciate the fact that the appellant had returned majority of the amount received as advance before the end of the relevant financial year. However, the addition was made to the total amount received during the year.
5. Without prejudice to the above, on the facts and circumstances of the case, the learned assessing officer erred in considering the income from business as Rs. 3,16,71,211/- in the statement of computation of income issued along with the assessment order as against the business income reported of Rs. 2,91,18,114/- as per the ITR and the assessment order u/s 143(3). The addition of Rs. 25,53,097/- made in the taxable business income of the appellant was without sufficient ground and no explanation was given thereof.
6. The Ld. Commissioner (Appeals) is erred in sustaining the additions made by the Ld. AO in his order."

2. The brief facts of the case are that the assessee is engaged in the business of processing and sale of granites. The assessee filed return of income u/s 139(1) of the Act on 28/10/2017, subsequently, the return was revised u/s 139(5) of the Act on 23/11/2018 declaring same income. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessment was completed us/ 143(3) of the Act and returned income was accepted. Later on, the AO received information+ from the Director of Investigation relating to M/s Crystal

Granites Marbles Pvt. Ltd. that during the course of search proceedings u/s 132 of the Act in case of M/s Oneworld group of cases on 06.11.2019, the statements were recorded of Shri Rajesh G. Mehta admitting that he was only providing bogus sales & purchase bills to various entities, and there was no actual supply of goods. Further during the post search enquiry statement of Shri Urvil A Jani, one of the key persons of the Oneworld group of companies recorded on 08.02.2020, wherein he admitted that various Oneworldd group entities have made bogus purchase/bogus sales transactions with various entities controlled and managed by Shri Rajesh G Mehta and he also provided the details. M/s Aneri Fincap Ltd. has provided accommodation entry to the assessee company in the form of bogus loan which is also controlled by Rajesh G. Mehta. Accordingly, on the bases of reasons recorded, approval was obtained from the competent authority for issuing notice u/s 148. The notice was issued to the assessee u/s 148 of the Act on 30th June, 2021 requiring the assessee to file return within 30 days from the service of notice. The assessee filed return in response to notice u/s 148 of the Act return on 15/09/2021. Thereafter, the assessee received various notices but he did not respond, thereafter the a show cause notice was issued to the assessee on 17.03.2022. The assessee filed reply on 21/03/2022 which was not accepted by AO and addition was made u/s 68 of the Act for Rs.81,00,000/- and assessment was completed on 31/03/2022.

3. Aggrieved from the above order, the assessee filed appeal before the CIT(A) and the CITA) issued various notices on different dates but the assessee did not respond. Accordingly, the CIT(A) decided the

issue on the basis of documents available and dismissed the appeal of the assessee on 17/05/2023.

4. Aggrieved from the order of CIT(A), the asssesee field appeal before the ITAT.

5. The ld. AR submitted that, the assessee filed appeal before the CIT(A), the CIT(A) passed the order u/s 250 of the Act confirming the addition of Rs.81,00,000/- by holding that the assessee did not comply any of the notices served to the assessee. The ld.AR further submitted that the AO issued another notices on 02/06/2022 u/s 148A(b) of the Act mentioning the reason for selecting the case for reassessment pursuant to the decision of Hon'ble Supreme Court in the case of UOI Vs. Ashish Agarwal in Civil Appeal NOS. 3005 to 2017 , 3019-3020 of 2022 order dated 04/05/2022 and also pursuant to the CBDT Instruction No.01/2022 dated 11/05/2022 on the same reasons recorded earlier and very same addition of Rs.81 lakhs was also made and reassessment was completed by the AO on 23/05/2023. Against the reassessment order passed under amended provisions the assessee filed appeal before the CIT (A) on 22.06.2023 bearing acknowledgement No. 27835785022062023 which is not yet disposed off. Accordingly, he submitted that the reassessment order passed by the AO under the old provisions is not sustainable in the eyes of law. The tax demand raised in both the orders passed by the AO are still in existence. He filed written synopsis before the ITAT, which is as under:-

A. WRITTEN SUBMISSION:

1. **The impugned order passed by the learned CIT(A), NFAC to the extent which is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.** Page No. 9 of the **Paper Book of the Appeal Memo.** (Ground No. 1)

2. **The order of the learned assessing officer in so far it is prejudicial to the interest of the appellant is bad, erroneous in law and contrary to the facts and circumstances of the case and the Ld. Commissioner (Appeals) erred in upholding the same.** Page No. 9 of the **Paper Book of the Appeal Memo.** (Ground No. 2)

3. **AS REGARDS INVALIDITY OF THE PROCEEDINGS INITIATED U/S 148 OF THE INCOME TAX ACT, 1961:**

   A. As regards, the learned AO in law and in facts erred in commencing the proceedings u/s 148 of the Act when the notification bearing No. 20/2021 F.no.370142/35/2020-TPL dated 31.03.2021 and notification No.38/2021/ F.No.370142/35/2020-TPL dated 27.04.2021 issued by Central Board of Direct Taxes, as ultra vires the provisions of Income Tax Act,1961 and other laws (Relaxation and Amendment of certain provisions) Act, 2020.
   (Ground no. 3(i), page no. 9 of Paper Book of Appeal Memo)

   In this regard, it is submitted that,

   a. The appellant's case for AY 2017-18 was selected for reassessment u/s 147 by issuing notice u/s 148 of the Act on 30.06.2021 relying on the extension of time limits mentioned in notification bearing No. 20/2021 F.no.370142/35/2020-TPL dated 31.03.2021 and notification No.38/2021/ F.No.370142/35/2020-TPL dated 27.04.2021. The copy of the notice u/s 148 dated 30.06.2021 is attached herewith as Annexure 2 of this paper book. In this regard, the provisions of the aforesaid notifications are mentioned below:

   b. The Central Government in exercise of powers under section 3(1) of the Act 2020 through Central board of Direct Taxes issued a Notification No. 20/21 dated 31-3-2021 and extended the time limit for issuance of notice under section 148 of the 1961 Act from 31-3-2021 to 30-4-2021. The aforesaid notification reads as under:

      - "*Notification bearing No. 20/2021 F.no.370142/35/2020-TPL dated 31.03.2021*
        (A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

        (a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, —
        (i) the 31st day of March, 2021 shall be the end date of the period during which the timelimit, specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and
        (ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

        Explanation.— *For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit*

specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

c. Another Notification No.38/2021 No. 370142/35/2020-TPL dated 27-4-2021 was issued under section 3(1) of the Act by the Central Government, by which the time limit for issuance of notice under section 148 of the 1961 Act was further extended from 30-4-2021 to 30-6-2021. As per the explanation in the aforesaid notification, it was provided that unamended provisions of Section 148, 149 and 151 shall apply to the notices issued under section 148 even after the expiry of time period mentioned in unamended section 149 of the 1961 Act. The aforesaid notification reads as under:

- *"Notification bearing No.38/2021/ F.No.370142/35/2020-TPL dated 27.04.2021*

  (A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

  (a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;

  (b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income-tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

  Explanation.— *For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply."*

d. Hence by virtue of the above notifications, CBDT extended the applicability of erstwhile provisions of section 147 till 30-06-2021.

e. However, the provisions of section 148, 148A and 149 were amended vide Finance Act, 2021 mentioning new set of procedures to be carried out for the reassessment proceedings u/s 147. Hence there was two overlapping provisions of law from 01.04.2021 to 30.06.2021 as far as the reassessment u/s 147 was concerned.

f. It is well settled in law that substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Substitution thus combines repeal and fresh enactment. Therefore, the amended provision of section 148A to be applied in respect of notices issued with effect from 1-4-2021 and erstwhile provisions of sections 147 to 151 cannot be resorted to as, it has been repealed by the amending Act. Even otherwise, no saving clause has been provided in the Act for saving the erstwhile provisions of sections 147 to 151.

g. Moreover, by substituting the provisions of the Act by means of the Finance Act, 2021 with effect from 1-4-2021, the old provisions were omitted from the statute book and replaced by fresh provisions with effect from 1-4-2021. Relying on the

principle -substitution omits and thus obliterates the pre-existing provision, it has been further submitted, in absence of any saving clause shown to exist either under the Ordinance, the Enabling Act or the Finance Act 2021, there exists no presumption in favour of the old provision continuing to operate for any purpose, beyond 31-3-2021.

h. Therefore, other things apart, undeniably, on 1-4-2021, by virtue of plain/unexcepted effect of section 1(2)(a) of the Finance Act, 2021, the provisions of sections 147, 148, 149, 151 (as those provisions existed upto 31-3-2021), stood substituted, along with a new provision enacted by way of section 148A of that Act. In absence of any saving clause, to save the pre-existing (and now substituted) provisions, the assessing officer could only initiate reassessment proceeding on or after 1-4-2021, in accordance with the substituted law and not the pre-existing laws.

i. Considering the above, it is clear that theabove notifications are ultra vires the provisions Income Tax Act, 1961. Therefore, reassessment proceedings initiated in appellant's case for AY 2017-18 on 30.06.2021 under the unamended provisions of the Act relying on the above notifications are bad in law.

j. The appellant submits based on above that the validity of the notice issued has to be adjudged on the basis of law as existing on the date of notice. Here, in the appellant's case, the first notice u/s 148 was served on 30-06-2021 (Annexure no. 2) and hence the amended provisions of section 147 should have been followed.

k. Reliance is placed on the following,

(i). Tata Communications Transformation Services Ltd.[2022] 137 taxmann.com 2 (Bombay)

"This Court is of the view that had the intention of the Legislature been to keep the erstwhile provisions alive, it would have introduced the new provisions with effect from 1st July, 2021, which has not been done. Accordingly, the notices relating to any assessment year issued under section 148 on or after 1st April, 2021 have to comply with the provisions of sections 147, 148, 148A, 149 and 151 of the Income Tax Act, 1961 as specifically substituted by the Finance Act, 2021 with effect from 1st April, 2021. Consequently, this Court is of the opinion that as the Legislature has permitted re-assessment to be made in this manner only, it can be done in this manner, or not at all."

(ii). Gujarat Power Corporation Ltd. [2013] 350 ITR 266 (Guj.),

"41. The powers under section 147 of the Act are special powers and peculiar in nature where a quasi-judicial order previously passed after full hearing and which has otherwise become final is subject to reopening on certain grounds. Ordinarily, a judicial or quasi-judicial order is subject to appeal, revision or even review if statute so permits but not liable to be reopened by the same authority. Such powers are vested by the Legislature presumably in view of the highly complex nature of assessment proceedings involving a large number of assessees concerning multiple questions of claims, deductions and exemptions, which assessments have to be completed in a time frame. To protect the interests of the Revenue, therefore, such special provisions are made under section 147 of the Act. However, it must be appreciated that an assessment previously framed after scrutiny when reopened, results into considerable hardship to the assessee. The assessment gets reopened not only qua those grounds which are recorded in the reasons, but also with respect to the entire original assessment, of course at the hands of the Revenue. This obviously would lead to considerable hardship and uncertainty. It is precisely for this reason that even while recognizing such powers, in special requirements of the statute, certain safeguards are provided by the statute which are zealously guarded by the courts. Interpreting such statutory provisions courts upon courts have held that an assessment previously framed cannot be reopened on a mere change of opinion. It is stated that the power to reopening cannot be equated with review."

(iii). Indian Tobacco Association [2005] 7 SCC 396,

The Supreme Court considered the effect of substitution of a statutory provision by new one. It was observed as under :-

"15. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, 5th Edition, at page 1281, the word "substitute" has been defined to mean "to put in the place of another person or thing". or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".

(iv). Rakesh Aggarwal [1997] 225 ITR 496/[1996] 87 Taxman 306,

"the Delhi High Court held that in view of the proviso to section 147 notice for reassessment under section 147/148 should only be issued in accordance with the new section 147 and where the original assessment had been made under section 143(3), then in view of the proviso to section 147 the notice under section 148 would be illegal if issued more than four years after the end of the relevant assessment year. In the instant case, the law prevailing on the date of issue of the notice under section 148, i.e., 20-11-1998, had to be seen. Admittedly, by that date, the new section 147 had come into force and, hence, it was the new section 147 which would apply to the facts of the present case. In the instant case, there was admittedly no failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for the assessment."

B. As regards, the learned AO has failed to recognise that the extension of time limit by the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 does not apply to notices issued under erstwhile section 148 of the Act after 01.04.2021.

(Ground no. 3(ii), page no. 9 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. Department of Revenue (CBDT) had issued notifications to extend the time limits in exercise of powers conferred under subsection (1) of Section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 from 31st March 2021 to 30th April 2021 and subsequently to 30th June 2021, vide Notification No. 20/2021, dated 31-3-2021 and Notification No. 38/2021, dated 27-4-2021.

b. The extension of time limits as specified by the Central Government is an enactment to extend timelines only from 1-4-2021 onwards. Plainly put, in absence of any saving clause to save pre-existing provisions, the revenue authorities could only initiate proceeding on or after 1-4-2021, in accordance with the substituted laws and not the pre-existing laws.

c. The Enabling Act, that was pre-existing, confronted the Income-tax Act as amended by the Finance Act, 2021, as it came into existence on 1-4-2021. In both the provisions, i.e. the Enabling Act and the Finance Act, 2021, there is absence, both of any express provision in its effort to delegate the function, to save the applicability of provisions of pre-existing sections 147 to 151, as they existed up to 31-3-2021.

d. Consequently, from 1-4-2021 onwards all references to issuance of notice contained in the TOLA Act, 2020 must be read as reference to the substituted provisions only. For all re-assessment notices which had been issued after 01-04-2021, after the enforcement of amendment by the Finance Act, 2021, no jurisdiction has been assumed by the assessing authority against the assessees under the unamended law. No time extension could, thus, be made under section 3(1) of the TOLA Act, 2020 read with the Notifications issued thereunder.

e. Therefore, in the absence of any specific clause in the Finance Act, 2021 either to save the provisions of the TOLA Act, 2020 or the notifications issued thereunder, by no interpretative process can those notifications be given an extended run of life, beyond 31-3-2021.

C. The learned AO failed to follow the amended provisions of the Act with respect to the enquiry u/s 148A. The notice issued u/s 148 was also invalid on the ground that no tangible basis was mentioned for reopening the assessment.
(Ground no. 3(iii), page no. 9 of Paper Book of Appeal Memo)

i. Section 148A of the Act was inserted by the Finance Act, 2021 and it was effective from 1st April, 2021. Thus, any assessment to be reopened by the Learned Assessing Officer must issue notice under section 148 of the Act after following the procedures mentioned in section 148A of the Act.

ii. In this regard, the extracts of section 148A of the Act which was introduced vide Finance Act, 2021 is produced hereunder for better understanding,

148A. The Assessing Officer shall, before issuing any notice under section 148,

(a) ***conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;***

(b) *provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued* ***on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);***

(c) *consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*

(d) *decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

……..
……..

iii. As per the above extract of the section 148A of the Act, the Learned Assessing Officer before issuing notice under section 148 of the Act, should have provided an opportunity of being heard to the Assessee, by serving a notice allowing the Assessee to respond to the said notice by giving at least 7 days of time but not more than 30 days from the date of service of the notice. He should consider the reply of the Assessee, decide on the basis of materials available on record and decide by passing an order with the prior approval of the specified authority referred under section 151 of the Act.

iv. However, in case of the Appellant, the Learned Assessing Officer had issued a notice under section 148 of the Act on 30th June 2021,citing the escapement of income under section 147 of the Act without following the procedures mentioned in section 148A of the Act. The reason for reopening the case of the Appellant for AY 2017-18 was also not mentioned in the notice issued by the Learned Assessing Officer.

v. The Learned Assessing Officer has not issued notice as required under section 148A of the Act before issuing the notice u/s 148 and not provided opportunity of being heard to the Appellant before reopening the case.

vi. The learned officer was not in possession of any tangible material for reopening the assessment nor it was shared to the appellant as required under the amended Act.

vii. Thus, the Learned Assessing Officer has not followed the formal procedures required under section 148A of the Act before issuing a notice under section 148 of the Act and has failed to comply with amended provisions of the Act.

viii. Hence, the notice issued by the Learned Assessing Officer under section 148 of the Act, without following the procedures mentioned under section 148A of the act was invalid. Therefore, the consequential proceedings and the order issued u/s 147 are bad in law and hence to be quashed.

D. The learned CIT(A), NFAC has failed to consider that the impugned notices u/s 148 are barred by limitation and the Ld. AO, before issuing the impugned notices under section 148 of the Income-tax Act, has failed to observe the statutory formalities under section 148A of the Income-tax Act as prescribed by the Finance Act, 2021 which are applicable w.e.f 1st April, 2021 before issuance of notices under section 148 of the Act on or after 1st April, 2021.
(Ground no. 3(iv), page no. 9 of Paper Book of Appeal Memo)

i. Before issuing the notice u/s 148, the learned officer ought to have considered the amended provisions of section 148, 148A and 149 for the procedure to handle the reassessment after 01.04.2021.

ii. Amended section 148 of the Act read as below:

"Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, ***the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A****, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment *in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained* ***prior approval of the specified authority*** *to issue such notice.*

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

…….

……"

iii. In the appellant's case, the notice u/s 148 was issued without following the provisions of section 148A and without the prior approval of the specified authority. Further, the appellant was not given the details of the information suggesting income escaping assessment. Hence the provisions of the amended law in section 148were not followed.

iv. Amended section 149 of the Act mentions about the time limit for issue of notice u/s 148. The extracts of amended section 149 is as below:

> "*(1) No notice under section 148 shall be issued for the relevant assessment year,—*
>
> *(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
>
> *(b)* ***if three years, but not more than ten years****, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax,* ***represented in the form of asset****, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*
>
> ……
> ……"

v. The notice u/s 148 was issued to the appellant on 30.06.2021 i.e., after three years from the date of the AY 2017-18. Hence the provisions of sub clause (b) of section 149(1) applies in appellant's case. As per the sub clause, only when the assessing officer has evidence of income escaping assessment "represented in the form of asset", the notice u/s 148 is supposed to be issued.

vi. The notice u/s 148 neither mentioned the fact of income escaped assessment which was represented in the form of asset, nor the learned AO has any information for issue of notice in compliance to the provisions of amended section 149. Hence the provisions of section 149 are also violated.

vii. Therefore, the notice issued by the Learned Assessing Officer under section 148 of the Act, without following the procedures mentioned under amended provisions of the Act was invalid. Hence the consequential proceedings u/s 147 is bad in law and to be quashed.

E. As regards, the learned CIT(A), NFAC has failed to consider that in the appellant's case the earlier re-assessment proceedings and order u/s 147 dated 31.03.2022 were set aside vide Hon'ble Supreme Court order dated 04.05.2022 in the case of Ashish Agarwal Vs. Union of India.
(Ground no. 3(v), page no. 10 of Paper Book of Appeal Memo)

F. As regards, the learned appellate authority has erred, in law and in facts, by failing to consider that since the notices are issued under the old provisions which have already been substituted by amended provisions and legal pronouncements, the notices are invalid and hence bad in law.
(Ground no. 3(vii), page no. 10 of Paper Book of Appeal Memo)

The Hon'ble Supreme Court in the case of Ashish Agarwal Vs. Union of India, in exercise of its powers under article 142 of the Constitution of India, had made a landmark judgement on 04th May 2022 setting aside all the judgements and orders passed on the reassessment notices issued on or after 01st April 2021 till 30.06.2021 under the unamended section of 148of the Act. The apex court also ruled that all such reassessment notices issued on or after 01stApril 2021 are deemed to be notice issued u/s 148A of the amended Act and should be governed by the substituted sections of 147 to 151 of the Act, which came into effect vide Finance Act, 2021 on PAN India basis. Further, the AO shall provide information and material to the assessee within 30 days so that assessee can reply within 2 weeks.This gave clarity and had overriding effect to all the judgements and orders passed by various lower authorities to avoid any further appeals.

In case of the Appellant, initial notice under unamended provisions of section 148 of the Act was issued on 30th June 2021, which is after 01st April 2021, and the Learned Assessing Officer passed the impugned order under reassessment proceedings on 31st March 2022 which was served upon the Appellant on 2nd April 2022. The Appellant being aggrieved by the assessment order of the Learned Assessing Officer, had appealed against the said assessment order with CIT(Appeals)on 03rd May 2022.

As the notice issued to the Appellant under section 148 of the Act was after 1st April 2021, but was not as per substituted section 148A of the Act, the entire proceedings under the old provisions and the assessment order passed by the Learned Assessing Officer were set aside by virtue of the Hon'ble Supreme Court order dated 04.05.2022. The Appellant was thus under the honest impression that as the impugned order passed by the Learned Assessing Officer was set aside, appeal filed by the Appellant against the set aside assessment order was not to be proceeded with.

However, the learned CIT(Appeals), NFAC has not considered the apex court judgment in landmark case of *Union of India Vs. Ashish Agarwal* dated 04.05.2022 on the validity of earlier reassessment proceedings. As mentioned in the above paras, the apex court order had set aside all the orders issued under unamended section 147 of the Act and instructed the AOs to start the fresh reassessment proceedings. The learned CIT(A) without considering this, continued to issue hearing notices to the Appellant and had passed an order under section 250 of the Act, on 17th March 2023 confirming the additions in the impugned order passed u/s 147 of the unamended Act.

Since such erstwhile proceedings were consequentially invalid and no longer existing as per amended provisions, the appellant did not respond to any notices issued. However, such non-response should not garner any penalty or carry any adverse impact, since such proceedings no longer exist, having been substituted vis-à-vis the judgement of the Hon'ble Supreme Court.

G. As regards, the learned appellate authority, in law and in facts, erred in considering that fresh re-assessment proceedings under the amended provision of section 147 are already under way and the issue is under consideration by the learned Authorities below.
(Ground no. 3(vi) and 3(vii), page no. 10 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

The Hon'ble Supreme Court while deciding on Civil Appeal No. 3005/2022, remarked that any re-assessment proceedings u/s 147 initiated under the earlier provisions must be closed within the time limit specified in Notification No. 20/2021, dated 31-3-2021 and Notification No. 38/2021, dated 27-4-2021, and thereafter with effect from 01-04-2021, any new re-assessment proceedings can be initiated only by invoking the amended provisions of section 147. Thus the initial notice issued u/s 147 on 30.06.2021 and the further proceedings was held invalid by virtue of this landmark judgment.

Further, the apex court order also provided for compliance to section 148A wherein prior to re-opening of re-assessment, the Ld. AO must provide the assessee with the opportunity to explain why notice u/s 148 must not be served. The apex court also mentioned that the respective High Courts have rightly held that the benefit of new provisions of sec.147 shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1-4-2021.

The supreme court issued following directions in its order,

"(i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of section 148A(b). The

assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesees can reply to the show cause notices withintwo weeks thereafter;"

Consequent to the above, the CBDT also issued Instruction No. 01/2022 circulated vide F.No.279/Misc./M-51/2022-ITJ dated 11.05.2022 mentioning the manner of completing the proceedings u/s 147 for the reopened case. The copy of CBDT instruction is attached as **Annexure 3** to this paper book.

Subsequently the Appellant was served notice under substituted section 148A of the Act and reassessment proceedings for AY 2017-18 were reopened and the issue under consideration was the same as it was in earlier reassessment proceedings. The copy of the show cause notice issued u/s 148A(b) of the Act on 02.06.2022 is attached as **Annexure 4** of this paper book.

The Appellant has submitted its reply, explanations, and documentary evidence to all the notices issued by the Learned Assessing Officer in that subsequent reassessment proceedings. However, the Learned Assessing Officer was not satisfied with the submissions of the Appellant and has made an addition vide order dated 23.05.2023. The copy of the order is attached herewith as **Annexure 5**of this paper book. Against this order, the Appellant filed appeal to Hon'ble CIT(A) within the time limits on the merits of the case.

The learned CIT(A) did not consider the fact of this consequential reassessment proceedings which was underway while issuing the hearing notices u/s 250 or while passing the impugned order u/s 250.

Hence the same issue has been assessed twice and addition was made for the same income. The appellant is liable to pay disputed tax under both the orders u/s 147 which was passed on the same issue. This is purely against the principles of law and the initial order u/s 147 dated 31.03.2022 which was passed under the unamended provisions of the Act need to be quashed on this ground.

The learned CIT(A) did not consider this and proceeded with confirming the addition in the order u/s 147 dated 31.03.2022 which is a mistake apparent on record and hence the impugned order u/s 250 also to be quashed.

In this regard, the Appellant places reliance on the followingjudgements;

(i). Bpip Infra (P.) Ltd [2021] 133 taxmann.com 48 (Rajasthan)

> *"It is declared that the Ordinance, the Enabling Act and sections 2 to 88 of the Finance Act 2021, as enforced w.e.f. 1-4-2021, are not conflicted. Insofar as the Explanation appended to clause A(a), A(b), and the impugned Notifications dated 31-3-2021 and 27-4-2021 (respectively) are concerned, we declare that the said Explanations must be read, as applicable to reassessment proceedings as may have been in existence on 31-3-2021 i.e. before the substitution of sections 147, 148, 148A, 149, 151 & 151A of the Act. Consequently, the reassessment notices in all the writ petitions are quashed. It is left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by Finance Act, 2021, after making all compliances, as required by law."*

(ii). Rajeev Bansal [2023] 147 taxmann.com 549 (Allahabad)

> *"The new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessees as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made applicable even in respect of the proceedings related to past assessment years, provided section 148 notice has been issued after 1-4-2021.*

The judgments of several High Courts would result in no assessment proceedings at all, even if the same are permissible under the Finance Act, 2021 as per substituted sections 147 to 151. To remedy the situation where revenue became remediless, in order to achieve the object and purpose of reassessment proceedings, it was observed that the notices under section 148 after the amendment was enforced with effect from 1-4-2021, were issued under the unamended section 148, due to bona fide mistake in view of the subsequent extension of time by various notifications under the Enabling Act (TOLA, 2020).

(II) The notices ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 as per the Finance Act, 2021.

(III)There appears to be a genuine non-application of the amendments as the officers of the revenue may have been under a bona fide belief that the amendments may not yet have been enforced."

4. <u>AS REGARDS THE ABSENCE OF JUSTIFICATION WITH REGARDS TO THE ADDITION OF RS. 81,00,000/- ON THE GROUNDS OF INCOME ESCAPING ASSESSMENT.</u>

H. As regards, the learned AO has failed to provide any cogent reasons regarding the escapement of income. The learned AO has erred in treating the genuine advance received as a bogus entry merely because the payer belonged to a group of companies where certain irregularities were noticed, without actually examining the other party who had advanced and to whom the advance is returned due to cancellation of the order.

I. As regards, the learned AO has neither cross verified with the other party who has given the advance nor made any enquiries nor allowed to cross verify the other party and thus, concluded the assessment without giving adequate opportunity of being heard and cross verification.

J. As regards, the learned AO has failed to appreciate the fact that the appellant had returned majority of the amount received as advance before the end of the relevant financial year. However, the addition was made to the total amount received during the year.

(Ground no. 4(i), 4(ii) and 4(vii), page no. 10& page no. 11 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. The appellant submits that after the issue of initial notice u/s 148 dated 30.06.2021 and submission of the return by the appellant in response to the same, it took another 9 months for the learned AO to issue show cause notice u/s 147 of the Act. This was the only notice issued to the appellant intimating the reason for selection for reassessment and calling for information and documents to prove that why the addition should not be made. The copy of the notice is enclosed hereto as **Annexure 6** of this paper book.

b. The reason for selection of reassessment in appellant's case was mentioned as below in the said notice dated 17.03.2022 as below:

"Information has been received from the Directorate of Investigation, through insight portal in the case of the assessee. As per information received, a search and seizure action u/s. 132 of the Act was carried out in the case of M/s Oneworld group of cases on 06.11.2019. Further, during the course of the search proceedings, it was noticed that various Oneworld Group entities have shown purchases and sales from and to the entities controlled and managed by one Shri Rajesh G. Mehta. He was also found to be involved in bogus purchase and sale transactions, wherein only invoices were raised and there was no actual movement/delivery of goods. In view of these facts, during the course of the afore-mentioned search proceedings, statement on oath of Shri Rajesh G.

Mehta was recorded wherein he admitted that he was only providing bogus sales and purchase bills to various entities, and there was no actual supply of goods. Further, during the course of the post search proceedings, statement on oath of Shri Urvil A. Jani, one of the key persons of the Oneworld group of companies was also recorded on 08.02.2020, wherein he admitted that various Oneworld group entities have made bogus purchase/bogus sale transactions with the various entities controlled and managed by Shri Rajesh G. Mehta. Shri Rajesh G. Mehta also provided the details of the entities controlled and managed by him, and the company - M/s. AneriFincap Ltd. was one of the entities controlled and managed by Shri Rajesh G. Mehta As per the information received one of the beneficiary whom M/s. AneriFincap Ltd as provided accommodation entry is M/s Crystal Granite and Marble Private Limited . The accommodation entry was provided as a bogus loan amounting to Rs.61,50,000/-. M/s Crystal Granite and Marble Private Limited received an amount of Rs.61,50,000/- from M/s. AneriFincap Ltd."

c. However, it is to be noted that the above statement is very generic and does not tie the appellant to such incriminating activities surrounding the debtor in any way. Moreover, it is to be also noted that no assessee specific evidence was brought on record by the Ld. AO.

d. Only from this notice, the appellant came to know about the background of the case and the reasons for reassessment. The learned AO failed to provide any evidence or statement or any other cogent reasons to prove that the appellant was having income escaping assessment. It was purely the allegations of the learned AO based on the information which was claimed to be in his possession.

e. The appellant was only given 5 days' time to respond to the same which included weekend. Providing insufficient time was against the principle of natural justice.

f. Nevertheless, the appellant managed to produce the relevant documents and submitted the same within the time allowed. The copy of the reply letter submitted is attached hereto as **Annexure 7** of this paper book.

g. The submission of the appellant included that it had received advance money from M/s AneriFincap Limited against the sale of goods during the FY 2016-17. However, due to non-agreement between the parties, the sale did not materialise. Hence, in light of fair-trade activities and upon confirmation from the debtors, the appellant duly returned the advance to the extent of Rs. 52,00,000/- The balance of Rs. 29,00,000/- was consequently carried forward to the next FY i.e 2019-20 and it was duly repaid in the said FY. The ledger copy of the party in the appellant's is submitted as **Annexure 8** of this paperbook.

h. However, the learned AO did not consider the submission of the appellant and went ahead to issue the impugned order dated 31.03.2022 by making addition for Rs. 81,00,000/- for the total advance amount received. The appellant was not given any further opportunity to prove this claim.

i. The Ld. AO has not brought on record any incriminating evidence that ties the appellant to the alleged bogus activities that are carried on the by debtor. Further, the Ld. AO has passed the impugned order based on a generic statement surrounding the debtor, however this is not a sufficient basis in any scenario to hold all the parties that were ever associated with the debtor at any point of time in bad light.

j. In such a situation, it is also submitted that, that the Ld. AO has neither refuted any of the evidences brought on record by the appellant nor has he reached out to the debtor to verify the genuineness of the transactions surrounding the advance amount of Rs. 81,00,000/-

k. In the instant case, the Ld. AO, throughout the entirety of the proceeding, has not brought on record any incriminating evidence and has upheld a single statement as being the base ground for initiating the proceedings and passing the impugned order u/s 147 which is against the essence of law.

l. The appellant has duly submitted all the relevant documents and has such discharged its onus with regards to affirming the genuineness of the transactions. But the Assessing Officer has not pointed out any infirmity in such details furnished by the assessee. In fact, since the assessee has duly discharged its onus by furnishing the requisite details, therefore the onus was shifted upon the learned Assessing Officer to reject the contention of the assessee based on the cogent materials.

m. Moreover, there was no material found by the Assessing Officer in the during the search and seizure proceedings which can be said to be cogent enough to fasten the liability of bogus advance upon the appellant. Apart from the information relating to the search and seizure proceedings conducted at the premises of the third party, no other evidence was brought on record by the Ld. AO.

n. The Ld. AO has implied that due to the causal effect of the search and seizure proceedings, the appellant having entered into a transaction with the third party is also liable to have concealed income. However, it is to be noted that it is not the jurisdiction of the AO to enquire as to why the appellant had entered into such a series of transaction with the third party. The AO's duty is limited only to the extent to enquire the identity of investor, genuineness of transaction and credit worthiness of the investor which was proved beyond reasonable doubt.

o. Moreover, in order to implicate the appellant, the Ld. AO ought to have bought on record material which was directly connected to the appellant. However, no such material was given.

p. Once the Books of Accounts and the facts reflected therein showed the repayment of the advance and the identity of the party and the aspect that Books of Accounts of the appellant also reflected the receipt and the amount was repaid by the appellant, it was not open to the Assessing Officer to raise doubts about the genuineness of the transactions.

q. The Ld. AO did not provide the appellant with sufficient opportunity to explain and evidence the case on hand and reach out to the debtors to verify the genuineness of the advance amount. Such conduct by the Ld. AO seeks to create an impressionthat the Ld. AO had no motive of refuting the submissions brought on record by the appellant and merely had a prejudiced intention of holding the appellant in guilt based on the search action conducted on the debtor.

r. Moreover, the appellant had submitted that part of the amount was repaid to the party in the same financial year on disagreement to the sale transaction. The balance repayable during the year was only Rs. 29,00,000/- which was also repaid in the subsequent periods. Hence taxing the entire advance given of Rs. 81,00,000/- as unexplained cash credit is not correct as per the provisions of the law.

s. Reliance is placed on the following,

(i) Ami Industries (India) (P.) Ltd. [2020] 116 taxmann.com 34/271 Taxman 424 ITR 219 where it was held as under:

"21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this

regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

(ii) AmbeTradecorp (P.) Ltd[2022] 145 taxmann.com 27 (Gujarat)

"Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld. CIT-A. ""

K. As regards, the learned Assessing Officer has failed to discharge his duty of rebutting the evidences produced and also failed in bringing any assessee specific evidence on record to prove the case wherein additions made under section 68 could be justified.

L. As regards, the learned AO has failed in recognising that the amount received was towards the advances against sales and the amount was partly repaid to the party on the same financial year and hence the question of unexplained cash credit u/s 68 does not arise.

M. As regards, on the facts and circumstances of the case the learned assessing officer erred in taxing the amount received from M/s AneriFincaps Limited as unexplained cash credit u/s 68 when all ingredients contemplated under section 68 had been duly satisfied on aspect of identity of creditors and genuineness of transactions. Moreover, loans had been granted through banking channels and copy of bank statements also had been provided.
(Ground no. 4(iv), 4(v) and 4(vi), page no. 11 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. Section 68 of the Act is with respect to Cash Credits mentions that where any sum is found credited in the books of assessee maintained for any previous year and the assessee offers no explanation about the nature and source of such sum credited or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, then in such eventuality, the sum so credited shall be liable to be charged to income tax as the income of the assessee of that previous year.

b. Moreover, the genuineness of the receipt and repayment of the advance amount of Rs. 81,00,000/- is not merely verbal since all these transactions were carried out through banking channels and hence the validity of the same is unquestionable.

c. In any assessment proceeding, the initial onus is upon the assessee to establish three things necessary to obviate the mischief of section 68. These are identity of the investors, their creditworthiness/investments and genuineness of the transaction.

d. As per the statutory provision of section 68, it is clear that primarily the onus is on the assessee to discharge that the credit received by it is from the sources whose identity can be proved, the genuineness of the transaction and the creditworthiness of the creditor is also established by the documentary evidence. If the assessee presents all these details during the assessment proceeding before the Assessing Officer, the responsibility shifts to the Assessing Officer to prove it wrong. If the Assessing Officer accepts such evidences without proving it wrong, it can be said that assessee has discharged its onus. If the Assessing Officer presents some contrary evidences, the responsibility again shifts upon the assessee to rebut such contrary evidences

e. The appellant, vide its submission dated 21-03-2022, had duly submitted for records the ledger copy of M/s AneriFincap Limited (Formerly Known as Farry Industries), the ledger copy of Farry Industries, bank statement (contain highlights referring to the receipt of Rs. 81,00,000/- as well as the re-payment of Rs. 52,00,000/- What is the inference that flows from a cumulative consideration of all the aforesaid contending facts is that the assessee has discharged its onus imposed under section 68.

f. However, in the current case, the Ld. AO has disregarded the genuine submissions made by the appellant based on the prejudiced opinion regarding the debtor. Any transactions surrounding the debtor, regardless of whether genuine of not, is of no relation to the case in hand. What is to be established in relation to the proceeding initiated in the appellant's case, is whether the transaction entered into**between** the appellant and the debtor is genuine or not. And the same is irrefutable since such transaction is backed by legal and valid documents.

g. Moreover, since the amount received by M/s AneriFincap Limited (Formerly Known as Farry Industries) has been returned by the appellant, the question of involving section 68 does not even arise since there is no advance being held by the appellant.

h. Further, no adverse evidence was brought on recordagainst the appellant. The appellant had furnished the available address of the third party in the ledger copy submitted vide its submission dated 17-03-2022,no investigation against those parties on available address was carried out. Moreover, the assessing officer nowhere in the assessment order recorded that any incriminating material for accommodating entry i.e bogus loan was seized during the search carried out on the premises of third party.

i. Hence, invoking provisions of section 68 of the Act is not legally tenable based in the facts of the case. The appellant had discharged its onus under section 68 of the Act and it also furnished the details of receipt and repayment of the advance amount and had established identity of the third party in relation to the said amount.

j. Reliance is placed on the following.

(i) Bharatbhai Manubhai Baldha[2023] 150 taxmann.com 66 (Surat-Trib.)

"if assessment is being completed on the basis of search, there is no place of any presumption, but it must be basis of incriminating material."

(ii) Trilok Chand Choudhary[2023] 146 taxmann.com 164 (Delhi)

"Where pursuant to search upon assessee, a MoU executed between one 'D' and a company pertaining to investment in a land was seized and 'D' in his statement recorded under section 131 admitted that he had signed MoU at direction of assessee in lieu of commission income and he was not party to MoU and assessee had received cash back from seller, since Tribunal returned a finding of fact that MoU was executed between 'D' and seller-company and assessee was not even remotely connected to MoU, impugned addition made to assessee's income under section 68 on account of bogus purchase of land was to be deleted"

(iii) Overtop Marketing (P.) Ltd.[2023] 148 taxmann.com 94 (Calcutta)

"since creditworthiness of lenders of assessee had been examined in depth by lower authorities and lenders companies had directly submitted documents before Assessing Officer, no substantial question of law arose for consideration from order of Tribunal affirming deletion of impugned additions under section 68."

N. As regards, without prejudice to the above, the learned AO has erred in holding that the appellant has failed to respond to the notice u/s 148 dated 30.06.2021 where the return of income was duly submitted. The delay in filing the return was due to the technical issues in the new Income Tax portal due to migration which was beyond the control of the appellant.
(Ground no. 4(iii), page no. 10 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. In response to the notice u/s 148 dated 30-06-2021, the Appellant filed the return of income on 15th September, 2021 vide acknowledgement number 514987820150921. The copy of the return of income is submitted as **Annexure 9** of this paper book.

b. This delay in filing the return within the due date was due to genuine hardship owing to the technical issues in the new income tax portal due to the migration of the website which was beyond the control of the appellant.

c. Further, substantial justice cannot be defeated by technical considerations of delay, where there is no deliberate delay or delay on account of negligence or on account of mala fide, the authorities should have taken a justice oriented approach and if a claim is legitimately due to an applicant even if a delay has occasional due to genuine hardship that should not be denied on technicalities.

d. Reliance is placed on the following,

(i) DGIT (International Taxation) [2010] 187 Taxman 44/323 ITR 223/228 SCC CTR 373 (Bom.)/[2009] SCC Online 2195,

"it was observed that refusing to condone the delay could result into a meritorious matter being thrown out the very threshold defeating the cause of justice."

(ii) Shailesh Vitthalbhai Patel [2022] 145 taxmann.com 10 (Gujarat)

"The object is to help the assessee who for good and valid reasons are prevented from moving an application for any purpose within the time stipulated under the Act. In other words, their applications may have witnessed delay for several meritorious reasons."

O. As regards, without prejudice to the above, on the facts and circumstances of the case, the learned assessing officer erred in considering the income from business as Rs. 3,16,71,211/- in the statement of computation of income issued along with the assessment order as against the business income reported of Rs. 2,91,18,114/- as per the ITR and the assessment order u/s 143(3). The addition of Rs. 25,53,097/- made in the taxable business income of the appellant was without sufficient ground and no explanation was given thereof.
(Ground no. 5, page no. 11 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. On perusal of page no. 1 of the computation sheet (Page no. 37 of the Paper Book of Appeal Memo) and Page no. 20 of the Income Tax Return for the AY submitted as Annexure 9 of this Paper Book, it can be seen that theProfits and gains from business as per ITR is different than what is appearing in the computation sheet. The same is briefed below:

Particulars	**Amount(In Rs.)**
Profits and gains from business as per ITR	2,91,18,114
Profits and gains from business as per computation sheet	3,16,71,211

Addition made as per computation sheet to Profits and gains from business	**25,53,097**

b. No explanation regarding the impugned additional addition of Rs. 25,53,097/- has been provided anywhere in the order passed u/s 147. Moreover, there was no discussions held with regards to said addition at any time during the assessment proceeding u/s 147.

c. The Ld. AO passed the impugned order u/s 147 making an addition of Rs. 81,00,000/- to the total income of the appellant on account of unexplained cash credit. This amount of Rs. 81,00,000/0 was the advance amount received from the third party i.e M/s AneriFincap Limited. This addition of Rs. 81,00,000/- is appearing in the computation sheet annexed to the order u/s 147. However, over and above this addition, there is also an addition of Rs. 25,53,097/- made to the profits and gains from business which is a mistake apparent on record.

d. Such unexplained addition made in the computation sheet juxtaposed the income in ITR is not prevalent in the appellant's case and is completely unrelated to the assessment proceedings u/s 147.

e. Moreover, if such an addition was being made, sufficient opportunity ought to have been given to the appellant to atleast understand the basis of such additions so that the appellant will have the gateway to place on record its own views and documents to counter such addition. However, the same was not done, and the appellant became aware about such an addition only after the closure of the assessment proceedings u/s 147 and while perusing the computation sheet annexed to the order u/s 147.

f. Since, there is no explanation provided for the addition of Rs. 25,53,097/- and since the same is also unconnected to the advance amount obtained and repaid of Rs. 81,00,000/-, the addition is incorrect and hence bad in law.

P. As regards, the Ld. Commissioner (Appeals) is erred in sustaining the additions made by the Ld. AO in his order.
(Ground no. 6, page no. 11 of Paper Book of Appeal Memo)

In this regard, it is submitted that,

a. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the additions of the Ld. AO as per the order passed u/s 147.

b. The Ld. CIT(A) ought to have considered that the amended provisions as per section 147 would be attracted in the appellant's case and that due to the same, the initial proceedings are no longer valid and hence bad in law. Hence, issuing notices u/s 250 under the erstwhile re-assessment proceedings do not have any legal weight and backing and are not binding.

c. Moreover, the Ld. CIT(A) did not even consider the submissions made by the appellant in the assessment proceedings u/s 147 and passed the order on the grounds of non-response by the appellant. The Ld. CIT(A) ought to have considered the submissions made by the appellant, since the evidences produced by the appellant were binding and legally backed since they were indisputable documents. However, due to the mere reason that the appellant did not respond to the notices issued, the Ld. CIT(A) did not even consider the details furnished by the appellant and passed the impugned order u/s 250 of the Act.

Q. As regards, the learned AO has erred, in law and facts, in charging interest u/s 234A of the Income Tax Act though the conditions are not precedent in the appellant's case.

R. As regards, the Ld. AO has erred, in law and in facts, in charging interest u/s 234B and 234C on the tax liability calculated on the incorrectly computed total income figure.

6. The CIT(A) issued notices on various dates but it was not received by the assessee, therefore, the assessee could not respond to the notices. The CIT(A) passed the ex-parte order without going into the merits of the case. The ld.AR further submitted that the reassessment was completed two times on the same issue and nothing was brought out by the AO in the subsequent proceedings. However, the AO made additions in both proceedings, which is not justified.

7. The ld. DR relied on the orders of the lower authorities and she submitted that the AO issued notices within well in time as per the existing provisions of the Income-tax Act. Due to COVID period there are various notifications issued in this regard for extension of time. Accordingly, after complying the sec. 147/148 and 151/153 of the Acts, the AO has followed all the provisions within the frame work of law and has completed the assessment as per law. Before the CIT(A), the assessee did not represent its case in spite of giving many opportunities. The assessee received accommodation entry which is clear from the reasons recorded and assessment order and before the AO it could not justify the additions made. She further submitted that the AO issued notice as per the CBDT Instruction No.01/2022 dated 11/05/2022 vide judgment of the Hon'ble Supreme Court in the case of Ashis Agarwal reported in [2022] 138 Taxmann.com 64 order dated 04/05/2022. In subsequent proceedings, the AO has followed all the procedures. Therefore, the order of the AO should be upheld.

8 After hearing rival contentions, we noted that the case was completed u/s 143(3) of the Act and subsequently, it has been reopened u/s 148 of the Act on 30/06/2021. After complying with the due procedures, the AO completed the assessment on 31/03/2022 by making addition of Rs.81 lakhs after considering the submissions of the assessee and treated it as accommodation entry as loan received from M/s Aneri Fincaps Ltd. The assessee filed appeal before the CIT(A) and the CIT(A) issued various notices to the assessee for fixing the case for hearing but the assessee did not comply any of the notices. Accordingly, the CIT(A) completed the appeal proceedings ex-parte and upheld the order of the AO. We note as per the documents submitted by the assessee that the AO on the basis of Instruction No.01/2022 dated 11/05/2022 issued by the CBDT, issued a fresh notice on 02/06/2022. Due procedures were followed by the AO and he passed order on 23/05/2023 after making the addition as was done in the reassessment completed on 31/03/2022. Against which, the assessee has also filed appeal before the CIT(A) on 22.06.2023 bearing acknowledgement No. 27835785022062023 which is not yet disposed off. Considering the totality of the facts and in the interest of justice, we think fit to remit this issue to the file of the CIT(A) for fresh consideration. The CIT (A) is directed to decide both the appeals i.e. the appeal filed against the order dated 17.03.2023 passed u/s 250 of the Income-tax Act, 1961 by the NFAC Delhi, DIN & Order No. ITBA/NFAC/S/250/2022-23/1050883261(1) along with the appeal acknowledgement No 27835785022062023 filed by the assessee simultaneously as per law. Needless to say reasonable opportunity of being heard to be given to the assessee and the assessee is directed to

substantiate its case and avoid unnecessary adjournment for early disposal of the case.

9. Since we have sent back the appeal to the file of CIT(A), therefore, the stay petition filed by the assessee becomes infructuous.

10. In the result, the appeal of the assessee is allowed for statistical purposes and Stay Petition is dismissed as infructuous.

Order pronounced in the open court on 17th August, 2023.

Sd/-	**Sd/-**
(George George K)	**(Laxmi Prasad Sahu)**
Vice President	**Accountant Member**

Bangalore,
Dated 17th August, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.

By order

Asst. Registrar/ITAT, Bangalore