

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1622/DEL/2020  
Assessment Year 2009-10

Aruna Garg, C/O LM Agarwal & Co. (CA) KA- 32 Kavi Nagar, Ghaziabad.	Vs.	ACIT, Circle-I Ghaziabad.
TAN/PAN: AFSPG3532N		
(Appellant)		(Respondent)

Appellant by:	Shri Deepanshu Agarwal, CA Shri LM Agarwal, CA		
Respondent by:	Shri Kanv Bali, Sr.DR		
Date of hearing:	19	09	2023
Date of pronouncement:	06	10	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Ghaziabad ('CIT(A)' in short) dated 03.08.2020 arising from the assessment order dated 28.10.2016 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. As per the grounds of appeal, the assessee has challenged the assumption of jurisdiction under Section 147 of the Act as well as additions of Rs.8,95,285/- on account of client code modification.

3. We have heard the parties in length and perused the first appellate order and the re-assessment order. The material referred to and relied upon in the course of hearing has also been taken into consideration.

4. Since the assessee has raised the legal question of wrongful usurption of jurisdiction by the Assessing Officer to reopen the assessment concluded under Section 143(1) of the Act, it would thus be pertinent to deal with the aforesaid question at the outset as it goes to the root of the matter.

5. The Id. counsel for the assessee submits at the outset that Assessing Officer has wrongly assumed jurisdiction by issuing notice under Section 148 of the Act dated 30.03.2016 relevant to Assessment Year 2009-10 in question, without authority of law. The Id. counsel further submits that the ingredients of Section 147/148 of the Act are clearly not fulfilled in the instant case to enable the Assessing Officer to exercise jurisdiction and to proceed with the re-assessment proceedings. The Id. counsel contends that fulfillment of the indispensable requirement of formation of 'reason to believe' that chargeable income has escaped assessment, are clearly not met.

6. Adverting to the reasons recorded by the Assessing Officer under Section 148(2) of the Act, the Id. counsel submits that the concluded assessment under Section 143(1) in the instant case has been reopened on grossly vague and non descript reasons and thus the consequent belief formed thereon is merely a pretence and an empty formality.

7. The reasons recorded in terms of Section 148(2) of the Act for conferment of jurisdiction to reassess the concluded assessment is reproduced hereunder for ready reference.

*“Information had been received that certain brokers have indulged in creating non-genuine losses and profits for the clients who have taken fictitious losses to set off against their profits with a view to reduce their tax liability.*

*As per the investigation carried out by the investigation wing, it was found that the assessee is also a beneficiary and has got generated loss of Rs.8,95,285/-. As per the IT filed by the assessee (Smt. Aruna Garg) they have shown business loss of Rs.49,12,085/- during the A.Y. 2009-10.*

*Based on the above facts, I have reason to believe that income of at least Rs.8,95,285/- in A.Y. 2009-10, has escaped assessment within the meaning of the section 147 of the IT Act, 1961. Hence, there is need to issue notice u/s. 148 for assessment year 2009-10 in the cases of the assessee.”*

8. A bare perusal of the reasons recorded as quoted above suggests that Assessing Officer has propelled himself to reopen a concluded assessment on the grounds of alleged fictitious losses claimed in the transactions carried on the platform of the Stock Exchange. At the first glance of the reasons recorded (supra), it can be seen that the Assessing Officer has merely made averments towards some information received for transfer of profit and loss of one constituent to another by modification of the client code but however, there is no reference to any relevant material which can give rise to *prima facie* belief of an escapement. There is no iota of reference to the nature of information received, the source of supply of such information, the contents of information and specific transaction wise details, where the client code has been subjected to any modifications causing wrongful transfer of profits from assessee to any other

party/constituent. The name of the broker facilitating such alleged client code modification also cannot be deciphered from the reasons recorded. It is a classic case of assumption of jurisdiction under Section 147 by recording 'belief' based on extremely vague and non-descript reasons. No reference to any material providing foundation for holding so called belief is available.

8. Needless to say, the allegation towards escapement of income must be backed by expression 'reasons to believe' and such belief requires to be based on some credible or relevant material. A concluded assessment cannot be disturbed based on some fanciful or whimsical ground or on the basis of 'reason to suspect' towards alleged escapement without giving reference to any relevant material which may give rise to a *bona fide* belief towards escapement to a reasonable person instructed in law. It is an ostensible case of reopening an assessment without reference to any objective material providing hint towards alleged escapement. As stated, there is no clarity on the nature of information purportedly received by the Assessing Officer. The Assessing Officer is expected to exercise jurisdiction under Section 147 of the Act with scrupulous care and based on material which are clear and beyond reasonable doubt. The reasons recorded in the instant case are in complete disarray. Mere reiteration of statutory language employed in Section 147 of the Act that the Assessing Officer has 'reason to believe' towards escapement of income is not, by itself, adequate. The instances of transactions resulting in loss/profit to the assessee on account of client code modification do not feature in the

reasons at all. The reasons recorded clearly appear to be a token exercise for assumption of jurisdiction and without compliance of jurisdictional parameters. The Assessing Officer in the instant case has proceeded on a hypothesis flowing from some distant and generic information claimed to have been received. Such act of the Assessing Officer renders the whole exercise to be arbitrary and unsustainable in law.

9. The belief towards escapement in the instant case is only pretense and a mere doubt and suspicion towards probable escapement though worded as 'reason to believe'. The Hon'ble Supreme Court in Lakhmani Mewal Das (1976) 103 ITR 437 (SC) has underscored that the word of the statute 'reason to believe' are not 'reason to suspect'. The vague feeling or suspicion of the Assessing Officer towards possible escapement would not permit to reopen a completed assessment in defiance of statutory requirement of substantial nature. The notice issued under Section 148(1) is thus ultra vires the provision of Section 147 of the Act. Therefore, we see considerable force in the plea of the assessee for non maintainability of re-assessment order passed in pursuance of a notice under Section 148 of the Act which is vitiated in law.

10. Hence, the re-assessment notice under Section 148 giving rise to the jurisdiction under Section 147 of the Act is quashed and consequently the re-assessment order appeal against is also similarly quashed and set aside.

11. The objection on assumption of jurisdiction under Section 147 of the Act thus succeeds. Having held that the re-assessment

order is bad in law, we do not see any warrant to look into other grounds of the appeal.

12. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 06/10/2023**

**Sd/-**

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

DATED: /10/2023

*Prabhat*

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**