

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

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

ITA No. 3023/DEL/2022 [A.Y. 2014-15]  
ITA No. 3024/DEL/2022 [A.Y. 2015-16]  
ITA No. 3025/DEL/2022 [A.Y. 2016-17]  
ITA No. 3026/DEL/2022 [A.Y. 2017-18]

RPG Nirman [P] Ltd.  
A-2, Shambhu Nagar, Baghpat Road  
Meerut Uttar Pradesh

Vs

The D.C.I.T  
Central Circle  
Meerut

PAN: AADCR 0039 G

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 27.09.2023

Date of Pronouncement : 06.10.2023

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned four separate appeals by the assessee are preferred against 4 separate orders of the ld. CIT(A) - Kanpur -4, dated 23.11.2022 pertaining to Assessment Years 2014-15 to 2017-18.

2. Since the underlying facts in the grounds of appeal taken by the assessee are identical, therefore, all these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The first challenge in all the captioned appeals relates to the assumption of jurisdiction for framing assessment u/s 147 of the Income-tax Act, 1961 [the Act, for short].

4. Representatives of both the sides agreed on facts being identical in all the captioned four appeals. Therefore, representatives of both the sides were heard on facts for A.Y 2014-15 in ITA No. 3023/DEL/2022.

5. Briefly stated, the facts of the case are that original return of income was filed on 19.09.2014 for A.Y 2014-15, on 25.09.2015 for A.Y 2015-16, on 24.09.2016 for A.Y 2016-17 and on 14.10.2017 for A.Y 2017-18.

6. The reasons recorded for reopening the assessment read as under:

The assessee has filed its return of income for the A. Y. 2014-15 showing total income of Rs. .4,055501-. A search action was conducted in M/s Dev Priya Group. On being found some incriminating materials during search the case was assessed U/S 143(3)/153C of the 1. T. Act; 1961 on 30.12.2017 on a total income of RsA,05,5501-.

The information has been received that the assessee had taken an unsecured loan of Rs.66,32,000I-. However, on investigation it was found that the loan was not genuine. The loan was provided by accommodation entries through shell companies operated by Sri Dharmendra Gupta. Shri Dharmendra Gupta had promoted around 21 companies whose primary purpose was. to provide accommodation entries. When asked about his role in those companies, he admitted that in some companies, he is one of the directors, and in some companies, he manages accounts. About the remaining companies, he admitted that his son and his wife are the directors. When asked about the nature of work done by these companies, he admitted that these companies engaged in trading and earns commission @ 1.5% to 2%. Sri Gupta stated that it is his earning. But actually Sri Dharmendra Gupta is acting as an entry providers.

Further, the returned income and other documents as on e-filing were checked it was found that prima facie the income of the assessee's giving loans and advances does not commensurate with the returned income. In fact, a typical structure of the entire transaction resembling those of a shell company was found. The gross total income of these companies is constantly found to be very low yet they are having huge loans and advances. The source of funds in the hands of

the lender is not clear. It is also found that all the companies having common address and operated by Sri Dharmendra Gupta.

During the assessment proceedings, u/s 143(3) of the Act, such information was not available and the assessee also failed to disclose the same before the assessing officer during the assessment proceedings. Therefore, it can be concluded that the assessee has not declared its true and correct income and suppressed! concealed its income.

I have also examined the assessment record containing the submissions made by the assessee in response to various notices issued during the assessment proceedings and have noted 'hat assessee has not fully & truly disclosed the above narrated facts necessary for its assessment for the A.Y. 2014-15. Hence, it is additional evidence. For the aforesaid reasons it is not a case of change of opinion also. It is evident from the above facts that the assessee had not truly and fully disclosed material necessary for assessment for the year under consideration, thereby, necessitating reopening u/s 147 of the Act. In view of the above, explanation 1 to section 147 is applicable to facts of this case and the assessment year under consideration is deemed to be a fit case, where income chargeable to tax has escaped assessment.

The assessee has unexplained cash credit in its account. I have therefore, reason to believe that the Income of Rs. 66,32,000/- of the assessee chargeable to tax for the A Y 2014-15 has escaped

assessment within meaning of section 147 of the Income Tax Act 1961. It is pertinent to mention case since the assessee has filed return of income for the year under consideration and assessment u/s 143(3)/153A was made the provisions of clause © of Explanation 2 . to section 147 are applicable and the A.Y under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case, more than four years have lapsed from the end of the A.Y under consideration. Hence, necessary sanction to issue the notice u/s 148 is being obtained separately from the Pr. Commissioner of Income tax [Central], Kanpur as per the provisions of section 151 of the Act."

7. Two facts emerge out of the aforementioned reasons which need to be addressed for upholding the reassessment proceedings. First, information is in respect of unsecured loan of Rs. 66.32 lakhs taken by the assessee and second, this loan was taken by way of accommodation entries through shell companies operated by Shri Dharmendra Gupta, who, in his statement, has categorically stated that he has been providing accommodation entries through shell companies operated by him.

8. On the basis of the aforementioned facts considered while reopening the assessment, the Assessing Officer formed a belief that the assessee has not fully and truly disclosed these facts necessary for completing the impugned assessments.

9. The first factual error in the reasons recorded above is in respect of unsecured loans which is Rs. 95 lakhs and not Rs. 66.32 lakhs, as mentioned by the Assessing Officer. The reasons recorded are factually incorrect on this count.

10. We have given thoughtful consideration to the statement of Shri Dharmendra Gupta exhibited at pages 100 to 113 of the Paper Book. We have also gone through each and every question put to Shri Dharmendra Gupta and answered by him. There is not even a whisper about his accepting that he is providing accommodation entries through shell companies. The reasons recorded are factually incorrect on this count also.

11. The Hon'ble Delhi High Court in the case SNG Developers Limited 404 ITR 312 had an occasion to consider a case where there was factual error while recording reasons for reopening the assessment. The Hon'ble High Court held as under:

"11. In the considered view of the Court, neither of the above two cases come to the aid of the Revenue in the present case where the facts speak for themselves. The reasons for reopening the assessment have already been set out hereinbefore. The Court has again perused Annexure - B thereto. As already noticed by the ITAT, there is a repetition of at least five entries. In other words the total amount constituting the so-called accommodation entries would therefore not work out to Rs.95,65,510. On the face of it, therefore, there is a non-application of mind by the AO. What is further unacceptable is that the AO persisted with his "belief" that the said amount had escaped assessment not only at the stage of rejecting the Assessee's objections but also in the re-assessment proceedings where he proceeded to add the entire amount to the returned income of the Assessee. This is a classic case of non-application of mind by the AO.

.....

13. In view of the said decision, the Court has no hesitation in concluding in the present case that the reasons recorded by the AO for reopening the assessment under [Section 147](#) of the Act do not meet the requirement of the law. The ITAT was, therefore, perfectly

justified in confirming the order of the CIT (A) and holding the reopening of the assessment to be bad in law."

12. Similar view was taken by the Hon'ble Bombay High Court in the case of Ankita A.Choksey 411 ITR 207. The relevant findings read as under:

"On 5th October, 2018, the Petitioner filed its objection to the impugned reopening notice and the reasons in support thereof. In particular, the Petitioner pointed out that the reasons in support of the impugned notice erroneously proceed on the basis that the Petitioner received a consideration of Rs.3.79 Crores for the sale of the said flat and that this fact was not disclosed. In fact, it was pointed out in the objection that the said flat had not been sold by the Petitioner as she continues to be in possession of the same.

Besides, it was pointed out that Petitioner had disclosed the amount of 10% of Rs.3.79 Crores i.e. Rs.38.07 lakhs as being the full value of consideration received on extinguishment of its share holding in the Limited Company in its return of income. Thus, it was the Petitioner's contention that if correct and relevant facts were to be considered, there can be no reason to believe that income chargeable to tax has escaped assessment. Therefore, the Petitioner prayed that the impugned notice dated 27th March, 2018 be withdrawn.

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7 Thus, we are of the view that even in cases where the return of income has been accepted by processing under Section 143(1) of the Act, reopening of an assessment can only be done when the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. The mere fact that the return has been processed under Section 143(1) of the Act, does not give the Assessing Officer a carte blanc to issue a reopening notice.

The condition precedent of reason to believe that income chargeable to tax has escaped assessment on correct facts, must be satisfied by the Assessing Officer so as to have jurisdiction to issue the reopening notice. In the present case, the Assessing Officer has proceeded on fundamentally wrong facts to come to the reasonable belief conclusion that income chargeable to tax has escaped assessment.

Further, even when the same is pointed out by the Petitioner, the Assessing Officer in its order disposing off the objection does not deal with factual position asserted by the Petitioner. Thus, it would safe to conclude that the Revenue does not dispute the facts stated by the Petitioner. On the facts as found, there could be no reason for the Assessing Officer to believe that income chargeable to tax has escaped assessment."

13. The above factual error goes on to show that there is no application of mind by the Assessing Officer which is the basic requirement in the cases where the Assessing Officer reopens the assessment as held by the Hon'ble Delhi High Court in the case of G & G Pharma 384 ITR 0147 wherein the Hon'ble High Court has held that when the basic requirement that the Assessing Officer must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment is missing, reopening of assessment is not justified.

14. This judgment of the Hon'ble High Court needs special mention as we have mentioned elsewhere that the entire reassessment proceedings revolve around the alleged acceptance by Shri Dharmendra Gupta that he has been providing accommodation entries through shell companies, where his entire statement is completely silent about this allegation.

15. On the contrary, we find that all the loan transactions were entered into through proper banking channel in the normal course of business as loan transactions are not accommodation entries, as alleged by the Assessing Officer. There is no material on record to

substantiate the claim of the Assessing Officer of the same being accommodation entries as the movement of cash to evidence the said claim is detected or found recorded anywhere, even as a result of search.

16. The impugned assessment order is dated 21.03.2022 and the Assessing Officer grossly failed in appreciating the fact that the unsecured loans taken from Ekdant EximsPvt Ltd and kanti Prasad Finvest Pvt Ltd have been repaid by the assessee by March 2018 and no amount was outstanding on the date of the assessment order.

17. It would be pertinent to refer to the decision of het Hon'ble Delhi High Court in the case of RMG Plyvinyl (I) Ltd 396 ITR 5. The relevant findings read as under:

"5. As it transpired subsequently there were at least two glaring errors in the above reasons. The first error was that the AO proceeded on the basis that "no return of income is available in the AST database of Income-tax Department. Therefore, it is clear that the assessee has not filed return of income for the A. Y. 2004-05 and consequently has not offered any income for taxation." In the assessment order dated 30th December, 2011 passed consequent upon the reopening of the assessment, the very first line states that "the Assessee had filed return declaring income of Rs.4,38,958/- on

31/10/2004 which was processed under [Section 143\(1\)](#) of the Act on 04.01.2005."

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. ....

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."

18. Considering the facts of the case in totality, we have no hesitation in holding that reassessment proceedings have been initiated on erroneous facts and, therefore, in light of the judicial decisions discussed hereinabove, the impugned notice u/s 148 of the Act deserves to be quashed, thereby quashing the assessment order framed u/s 147 r.w.s 143(3) of the Act.

19. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

20. In A.Y 2017-18, the ld. DR has relied upon the decision of the Hon'ble Kerala High Court in the case of Maruthi Babu Rao Jadav wherein the Hon'ble High Court has held that provisions of Section 115BBE are applicable from F.Y. 2016-17 relevant to A.Y 2017-18. Since we have not dwelled into the merits of the case, applicability of this judgment or otherwise, is left open.

21. In the result all the captioned appeals of the assessee in ITA Nos. 3023 to 3026/DEL/2022 are allowed on the point of law.

The order is pronounced in the open court on 06.10.2023.

**Sd/-**

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 06<sup>th</sup> OCTOBER, 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	