

**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. 5904/DEL/2019 [A.Y. 2011-12]

Riya Buildtech Pvt Ltd  
C/o Kapil Goel, Adv  
F-26, /124, Sector -7  
Rohini, Delhi

Vs. The A.C.I.T.  
Central Circle - 21(2)  
New Delhi

PAN: AAECR 5439 F

(Applicant)

(Respondent)

Assessee By : Shri Kapil Goel, Adv

Department By : Shri Vivek Vardhan, Sr. DR

**Date of Hearing : 11.12.2023**

**Date of Pronouncement : 14.12.2023**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 7, New Delhi dated 30.05.2019 pertaining to A.Y. 2011-12.

2. The grievances of the assessee read as under:

1. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO /s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld AO was in violation of jurisdictional conditions stipulated under the Act;

1.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that rubber stamp; reasons in present case are based on uncontroverted appraisal report; of investigation wing and are without independent application of mind;

1.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that material referred in reasons has not been confronted to assessee namely report of investigation wing Ahmedabad, broker surveyed /s133A. statement of broker surveyed and material found from survey and connection of that broker with the assessee, lack of which vitiates the entire proceedings as complete reasons were not furnished to the assessee;

1.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that various benches of ITAT across country including Delhi benches of ITAT in identical facts has

hitherto quashed the reopening made in similar allegations and deleted the wrongful additions made.

2. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that on basis of surfeit and inundated evidences on records burden lying on assessee has been fully discharged and met so addition made by Ld AO (Rs.489.135) and confirmed by CIT-A in impugned order deserves to be deleted.

2.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that there is no basis of any of the addition of Rs 489,135 as whole addition is based merely on assumption, conjectures and surmises and suspicion only without any iota of evidence to support the bald allegation made.

2.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that all the additions made are without bringing legally admissible document;

2.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that none of evidence filed by assessee is overruled in accordance with law;

3. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in not restoring the returned income declared by assessee in its return of income.

4. That on the facts and in the circumstances of the case and in law, Id. CIT(A) erred in not deleting the addition made by Ld AO which was also unlawful and made in violation of principles of natural justice.

That the appellant craves leave to add, add/alter any/all grounds of appeal before or at the time of hearing of the appeal."

3. Briefly stated, the facts of the case are that the assessee filed its return of income electronically on 23.09.2011 declaring total income of Rs. 1,65,57,210/- which was processed u/s 143(1) of the Income-tax Act, 1961 [the Act, for short] and the returned income was accepted as such.

4. Subsequently, specific information was received from the office of the Pr. CIT [CCA], New Delhi dated 11.03.2015 in respect of beneficiary clients who have taken losses and shifted out profits during the F.Ys 2008-09 to 2011-12. Since the assessee company's name also figures in the list of beneficiaries, notice u/s 148 of the Act was issued on 22.03.2018 after duly recording reasons.

5. Reasons recorded for reopening assessment are placed at pages 26 to 32 of the Paper Book. Reasons running into 7 pages can be summarized as under:

13. A careful examination of information received from the Investigation Wing as enumerated above and subsequent analysis of its report along with annexure lead to an irresistible conclusion that the assessee M/s. Riya Buildtech Private Limited (PAN. AAECR5439F) has been shifted out his profit of Rs. 40,19,670/- for the A.Y 2011-12.

PAN		AAECR5439F
Name of the Beneficiary		M/s. Riya Buildtech Private Ltd.
Address of Beneficiary		First Floor, 8/33, WEA, Karol Bagh, New Delhi – 110005
Name of Broker		M/s. Crosseas Capital Services Pvt. Ltd.
When OC (Ascertained Profit Shifted Out)		Rs.40,19,670/-
When MC (Ascertained Losses Shifted out)		Rs.4,89,135/-
Net reduction in income due to CCM		Rs.45,08,805/-
As original client	No. of transactions where ascertained loss is shifted	0
	Transaction resulting in no profit no loss	0
	No of transactions where ascertained profit is shifted out	0
As Modified Client	No. of transactions where loss is shifted in	0
	Transaction resulting in no profit no loss	0
	No. of transactions where profit is shifted in	26

6. It has been vehemently argued before us by the Id. counsel for the assessee that the reasons recorded for reopening assessment is completely devoid of application of mind as it is full of factual errors making the reassessment null and void.

7. It is the say of the Id. DR that at the time of reopening the assessment, the Assessing Officer is only required to have a prima facie belief that some income has escaped assessment which has been duly satisfied in the present case.

8. We have given thoughtful consideration to the rival submissions qua the reasons. First factual error is that the Assessing Officer in his assessment order at Para 7.2 mentions the information received in the case of the assessee and refers to the Original Client Codes pertaining to M/s Crosswind Trading Company, M/s Crossland Trading Company and M/s Essar Trading Company which have been modified to the Client Code of the assessee with the assessee's PAN Number, whereas in the reasons recorded exhibited at pages 26 to 32 of the Paper Book at Para 13, name of the broker of the assessee is Crosseas Capital Services Pvt Ltd.

9. Second factual error is also mentioned in the reasons recorded for reopening assessment where original code ascertained profit is Rs. 40,19,670/- which profit has been shifted out with modified code ascertained loss of Rs. 4,89,135/- and reopening has been done as the

officer has reasons to believe that income of Rs. 45,08,805/- has escaped assessment in the A.Y 2010-11.

10. A perusal of the case record shows that the Assessing Officer has proceeded to reopen the assessment on mere disclosure of certain facts during the survey of Amrapali Group. Not an iota of evidence or circumstances of transactions between Amrapali Group and the assessee were examined in context to the return filed by the assessee to justify the reasons independently and which can be said to have been foundation of belief that a certain income of the assessee has escaped assessment.

11. It is an undisputed fact that the client code modification is permissible mode to correct bonafide errors and unless a culpable act is reflected in the CCM transactions of the assessee, then on a presumption that the assessee may also have been one of the beneficiaries of the alleged illegal act of the Amrapali Group assessment could not have been reopened. The onus is on the Assessing Officer to show that something which otherwise is legal has been done illegally.

12. Mere suspicion cannot give right to reopen a completed assessment and that too, on erroneous facts as mentioned elsewhere. Therefore, we have no hesitation in setting aside the notice issued u/s 148 of the Act, thereby quashing the assessment order dated 10.12.2018 framed u/s143(3) r.w.s 147 of the Act.

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

14. In the result the appeal of the assessee in ITA No. 5904/DEL/2019 is allowed.

The order is pronounced in the open court on 14.12.2023.

**Sd/-**

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 14<sup>th</sup> DECEMBER, 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	