

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
and  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.8466/DEL/2019  
(Assessment Year : 2008-09)**

Lalit Kumar Modi,  
C/o L.N. Malik & Co., CA  
18/3, WEA, Karol Bagh,  
New Delhi – 110 005.

vs.

DCIT, Circle 11 (1),  
New Delhi.

**(PAN: AAPPM415M)**

**ITA No.8655/DEL/2019  
(Assessment Year : 2008-09)**

DCIT, Circle 11 (1),  
New Delhi.

vs.

Lalit Kumar Modi,  
C/o L.N. Malik & Co., CA  
18/3, WEA, Karol Bagh,  
New Delhi – 110 005.

**(PAN: AAPPM415M)  
(RESPONDENT)**

**(APPELLANT)**

ASSESSEE BY : Shri Sachit Jolly, Advocate  
Shri Devansh Jain, Advocate  
REVENUE BY : Shri Vijay B Vasanta, CIT DR

Date of Hearing : 08.10.2024  
Date of Order : 06.11.2024

**ORDER**

**PER S. RIFAUR RAHMAN, AM :**

1. These cross appeals are filed by the assessee and Revenue against the order of Id. Commissioner of Income-tax (Appeals)-28, New Delhi (hereinafter

referred to 'Ld. CIT (A)') dated 26.08.2019 for Assessment Year 2008-09.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.
3. Brief facts of the case are, the assessee filed his return of income for AY 2008-09 on 11.08.2008 declaring total income of Rs.33,99,804/-. A survey action u/s 133A of the Income-tax Act, 1961 (for short 'the Act') was carried on 15.04.2010 on the assessee by DDIT (Inv.), Unit-II (1), Mumbai and a survey report along with impounded material were forwarded to the Assessing Officer. Accordingly, the case was selected for scrutiny and notice u/s 148 of the Act was issued and served on the assessee on 29.03.2012. Accordingly, notice u/s 143 (2) of the Act was issued and served on the assessee. Ld. AR of the assessee appeared from time to time and filed the relevant information as called for.
4. The Assessing Officer considered the income declared by the assessee and statements on oath recorded during the course of survey proceedings, analysed materials impounded and information received from FT & TR, the assessment was finalized by the Assessing Officer by observing as under. Assessing Officer observed that during survey proceedings on 15.04.2010, data from the mobile of assessee was extracted from which it was found that assessee had credit card details of many of his relatives. These details

include the card number, type of card, etc.. These informations were sufficient for the assessee to use the credit cards for his personal expenses, source of which were not disclosed in its books of account for tax purposes. The Assessing Officer observed that all these credit cards are issued by international banks and are registered abroad. Based on the information available in his mobile, the assessee was in a position to pay for his expenses anywhere in the world. In order to obtain further information, reference was made to UK Tax Authorities and USA Tax Authorities through the Foreign Tax Division, CBDT, New Delhi. As per the information received from Foreign Tax Division (FT & TR-I), CBDT, New Delhi, the Assessing Officer has summarised the credit cards purchases made by the assessee on the basis of credit card bills, details are produced at page 3 of the assessment order and the total amount of credit card bills in US \$ 661572.12 and UK Pound 181700.34. A query was raised by issue of show-cause notice dated 25.02.2013 as to why the above mentioned expenditure was not disclosed by assessee and should not be considered it as his unexplained expenditure. In response, assessee has submitted vide letter dated 20.03.2013, the contents of the letter are reproduced at pages 4 & 5 of the assessment order. In the above said letter, assessee has submitted that apart from two credit cards mentioned in the summary extracted by the Assessing Officer, no other

credit cards are in the name of the assessee. Therefore, these cards do not pertain to the assessee. Further, assessee disputed the fact that credit card ending with No.1467 pertains to Ms. Vijay Israni and the payments of the said card was borne by her and her family members and further details were also furnished. As regards to American Express credit cards appearing at Sl.Nos.1 & 3 of the summary, which are in the name of the assessee, however no payment against the same was made by the assessee. These payments are made by his wife who is an NRI and paid the same from her own sources and no part of the same was borne or paid by the assessee. In summary, he denied that none of the cards were belonged to him and all these payments were settled by the respective members of the family or friends and settled by them.

5. After considering the above submissions, the Assessing Officer observed that it is well settled rule of evidence relating to material found during the course of survey proceedings is that the onus to prove that the same are not related to the party on whom survey was carried out lies on the assessee himself. In this case, assessee could not produce evidence that the payment was made by his wife. Mere submission of the assessee cannot be accepted as evidence and proof and the assessee failed to discharge the onus of proving in this regard. It is alleged that his wife is an NRI, hence is staying

abroad either in US or UK and while the assessee is maintaining their credit cards in India and making the payments accordingly. The assessee has not shifted the burden of proof to Department as he has failed to produce those persons who are supposed to confirm on oath with relevant documentary evidences regarding owning up of the ownership of the credit cards found in the possession of the assessee during the survey proceedings. The claim of the assessee is based on oral evidence which is not accepted in the Income Tax proceedings, hence are liable to be treated as asset of the assessee. During the year, the assessee has made huge payments through these credit cards as has been gathered from enquiries collected, hence the expenses incurred are liable to be treated as unexplained expenditure u/s 68 of the Act because the source of the expenditure is not explained. Accordingly, the Assessing Officer proceeded to make the addition u/s 69C of the Act by converting the amount of foreign currency spent by the assessee utilising 1 US \$ = Rs.55 & 1 UK Pound = Rs.82 and made the addition of Rs.5,12,85,895/-.

6. Further, a show-cause notice u/s 144 dated 26.03.2013 was sent to the assessee wherein it was asked that why disallowance of undisclosed credit card expenditures in foreign currencies u/s 68 of the Act of US\$ 23916.47 and converted in Indian currency (1US \$ = Rs.55) at Rs.13,15,406/-. In

response, vide letter dated 28.03.2013, the assessee submitted that there is no warrant to make disallowance of the above said amount u/s 68 of the Act since there is nothing on record to cast an aspersion that the alleged credit card belongs/pertains to the assessee or any payment thereon borne by the assessee. After considering the reply of the assessee, Assessing Officer found not acceptable and he observed that from the perusal of the details of the bank accounts filed by the assessee, it is noted that the balances and withdrawals appearing in these accounts do not support the heavy expenditure incurred by the assessee through credit cards. Accordingly, he proceeded to make the additions.

7. The Assessing Officer observed from the information from FT & TR regarding the investment in Ananda Heritage Hotels P. Ltd. owned by the assessee which was further developed by obtaining financial accounts of M/s. Wilton Investment Ltd. and M/s. Harbor Ltd., Mauritius. The Assessing Officer listed the details of investment made in Ananda Heritage Hotels P. Ltd. through M/s. Wilton Investment Ltd. by way of share application money to the extent of US\$ 2570978.86. After enquiry and verification and also considering the submissions of the assessee, the Assessing Officer treated the entire investment of Rs.14,14,03,838/- received from Ananda Heritage Hotels P. Ltd. which is owned by the

assessee as unexplained money u/s 69 of the Act. Also this is being added protectively in the hands of the assessee.

8. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A)-28, New Delhi by raising several grounds of appeal objecting to the reopening of the assessment u/s 147 of the Act and additions proposed by the Assessing Officer on merits.
9. After considering the detailed submissions of the assessee, Id. CIT (A) rejected the submissions on reopening of the assessment, on the issue of reopening of assessment u/s 143(1) and issue relating to notice u/s 143(2) of the Act.
10. With regard to addition u/s 69C and 68 of the Act, Id. CIT (A) sustained the additions with the following observations :-

“4.1 I have considered the facts of the case, basis of additions made by AO and submissions of the appellant. As it can be seen from the assessment order that the aforesaid credit cards were detected during the survey proceedings u/s 133A of the IT Act having evidentiary value of the material found. The onus was on the appellant to explain that why he was in possession of these credit cards having knowledge of each and every entry & transactions and being capable of using these credit cards regularly for his own personal purposes. Since the appellant was using these credit cards, onus was on him to explain the source of funds available in these credit cards and usage of those funds wholly and exclusively by relevant person, if not by him. He failed to give any such documentary evidence or produce the persons in whose name the credit cards were opened to establish that these cards were actually belonged to those persons and funds available in those cards also belonged to them only. The appellant also failed to explain the source of funds and details of transactions made

for incurring of these expenses. Just by saying that these credit cards belonged to his family members and relatives, therefore, there is no liability on the part of appellant to explain the source of funds and transactions executed, does not suffice as these credit cards were in absolute possession and control of appellant and actually used by him only. In such situation, it is clear that the appellant has failed to discharge his onus of establishing at these credit cards were not used by him for his own purposes and source if funds were also not explained. Therefore, AO was justified in making additions of Rs.5,12,85,895/- and Rs. 13,15,406/-. I, therefore, confirm the additions made by AO and dismiss the grounds taken by the appellant.”

11. With regard to unexplained money received by the assessee through Ananda Heritage Hotels P. Ltd., ld. CIT (A) deleted the addition made by the Assessing Officer on protective basis in the hands of the assessee.
12. Aggrieved with the above order, both assessee and Revenue are in appeal before us by raising following grounds of appeal :-

**“ITA NO.8466/Del/2019 (Assessee’s appeal)**

1. The Ld. Commissioner of Income-tax (Appeals) erred in law in not adjudicating upon the ground specifically taken by the appellant that the order passed by the Assessing officer u/s. 143(3) read with section 147 of the Act is illegal, bad in law as the objections filed in response to notice u/s. 148 of the Act were never dealt with by the Assessing Officer inspite of repeated requests.

1.1 The Ld. Commissioner of Income-tax (Appeals) ought to have appreciated that "Reasons to believe" recorded were not the reasons, but only conclusion and reproduction of the conclusion in the report received from the Mumbai Income-tax Department.

1.2 The Ld. Commissioner of Income-tax (Appeals) failed to appreciate that the Assessing Officer had not formed any opinion in terms of section 147 of the Act but he proceeded on borrowed satisfaction which is repugnant of the provisions of Section 147 of the Act.

1.3 The Ld. Commissioner of Income tax (Appeals) failed to appreciate that in the report from Mumbai Income-tax Department it was their observation that the information needs to be scrutinized and the Assessing officer proceeded on that basis; oblivious of the fact that once section 147 of the Act, it cannot be applied for scrutinizing.

2. Without prejudice to the above, the Ld. Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.5,12,85,8951- u/s. 69C of the I.T. Act, 1961 on account of alleged unexplained expenditure incurred by the appellant through 14 credit cards in the assessment year under consideration.

2.1 The Ld. Commissioner of income-tax (Appeals) failed to appreciate that the credit cards mentioned in the reasons recorded, 12 credit cards did not belong to the appellant and they were never found in the possession of the appellant ( except two credit cards).

2.2 The Ld. Commissioner of Income-tax (Appeals) failed to appreciate that 12 of the 14 credit cards, the impugned credit cards never belonged to the appellant nor were found in his possession nor the department has been able to establish that the transaction in respect of these credit cards was made by the appellant.

2.3 The Ld. Commissioner of Income-tax (Appeals) failed to appreciate that in respect of 2 credit cards payment was made by the wife of the appellant, who is an Non Resident Indian, out of her own funds and no part of it was borne by the appellant.

2.4 The Ld. Commissioner of Income-tax (Appeals) erred in making addition of US \$ 1,11,898.56 against the credit card bearing account No. 3745-880618-0050000 twice in the impugned assessment order without any basis.

2.5 The Ld. Commissioner of Income-tax (Appeals) erred in sustaining the action of the Assessing officer in failing to appreciate that the above credit cards neither belonged to the appellant nor was any payment against the same borne or reimbursed by the appellant, and, therefore, the question of making any addition in the hands of the appellant could not arise at all.

3. That the Ld. Commissioner of Income-tax (Appeals) erred in sustaining the addition of Rs.13,15,406/- on account of alleged use of credit cards issued in the name of Ms. Aranka Vijay Israni.

3.1 That the Ld. Commissioner of Income-tax (Appeals) erred in sustaining the action of the Assessing officer in failing to appreciate that the above credit cards neither belonged to the appellant nor was any payment against the same borne or reimbursed by the appellant and, therefore, the question of making any addition in the hands of the appellant could not arise at all.

**“ITA NO.8655/Del/2019 (Revenue’s appeal)”**

“Whether the Ld. CIT (A) justified in deleting the addition of Rs.14,14,03,838/- made u/s 69 of the Act, 1961 (Protective basis) ignoring the fact that the assessee filed to establish the genuineness of the transactions and the creditworthiness of the entity from which the assessee received share application money in the case of M/s. Ananda Heritage Hotel Pvt. Ltd. and the procedural compliance made by the assessee in this regard is not sufficient for establishing the same.”

13. At the time of hearing, ld. AR for the assessee brought to our notice brief facts of the case and brought to our notice page 1 of the paper book wherein the reasons for reopening are recorded by the Assessing Officer. He submitted that the list of credit cards and amounts alleged to be spent by the assessee in US\$ and UK Pound are listed. He submitted that except Item No.1 & 3, all other credit cards are not relating to the assessee. The Assessing Officer merely recorded that it needs scrutiny. Therefore, he proceeded to reopen the assessment and there is no other information in the reasons recorded by the Assessing Officer of any escapement of income. In this regard, he relied on the decision of Hon’ble Delhi High Court in PCIT vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (Delhi) dated 26.05.2017 and he brought to our notice page 680 of the decision wherein similar case of information received from DIT (Inv.) with regard to accommodation entries. The Assessing Officer proceeded to issue notice u/s 148 of the Act after taking approval from ACIT wherein similar reasons for the plea of income escapement was recorded and then he brought to our

notice page 684 of the decision. The Hon'ble High Court has observed that one would have expected the Assessing Officer to point out what he found when he went through the information and what in such information led him to prove that the income has escaped assessment. They observed that the same was absent. He submitted that the fact in the present case is exactly similar on the above observation of Hon'ble High Court. Further, he relied on the decision of Hon'ble Delhi High Court in Well Trans Logistics India Pvt. Ltd. vs. Addl. CIT 2024 Hon'ble High Court Online Del 6149. He brought to our notice page 7 of the decision wherein similar reasons were recorded for issue of notice u/s 148 wherein Assessing Officer has merely considered the information received from DIT (Inv.) and the Hon'ble High Court observed that in the present case, there is no close nexus or live link between the tangible material and the reasons to believe that income has escaped assessment. The information received from the Investment Wing of the Revenue cannot be sole basis for forming a belief that the income of the assessee has escaped assessment. Having received the information from the Investment Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquires and garner further material and if such material indicates that the income of the assessee has escaped assessment and then form a plea that the income of the assessee has escaped assessment.

Ld. AR submitted that in the present case also, actually there is no reason to reopen the assessment.

14. Further, ld. AR submitted that the Assessing Officer has completed the assessment without issue of notice u/s 143(2) of the Act.
15. Further, on merits, ld. AR submitted that the Assessing Officer makes entire expenditure recorded in the statement of credit cards as unexplained expenditure of the assessee except credit cards mentioned in Sl.No.1 & 3, all other information are not related to the assessee. All these credit cards are belongs to other friends and relatives. He brought to our notice findings of the Assessing Officer and submissions of the assessee from pages 3 to 5 of the assessment order and he submitted that the additions made by the Assessing Officer cannot be made u/s 69A of the Act.
16. On the other hand, ld. DR for the Revenue brought to our notice page 5 of the appellate order wherein ld. CIT (A) has elaborately discussed on the issue of utilising the information received from Investigation Wing and he held that information received from Investigation Wing is tangible material and he has elaborately discussed that Assessing Officer has reopened the assessment based on the tangible material available on record. He further relied on various decisions relied by the ld. CIT (A) that the information received from DIT (Inv.) constitute tangible material. With regard to issue

of non-issue of notice u/s 143(2), he submitted that ld. CIT (A) has given a clear cut finding that notices u/s 142(1) or 143 (2) will not issue again and these notices cannot be issued only when there are assessment proceedings pending against the case of the assessee. He further submitted that in this case, the Assessing Officer issued 143(2) notice to the assessee and in response, ld. AR of the assessee appeared on behalf of the assessee from time to time and the same fact was already recorded in the assessment order itself.

17. Ld. DR further submitted that all the credit cards were found in the mobile of the assessee and the assessee was using those credit cards. He submitted that the presumption is that the tangible material belongs to the assessee and the assessee has not provided any detail before the Investigation Wing at the time of survey nor before the Assessing Officer. He relied on the findings of the ld. CIT (A) that assessee has not provided any details except names on the credit cards.
18. In rejoinder, ld. AR for the assessee submitted that para 3.3 of the appellate order wherein ld. CIT (A) observed that the contentions of the assessee that the Assessing Officer should have made independent enquiry and examined the transactions before recording the reasons are also misplaced. He submitted that this observations is against the decision of Hon'ble Delhi

High Court and further he submitted that ld. CIT (A) cannot improvise the finding of the Assessing Officer.

19. Considered the rival submissions and material placed on record. We observed that in survey proceedings, the officers found that assessee was having details of various credit cards in his mobile through which assessee was able to utilize these credit cards for his personal use and when these details were called for, the assessee was not in a position to explain the same during survey proceedings, therefore, the information was passed on to the Assessing Officer. Prima facie, the Assessing Officer has received these informations and had to make further investigations. Ld. AR of the assessee made detailed submissions before us that the Assessing Officer merely received the information from DIT (Inv.) and formed an opinion without making further investigations as held in the cases of Meenakshi Overseas Pvt. Ltd. and Well Trans Logistics India Pvt. Ltd. (supra). After considering the submission of ld. AR, we observed that in the cases referred by the assessee, as cited above, these cases are relating to accommodation entries received by the respective assesseees and in fact, these informations were passed on by the DIT (Inv.) to the Assessing Officer. The Assessing Officer being the jurisdictional officer to the respective assessee has to make the investigation on receipt of those informations whether these informations are

pertained to the assessee and has to form an opinion and reasons for reopening of the assessment. Whereas, in the present case, a survey proceeding was initiated in the case of the assessee itself and not the information passed on by DIT (Inv.) from a third person. The survey conducted in the case of the assessee revealed that assessee was in possession of various credit cards and the information contained in the mobile of those credit cards enabled the assessee to utilize the same wherever he is. Assessee being a resident in India holding various international credit cards of various friends and relatives and the assessee was able to utilize the same wherever he is. When the Investigation Wing asked for details, the assessee was not able to provide the same nor submitted any information during the investigation. The same was forwarded to the Assessing Officer and Assessing Officer having jurisdiction over the assessee and after verification of the information available on record, the information forwarded by the Investigation Wing was not reflected anywhere in the information available with the Assessing Officer. Therefore, the Assessing Officer has no option but to reopen the assessment to make further investigation. Accordingly, the Assessing Officer also issued notice u/s 143(2) of the Act to collect the information. In response only, ld. AR of the assessee attended the proceedings and submitted the

relevant information. Therefore, the submissions of the assessee and relying on the decision of Hon'ble Delhi High Court are distinguishable to the facts on record. Accordingly, grounds raised by the assessee are dismissed and also we observed that Id. CIT (A) has elaborately discussed the above points and rightly dismissed the grounds raised by the assessee.

20. With regard to merits of addition made by the Assessing Officer, we observed that assessee was found with the information in his mobile relating to several credit cards in US \$ and UK Pound which belongs to assessee, his friends/relatives including his wife. Since the information relating to these credit cards are in the mobile of the assessee, as the assessee was able to utilize the same without the presence of any of the relatives and friends. Therefore, when the details were called for from the assessee and the assessee was not in a position to explain the same before the DIT (Inv.) and before the Assessing Officer, it clearly indicates that assessee has utilised the funds through these credit cards for his personal use and none of the parties or friends who are the owners of the credit cards never filed any proof/documents or affidavit to claim the same as belong to them. In absence of any material before the Assessing Officer, the Assessing Officer has no option but to make the addition in the hands of the assessee. Therefore, we do not see any reason to disturb the findings of the Id. CIT

(A). Accordingly, grounds raised by the assessee are dismissed.

21. Coming to the appeal preferred by the Revenue, we observed that the investment was made in Ananda Heritage Hotels P. Ltd. through M/s. Wilton Investment Ltd. and it is a fact on record that these investments were made through Wilton Investment Ltd. and the transaction is of share application money. Ananda Heritage Hotels P. Ltd. being an independent person accordingly Assessing Officer has made substantive addition in the hands of Ananda Heritage Hotels P. Ltd. and made the addition protectively in the hands of the assessee. We observed that ld. CIT (A) has observed the above facts on record and deleted the same in the hands of the assessee. Therefore, we do not see any reason to disturb the same. Accordingly, the appeal filed by the Revenue is dismissed.
22. In the result, both the appeals filed by the assessee and Revenue are dismissed.

**Order pronounced in the open court on this 6<sup>th</sup> day of November, 2024.**

**Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT**

**sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated : 06.11.2024  
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-28, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI