

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3657/Del/2019  
(Assessment Year: 2010-11)**

Ashok Kumar Gupta, B-3, West Gorkh Park, Shahadra, Delhi	Vs.	ITO, Ward-56(4), New Delhi
(Appellant)		(Respondent)
<b>PAN: AGJPG4741M</b>		

Assessee by :	Shri Prince Mohan Singh, Adv
Revenue by:	Shri Poojan Rana, Sr. DR
Date of Hearing	19/11/2024
Date of pronouncement	10/12/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.3657/Del/2019 for AY 2010--11, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-19, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10160/17-18/652 dated 11.03.2019 against the order of assessment passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2017 by the Assessing Officer, ITO, Ward-56(4), New Delhi (hereinafter referred to as 'Id. AO').
2. Though the assessee had raised various grounds of appeal, the preliminary issue to be decided in this appeal is as to whether the Learned AO had correctly assumed jurisdiction under section 147 of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2010-11 was filed by the assessee on 30-12-2010 declaring total income of Rs. 3,90,970/-. The case of the assessee was sought to be reopened under section 147 of the Act on the basis of information received from Assistant Director of Income Tax Investigation-1 Faridabad vide letter dated 17-3-2017 that assessee has made suspicious transactions of Rs. 7,88,910/- with M/s Global Trade Corporation during the year under consideration in the form of purchase, which was to be treated as non-genuine. The Investigation Wing report revealed that Global Trade Corporation was a bogus entity and accordingly they had supplied bogus bills to the assessee and assessee had transacted with them by obtaining accommodation entry in the form of bogus purchases for which purpose the assessee's case was sought to be reopened. The reasons recorded by the Learned AO for reopening the assessment are reproduced here under:-

**"Reason for belief in the case of Sh. Ashok Kumar Gupta (Pan No-AGIPG4741M) that income has escaped assessment for A.Y. 2010-11**

*As per Information available in this office, my assessee Sh. Ashok Kumar Gupta (PAN:NO-AGJPG4741M) R/o B-3/1043, Naveen Shahdara, Delhi-110032 had obtained bogus entries of Rs. 7,88,910/- from the concern, M/s. Global Trade Corporation through its bank A/c No. 10250500817 maintained with ICICI Bank during the FY-2009-10 relevant to AY under consideration.*

*It is further observed that M/s. Global Trade Corporation did not perform any business activities and a Firm only on papers. It is found that there were unusual heavy credit and debit entries in its bank accounts. As per information the Firm did not exist at the given address. The foregoing facts was examined with relation to ITR filed by the assessee for the A.Y. under question. The assessee has filed his ITR (ITR-4) for the A.Y. 2010-11 on 30/12/2010 declaring an income of Rs. 3,90,970/- On perusal of ITR, the particulars of income and deduction are as under-*

<i>Income under the head "PGBP"</i>	<i>Rs. 4,18,852/-</i>
<i>Deduction under chapter VIA</i>	<i>Rs. 27,882/-</i>
<i>Total income</i>	<i>Rs. 3,90,970/-</i>

*No detail regarding purchase has been furnished by the assessee. As such it is viewed that since M/s. Global trade Corporation is a bogus concern and engaged in providing accommodation entries in the form of sale/purchase of products, My assessee, Sh. Ashok Kumar Gupta has taken accommodation entry of Rs. 7,88,910/- by making bogus purchases from non existed entity.*

*In view of the above facts and observation, I have reason to believe that income of Rs. 7,88,910/- the assessee for A.Y. 2010-11 has escaped assessment because of the reason on the part of the assessee for not providing all the particulars of his income truly and fully. Hence, it is fit case to re-open u/s. 147/148 of the Income Tax Act, 1961.*

4. The Learned AR before us vehemently argued that the assessee does not have any bank account with ICICI bank as stated in the reasons and accordingly the reasons for reopening the assessment were recorded with incorrect assumption of fact , consequentially the entire formation of belief that income of the assessee had escaped assessment fails and the reassessment should be declared as void ab initio. But on perusal of the reasons, we find that though the Learned AO had indeed made an incorrect recording of fact that assessee had maintained a bank account with ICICI bank account, but ultimately for the purpose of formation of belief the learned AO had not relied on the maintenance of bank account in ICICI bank by the assessee instead the learned AO had only relied on the information received from investigation wing that M/s Global trade corporation was a bogus entity and the assessee had made some purchases from such bogus entity which had resulted in escapement of income. Hence we hold that the assumption of jurisdiction cannot be treated as invalid on this very basis of incorrect assumption of fact as the

said incorrect assumption of fact as stated supra has got no bearing on the ultimate formation of belief on the part of the learned AO that income of the assessee had escaped assessment within the meaning of section 147 of the Act. However, we find from the proforma enclosed in pages 24 and 26 of the paper book seeking approval of the competent authority in terms of section 151 of the Act for the purpose of reopening the assessment, the learned PCIT had merely stated he is satisfied that it is a fit case for reopening the assessment. This sort of approval has been considered to be illegal and mechanical without due application of mind on the part of the approving authority by the Hon'ble Madhya Pradesh High Court in the case of CIT Vs. S. Goyenka Lime and Chemicals Ltd reported in 56 taxmann.com 390 (MP HC). The Special Leave Petition (SLP) filed by the revenue against this decision was dismissed by the Hon'ble Supreme Court reported in 64 taxmann.com 313. Further, we find that the Hon'ble Jurisdictional High court in the case of PCIT Vs. NC Cables Ltd reported in 391 ITR 11 (Del) had also held the same, wherein, the approving authority had merely stated "approved" in the proforma while granting approval in terms of section 151 of the Act. This approval was held by the Hon'ble Jurisdictional High court to be a mechanical approval. The relevant observation of the Hon'ble Jurisdictional High Court in this regard are reproduced herein:-

*"11. Section 151 of the Act clearly stipulates that the CIT (A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.*

*12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed."*

5. Respectfully following the aforesaid decisions, we hold that the reopening has been made in the instant case by not taking approval u/s 151 of the Act from the competent authority in the manner known to law. Accordingly, the entire reassessment proceedings are hereby quashed. Hence, one of the legal grounds challenging the validity of assumption of jurisdiction u/s 147 of the Act is allowed in the above mentioned terms. Since the reassessment is quashed, the other legal grounds raised by the assessee as well as the grounds raised by the assessee on merits need not be adjudicated and they are left open.

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

Order pronounced in the open court on 10/12/2024.

**-Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated:10/12/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi