

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA , JUDICIAL MEMBER  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 1802/DEL/2024  
Assessment Year: 2010-11**

Rahul Tyagi, G-802, VVIP Addresses, Raj Nagar Extension, Ghaziabad-201001. <b>PAN: ADXPT 9820 E</b>	<u>Vs</u>	Income Tax Officer, Ward-2(2), Ghaziabad
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>		Sh. Ved Jain, Adv.; & Ms. Uma Upadhyay, CA
<b>Department represented by</b>		Shri Sanjay Kumar, Sr. DR
<b>Date of hearing</b>		13.12.2024
<b>Date of pronouncement</b>		18.12.2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against the order dated 23.02.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. CIT(A), Ghaziabad/-10155/2018-19, for the assessment year 2010-11, arising out of the order dated 26.12.2017 u/s 147 read with section 144 of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward-2(2), Delhi (hereinafter referred in short as “Ld. AO”).

2. On hearing both the sides it comes up that learned AR has primarily contested the appeal on the following two grounds:

*“3. On the facts and circumstances of the case, learned CIT(A), ITD has erred both on facts and in law in confirming the order of the AO despite the fact that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.*

*4. (i) On the facts and circumstances of the case, learned CIT(A), ITD has erred both on facts and in law in confirming the order of the AO despite that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts*

*(ii) That the learned CIT(A), ITD has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*

3. Learned AR has placed on record before us and relied the form of recording reasons for initiating proceedings u/s 147/148 of the Act and based upon the same learned AR has submitted that reasons have been recorded without application of mind. It was submitted that merely by relying the Investigation Wing report the case was reopened and on that ground alone the reassessment proceedings are liable to be quashed.

4. Learned DR, however, submitted that for reopening reasons were not supposed to be elaborative the impugned orders were relied.

5. Giving thoughtful consideration to the record we consider it appropriate to reproduce the reasons for belief as recorded by the learned AO.

*“An information has been received from DDIT (Inv.)-II, Noida, that the assessee Sh. Rahul Tyagi, Prop. M/s Mahalaxmi Trading Co: has made bogus purchases amounting to Rs.38,40,000/- from M/s Maa Saraswati Enterprises during the F.Y. 2009-10 relevant to AY. 2010-11.*

*During the investigation carried out by the wing it was found that the proprietary firm M/s Maa Saraswati Enterprises does not exist on the given address of the firm. Sh. Sunil Kumar the account holder of the account in the name of M/s Maa Saraswati Enterprises has denied to have sold any material to M/s Mahalaxmi Trading Co.*

*Hence, purchases of Rs.38,40,000/- remain bogus and is liable to be disallowed.*

*Therefore, I have reasons to believe that the amount of Rs.38,40,000/- in respect of bogus purchases which is liable to be disallowed, is chargeable to tax as income of the assessee for A.Y. 2010-11 and the same has escaped assessment within the meaning of section 147 of the I.T. Act 1961. If approved, notice u/s 148 of the I.T. Act 1961, may be issued.”*

6. It is quite evident from the aforesaid that the reasons are merely reproduction of the Investigation Wing report and not a word of any material otherwise relied or examined from the assessment record of assessee or any other piece of document containing such information has been relied by the AO to indicate that there was any application of mind. So much so that in this sheet the AO has not even cared to look into the fact if income-tax return was already filed and without taking cognizance of return so filed the Investigating Wing report has been relied for making the reopening.

7. In aforesaid context we are of the considered view that the settled proposition of law is that reasons for reopening should not be merely a conclusion to make reopening. It is necessary that there is independent application of mind by the AO to the tangible material which is relied to form the reasons to believe that income has escaped assessment. The conclusion of the AO in the present form are at best reproduction of the conclusion in the Investigation report and indeed it is a borrowed satisfaction. Thus, relying the judgment of Hon'ble Delhi High Court in

the case of **PCIT v. Meenakshi Overseas Pvt. Ltd. 2017 (5) TMI 1428** which has been followed by coordinate Bench in the case of **Akik Marketing India Pvt. Ltd. v. ITO – 2024 (1) TMI 608 (ITAT – Delhi dated January 11,2024)**, wherein one of us i.e. Judicial Member was on the Quorum, we are inclined to allow these grounds no 3 and 4. **Consequently, the appeal of assessee is allowed.**

Order pronounced in open court on 18.12.2024.

**Sd/-**

**(BRAJESH KUMAR SINGH)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**