

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DEHRADUN BENCH "DB", DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA Nos.3500 & 3501/Del/2017  
Assessment Years: 2003-04 & 2008-09

M/s. R.B. Enterprises, 7, Saharanpur Road, Dehradun	<b>Vs.</b>	DCIT, Central Circle, Dehradun
<b>PAN :AADFR7892D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**With**

ITA No.4/DDN/2019  
Assessment Year: 2010-11

DCIT, Central Circle, Dehradun	<b>Vs.</b>	M/s. R.B. Enterprises, 7, Saharanpur Road, Dehradun
<b>PAN :AADFR7892D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Ms. Ananya Kapoor, Adv.
Department by	Sh. S.K. Chaterjee, CIT(DR)

Date of hearing	08.01.2025
Date of pronouncement	27.01.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

These assessee's twin appeals ITA Nos. 3500 & 3501/Del/2017 for assessment years 2003-04 and 2008-09 arise against the Commissioner of Income Tax (Appeals) [in short, the

“CIT(A)”, Muzaffarnagar’s orders, both dated 24.03.2017 in case nos. 226/CIT(A)1/DDN/2014-15 and 231/CIT-A-1/DDN/14-15 involving proceedings under section 153A(1)(b)/143(3)/263/254 respectively. The Revenue’s appeal ITA No.4/DDN/2019 for AY 2010-11 is directed against the CIT(A)-IV, Kanpur’s order dated 29.01.2019 in case no. CIT(A)-IV/10102/DCIT-CC/DDN/2018-19/794 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. Coming to the assessee’s twin appeals ITA Nos. 3500 & 3501/Del/2017, learned counsel submits at the outset that it has applied for settlement under the Direct Tax Vivad Se Vishwas Scheme, 2024 as under:

*“ITA No.3500 & 3501/DDN/2017 AY: 2003-04 & 2008-09*

*Fixed for: 08.01.2025*

*Subject: Request for adjournment*

*Hon’ble Members,*

*That the captioned matters are fixed for hearing before Your Honours on 08.01.2025. It is humbly submitted that we have applied under VSVS Scheme, however, final form is awaited. Therefore, we require some time in the captioned matter.*

*In the light the above it is requested that the above captioned matters may kindly be adjourned to any other convenient date. We shall be grateful for this accommodation.”*

3. The Revenue is equally fair in not disputing all these intervening developments herein. That being the case, we dismiss

the assessee's instant twin appeals ITA Nos. 3500 & 3501/Del/2017 as withdrawn subject to all just exceptions. Ordered accordingly.

4. Lastly comes the Revenue's appeal ITA No.4/DDN/2019 for assessment year 2010-11, raising the following substantive grounds:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in law and in facts of the case in holding the notice u/s 148 invalid-ab-initio.*
2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law and in facts of this case holding that the notice u/s 148 is based on mere change of opinion without appreciating that once there was no explicit opinion recording in the assessment order itself, it could not be said that the A.O. had formed any opinion on the issue. The findings of the CIT(A) is therefore contrary to the recent decision of Supreme Court in the case of TechSpan India Pvt. Ltd. 92 Taxman.com361(SC).*
3. *Ld. CIT(A) erred in law and in facts of the case in appreciating the facts that this aspect has not been actually considered during original assessment order.*
4. *The order of the Ld. CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of AO be restored.*
5. *The appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.*

5. Both the parties invite our attention to the learned CIT(A)'s lower appellate discussion quashing the impugned reopening itself as under:

*“5.3 The undersigned has carefully gone through the assessment order, written submission as well as verbal arguments of the Ld. A.R..*

*It is seen that, original assessment u/s 143(3) of the Act was completed on 21.03.2013, on the total income at Rs. 11,08,270/-, AO has issued notice u/s 148 of the Act on 31.03.2017, after obtaining the prior approval of Pr. CIT (Central), Kanpur on 29.03.2017. For reopening the assessment AO has recorded the reasons to believe, which is reproduced here-in-under:*

*M/s R.B. Enterprises  
7-Saharanpur Road,  
Dehra Dun*

*PAN: AAGFR7892R*

*Asstt. Year 2010-11*

*Reason for initiating action u/s 147 of the Income Tax Act, 1961*

*The assessee filed e-return of income for the A.Y. 2010-11 on 5/10/2010 showing income of Rs. 11,08,270/-. The case was selected under scrutiny as per guidelines of CBDT. Assessment u/s 143(3) was completed on 21/3/2013 on returned income.*

*2 From the perusal of audited balance sheet and profit and loss account of the assessee it is noticed that the partners capital of Sh. Rakesh Batta and Smt. Devika Batta are shown Rs. 42.37.461/- Rs. 38,41,085/- respectively as on 31/3/2009 (closing balance). However, the same have been accounted for at Rs. 1,90,82,032/- and Rs. 93,04,085/- respectively as on 1/4/2009 (opening balance). The excess carry forwarding amounting to Rs 2,03,07,171/-(2,83,86,117 1,90,82,032 + 93,04,085) 80,78,946/- (42,37,86) 38,41,085) has been made by the assessee it is clear that the excess carry forward amounting to Ra. 2,03,07,171/ remained un- explanation and untaxed during the course of finalizing assessment order, in the year under consideration.*

*3 Keeping in view all the above facts, I have reason to believe that income chargeable to is tax amounting to Rs. 2,03,07,171/- for the A.Y. 2010-) has escaped assessment within the meaning of explanation 2(c)(1) of section 147 of Income Tax Act, 1961*

*(Negi)  
Sd/-  
Dy. Commissioner of Income Tax  
Central Circle, Dehra Dun*

*3.4 Adjudication of the grounds of appeal requires perusal of bare facts, which are as follows:*

- i. *The appellant is a registered partnership firm, engaged in the business of development, purchase and sale of land. A search u/s 132 of the Income Tax Act, 1961 was initiated in the premises of the assessee on 04-03-2009 and proceedings were completed u/s 153A of the Act on 21-03-2013.*
- ii. *During the course of assessment of search case, certain transactions were incorporated in the financial statements in AY 2009-10 through a revised financial statement, which were duly placed on record during the search assessments proceedings and, also explained to the AO in the submissions and duly accepted by the assessing officer.*
- iii. *During assessment proceedings undertaken for the year under review u/s 143(3), the revised opening balances were carried forward in the financials of the assessee firm, after taking into consideration the changed financials of the previous year. The search assessment proceedings were concluded by the assessing officer without any additions in the assessment order on 21-03-2013.*
- iv. *During the original scrutiny assessment proceedings, the then AO has issued a letter bearing no. DCIT/Central Circle/DDN/2012-13/1775 dated 27.02.2013 to the appellant and specifically requisitioned "closing balance in partners capital account for A.Y. 2009-10 as on 31.03.2009 is Rs. 2,32,62,373/- but, opening balance as on 01.04.2009 for A.Y. 2010-11 as per schedule I is shown at Rs. 1,48,28,544/-"*
- v. *Appellant has replied in detailed to the then AO vide its submission dated 08.03.2013, which is reproduced below:*

*6. Regarding difference in balance of capital account of partners we would like to point out that during the assessment proceeding u/s 153A(1)(b) for the AY 2009-10 a revised balance sheet was placed on the assessment records. For your reference we are attaching herewith as annexure 5 copy of this submission. We would like to point out that during the AY 2009-10 your assessee firm made certain payment to Mr. Kushal Pal for purchase of land. Following entry was passed in the books of your assessee during the AY 2009-10:*

<i>Kaushal Pal Debit</i>	<i>1,93,88,100/-</i>
<i>Rakesh Batta Capital Account Credited</i>	<i>81,07,500/-</i>
<i>Anuradha Batta Credited</i>	<i>57,17,600/-</i>
<i>Devika Batta Capital Account</i>	<i>54,63,000/-</i>
<i>Bank account</i>	<i>1,00,000/-</i>

*Against the advances to Kushal Pal during the AY 2009-10 purchase deed for Rs 1,92,88,100 was executed. This*

*purchase was debited as, Land from Kushal Pal as was reflected under Schedule 5 of Current Assets Loans and advances in the Balance Sheet of your assessee as at 31 day of March 2009.*

*This balance sheet for the AY 2009-10 was revised and submitted on the assessment records with our written submission dated 12.12.2010. The balance sheet for the year Under consideration was prepared and finalized on 28.09.2010 i.e. before this date. This has resulted in difference of balance in the capital account of the partners.*

- vi. After appreciation of the reply of the appellant, the then AO did find it desirable to make not made any addition on the issue of increase in the share capital in the partners account.*

*5.5 It is evident from the bare perusal of the facts mentioned here-in-above that, the issue under consideration of forming the basis of addition, has already been considered in the original assessment and there is absolutely no change in facts in the case. The AO has mechanically proceeded to record his reasons merely on the differences observed without the due examination of assessment record. Therefore, issue of notice u/s 148 of the Act is to be considered as issued without any independent application of mind by the AO, which merely constitutes the change of opinion without any new material fact or information coming into the possession of the AO. It is a settled preposition of law that, notice issued u/s 148 of the Act without application of mind and on the basis of change of opinion is not a valid notice under the income tax act. Hon'ble Supreme Court in the case of ITO vs. Tech Span India Pvt. Ltd. (Civil appeal no 2732 of 2017) vide its ruling dated 24.04.2017 has held that, "reassessment proceedings u/s 147 of the Act for the issues already considered in the proceedings conducted on the u/s 143(3) of the Act was merely the change of opinion and the same is liable to be quashed. Further, Hon'ble Gujarat High Court in the case of Adani Exports vs. DCIT 240 ITR 224 and Hon'ble Delhi High Court in the case of CIT vs. Sfil Stock broking Ltd. 325 ITR 285 has held that, "AO cannot reopen the assessment without applying his mind to the information and forming an opinion. The reasons must show the due application of mind to the information."*

*5.6 In the present factual matrix of the case, it is seen that, the appellaist has disclosed all the material facts and information regarding the addition made through journal entries in the opening capital of the partners. The notice u/s 148 of the Act issued by the AO does not specifically allege about any failure on the part of the appellant to make a full and, true disclosures on the material facts*

necessary for the assessment. Hence, the assessment based on such notice is liable to be quashed. Hon'ble Delhi High court in the case of CIT vs. Usha International Ltd. (ITA no. 2026/2010) has held as under:

*"As to the first part of the second question my answer would be that the assessment proceedings cannot be validly reopened under section 147 of the Act even within four years, if an assessee has furnished full and true particulars at the time of original assessment with reference to the income alleged to have escaped assessment, if the original assessment was made u/s 143(3)."*

5.7 Hon'ble High Court of Chennai in the case P Praveen Kumar vs. DCIT (ITA 2212/Mds/2017) has held on 06.12.2017 that, the reassessment proceeding initiated on the basis of same records, which were available during the original proceedings, is bad in law. The operative portion of this judgement is reproduced here-in-under;

*"In the present case, the AO reopened the assessment originally completed by him on the basis of the same records as were available before him while completing the original assessment and there was no new tangible material that had come to his possession on the basis of which the assessment was reopened. The relevant records including the books of account of the assessee were duly examined by the AO during the course of assessment proceedings completed u/s.143(3) of the Act and only after being satisfied with the details, the assessment of the assessee was completed. Therefore, the reopening of the assessment by the AO was bad in law as it was based merely on a change of opinion and the assessment in pursuance thereof was invalid and liable to be quashed. In view of the above we find no substance in the submissions raised by Id. D.R. Accordingly, we quash the reassessment order."*

5.8 Hence, in view of the above detailed discussion and judicial pronouncements cited here-in-above, it is concluded that, change in opinion cannot constitute the ground for reopening of assessment by the AO. Following the judgement also supports this view point;

- i. CIT Vs. Chaitanya Properties Pvt. Ltd (IA No. 205 of 2015)
- ii. M/s. T.T.K. Prestige Ltd. Vs. DCIT (W.P No. 30388/2015)
- iii. Signature Holdings P. Ltd Vs. ITO [2011] 338 ITR 0051
- iv. CIT Vs. Vinyas Finance and Investment P. Ltd. 357 ITR 646 (Delhi HC)
- v. v) Sidhi Vinayak Transport Vs. ACIT 362 ITR 72"

6. The Revenue could hardly dispute the clinching facts, inter alia, emerging from the case file that the learned Assessing Officer had framed his first round regular assessment in assessee's case on 21<sup>st</sup> March, 2013. There is further no indication in his reopening reasons extracted hereinabove that the assessee had ever been held not to have disclosed the relevant particulars "fully" and "truly" in the said former round so as to satisfy the rigor of section 147 1<sup>st</sup> proviso as the notice u/s 148 had been issued on 31<sup>st</sup> March, 2017 for assessment year 2010-11 i.e. beyond the specified period for four years from the end of the relevant assessment year.

7. We accordingly conclude in these peculiar facts and circumstances that the learned CIT(A) has rightly quashed the impugned reopening by quoting all the foregoing case laws (supra). The Revenue fails in the instant legal issue, and therefore, all its other pleadings on merits herein stand academic. Its main appeal ITA No. 4/DDN/2019 is dismissed.

8. To sum up, this assessee's twin appeals ITA Nos. 3500 & 3501/Del/2017 are dismissed as withdrawn and Revenue's appeal ITA No.4/DDN/2019 is dismissed in the above terms. A copy of this order be place in the respective case files.

***Order pronounced in the open court on 27<sup>th</sup> January, 2025***

***Sd/-***  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

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

Dated: 27<sup>th</sup> January, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi