

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.3849/Del/2016
[Assessment Year : 2009-10]**

ITO Ward-10(1) New Delhi	vs	M/s. Garg Alumino Pvt. Ltd. B-79, New Moti Nagar New Delhi-110015. PAN-AAACY1003G
APPELLANT		RESPONDENT
Appellant by		Shri Amit Katoch, Sr. DR
Respondent by		Dr. Kapil Goel, Adv.
Date of Hearing		25.02.2025
Date of Pronouncement		07.03.2025

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the Revenue seeking to assail the First Appellate order dated 29.04.2016 passed by Commissioner of Income Tax (A)-4, New Delhi [“CIT(A)”] under s. 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 18.03.2015 passed under s. 147 r.w.s143(3) of the Act pertaining to assessment year 2009-10.

2. As per the grounds of appeal, the Revenue has challenged the first appellate order towards reversal of addition of INR 3 crore under s. 68 of the Act. The Revenue has also challenged the reversal of additions towards estimated commission quantified at INR 3,00,000/- on the alleged accommodation entry by invoking the provision of s.68 yet again.

3. When the matter was called for hearing, the Ld. Counsel adverted to the petition dated 16.12.2014 under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 placed by the assessee with a prayer to examine the legality of assumption of jurisdiction under s. 147 of the Act.

3.1. It was contended that above ground is a legal ground and its adjudication does not require any intense investigation and relevant facts are explicitly available on record. It was entitled to support the outcome of the order of the CIT(A) on all grounds including the grounds taken in the impugned petition which was also raised before the CIT(A) although adjudicated against the assessee. The Ld. Counsel pointed out that the jurisdiction assumed under s. 147 in the instant case is outside the sanction of law and therefore, consequential assessment order itself is vitiated in law owing to exercise of nonest jurisdiction.

3.2. The Ld. Counsel also submitted that the first appellate order cannot be faulted with on merits. Notwithstanding, the legality of assumption of jurisdiction is required to be examined by the Tribunal.

3.3. To begin with, we advert to the objections raised by the assessee in terms of application filed under the shelter of Rule 27 of Income Tax (Appellate Tribunal) Rules, 1963. The assessee has *inter-alia* raised objections under Rule 27 to challenge the assumption on the grounds of non-compliance of pre-requisites for assumption of jurisdiction.

3.4. In the light of plain language of Rule 27, the application seeking to assail jurisdiction assumed under s. 147 of the Act by the AO requires to be adjudicated at the threshold. The application under Rule 27 is thus admitted for adjudication.

3.5. The Ld. Counsel has made wide ranging allegations to allege absence of pre-requisites for assumption of jurisdiction. The objections so raised on behalf of the assessee shall be dealt with in succeeding paragraphs.

4. To adjudicate the legal propriety of assumption of jurisdiction under s.147 of the Act, it may be pertinent to reproduce the reasons recorded which read as under:-

Reasons for the belief that income has escaped assessment in the case of M/s. Yash Ceremics P.Ltd. for A.Y. 2009-10 AAACY1003G

“M/s Yash Ceremics P. Ltd. is assessed to lax with Ward 18(4), New Delhi Enquiries of Investigation Wing. Delhi of the Department have unearthed huge accommodation entry racket being operated by accommodation entry operator Sh. Surendra Kr. Jain by way of more than 100 companies/firms etc. The investigation wing has compiled a report & data of the beneficiaries of such entries. The name of the assessee figures in the list of beneficiaries of Share capital Premium/Loan.

I have gone through the report and data sent by the investigation wing. The report clearly indicates that accommodation entries have been taken to plough back uncounted black money for the purpose of business or for personal needs such as purchase of assets etc. in the form share application money loans etc and even describes the modus operandi of this scam.

The Investigation Wing's list of Beneficiaries (of such accommodation entries) gives comprehensive details of Beneficiaries Name, Entity from where entry received, bank cheque/RTGS, date and even the middleman through which such entry is received.

This list contains the name of M/s Yash Ceremics P. Ltd which has taken such accommodation entries as under:

<i>Amount</i>	<i>Cheque/DD No.</i>	<i>Cheque Date</i>	<i>From Company name</i>	<i>Name of Issuing Bank</i>
<i>5000000</i>	<i>094358</i>	<i>05.05.2008</i>	<i>Mega Top Promoters P.Ltd.</i>	<i>Axis</i>
<i>5000000</i>	<i>248615</i>	<i>07.07.2008</i>	<i>AD Fin Capital Services</i>	<i>Axis</i>
<i>2500000</i>	<i>120238</i>	<i>19.08.2008</i>	<i>Huntum Marketing P.Ltd.</i>	<i>Axis</i>
<i>2500000</i>	<i>128027</i>	<i>19.07.2008</i>	<i>Virgin Capital Services</i>	<i>Axis</i>
<i>2500000</i>	<i>229868</i>	<i>19.07.2008</i>	<i>Euro Asia Mercantile P.Ltd.</i>	<i>Axis</i>
<i>2500000</i>	<i>252494</i>	<i>19.07.2008</i>	<i>Shalini Holdings Ltd.</i>	<i>Axis</i>
<i>2500000</i>	<i>252407</i>	<i>22.07.2008</i>	<i>Shalini Holdings Ltd.</i>	<i>Axis</i>
<i>2500000</i>	<i>229872</i>	<i>22.07.2008</i>	<i>Euro Asia Mercantile P.Ltd.</i>	<i>Axis</i>

2500000	128031	22.07.2008	Virgin Capital Services	Axis
2500000	120239	22.07.2008	Hum Tum Marketing P.Ltd.	Axis

Copies of handwritten papers seized from residence of Sh. SK Jain have also been forwarded from the wing. The middleman involved in helping the assessee take these entries has been named as Mr Vijay Gupta.

Thus, the assessee has ploughed back unaccounted money of Rs 3 crores in its business through the channel of accommodation entry. The assessee has also paid commission of 1.75% in cash on the same. Therefore, it is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, for the assessment year 2009-10 and has not paid tax on such amount. The unaccounted moneys which should have been charged to tax are being ploughed back to business without paying dues tax on it. In view of the above facts, I have reasons to believe that income to the tune of Rs 3 crores, commission paid on the same, of the assessee company for AY 2009-10 has escaped assessment.”

Sd/-

Income Tax Officer

Ward-18(4), New Delhi

5. The contentions of the assessee towards purported lack of jurisdiction under s. 147 are broadly outlined as under:-

[i] the reasons recorded would make it evidently clear that the AO has acted in mechanical manner and without application of mind and without objectively ascertaining the facts before recording the reasons towards alleged escapement. The assessment has been re-opened on the basis of borrowed satisfaction without independent application of mind and thus consequential action and proceedings are illegal and bad in law. On facts, the transaction of credit by way of share application money have been duly recorded in books and also assessed under s. 143(3) of the Act and there was no failure on the part of the assessee to disclose any material fact as wrongly alleged in the reasons for re-opening of assessment.

Similarly, no reference to any adverse material has made in the reasons to suspect the propriety of credits obtained from the various parties listed in the reasons recorded. Placing reliance on the judgement rendered in the case of *Pr.CIT vs RMG Polyvinyl (I) Ltd. 396 ITR 5 (Del.)*, the Ld. Counsel contended that in the absence of any tangible material whatsoever, referred to in the reasons recorded, the re-opening of assessment based on un-supported and generalized information of Investigation Wing *per se* is wholly arbitrary exercise of powers and thus untenable in law. The information provided by the Investigation Wing to the AO itself is delightfully vague and non-descript and not backed by any tangible material detected in the course of search or at any other stage of enquiry. The *modus operandi* narrated in the case of S.K.Jain Group would not give rise to any *prima-facie* belief towards escapement in the hands of the assessee. Such assertions made in the report of Investigation Wing would, at best, give rise a reason to initiate enquiries to ascertain the correctness of suspicion which is wholly distinct from the pre-eminent expression 'reason to believe'. The 'reason to believe' is the fulcrum for exercise of powers under s. 147 of the Act. The 'believe' fostered, although subjective in nature, must trigger from reasons which are objective in nature and need to be based on something tangible and substantive. The 'belief on escapement' thus could not have been made in the instant case in the absence of any objective material referred in the reasons recorded.

[ii] In the absence of any reference to any tangible material showing involvement of assessee in obtaining any accommodation entry as alleged, the approval granted by the Competent Authority under s. 151 of the Act is clearly mechanical. A mechanical approval would thus not permit the AO to re-open the assessment earlier completed under s. 143(3) of the Act. Such mechanical approval has thus also vitiated the assumption of jurisdiction under s. 147 of the Act standalone basis.

[iii] The AO, while recording the reasons under s. 148(2) of the Act, has even not cared to take cognizance of the basic information that assessment was earlier

carried out under s. 143(3) of the Act. The impact of the assessment under s. 143(3) and nature of enquiries carried out in the earlier assessment has not been weighed while alleging any kind of 'failure' on the part of the assessee.

[iv] The reasons have been recorded to exercise jurisdiction available under s. 147 of the Act on 'borrowed satisfaction' as evident from cursory look to some of the striking features of the impugned reasons recorded in the instant case:-

(a) the reasons recorded nowhere considered factum of return filed and framing of assessment under s. 143(3) of the Act;

(b) reasons nowhere describe the exact/specific nature of impugned transactions entered into by the S.K.Jain Group with the assessee;

(c) mere reference from Investigation Wing is made the basis to infer escapement of income without disclosing any objectivity in such reference.

[v] The detailed objections filed by the assessee on the legality of re-opening proceedings before the AO raising multiple contentions were not disposed off by separate & valid speaking order in complete defiance of the judgement rendered by the Hon'ble Apex Court in the case of *GKN Driveshafts (India) Ltd. vs ITO 259 ITR 19 (SC)*.

[vi] The CIT(A) has rejected the challenge to the assumption of jurisdiction before him solely on the footing that if the AO gets information from Investigation Wing, he is entitled to re-open the assessment. The simplicitor view expressed by the CIT(A) without considering the nuances of various conditions including 'reason to believe' provided in s. 147 of the Act, is in total defiance of plethora of judgements available on this score. The observations of the CIT(A) and conclusion drawn against the assessee is *prima-facie* susceptible in law.

6. Having regard to the jurisdictional issue involved, we shall straightway address ourselves with the objections emanating from petition filed under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963.

7. The assessee has raised legal objections on account of wrongful jurisdiction of assumption under s.147 of the Act alleging non-compliance of strict conditions of jurisdictional provision of s. 147 r.w.s. 151 of the Act.

8. As noted from the reasons extracted in the preceding paras, the reasons recorded sets out that information has been received from Investigation Wing, Delhi adverse to the assessee. However, there is no reference or particulars about the date on which the information was received by the AO. There is also no reference of any objective particulars which led the AO to believe towards escapement of chargeable income. The AO has merely quoted the entries routed through banking channels from various parties which were alleged to be accommodation entries. No basis has been referred to show his application of mind on the material if any, to implicate the assessee with such vicious allegation.

8.1. A plain reading of reasons would clearly show that re-opening proceedings have been initiated based on some generalized and uncorroborated information. There does not appear any application of mind on the so-called information (contents not available) collected by the AO. The circumstances narrated in the reasons recorded would show that the AO has proceeded on dotted lines as dictated in the information received.

8.2. The reasons recorded apparently vouches for the fact that no immediate nexus or live link is reflected between any tangible material and the corresponding 'belief' thereon towards escapement.

8.3. The Hon'ble Delhi High Court in its judgement in W.P.(C). 13273/2018 in the case of *Well Trans Logistics India Pvt.Ltd. vs Addl.CIT & Ors.* dated 02.09.2024 has *inter-alia* observed that information received from the investigating unit of the Revenue cannot be the sole basis for formation of belief that income of the assessee has escaped assessment. The Hon'ble Delhi High Court observed that having received information from the Investigation Wing, it was incumbent upon the AO to take further steps for making further inquiries and garner objective

material indicating that income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.

8.4. In the instant case, there is not even a line of reason which may justify the formation of belief. The AO in the instant case observes that the name of the assessee figures in the list of beneficiaries on share capital premium/loan. Thus, the AO is not privy to even the nature of transaction whether the assessee is a beneficiary towards share capital premium or towards loan. Besides, in the absence of any specific information of reliable character referred in the reasons, the reasons are required to be construed as vague, indefinite, far-fetched and remote. The AO has also not bothered to take cognizance of basic facts such as income reported, date of return filed or any assessment carried out earlier. The reasons recorded are apparently stereo-typed without any emphasis on the relevant facts.

9. We thus find potency in the plea of the assessee that the reasons recorded and approval granted thereon under s. 151 do not meet the requirement of law at all and thus the issuance of notice under s. 148 based on cryptic and non-descript reasons combined with a mechanical approval thereon under s. 151 do not pass the test of judicial scrutiny. The CIT(A), in our view, has committed blatant error in endorsing the reasons recorded which are clearly plagued by the vice of being vague, indefinite, non-descript and distant and that too without providing an iota of sound reasoning. A solitary observation that the re-opening has been carried in the light of Investigation Report can be no basis to fasten the jurisdiction for re-assessment of completed assessment. Such findings of the CIT(A) against the assessee on the jurisdictional aspect cannot be countenanced in law.

10. Consequently, the notice under s. 148 to re-open the assessment is held to be void *ab-initio* and thus consequential re-assessment order is bad in law and therefore stands quashed.

11. The Revenue has challenged the justification advanced by the CIT(A) while granting relief to the assessee on merits of the case. The relevant operative para of the order of the CIT(A) dealing with the aspects of merits are reproduced as under:-

“.....I have gone through the facts of the case, grounds of appeal, observations of the Assessing officer in the assessment order dated 18.03.2015, written submissions and paper book of the appellant company and case laws relied upon by the appellant and considered them. On perusal of the assessment record for the assessment year, it is seen that the appellant has furnished all the relevant details pertaining to the share capital and share premium that were called for by the Assessing Officer, and in response to the aforesaid notice, appellant furnished various details pertaining to the share capital and share premium from 7 companies. The evidences furnished by the assessee during the course of the assessment proceedings are as under:

- i. Copy of share application*
- ii. Confirmation*
- iii. Copy of acknowledgement of return of income*
- iv. Copy of PAN*
- v. Copy of bank statement*
- vi. Auditors report and balance sheet.*

From the perusal of the aforesaid, it is evident that the assessee has produced complete documentary evidence to establish the identity and creditworthiness of the shareholder and genuineness of the transaction. All the shareholders are identifiable companies and are duly assessed to tax. From the perusal of the annual accounts of those companies, it is also apparent that all the shareholder companies have sufficient reserve and surplus to invest in the shares of the appellant company and hence assessee has discharged its onus cast under section 68 of the Act. Further in the order of assessment, it has been stated that AO has issued notices under section

133(6) of the Act and it has been observed that all the shareholders have filed the requisite details in such circumstances, identity of the shareholder cannot be doubted further since they have not denied the investment made in the appellant company and on the contrary have confirmed the investment, as such, appellant has discharged its burden u/s 68 of the Act. Apart therefrom, all the summons issued u/s 131 of the Act have also been duly served on all the investor companies. As such, on account of the independent enquiry conducted by the AO, no adverse information came to suggest that either the shareholders are nonexistent companies or they don't have capacity to invest or any of the shareholder denied the investment made in the appellant company. On the contrary, all the shareholders duly confirmed the investment made in the appellant company.

In the present case, section 68 is applicable to the share application money and share premium received by the appellant to the extent of discharging its onus regarding the nature and source thereof, to the satisfaction of the assessing officer. It involves three incidents namely:

- (i) Proof regarding the identity of the share applicants.*
- (ii) Their creditworthiness to purchase the shares.*
- (iii) The genuineness of the transaction as a whole.*

In the instant case, infact all the aforesaid three limbs are satisfied as in response to independent enquiry made by the AO, i.e. in response to notices issued u/s 133(6), all the shareholders have filed their replies and has confirmed the investment made in assessee company. Further, from the perusal of the balance sheets of such companies it has been found that such companies have sufficient reserve and surplus and investment has been made by account payee cheques as such creditworthiness cannot be disputed. As such, share capital received by the assessee cannot be held to be not genuine.

That the Apex Court in the case of CIT vs. Lovely Export 216 CTR 195 has held that if the share application money is received by the assessee company is from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen the individual assessments of share applicants and addition cannot be made in the hands of the assessee. The AR of the appellant has relied on various other case laws of the Hon'ble Jurisdictional High Court, and other High Courts and Hon'ble Tribunal on this issue which are not reiterated here as they are embedded in the written submission furnished by the appellant company. Respectfully following the aforesaid judgments relied upon by the appellant on this issue, I hold that the appellant has discharged its onus cast upon it as per the provisions of section 68 of the IT Act, 1961. Thus the action of the assessing officer in making the impugned addition is unwarranted and unjustified.

To sum up, from the material on record I find that the appellant company had discharged its onus as provided in the provisions of section 68 of the IT Act, 1961. Therefore, the action of the Assessing officer in treating the share application money received by the appellant during the year under consideration as unexplained is not justified. Accordingly, the addition of Rs. 3,00,00,000/- made by the Assessing officer u/s 68 of the IT Act is deleted.”

12. On perusal of the assessment order, we notice that material collected from the Investigation Wing if any, was never confronted to the assessee at any stage of the assessment. The assessment in the instant case was earlier carried out under s. 143(3) of the Act. As per the reasons recorded, the AO has alleged that tangible material showing ‘escapement of income’ seeks to dislodge the position taken by the assessee as per the return of income. However, having not disclosed the information collected, the onus continued to remain on the Revenue and was never discharged and therefore, never shifted on the assessee.

12.1. The process of reasoning adopted by the CIT(A) while affirming the stance of the assessee and reversing the additions appear to be on sound principles. We do not see any infirmity in the process of reasoning so adopted. Without

repeating the finding of the CIT(A) quoted in the earlier paragraphs, we endorse the action of the CIT(A) on merits.

12.2. We thus decline to interfere with the action of CIT(A) on merits.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 07th March, 2025.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Amit Kumar, Sr.P.S

Copy forwarded to:

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

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI