

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3055/Del/2022
(ASSESSMENT YEAR 2012-13)

Dy. CIT, Central Circle-27, New Delhi.	Vs.	M/s Debonair Tie-up Pvt. Ltd., Flat No.1B, Shibshakti Apartment 166, Rajdanga Nabapally, Kasba PS, Kolkata, West Bengal-700107 PAN: AACCD8022C
(Appellant)		(Respondent)

Assessee by	Sh. Vartik Choksi, CA
Department by	Sh. Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing	27/02/2025
Date of Pronouncement	27/02/2025

ORDER

PER MANISH AGARWAL, AM:

This present appeal is filed by the Revenue against the order passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) by the Id. Commissioner of Income Tax (Appeals)-27 in Appeal No. CIT(A), Delhi-27/10249/2019-20 dated 03.10.2022 for Assessment Year 2012-13.

2. Brief facts of the case are that the assessee is a company engaged in the business of trading in shares, securities, debentures

and other investments. The return of income was filed u/s 139 (1) of the Act on 30.09.2012 declaring total income at Rs.43,187/-. The assessment was completed u/s 144 vide order dated 02.03.2015 the making addition of Rs.17,07,86,833/- was made on account of unsecured loan. In first appeal, out of total addition of Rs.17,07,86,833/-, addition of Rs.5,41,000/- were sustained and balance were deleted in terms of the order of CIT(A) dated 15.11.2021. In the meantime, the case of the assessee is reopened by way of issue of notice u/s 148 on 18/03/2019. In response to which the assessee has filed its return of income on 15.04.2019. The reason for reopening was based on the information received from the Investigation Wing, U-3(1), Kolkata that assessee has transferred undisclosed funds of Rs.15,00,000/- from the transaction with M/s Mayfair Barter Pvt. Ltd., Kolkata with other M/s Mangalmayee Hirise Pvt. Ltd. and M/s Neelkamal Dealcom P. Ltd. After considering the submissions of the assessee and also further perusing the material/information available on record, the reassessment order was passed u/s 147 r.w.s 143(3) of the Act dated 29.12.2019 wherein addition of Rs.4,50,00,000/- was made u/s 68 of the Act on account of alleged accommodation entry in the form of sale of share at on premium.

3. Against such order, assessee preferred appeal before the Ld. CIT(A) who allowed the appeal on the merits vide impugned order dated 03.10.2022 against which the present appeal is filed by the Revenue before the Tribunal wherein following the grounds of appeal have been taken:-

“1. The Ld. CIT(A) erred in deleting the addition of Rs.4.5 Crores on account of unexplained cash credits without recording any finding in respect of different reasons given by AO for making.

2. The CIT(A) erred in entirely resting his decision on the premise that if the sale proceeds are received through banking channel and the buying company had been filing its return of income, the cash credit is genuine.

3. The Ld. CIT(A)'s finding that the appellant was under no obligation to undertake a physical verification of buying company is totally perverse and disregards the intent and purpose of physical verification undertaken by AO establishing that the buying company was shell entity.

4. The Ld. CIT(A) has failed to record any finding against the fact brought on record by the AO that the stake held by assessee in M/s Monitor Vinimay Pvt. Ltd, Glacial Agencies Pvt. Ltd, Shivamani Advisory Services Pvt. Ltd did not undergo any change during the relevant Previous Year.

5. The order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

6. The grounds of appeal are without prejudice to each other.

7. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. At the outset, in the instant case, ld. CIT(A) has rejected the legal ground No.1 with regard to the validity of the order passed u/s 147 r. w. section 143(3) of the Act. However, ld. CIT(A) has decided the issues on merits in favour of the assessee. The Department filed present appeal before ITAT against such deletion by ld. CIT(A), however, no cross objection was filed by the assessee. During the course of hearing, the Ld. AR of the assessee raised the said legal ground which was rejected by ld. CIT(A) by taking resort to Rule 27 of the ITAT Rules, 1963 and an oral request was made in this respect.

5. As per Rule-27 of ITAT Rules, the assessee cannot be precluded to challenge that part of order of Ld. CIT(A) which is against him

merely because no cross objection was filed by the assessee by not filing cross objection it cannot be inferred that the assessee has accepted that part of the order which was against him. This view is duly supported by the judgment of Hon'ble Jurisdictional High Court in the case of *Sanjay Sawhney vs. PCIT* in ITA No.834/2019 dated 18.05.2020 wherein the Hon'ble Court was of the view that the assessee was entitled to defend the ground decided against him by Id. CIT(A) and support the order in appeal on any of the grounds decided against it. The Hon'ble Court further observed that the assessee could rely upon rule 27 of ITAT Rules and advance his arguments, even though it had not filed cross objections against the findings which are against his. With these, we are taking first the legal ground of the assessee with regard to the validity of order passed u/s 147 r.w. section 143(3) of the Act as was taken in ground of appeal No.1 before Id. CIT(A).

6. Ld. AR submits that from the perusal of the reasons recorded it appears that the Assessing Officer merely on suspicion has reopened the completed assessment in case of assessee, without making any verification of the material available on record. He further submit that in the reasons recorded it can be observed that it was not clear as to whether the assessee has received the funds or made payment. Further in the reasons recorded, it was observed that on verification of the return of income of the assessee company, it was prima facie noticed that the sale has not been reflected in the accounts. In the instant case, the assessment has already been completed u/s 143(3)

of the Act and all the information was available with the Assessing Officer at the time of making assessment and, therefore, it cannot be said that the information now referred with regard to sale of shares by assessee company is not verifiable from the return itself. He further submit that in the reasons recorded, the AO further observed that prima facie it is construed that this matter requires verification by taking up for scrutiny. According to Ld. AR before issue of notice u/s 148, it is duty of the Assessing Officer to make the necessary enquiry and verification with respect to the material available on record so as to record his satisfaction that certain income has escaped assessment more particularly when the re-opening is done after a period of four years from the end of relevant Assessment Year. Merely on the basis of suspicion, reopening of the completed assessment u/s 147 of the Act is not allowed, which is permissible only in case where there is a reason to believe and not reason to suspect. When the assessment was reopened for the purposes of making verification, then it is clear that no enquiry or verification was made prior to issue of notice u/s 148 of the Act nor any reasons to believe was recorded. He further submit that the AO in the reasons observed that the assessee is a beneficiary of Rs.15,00,000/- in case of M/s Mayfair Barter Pvt. Ltd., however, no such amount was received by the assessee from M/s Mayfair Barter Pvt. Ltd., Kolkata and, therefore, even otherwise the case of the assessee could not be reopened. Further no addition could be made in the case of the assessee when no addition was made on account of issue for which the reason to believe was recorded for escapement of income before issue of notice u/s 148 of the Act. He

therefore, prayed that the order of the Ld. AO in reopening the completed assessment merely on suspicion deserves to be hold bad in law. He further supports the order of the Ld. CIT(A) deleting the addition on merits.

7. On the other hand, the Ld. Sr. DR vehemently supported the order of the AO on account of reopening and submit that the reopening was made on the basis of the information received by the Assessing Officer which was examined in the light of the material available on record, thus, the conclusion that certain income has escaped assessment is correct. He, therefore, prayed that in the instant case reopening has been done in accordance with law and the same deserves to be upheld.

8. We have heard the rival submissions and perused the material available on record. In the instant case, the case of the assessee has been reopened by recording the reason that as per the information received from DDIT (Inv.), U-3(I), Kolkata that in the case of M/s Mayfair barter Pvt. Ltd., A/C No.695205122436 with Kolkata, NS Raod Branch (with others M/s Mangalmayee Hirise Pvt. Ltd. A/c 695205123136, M/s Neelkamal Dealcom P. Ltd. A/c 695205128032) it is seen to have transferred fund from their account, it was revealed that the assessee company M/s Debonair Tie-up Ltd. transferred such undisclosed fund to their account and was beneficiary after triggering suspicion and involving amount to Rs.15,00,000/- for such period which remained unexplained. "On the verification of the return

of income of the assessee company it was prime facie noticed that the said transactions have not been reflected in the accounts. Prima facie it is constitutes that it is requires verification by taking up the case for scrutiny. I have, therefore, reason to belief that income of Rs.15,00,000/- escaped assessment on the part of assessee company to disclose at rupees more than return of income.” Accordingly, the notice u/s 148 was issued.

9. From the perusal of the reasons recorded, we find that the AO has recorded the satisfaction of escapement of income by observing that the assessee has transferred the funds of Rs.15,00,000/- in the accounts of M/s Mayfair Barter Pvt. Ltd. with M/s Mangalmayee Hirise Pvt. Ltd. and M/s Neelkamal Dealcom Pvt. Ltd. It is further seen that all these allegations is based on mere suspicion and for the purposes of making verification of this facts, the case of the assessee was reopened. Further from the perusal of the assessment order, we find that no such addition of any transfer of funds to M/s Mayfair Barter Pvt. Ltd. or M/s Mangalmayee Hirise Pvt. Ltd. or M/s Neelkamal Dealcom Pvt. Ltd. was made rather entire addition of Rs.4.50 Crores were made on account of alleged amount received on the sale of shares at premium to various entities. It is thus a matter of fact that no addition whatsoever is made for the issue of amount transferred at Rs.15,00,000/- to any entity stated in the reasons recorded. Therefore, when the AO has assumed jurisdiction u/s 148 of the Act on a particular issue for which no addition is made, he has no jurisdiction to travel beyond the reasons recorded in such

circumstances. This view is supported by the judgment of the Hon'ble Rajasthan High Court in the case of CIT v. Shri Ram Singh reported in [2008] 306 ITR 343 held as follows:

". . . if is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then, only in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

10. Further, in the case of [CIT Vs Jet Airways \(I\) Ltd.](#) reported in (2011) 331 ITR 236, Hon'ble Bombay High Court held as under:

"Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance or core nugatory. [Section 147](#) has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under [section 148](#), he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under [section 148](#) would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

11. Further the reasons were recorded on the basis of suspicion and doubts. The Assessing Officer should have examined the material available before him as a consequence to assessment proceedings concluded u/s 143(3) of the Act, from which he can draw the interference that certain income has escaped assessment. Merely on the basis of vague findings and on suspicion that there might have same income escapement assessment, reopening of completed assessment cannot be done. There must have rational connection with or relevant bearing of the information to the belief. Rational connection postulates there must be direct nexus between the information coming to the notice of the Assessing Officer that there has been escapement of income of the assessee in a particular year. In the light of the above discussion, and by respectfully following the judgements referred to above, we are of the considered view that in the instant case, the AO has proceeded to reopen the completed assessment merely on suspicion and for making verification of the information with the material available on record without making any exercise of such verification prior to issue of notice u/s 148 of the Act, therefore, the notice u/s 148 is liable to be quashed. Accordingly, we hold that the notice issued u/s 148 of the Act is void ab initio and subsequent reassessment proceedings are hereby quashed.

12. Since, we have already decided the legal issue of reopening in favour of the assessee, the grounds of appeal taken by the Revenue with respect to the merits of the addition deleted by Ld. CIT(A) became academic and, thus, not adjudicated.

13. As a result, the appeal filed by the Revenue is dismissed.

Order pronounced in open court on 27/02/2025.

Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 25/03/2025

PK/Ps

Copy forwarded to:

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

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI