

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं. / ITA No. 276/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)

DCIT, Central Circle Agra.	बनाम/ Vs.	Agra Better Homes LLP 13B, Raj Apartment, Jasoria Enclave Agra-282001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAZFA-9657-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Shailender Shrivastava – Ld. Sr. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Deependra Mohan, CA – Ld. AR

सुनवाईकीतारीख/ Date of Hearing	:	18-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	25-04-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2015-16 arises out of an order passed by learned Commissioner of Income Tax (Appeals), Kanpur-4 [CIT(A)] on 07-06-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 147 r.w.s. 144 of the Act on 30-03-2022. The Ld. Sr. DR advanced arguments and supported the assessment order whereas Ld. AR referred to the findings of Ld. CIT(A). Having heard rival submission and upon perusal of case records, our adjudication would be as under.

2. Upon perusal of opening paragraph of assessment order, it could be seen that the case was reopened pursuant to receipt of certain information from investigation wing that the assessee received accommodation entries from Shri Pradeep Kumar Jindal group of entities.

Notice u/s 148 was issued to the assessee on 31-03-2021. The Ld. AO ultimately added unsecured loans of Rs.14.19 Crores along with estimated commission of 2.5% u/s 68 and framed the assessment for want of sufficiency of documents from the assessee.

3. The assessee's elaborate submissions during first appeal were subjected to remand proceedings. The Ld. AO furnished a remand report on 16-11-2023. The assessee assailed reassessment jurisdiction on the ground that reopening proceeds on wrong belief that the case was not scrutinized u/s 143(3) whereas the fact was that the case was already scrutinized u/s 143(3) which culminated into an assessment order dated 16-10-2017. The attention was drawn to the fact that Ld. AO invoked the provisions of Explanation 2(b) to Sec.147 of Act whereas the case was covered under Explanation 2(c). Therefore, the jurisdiction was defective. On merits also, it was submitted that there was no material to indicate that these loans were accommodation entries. Rather these loans were squared up in subsequent years.

4. The Ld. CIT(A), upon perusal of approval form for reopening the case of the assessee, concurred with the aforesaid legal submissions. It was observed that the regular return of income was thoroughly scrutinized u/s 143(3) wherein the issues of unsecured loans were also examined by Ld. AO. The Ld. AO could not record any finding as to how there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. In such a case, the reassessment proceedings would be bad-in-law as held by Delhi Tribunal in the case of **ACIT vs. Jamuna Auto Industries Ltd. (ITA No.4033/Del/2011 dated 20-07-2012)** rendered after considering catena of judicial decisions holding the field.

It was also observed by Ld. CIT(A) that there was no seized material or any other evidence which would indicate that the assessee obtained bogus entries. Only a general statement was given by Shri Pradeep Kumar Jindal in which he revealed that the lender entities used to provide accommodation entries but nowhere the assessee's name was mentioned therein. Further, the said statement was never confronted to the assessee. Therefore, the additions could not be sustained.

Another legal ground was that the assessee objected to reopening vide letter dated 17-03-2022 which was not disposed-off by Ld. AO which was contrary to the decision of Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. vs. ITO (259 ITR 19)**.

In the above background, the impugned additions were deleted on legal grounds. Aggrieved, the revenue is in further appeal before us.

5. We find that the aforesaid findings as rendered by Ld. CIT(A) remain uncontroverted before us. It is admitted position that the reopening has proceeded on wrong assumption of facts and reopening exercise has been done in a mechanical manner. The regular return of income was already scrutinized u/s 143(3) whereas the approval proceeds on wrong assumption that no such scrutiny had taken place. The reopening has been triggered by invoking wrong clause. The reopening is beyond 4 years and there is no allegation that income escaped assessment owing to any failure on the part of the assessee to disclosed fully and truly all material facts necessary for the assessment. This statutory requirement has not been fulfilled by Ld. AO. It is another fact that the issue of unsecured loan was duly examined by Ld. AO during the course of regular assessment proceedings itself. It could also be seen that Ld. AO do not have sufficient material in his possession to form belief of

escapement of income. The reopening has been done merely at the behest of investigation report whereas the assessee has not been named by the tainted group in their recorded statement. There is no material to support the allegation of accommodation entry. Pertinently, all the unsecured loans stood squared up in subsequent years. The cited case laws duly supports the adjudication of Ld. CIT(A). Considering all these facts, we see no reason to interfere in the impugned order, in any manner.

6. The appeal stand dismissed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(SATBEER SINGH GODARA)

न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Dated: 25-04-2025

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA