

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH**

**BEFORE SHRI GEORGE GEORGE K., VP  
AND SHRI INTURI RAMA RAO, AM**

**ITA No. 522 /Coch/2023  
Assessment Year: 2006-07**

Yenkey Roller Flour Mills ..... Appellant  
6/1183, Kunhipari Buildings  
Cheroty Road, Calicut 673032  
[PAN: AAAFY2787L]

vs.

DCIT, Circle -1(1), Calicut .....  
Respondent

Appellant by: Shri G. Surendranath Rao, CA  
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 13.05.2025  
Date of Pronouncement: 14.05.2025

**ORDER**

**Per: Inturi Rama Rao, AM**

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 18.05.2023 for Assessment Year (AY) 2006-07.

2. Brief facts of the case are that the appellant is a partnership firm engaged in the business of running a wheat flour mill. The return of income for AY 2006-07 was filed on 30.10.2006. Against the said return of income, the assessment was completed by the ACIT, Central Circle-2, Kozhikode (hereinafter called "the

AO") vide order dated 22.12.2008 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 32,87,670/-. While doing so, the AO made certain disallowances on account of disallowance of interest and disallowance on account of excess wastage and depreciation, etc. Subsequently, the AO sought to reopen the assessment by issuing notice u/s. 148 of the Act on 23.03.2013 after recording the following reasons u/s. 147 of the Act:-

*"Information has been received from investigation Wing Calicut that bank account No. 1331 in the name of M/S. M.P. Traders shows huge credits and all these are cheque payments from Parrissons Group from F.Y. 2004-05 to FY 2007-08. Statement was recorded from Mr. M.P Gangadharan on 17.01.2011 in which he stated that credits appearing in bank account No. 1331 in Federal Bank, Cherrooty Road, Calicut were cheques issued by Parrissons Group, who were inflating their purchases through M.P.Gangadharan by receiving bills and making payments for bogus purchases. A statement recorded from MP Gangadharan on 04.03.2013 in connection with assessment proceeding pending in case of Parrissons foods for AY 2005-06 has revealed that Yenkey Roller Flour Mills is one of the main entity in Parrissons Group mainly indulged purchase initiation as mentioned above. The huge credit appeared in the MP Traders Account for FY 2005-06 is Rs.3,79,62,446/-*

*In view of above I have reason to believe that income chargeable to tax to an extent of rupees more than one lakh for assessment year 2006-07 has escaped assessment within the meaning of section 147 of Income Tax Act. 1961 in case of Yenkey Roller Flour Mills."*

3. The assessment was completed by the AO vide order dated 22.08.2014 passed u/s. 143(3) r.w.s. 147 of the Act at a total income of Rs. 49,43,261/-. While doing so, the AO made addition on account of bogus purchase of Rs. 25,70,735/-

4. Being aggrieved, an appeal was filed before the CIT(A) challenging the very validity of the reassessment proceedings on the ground that the assessment was sought to be reopened after expiry of a period of 4 years from the relevant assessment year without allegation of failure of the assessee to produce material facts necessary for completion of assessment. However, the CIT(A) confirmed the action of the AO.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. The learned counsel for the assessee submitted that the assessment proceedings sought to be reopened is in valid in law as there is no allegation that the appellant had failed to disclose relevant material facts necessary for assessment purposes placing reliance on the following judgments: -

- i) Dull Chand Singhania v. ACIT 269 ITR 192 (P&H)
- ii) General Motors India Pvt. Ltd. v. DCIT 360 ITR 527 (Guj.)
- iii) CIT v. Suren International Pvt. Ltd. 357 ITR 24 (Del)
- iv) CIT v. Fibres & Fabrics Pvt. Ltd. ITA No. 310/2014 dated 22.09.2015 (Kar HC)

- v) Kotarki Constructions Pvt. Ltd. v. ACIT WP No. 61671 of 2016 dated 02.01.2018 (Kar HC)

7. On the other hand, the ld. Sr. DR, relying of the orders of the lower authorities, submits that no interference is called for.

8. We have heard rival contentions and perused the material available on record. We will take up the ground challenging the very validity of reassessment proceedings. Admittedly the reassessment proceedings was sought to be reopened after expiry of a period of 4 years. Proviso to section 149 of the Act, as it stood at the relevant point of time, provides that no assessment shall be reopened after the expiry of a period of 4 years from the end of the relevant assessment year, unless there is failure of the assessee to disclose all relevant material facts necessary for completion of assessment proceedings. From the reasons recorded as extracted supra there was no allegation by the AO that there is failure on the part of the assessee to disclose relevant material facts necessary for completion of assessment. The Hon'ble Delhi High Court in the case of CIT v. Suren International P. Ltd. [2013] 357 ITR 24 (Del) held as under: -

*“15. Having stated the above, we are also unable to accept the contention that there has been failure on the part of the assessee to disclose all material facts in his return as, first of all, there is no such allegation in the reasons as furnished to the assessee; secondly, we cannot ignore the fact that the enquiry into the share application money had been conducted in detail by the Assessing Officer in the first round of assessment. Having framed his assessment after*

*enquiry into the identity, genuineness and the creditworthiness of the share applicants, it would not be open for the Assessing Officer to re-examine the same without there being any material allegation of failure, on the part of the assessee, to make a full and true disclosure. It is well-settled that in order to invoke the provisions of Section 147 of the Act, after a period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income has escaped assessment, it must also be established that the income has escaped assessment on account of the assessee failing to make returns under Section 139 or on account of failure on the part of the assessee to disclose, fully and truly, the necessary material facts. This Court in the case of Wel Intertrade (P.) Ltd v. ITO [2009] 308 ITR 22/178 Taxman 27 and Haryana Acrylic Manufacturing Co. v. CIT [2009] 308 ITR 38/ [2008] 175 Taxman 262 (Del) held that it would not be open for the Assessing Officer to reopen the assessment already done beyond the period of four years unless the income has escaped assessment on account of failure, on the part of the assessee, to disclose all the material facts. In the case of Wel Intertrade (P.) Ltd (supra) it has been held as under :*

*"A plain reading of the said proviso makes it more than clear that where the provisions of section 147 are being invoked after the period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income chargeable to tax has escaped assessment, it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee failing to make a return under section 139, etc., or by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year. In the present case, the question of making of a return is not in issue and the only question is with regard to the second portion of the proviso, which relates to*

*failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Insofar as this pre-condition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer. In fact, as indicated above, the Assessing Officer could not have made this a ground because the Assessing Officer had required the petitioner to furnish details with regard to loss occasioned by foreign exchange fluctuation which the petitioner did by virtue of the reply dated February 5, 2002. Since the petitioner had fully and truly disclosed all the material facts necessary for the assessment, the pre-condition for invoking the proviso to section 147 of the said Act had not been satisfied.*

*In this connection, it may be relevant to note one decision, although there are several others. The said decision is that of the Punjab and Haryana High Court in the case of Duli Chand Singhanian v. Asstt. CIT : [2004] 269 ITR 192. In the said decision, the High Court of Punjab and Haryana was faced with a similar situation. The court noted that there was not even a whisper of an allegation that the escapement in income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The court observed that absence of this finding, which is the sine qua non for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, makes the action taken by the Assessing Officer wholly without jurisdiction. We agree with these observations of the Punjab and Haryana High Court and are of the view that in the present case also, the Assessing Officer has acted wholly without jurisdiction. The invocation of section 147, the issuance of the notice under section 148 and the subsequent order on the objections are all without jurisdiction. The impugned notice as well as the proceedings pursuant thereto are quashed."*

**16.** *In the reasons as furnished by the Assessing Officer, we find that there is neither any allegation that the assessee had failed to truly disclose any material facts at the time of*

*assessment, nor can we readily infer the same in view of the fact that a detailed enquiry had been conducted by the Assessing Officer with regard to the identity and creditworthiness of the share-applicants and genuineness of the transactions in relation to the share application money received by the assessee. Further the mere statement that the DRI has seized certain goods of the assessee and levied a penalty also cannot be stated to be a reason for reopening of assessment of the assessee as the said statement made is neither followed by the recording of a belief that the income escaped on that count or that the assessee has failed to disclose all relevant material, fully and truly, at the stage of the first assessment.”*

In view of the above, we are of the considered opinion that the necessary conditions prescribed u/s. 149 of the Act does not stand satisfied. Therefore, the reassessment proceedings initiated are bad in law. Hence, the reassessment proceedings are quashed.

9. In the result, the appeal filed by the appellant stands allowed.

Order pronounced in the open court on 14<sup>th</sup> May, 2025.

Sd/-  
**GEORGE GEORGE K.**  
**VICE PRESIDENT**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 14<sup>th</sup> May, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin