

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No.1724/DEL/2020
[Assessment Year 2008-09]**

| | | |
|--|----|---|
| Nova Formworks Private Limited, (Formerly Known as Wonder Moldplast Private Limited), 103 Ground Floor, Hargovind Enclave Delhi-110092 | Vs | Income Tax Officer, Ward-27(3), Room No.197A, 1 st Floor, C.R. Building, I.P. Estate, New Delhi-110002 |
| PAN-AAACW6106G | | |
| Appellant | | Respondent |

| | |
|---------------|---|
| Appellant by | Shri Nitin Kanwar, Adv. Shri Rajiv Kumar, Adv. & Shri Shivam Jain, Adv. |
| Respondent by | Ms. Monika Singh, CIT-DR |

| | |
|------------------------------|-------------------|
| Date of Hearing | 27.05.2025 |
| Date of Pronouncement | 30.05.2025 |

ORDER

PER KHETTRA MOHAN ROY, AM

This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-13, New Delhi, dated 20.08.2020 pertaining to Assessment Year 2008-09.

2. The assessee has raised following grounds of appeal:-

1. That the jurisdictional LD.AO has erred, both in law and in facts, by assuming wrong jurisdiction in reopening the assessment, to issue notice under section 148, which is

wholly without jurisdiction, thus reopening was bad in law and procedure, on all the parameters, laid down under the Act.

2. That the Id. AO erred both in law and on the facts in not complying with the mandatory provisions of law & procedure laid down u/s 147 to 153, in relation to both reopening u/s 148 and reassessment, thus reassessment was bad in law and in procedure.

3. That the Id. AO erred both in law and on the facts in not supplying "Reason to believe" to the assessee, in toto, thus reassessment was bad in law and in procedure.

4. That the jurisdictional LD.AO had erred, both in law and in facts, in not jurisdictional notice u/s 143(2), thus reassessment was bad in law and in procedure.

5. That the order passed by LD.AO, was erroneous, illegal and against the principles of natural justice and equity as well as the well settled laws, thus reassessment was bad in law and in procedure.

6. That the jurisdictional LD.AO had erred, both in law and in facts, by not issuing

Show cause notice, to make addition, thus the reassessment was bad, both, in law and in procedure.

7. That the LD.AO had erred, both in law and in facts, by taxing the share capital, without the mandate of law, in relation to tax rate, thus reassessment was bad in law and in procedure.

8. That the LD.AO had erred, both in law and in facts, by not following the mandate of Sec 68, thus total addition under relevant Section by taxing the share capital, was bad, both in law and in procedure.

9. That the jurisdictional LD.AO had erred, both in law and in facts, by not following the procedure laid down for reassessment under Income Tax Act, thus reassessment was bad, both in law and in procedure.

3. The appellant has initially assailed the sustainability of the reasons to believe and the justifiability of notice u/s 148 of the Act. The Id. AR drew our attention the notice u/s 148 of the Act. In this connection, the reasons for initiating proceedings u/s 147/148 of the Act dated 24.09.2014 is reproduced as under, contained in PB page 166 of assessee's paper book:

Office of the
Income Tax Officer, Ward 18(3)
R No 197A, C R Building, I P Estate, New Delhi

Dated: 24.09.2014

F No ITO W 18(3)/Scrutiny/2014-15/

To
The Principal Officer,
Wonder Moldplast Pvt Ltd
103, Hargovind Enclave,
Delhi-92

Sir/Madam

Sub: Reasons for initiating proceedings u/s 147/148 of the Income tax Act, 1961 in the case of M/s Wonder Mold Plast Pvt Ltd (PAN: AAACW6106G) for Assessment year 2008-09 – reg.

Please refer to your letter dated 28.08.2014 seeking reasons for initiating proceedings u/s 147/148. Your case was reopened by the then A.O. Ward 18(3), New Delhi after obtaining approval from the Commissioner of Income tax, Delhi VI, New Delhi. The reasons recorded at the time of initiating proceedings u/s 147 are reproduced below:-

*Assessment in this case was completed u/s 143(3) on 28.12.2010 at an income of Rs. 7,62,020/- as against of Rs. 7,42,020/-. An Addition of Rs. 20,000/- was made as disallowance of preliminary expenses.

Later on an information was received from the Investigation Wing that the assessee co. was a beneficiary of accommodation entry of Rs. 40 Lac received from the following parties:

| S.No. | Amount | Cheque/DD No. | Cheque Date | from company name | Name of Issuing Bank |
|-------|-----------|---------------|-------------|----------------------------------|----------------------|
| 1 | 20,00,000 | 190249 | 15.01.2008 | Shalini Holdings Ltd | Axis |
| 2 | 20,00,000 | 107548 | 22.01.2008 | Finage Lease & Finance India Ltd | BOI |

Both the above Co. belongs to Sh. Surender Kumar Jain who has admitted that he used to provide accommodation entries from about 100 companies floated by him to various of its clients in lieu of receipt of cash against them.

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 unaccounted 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.

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



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Thus, the assessee has ploughed back unaccounted money of Rs.40 lakhs in its business through the channel of accommodation entry. 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 2008-09 and has not paid tax on such amount. The unaccounted moneys are ploughed back in business. In view of the above facts, I have reasons to believe that income to the tune of Rs. 40 lakhs, of the assessee company for AY 2008-09 has escaped assessment due to failure on the part of the assessee to declare full & true particulars of its income. The provision of section 147 are attracted and a notice u/s 148 is to be issued*



Yours faithfully,

(R.K. BHATIA)
Income Tax Officer
Ward 18(3), New Delhi

आयकर अधिकारी
वार्ड-18 (3), कमरा सं० 194बी
केन्द्रीय राजस्व भवन, नई दिल्ली

4. Upon perusal of the reasons recorded, it is absolutely clear that the Assessing Officer has simply reopened the case on borrowed satisfaction without making any enquiry whatsoever. He has merely relied upon the report of Investigation Wing as well as copies of hand written papers. However, those have never been disclosed in the course of assessment proceedings nor the same has been placed before us. Thus it is highly doubtful about the existence of these relied upon materials. It is also pertinent to reproduce the form for recording the reasons for initiating proceedings u/s 148 of the Act and obtaining the

approval of the Ld. CIT-VI, Delhi, as contained in page 168 to 169 of the paperbook submitted by the appellant

**FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS
U/S 148 AND FOR OBTAINING THE APPROVAL OF
COMMISSIONER OF INCOME TAX**

| | | |
|-----|--|------------------------------|
| 1. | Name & address of the assessee | M/s Wonder Moldplast Pvt Ltd |
| 2. | PAN/ GIR | AAACW6106G |
| 3. | Status | Company |
| 4. | Ward | Ward 18(3), New Delhi |
| 5. | Assessment Year in respect of which it is proposed to issue Notice u/s 148 | 2008-09 |
| 6. | The quantum of income which has escaped Assessment | Rs. 40,00,000/- |
| 7. | Whether the provisions of Sec. 147(a)/147(b) are applicable or both the sections are applicable | No |
| 8. | Whether the Assessment is proposed to be made for first time. If the reply is in affirmative, please state: Whether any voluntary Return had already been filed and if so, the date of filing the said Return | No Yes 29.09.2008 |
| 9. | If the answer to item 8 is in negative, please state :- a) the income originally assessed b) Whether it is a case of under-assessment at too low a rate, Assessment which has been made the subject of excessive relief or allowing of excessive loss or Depreciation. | Rs. 762020/- Yes |
| 10. | Whether the provisions of Sec. 150(1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of Sec. 150(2) would not stand in the way of initiating proceedings u/s 147 | No |
| 11. | Reasons for the belief that income has escaped Assessment | As per annexure enclosed. |

Thus, the assessee has ploughed back unaccounted money of Rs.40 lakhs in its business through the channel of accommodation entry. 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 2008-09 and has not paid tax on such amount. The unaccounted moneys are ploughed back in business. In view of the above facts, I have reasons to believe that income to the tune of Rs. 40 lakhs, of the assessee company for AY 2008-09 has escaped assessment due to failure on the part of the assessee to declare full & true particulars of its income. The provision of section 147 are attracted and a notice u/s 148 is to be issued*



Yours faithfully,

(R.K. BHATIA)
Income Tax Officer
Ward 18(3), New Delhi

आयकर अधिकारी
वार्ड-18 (3), कमरा सं० 194बी
केन्द्रीय राजस्व भवन, नई दिल्ली

5. There is the apparent anomaly and infirmity in the above form for seeking approval. In para no.8,, it is stated that the assessment is made for first time, whereas, the assessment has already been completed u/s 143(3) on 28.12.2010. Thus, it is seen that there is mechanical application of mind by the approving authority who has not ever cared to examine the records and such approval u/s 151 of the Act is liable to be quashed since the same is given based on erroneous facts. The ld. CIT-DR could hardly submit any reply to the above

discrepancies and simply relied on the order of the Ld. CIT(A). Since, the ground of opening is fragile and further coupled with the mechanical approval, the entire assessment is quashed and the appellant succeeds in assailing ground no.1 to 3. Our above lines of reasoning is further fortified by the view taken by Hon'ble Lordships of jurisdictional High Court in the matter of Sabh Infrastructure Ltd. vs ACIT in W.P.(C) no.1357/2016:-

“11. Thus, it is also now well settled that the reasons to believe have to be self explanatory. The reasons cannot be thereafter supported by any extraneous material. The order disposing of the objections cannot act as a substitute for the reasons to believe and neither can any counter affidavit filed before this court in writ proceedings.

12. In the present case, the reasons to believe contained the names of the very same five companies which were initially disclosed by the Petitioner during the assessment proceedings. The number of shares subscribed to by the said companies is the same and the amount received has been disclosed by the Assessee. There is no new material which has been found or mentioned in the reasons to believe which were not contained in the information provided by the Assessee prior to the conclusion of assessment under [Section 143 \(3\)](#) of the Act.

13. In fact, the Petitioner, after initially submitting the details of the companies and the shares subscribed to, further provided confirmations from the said companies. The Petitioner also submitted copies of the balance sheets of the said companies for the relevant AYs showing that these amounts were duly reflected therein. The said companies were also assessed to tax. Thus, it appears that the AO was satisfied with the details and information provided by the Petitioner.

14. A perusal of the order disposing of the objections reveals that it proceeds on the basis that the information sought for by the Petitioner which formed the basis for the reasons to believe, including the evidence collected, was required to be provided only in the further assessment proceedings. The said order overlooks the fact that the reasons for reopening do not mention as to what fact or information was not disclosed by the

Petitioner. This is very vital and in fact goes to the root of the matter. An allegation that the companies are 'paper companies' without further facts is by itself insufficient to reopen assessments that stand closed after passing of orders under [Section 143 \(3\)](#) of the Act.

15. The assessment proceedings, especially those under [Section 143 \(3\)](#) of the Act, have to be accorded sanctity and any reopening of the same has to be on a strong and sound legal basis. It is well settled that a mere conjecture or surmise is not sufficient. There have to be reasons to believe and not merely reasons to suspect that income has escaped assessment. In this case, the reasons failed to mention what facts or information was withheld by the Petitioner. Merely relying upon the statement of Mr. Navneet Kumar Singhania that the companies in question were 'paper companies', by itself, is insufficient to reopen the assessment, unless the AO had further information that these companies were non-existent after making further inquiries into the matter. It is clear that the AO did not make any inquiry or investigation, if these companies were in fact 'paper companies'. No effort has been made to establish the connection between the statement of Mr. Navneet Kumar Singhania and the five companies.

16. Mr. Chaudhary's submission that this Court cannot dictate the manner and content of what is to be written in the reasons to believe is correct as a legal proposition. However, the Court has to examine the reasons to believe to see if it satisfies the rigour of the provisions. The observations of this court in [Multiplex](#) (supra) are relevant in this respect and are set out below:

"24. In our view, the question whether the Assessee could have been stated to disclosed fully and truly all material facts have to be examined in the light of facts of each case and also the reasons that led the AO to believe that income of an Assessee has escaped assessment. In a case where the primary facts have been truly disclosed and the issue is only with respect to the inference drawn, the AO would not have the jurisdiction to reopen assessment. But in cases where the primary facts as asserted by the Assessee for framing of assessment are subsequently discovered as false, the reopening of assessment may be justified".

17. In the facts of this case, the primary facts have not been shown to be false. The five companies do exist. They did subscribe to the share capital of the Petitioner. They did pay the money to the Petitioner. All the five companies are assessed to

tax. These are the primary facts. The reasons to believe rely upon a letter received from the Investigation Wing and Mr. Chaudhary submits that this letter was in fact an investigation report. The report does not form part of the reasons and neither was it annexed to the reasons. Interestingly, even the counter affidavit is silent as to the material which has not been disclosed by the Petitioner. The counter affidavit merely states that the information was specific and the information would be provided to the Petitioner during the assessment proceedings. Thus, if the Revenue had any basis to show that the primary facts were incorrect, the same ought to have been set out in the reasons to believe. That has not been done in the present case.

18. Thus, the Petitioner cannot be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under [Sections 147 and 148](#) of the Act was erroneous. The notice dated 20th March, 2015 and the subsequent order dated 1st February, 2016 deserve to be and are hereby quashed.

19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under [Sections 147 and 148](#) of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for reopening the assessment -especially in those cases where the first proviso to [Section 147](#) is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

20. The writ petition is allowed in the above terms. There will be no order as to costs.

6. Accordingly, it is not is not deemed expedient to deal with the balance grounds, since, the appellant has been successful in challenging the vires of reopening at the very onset.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30th May, 2025.

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

Dated: 30.05.2025

Shekhar

Copy forwarded to:

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

Sd/-
[KHETTRA MOHAN ROY]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi