

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE**

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

**ITA No.524/Ind/2023
(Assessment Year: 2014-15)**

Jai PrakashShahani, Prop. M/s Jai Prakash Impex, 73, New Palasia, Indore (Appellant / Assessee)	Vs.	Income Tax Officer, NFAC, Delhi (Respondent/ Revenue)
PAN: APQPS7948G		
Assessee by	Ms. Ruchira Singhal, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	27.02.2025	
Date of Pronouncement	29.04.2025	

ORDER

This appeal by the assessee is directed against the order dated 25.10.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi for A.Y.2014-15 which is arising from the assessment order u/s 147 of the Act dated 31.03.2022 framed by NFAC, Delhi.

2. Assessee has raised following grounds of appeal:

“1. The Learned CIT(A) erred in dismissing ground nos. 1 to 6 raised before him challenging the very initiation of reassessment proceedings, thereby also erred in upholding the reassessment proceedings even when:

(i) the Learned AO did not provided the exact, proper and signed 'reasons to believe as might have been recorded and only provided an abstract thereof and the abstract so provided was not having any document identification number (DIN).

(ii) the regular assessment having been completed u/s 143(3) and there being no failure on the part of the appellant to disclose all material facts necessary for its assessment and the case having

reopened after four years from the end of the relevant assessment year.

(iii)the underlying report and material on the basis which case was reopened was not provided to the appellant.

That on the facts and in the circumstances of the case and in law the reopening proceedings so initiated and conducted renders the same as wrong and bad in law.

2. The Learned CIT(A) erred in not appreciating the contention that the reassessment proceedings carried out and the assessment order passed u/s 147 r.w.s. 144B was not in conformity with the provision of section 144B and in upholding the same as valid and legal. That on the facts and in the circumstances of the case and in law the proceedings conducted and the assessment order so passed is wrong and bad in law.

3. The learned CIT(A) erred in confirming the addition of Rs. 31,60,087/- made by the learned AO and also erred in enhancing the addition made by AO by Rs. 1,95,945/-(Rs.33,56,02/-less Rs. 31,60,087/-) without appreciating the facts of the case. That on the facts and in the circumstances of the case the addition made by the AO and also that enhanced by the Learned CIT(A) is patently wrong and uncalled for and is prayed to be deleted.

4. The learned CIT(A) erred in upholding the disallowance of Rs. 33,56,032/- made u/s 37 of the Act. That on the facts and in the circumstances of the case and in law, provisions of section 37 are not attracted at all in this case.

5. That the appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arise.”

3. The brief facts of the case are that the assessee is an individual running proprietorship concern in the name of M/s Jaiprakash Impex engaged in trading and manufacturing of iron goods like iron tanks, rolled sheets etc. Original return of income u/s 139(1) of the Act for Assessment Year 2014-15 e-filed on 29.11.2014 declaring income of Rs.7,68,510/-. The case selected for scrutiny and assessment u/s 143(3) of the Act completed on 10.11.2016 by ITO Ward 3(2), Indore assessing income at Rs.8,28,510/- after making addition of Rs.60,000/-. Subsequently

Ld. A.O based on credible information from DDIT (Investigation)-I, Indore about Mr. Laxmichand Ahuja, Proprietor of M/s Garima Enterprises where high value transactions were made in the bank account for Financial Year 2013-14 and the funds received in the bank account from various business concerns including M/s Jaiprakash Impex (Proprietor Mr. Jai Prakash Shahani - the assessee) issued notice u/s 148 of the Act on 30.03.2021. In response to which the assessee e-filed the return on 28.4.2021 declaring income of Rs.8,28,510/- (same income as was assessed u/s 143(3) of the Act) and requested for specific reasons for reopening of the case along with requisite approval. Thereafter the proceedings u/s 147 r.w.s. 144B of the Act were carried out and during the course of proceedings Ld. A.O noticed that the total sum of Rs.1,94,07,890/- received by M/s Garima Enterprises from M/s Jaiprakash Impex. Ld. A.O observed that the assessee has purchased goods from M/s Garima Enterprises and when the details of the purchases were asked the assessee was able to furnish the invoices amounting to Rs. 1,62,47,803/- and for the remaining amount of Rs. 31,60,087/- assessee failed to furnish the supporting documents as the matter was almost eight years old and certain bills got misplaced. Ld. A.O concluded the reassessment proceedings accepting the genuineness of purchases of Rs.1,62,47,803/- and made disallowance u/s 37 of the Act for

unverifiable purchases at Rs.31,60,087/-. Income assessed at Rs.39,88,597/-.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) challenging the validity of notice issued u/s 148 of the Act and the validity of reopening proceedings and also raised grounds on merits but failed to succeed on any of the grounds.

5. Now the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee firstly strongly argued on the legal grounds challenging the validity of notice issued u/s 148 of the Act as well as validity of reassessment proceedings. She submitted that the assessee's case already got scrutinized u/s 143(3) of the Act vide order dated 10.11.2016 and all details of the financial transactions carried out during the year were submitted to the satisfaction of the Ld. A.O. Ld. A.O has examined the detail of purchases as well as other expenses and after being satisfied with the details, concluded the assessment proceedings making minor additions. She submitted that the reopening has been made merely on the basis of information received from Investigation Wing but thereafter Ld. A.O failed to make independent application of mind and verify the Income Tax Return and assessment records and there was no proper reason to believe to reopen the assessment proceedings. She also stated that the approval u/s 151 of the Act is also mechanical in nature. She further stated that the reasons

on the basis of which the case of the assessee has been reopened are regarding alleged bogus purchase transaction of Rs.1,94,07,890/- escaped from levy of tax but Ld. A.O has finally accepted the genuineness of the purchases made from M/s Garima Enterprises to the extent of the copies of invoices furnished by the assessee and only for the amount of purchases of Rs.31,60,087/- for which the assessee failed to furnish the copies of invoices of the bills, disallowance has been made u/s 37 of the Act for unverifiable purchase. She stated that since the very basis on which the case of the assessee has been reopened, no addition has been made by Ld. A.O, therefore the reassessment proceedings are invalid and void *ab-initio* and liable to be quashed. She referred to the following decision in support of her contentions challenging the validity of reopening proceedings:-

(i) *Hon'ble High Court of Delhi in the case of Sabh Infrastructure Ltd Vs ACIT in W.P (C) 1357/2016.*

(ii) *Hon'ble High Court of Delhi in the case of Saraswati Petro Chem P. Ltd Vs ITO in W.P (C) 10802 of 2018.*

7. As far as merits of the case are concerned she relied on the decision of Coordinate Bench in the case of *ACIT v Sharp Corp Ltd 161 taxmann.com 207 (Delhi)* stating that disallowing part of the purchases u/s 37 is wrong when the remaining purchase transactions from the very same party are accepted as genuine. She submitted that the books of accounts have not been rejected

and no discrepancy has been noticed in the books of accounts during reassessment proceedings and therefore merely for non submission of purchase bills impugned disallowance is uncalled for.

8. On the other hand Ld. Departmental Representative stated that the reopening is valid because when the Ld. A.O called for the information about the purchases, no details were filed from assessee side as a result of which notice u/s 148 of the Act was issued. So far as merits of the case are concerned he vehemently argued supporting the finding of Ld. CIT(A).

9. I have heard rival contentions and perused the records placed before me. In this appeal the assessee has challenged the validity of the reopening proceedings as well as challenging the addition of Rs.31,60,087/- made by the Ld. A.O u/s 37 of the Act for unverifiable purchases. I will first take the legal issue challenging the issue of notice u/s 148 of the Act as well as the reassessment proceedings. Undisputedly the assessee furnished its regular return of income on 29.11.2014 u/s 139(1) of the Act declaring income of Rs.7,68,510/- and the return was selected for complete scrutiny by ITO Ward 3(2), Indore. Books of accounts were produced and detailed submissions were filed. After examining the book on test check basis and also going through the details filed, Ld. A.O concluded the assessment proceedings u/s.143(3) of the

Act making lump sum addition of Rs.60,000/-. Thereafter notice u/s 148 of the Act was issued for carrying out the reassessment proceedings. Assessee duly submitted written submission in response to the notice issued u/s 148 of the Act and when asked following reasons recorded were supplied to the assessee:-

"The information has been received from DDIT(Inv.)-1, Indore. The Credible information was received to the effect that subject Shri Laxmichand Ahuja, Prop. of M/s Garima Enterprises was engaged in the business of Iron and Steel Scrap. High value cash transactions were made in the bank accounts of the subject during F.Y. 2013-14. In order to verify the said transactions, notices were issued to IDBI Bank calling for statements of bank account bearing no. 1102000047676 (M/s Garima Enterprises), 0001102000048383 (Jay Prakash Trading Company), 000165100007627 (M/s Jay Prakash Impex), 0001102000047898 (Mini Industries Ltd.), 0001102000046455 (Pragati Trading Co). 1040102000000213(MB Sales Corporation) for FY 2013-14 which were perused and placed on records. On perusal of ITBA, e-filing, ITS Data of departmental data base, the subject Shri Laxmichand Ahuja, Prop. of M/s Garima Enterprises filed his return of Income from AY 2013 14 & 2014-15. A summons dated 19/01/2021 was issued to the subject Shri Laxmichand Ahuja on the address given in the latest return filed but the same was returned unserved with remark "not resides at this address". Further, summons were also issued to other addresses available but reply was not received at this office. Therefore, summons was also issued to M/s Pooja Steels Pvt. Ltd., ShriArvind Trivedi (Prop. Pragati Trading), Basant Kumar Mindad (M/s MB Sales Corporation), Jai PrakashShahani (Prop. M/s Jai Prakash Impex), Mini Industries Ltd. calling for certified copy of ledger of transactions made with M/sGarima Enterprises, Prop. Laxmichand Ahuja.

Further, above mentioned parties were also asked to furnish evidence of transportation of goods on sample basis, if any. All the above mentioned parties did not furnish details of transactions made with the subject M/s Garima Enterprises. Account statement of A/c No. 0001102000047676 held with IDBI Bank, as mentioned in dissemination note for F.Y. 2013-14 was called for. On perusal of the account statement of the subject, it was noted that total credit in the Impugned bank account during F.Y. 2013-14 was Rs.14,18,93,188/- The credits were received from various parties through RTGS/NEFT During FY. 2013-14, total debits were Rs. 14,18,90,823/- out of these; withdrawals made in cash amounted to Rs.2,62,15,200/- during F.Y. 2013-14. Summons u/s 131(1A) was issued to the subject for furnishing the detail of banking transactions made by the subject during F.Y. 2013-14. Subject was also contacted telephonically and requested to submit reply/ documents called for in the summons issued. But till date the subject has not submitted his reply. Therefore, conclusion is being drawn on the basis of material available on record.

On perusal of the account statement, it was noted that out of total credits, majority of the credits were made by RTGS/NEFT from other entities. Entities with whom subject has entered into financial transactions during F.Y.2013-14 are identified and depicted below-

<i>S.No</i>	<i>Name of the Parties</i>	<i>Sum of credit amount</i>
<i>1</i>	<i>JAIPRAKASH IMPEX</i>	<i>19407890</i>

In view of the above facts, I have therefore, reason to believe that the assessee has not disclosed fully and truly all he material facts necessary for completing the assessment of its income for the A.Y. 2014-15 due to which income of Rs. 1,94,07,890/- has escaped assessment within the meaning of provision of section 147 of the Act for the A.Y. 2014-15."

10. Ld. Counsel for the assessee has stated before me that the reasons recorded are not proper so much so that the Ld. A.O has not examined the Income Tax Return filed by the assessee as well as the assessment records. I observe that in the reasons recorded alleges that bogus purchases of Rs.1,94,07,890/- has escaped the assessment. Before alleging bogus purchases, Ld. A.O is certainly expected to have levelled such allegation against the assessee after detailed examination of records. Now the case before me is where the assessee's books of accounts have already been scrutinized and audited financial statement along with all details stood furnished. What was required from the Ld. A.O that once the information was received from the Investigation Wing about the alleged transaction of bogus purchase made by the assessee from M/s Garima Enterprises, he has to take note of Income Tax Return filed by the assessee and also the assessment records of the proceedings carried out u/s 143(3) of the Act. Now for reopening the case u/s

147 of the Act where the assessee has already passed scrutiny proceedings the burden on the Ld. A.O is to first bring on record the material facts which has not been disclosed truly and fully by the assessee in its Income Tax Return. Now the Ld. A.O has carried out the reassessment proceedings and referred to the bank transactions to which the assessee made payment to M/s Garima Enterprises. Ld. A.O failed to note that complete details of the bank statement stood already filed with the submissions dated 1.03.2016 given during the course of regular scrutiny proceedings. Had Ld. A.O laid hands on these details prior to issue of notice u/s 148 of the Act then he would have certainly come to know that the transactions reflected in the bank account are the same as are referred in the information received from Investigation Wing and already been disclosed in the Income Tax Return as well as furnished in the scrutiny proceedings. At this juncture, I would like to refer to the judgment of Hon'ble Apex Court in the case of *NDTV V/s DCIT (116 Taxmann.com 151)* in which Hon'ble Court held that when the assessee has disclosed all primary facts before the A.O, it was not required to give any further assistance to the Assessing Officer by disclosure of other facts. It was for the Assessing Officer at this stage to decide what inference should be drawn from the facts of the case. The Hon'ble court has also observed that mere statement by the A.O that the assessee failed to disclose all material facts in the reasons recorded is not sufficient

enough and does not suffice the legal mandate provided in the first proviso to section 147. Rather, the A.O is under the obligation to arrive at such conclusion that the appellant failed to disclose all material facts necessary for assessment after applying his mind and verification of the facts in categorical terms as to which material fact was not so disclosed.

11. In light of above judgment, I further notice that the A.O on one hand is alleging the escapement of income to the tune of Rs.1,94,07,890/- for the alleged bogus purchase made from M/s Garima Enterprises but finally after carrying out the reassessment proceedings has accepted the genuineness of the purchase and has not invoked Section 69C of the Act applicable for unexplained expenditure and has concluded the proceedings only by making minor disallowance u/s 37 of the Act for unverifiable purchase. This subsequent observation of the Ld. A.O clearly indicates that the exercise which the Ld. A.O was required to carry out prior to issue of notice u/s 148 of the Act and also to arrive at a proper reason to believe for non-disclosure of material facts at the end of the assessee income has escaped to be taxed. I also find that nature of addition made by Ld. AO is different from the nature of addition alleged in the reasons recorded for reopening. Therefore in the light of the decision referred (*supra*) and discussions made above I am of the considered view that Ld. A.O has issued notice

u/s 148 of the Act without proper reasons to believe of escapement of income and without proper application of mind and therefore the alleged notice issued u/s 148 is illegal, bad in law and deserves to be quashed. Accordingly the reassessment proceedings carried thereafter are also illegal and therefore stands quashed. The assessee succeeds on the legal issue raised in Ground No. 1 & 2.

12. So far as Ground No. 3 & 4 raised on merits are concerned though we have already quashed the reassessment proceedings and no addition survives but still for academic purpose we would deal with the merits of the case also. I find that the charge levelled against the assessee was for escapement of income to the tune of Rs.1,94,07,890/- for bogus purchases for the total of payment made by the assessee to M/s Garima Enterprises towards purchases. The assessee succeeded in satisfying the Ld. A.O about the genuineness of the purchase of Rs.1,62,47,803/- with the help of purchase bills. It means that the transactions of purchases between the assessee and M/s Garima Enterprises have been found to be genuine and the alleged addition is only with regard to the non production of few bills of purchases from M/s Garima Enterprises. It is interesting to note that the Ld. A.O has not rejected the book results and there is no discrepancy noticed in the gross turnover declared by the assessee. The assessee has already been scrutinized u/s 143(3) of the Act in the first round of

assessment. But merely for non-furnishing of few purchase bills addition has been made u/s 37 of the Act even when the payments have been made through the banking channel and transactions are confirmed from both the sides. I would like to place reliance on the decision of Coordinate Bench in the case of *ACIT Vs Sharp Corp Ltd (supra)* dealing with the identical issue where the Tribunal has held as under:

“7. We find that the aforesaid factual findings and legal findings were not controverted by the revenue before cogent evidences. We find that the assessee in the instant case had duly discharged its burden by furnishing all the necessary documents to prove the veracity of the purchases from Kamal Kishore Mukesh Kumar to the tune of Rs 2,16,83,820/-. The goods purchased from the said supplier had been duly reflected in the stock registers maintained by the assessee and the same were sold by the assessee to RBRL Agro Commodities Ltd and Sharp Comtrade Ltd by making due reduction in the stock register to the extent of sales Hence the purchases and corresponding sales were duly matched by the assessee in the instant case Moreover, the sales made by the assessee is not doubted by the revenue and naturally the purchase made by the assessee cannot be doubted. The purchase made by the assessee from the said supplier had been duly reflected in the books of accounts and payments made for the same through account payee cheques out of disclosed sources of income. One more excruciating fact to be considered in the instant case is the ledger account of Kamal Kishore Mukesh Kumar as appearing in the books of the assessee company for the period 1.4.2011 to 31.3.2012, wherein it could be seen that total purchases made during the year by the assessee from the said supplier was Rs 2,62,54,071.60, out of this, the Id. AO is disputing the purchase made from this very same supplier only for the sum of Rs 2,16,83,820/-. How can the said supplier be genuine for the remaining supplies and be ingenuine only for the disputed supplies of Rs 2,16,83,820/-. Hence the entire case of the revenue falls flat.”

13. In light of the above decision and considering the facts of the case I find that the assessee has been making purchases from M/s Garima Enterprises regularly from past many years and for the year under consideration there was opening balance in the ledger account of M/s Garima Enterprises and thereafter regular

purchases have been made to which payment have also been made to M/s Garima Enterprises. Therefore questioning the genuineness of the purchases for few purchase bills not found by the assessee cannot lead to disallowance of expenditure in totality. I therefore set aside the finding of Ld. CIT(A) and even on merits delete the disallowance made u/s 37 of the Act at Rs.33,56,032/- (addition made by A.O at Rs.31,60,087/- which was further enhanced by Ld. CIT(A) by Rs.1,95,945/-) . Accordingly Grounds No. 3 & 4 raised by the assessee on merits are also allowed.

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

Order pronounced in the open court on 29.04.2025.

Sd/-

(MANISH BORAD)
Accountant Member

Date :29.04.2025
Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

//TRUE COPY //

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*