

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1405/Del/2022
निर्धारणवर्ष/Assessment Year:2012-13

DCIT, Central Circle-2, Room No.363, ARA Centre, Jhandewalan Extension, New Delhi.	<u>बनाम</u> Vs.	APPLE COMMODITIES LTD., B-16, Sector-2, Gautam Budh Nagar, Uttar Pradesh. PAN No.AADCA0300K
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

&

**Cross Objection No.72/Del/2022
(Arising out of I.T.A No.1405/Del/2022)
निर्धारणवर्ष/Assessment Year:2012-13**

APPLE COMMODITIES LTD., B-16, Sector-2, Gautam Budh Nagar, Uttar Pradesh. PAN No.AADCA0300K	<u>बनाम</u> Vs.	DCIT, Central Circle-2, Room No.363, ARA Centre, Jhandewalan Extension, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri Amit Goel, CA & Shri Mohit Jain, CA
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	03.06.2025
उद्घोषणाकीतारीख/ Pronouncement on	23.07.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

The appeal and cross objection are filed by the Revenue and Assessee respectively against the order of the Ld. CIT(Appeals)-4, Kanpur dated 08.03.2022 for the AY 2012-13. The Revenue filed appeal against the order of the Ld. CIT(Appeals) in deleting the addition of Rs.4,92,73,748/- made on account of disallowance of expenses. The assessee in its cross objection challenged the validity of reassessment made u/s 143(3) r.w.s. 147 of the Act pursuant to notice issued u/s 148 of the Act.

2. The Ld. Counsel for the assessee, at the outset, submits that the Assessing Officer while completing the impugned reassessment order u/s 143(3) r.w.s. 147 of the Act dated 11.12.2019 made disallowance of expenditure debited to P&L account and this is not the reason for reopening of the assessment. Ld. Counsel submits that since the addition made in the reassessment order was not part of the reasons for which the assessment was reopened, the reassessment made u/s 143(3) r.w.s. 147 is bad in law. Reliance was placed on the following decisions in support of the above contentions:

- PCIT Vs. Jaguar Buildcon Pvt. Ltd. 2024 (8)TMI 517 Delhi High Court (ITA No.756/2023 dated 01/08/2024);
 - Ranbaxy Laboratories Ltd. Vs. CIT - 2011 (6) TMI 4 - Delhi High Court;
 - CIT Vs. Jet Airway (I) Ltd. - 2010 (4) TMI 431 - Bombay High Court
3. On the other hand, the Ld. DR strongly placed reliance on the orders of the Assessing Officer.
4. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. Since the assessee in its cross objection challenged the very validity of the reassessment made u/s 143(3) r.w.s. 147 of the Act based on notice u/s 148, we first take up the grounds in cross objection of the assessee.
5. Assessee in its cross objection raised the following grounds:
1. *“On the facts and circumstances of the case and in law, the notice u/s 148 of the Income Tax Act, 1961 issued in the case is bad in law, void and without jurisdiction and, therefore, the said notice along with the assessment order passed by the Assessing Officer on the foundation of such notice are liable to be quashed and CIT(A) erred in not holding so.*
 2. *On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to law including the specific provision of section 147 to 151 of the Act and CIT(A) erred in not holding so.*
 3. *On the facts and circumstances of the case and in law, the addition of Rs.4,92,73,748/- made by the Assessing Officer*

is beyond the scope of provisions of section 147/148 of the Act.

The assessee craves leave to add, alter, modify or delete one or more ground before or at the time of hearing of appeal.”

6. In this case, the assessment was reopened by issue of notice u/s 148 dated 28.03.2019 along with the reasons recorded for reopening of assessment which are as under: -

Name	M/s Apple Commodities Pvt. Ltd.
Address of the Assessee	T-1 & 3, 3 rd Floor, Anupam Plaza, IIT Crossing, Hauzkhas, Delhi-16.
PAN	AADCA0300K
Status	Company
Assessment Year	2012-13
Details of the Assessing Officer having jurisdiction over the Assessee	Dy. Commissioner of Income Tax, Central Circle-II, Noida.

Reasons for re-opening of the Assessment in the case of M/s Apple Commodities Pvt. Ltd. for A.Y. 2012-13 u/s 147 of I.T. Act, 1961

The name of the assessee is M/s Apple Commodities Pvt. Ltd having address T-1 & 3, 3rd floor, Anupam Plaza, IIT Crossing, Hauzkhas, Delhi-16. The assessee is engaged in the business of trading of iron of coal. The assessee has filed his return of Income u/s 139(1) on 29.09,2012 declaring total income of Rs.10,71,91,220/-. Original assessment in this case was completed u/s 143(3) of the I.T. Act, 1961 vide order dated 23.03.2015 at income of Rs.10,71,92,780/-. Further in compliance to notice u/s 153C the assessee has filed same return. The assessment of the return u/s 153C r.w.s 143(3) of the I.T. Act, 1961 has been completed on 11.01.2018 at income of Rs.97,66,78,119/-.

Assessment in the case of M/s Apple Commodities Ltd. for A.Y. 2012-13 was completed at total income of Rs.97,66,78,119/- u/s 153C r.w.s. 143(3) of the I.T. Act, 1961 on 31.12.16 against the return income of Rs.10,71,91,220/-. Subsequently an appeal against the order of the A.O was filed before the Ld CIT(A)-IV, Kanpur. Vide the Appeal no CIT(A)- IV/10452,10455,10456,10460,10468,&10472/DCIT-CC/Noida/2016-17/741 dated 07.01.19 the Ld CIT(A)-IV, Kanpur has following observations.

“5.12 In view of the detailed discussion mentioned here in above and respectfully following the judgement of the Supreme Court in the case of Sinhgad Technical Education Society, it is concluded that notice u/s 153C issued by the AO need to be treated as ab-initio invalid and

legally not sustainable, therefore, assessment framed on the basis of legally unsustainable notice is hereby quashed and annulled. Thus, these legal grounds of appeal i.e. for A.Y. 2009-10 to A.Y. 2013-14 (5 Years) are decided in favour of the appellant.

5.13 Though, addition made by the AO was not justified in terms of provisions u/s 153C of the Act. However, it is open for AO to take remedial action in accordance with the provisions of income tax Act to assess/reassess the income escaping assessment, if any.”

The observation of Ld CIT(A) -IV, Kanpur has been perused and it is found that the appeal has been decided without going into to merit. During course of search action conducted at the business premises of apple group of companies at B-16, Sector-2, Noida, several incriminating documents were found and seized. Page no. 8 & 9 of LP-3 seized from this premise shows details of investment in mines by Apple Group of companies. Further page no. 4, 5 & 10 of annexure LP-7 contains summery of funds infused from overseas entities of Apple Group. Page no. 76 of LP-11 contains a hand written page that clearly mentioned that the group was involved in increasing bogus creditors in their books of accounts. These additional evidences in the form of incriminating documents are result of search proceedings which were not available at the time of original u/s 143(3) of the I.T. Act, 1961. Details of these evidences have elaborately been mentioned in assessment order u/s 153C/144 of I.T. Act, 1961 dated 11.01.2018. All the documents available on record have been perused and it is found that during assessment proceeding U/s 153C the following additions have been made by the A.O:

a)	Addition on account of unexplained investment	4,00,54,196/-
b)	Addition on account of unexplained foreign remittance	29,64,66,082/-
c)	Addition on account of enhancement of GP	51,49,53,586/-
d)	Addition on account of Disallowance of interest expenses	1,24,13,035/-
	Total	86,94,86,899/-

As the assessee was not able to provide satisfactory explanation in this regard during assessment therefore, I have reason to believe that due to omission on the part of the assessee Rs.86,94,86,899/-has escaped assessment in the meaning of section 147 of the I T Act, 1961.

Since 4 years from the end of relevant year has expired in this case, and the requirement to initiate proceedings u/s 147 is reason to believe that income for the year under consideration has escaped assessment because of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment for the AY under consideration, it is pertinent to mention, here that reasons to believe that income has escaped assessment for the year under consideration have been recorded hereinabove.

I have carefully considered the Assessment record containing the submissions made by assessee in response to various notices issued during the assessment proceedings and have noted that assessee has not fully & truly disclosed the evidences necessary for his assessment for the year under consideration.

It is evident from the above facts that the Assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act. In view of the above, explanation 1 to section 147 is applicable to facts of this case and the assessment year under consideration is deemed to be case where income chargeable to tax has escaped assessment.

In this case more than four years have passed under consideration. Hence necessary sanction to issue the notice u/s 148 is being obtained separately from the Pr. Commissioner of Income Tax as per the provisions of section 151 of the Income tax Act, 1961.”

7. The reassessment was completed u/s 143(3) r.w.s. 147 of the Act by order dated 11.12.2019 by disallowing expenditure of Rs.4,93,73,748/- in respect of purchase and sale transactions, *inter alia*, the AO treated these transactions as no actual business and made disallowance of expenditure. The AO while completing the reassessment has made none of the additions/disallowances which form part of the basis of reasons for reopening of the assessment.

8. The Hon'ble Jurisdictional High Court in the case of PCIT Vs. Jaguar Buildcon Pvt. Ltd. (supra) answered the question whether Explanation 3 of section 147 of the Act would empower the Assessing Officer to assess or reassess income in respect of any issue which has escaped assessment notwithstanding the reasons recorded under sub-section (2) of section 148 having not alluded to the same or formed

the basis for reopening, in the negative and against the Revenue (the Appellant) observing as under: -

“2. We had while originally admitting the appeal taken note of the principal questions which arise in our order dated 02 February 2024 which reads thus:

“A. Whether Ld. ITAT has erred on the facts and circumstances of the case in not appreciating Explanation 3 of Section 147 of the Income Tax Act, 1961 and whether the same would empower the Assessing Officer to assess or reassess income in respect of any issue which has escaped assessment notwithstanding the reasons recorded under sub-section (2) of Section 148 having not alluded to the same or formed the basis for reopening?”

3. However and on hearing learned counsels for the parties, we note that the Tribunal while dealing with the question which is proposed had observed as follows:

“7. Upon careful consideration, we note that assessee’s case was reopened on the basis of information relating to accommodation entry received from TVH Trading Company Pvt. Ltd. of Rs.26,40,00,000/-. No addition was made in the assessment order on this account since the amount had already been added in the order u/s 153A dated 30.03.2014. The addition of Rs.58,18,50,000/- was made u/s 68 of the Act in respect of the amount received from 5 persons which did not form part of the reasons recorded for reopening of the case. In these circumstances, the case laws of Hon’ble Delhi High Court in the case of Jet Airways (I) Ltd. (supra) are fully applicable and there is no infirmity in the well reasoned order of Id. CIT (A). Ld. DR tried to submit that there are some other High Court who have taken a contrary view. But, in our considered view, this is not an acceptable proposition in view of the decision of the Hon’ble jurisdictional High Court which is a binding. Hence, respectfully following the decision of Hon’ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. (supra), we uphold the order of Id. CIT (A).”

4. *The principal question which arises for our consideration is whether once the issue of accommodation entry and which alone formed the subject matter of the notice issued under Section 148 of the Income Tax Act, 1961 Act was ultimately dropped, any further additions could have been made thereafter. It was in the aforesaid context that the appellant had sought to press Explanation 3 of Section 147 as it stood prior to 1 April 2021.*

5. *The Tribunal rested its conclusions on the judgment rendered by a Division Bench of this Court in Ranbaxy Laboratories Ltd. v. Commissioner of Income-tax 2011 SCC GnLine Del 2612 to hold that once the principal grounds on which reassessment was proposed are dropped, no further additions can be made even by taking recourse to Explanation 3.*

6. *We deem it apposite to extract the following pertinent observations rendered in the afore noted decision:*

“8. The crux of section 147 of the Act is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the Assessing Officer may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though the said issue did not find mention in the reasons recorded and the notice issued under section 148. Since there was a confusion prevailing with regard to the powers of the Assessing Officer to assess or reassess on the issues for which no reasons were recorded, this Explanation came to be inserted as clarificatory. The reasons for insertion of this clarificatory Explanation in clause (57) of the Memorandum Explaining the Provisions of the Finance (No. 2) Bill, 2009, of 2009 are the following (see (2009) 314 ITR (St.) 57, 206):

“Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under subsection (2) of section 148.

This amendment will take effect retrospectively from April 1, 1989, and will accordingly apply in relation to the assessment year 1989-1990 and subsequent years.”

9. *By virtue of Explanation 3 to section 147 interpretive confusion came to be clarified and thus the decisions rendered by the Punjab and Haryana High Court in the case of Vipan Khanna v. CIT, (2002) 255 ITR 220 (P&H) and the Kerala High Court in the case of Travancore Cements Limited v. Asst. CIT, (2008) 305 ITR 170 (Ker), no longer hold the field on the subject.*

10. *The ratio of both the afore cited cases was that upon the issuance of notice under section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated. To put it differently, once the Assessing Officer has reason to believe that income chargeable to tax has escaped*

assessment and proceeds to issue a notice under section 148, it is not open to him to assess or reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

11. Now, after the insertion of Explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2) on the basis of which he had initiated proceedings under section 147. Similar question came for consideration before the Division Bench of the Bombay High Court in CIT v. Jet Airways (I) Limited, (2011) 331 ITR 236 (Bom). The court held as under (page 242):

“The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarized as follows:

(i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or re-computation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) though the notice under section 148(2) does not include a particular, issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his

notice subsequently in the course of the proceedings under the section.’’

7. We find that the view that was expressed in *Ranbaxy Laboratories* was noticed by us recently in our decision in *ATS Infrastructure Limited v. Assistant Commissioner of Income Tax Circle 1 (1) & Ors. 2024 SCC OnLine Del 5048* and where the legal position was summarized in the following passages:

“23. It becomes evident that the Court in Ranbaxy Laboratories Ltd., firstly took into consideration Section 147 of the Act, embodying the phrase “and also” prefixed to the expression “any other income chargeable to tax which has escaped assessment”. It thus came to the conclusion that, while an assessment may be reopened based on certain grounds which may have led the AO to be of the opinion that income chargeable to tax had escaped assessment, once it is found that the reassessment power had been validly invoked, the power of the AO would not stand confined only to those aspects which may have been noticed in the original notice issued under Section 148 of the Act but would also extend to any other income which may be found to be exigible to tax.

24. This clearly appeals to reason, since Section 147 of the Act embodies a power to assess, reassess as well also to recompute. Consequently, and once that power is validly invoked, the original assessment would cease to exist in the eyes of law. Undoubtedly, once an assessment already made comes to be reopened, the AO stands empowered statutorily to undertake an assessment afresh in respect of the entire income which may have escaped assessment. However, the only additional caveat which Ranbaxy Laboratories Ltd. enters is with respect to a situation where, in the course of reassessment, the AO ultimately comes to the conclusion that no additions or variations were warranted in respect of the heads or items of income which had formed the basis for initiation of action under Section 148 of the Act. It is in the aforesaid backdrop that the Court in Ranbaxy

Laboratories Ltd. proceeded on facts to hold that since no additions had ultimately been made in respect of items such as club fees, gifts and presents, and which constituted the basis for initiation of reassessment, it would not be open to the AO to revise or modulate findings on any other head or items that may have been dealt with in the original assessment.

25. The position in law which emerges from the aforesaid discussion is that while it is true that the AO would have to establish that reassessment is warranted on account of information in its possession which appears to indicate that income chargeable to tax had escaped assessment, once the assessment itself is reopened it would not be confined to those subjects only. This would, however, be subject only to one additional rider and that being if, in the course of reassessment, the AO ultimately comes to conclude that no additions or modifications are warranted under those heads, it would not be entitled to make any additions in respect of other items forming part of the original return.

xxxx xxxx xxxx

27. For the sake of completeness, we may note that a Division Bench of this Court had expressed certain doubts with respect to the view taken by the Court in Ranbaxy Laboratories Ltd. This becomes evident upon a consideration of the opinion expressed by the Court in Principal Commissioner of Income Tax v. Jakhotia Plastics Pvt. Ltd. The Court in Jakhotia Plastics had expressed certain reservations with respect to what it viewed as undue importance having been placed by the Bombay High Court on the words “and also” in Jet Airways (I) Ltd.

28. In light of the above, the Court in Jakhotia Plastics had observed that since there was some doubt as to the accuracy of the interpretation accorded in Ranbaxy Laboratories Ltd., it would be appropriate for the matter being placed for the consideration of a

larger Bench. This becomes evident from a reading of paragraphs 13, 14 and 15 of the report and which are extracted herein below:-

xxxx xxxx xxxx

29. In our considered opinion, and bearing in mind the import of Explanation 3 as well as the language in which Section 147 of the Act stands couched, we find no justification to differ from the legal position which had been enunciated in Ranbaxy Laboratories Ltd.

We also bear in consideration the said decision having been affirmed and approved subsequently in Commissioner of Income-tax (Exemption) vs. Monarch Educational Society and Commissioner of Income-tax vs. Software Consultants.

30. We thus, come to the conclusion that the enunciation with respect to the indelible connection between Section 148A(b) and Section 148 A(d) of the Act are clearly not impacted by Explanation 3. As we read Sections 147 and 148 of the Act, we come to the firm conclusion that the subject of validity of initiation of reassessment would have to be independently evaluated and cannot be confused with the power that could ultimately be available in the hands of the AO and which could be invoked once an assessment has been validly reopened.

31. Explanation 3, or for that matter, the Explanation which presently forms part of Section 147, would come into play only once it is found that the power to reassess had been validly invoked and the formation of opinion entitled to be upheld in light of principles which are well settled. The Explanations would be applicable to issues which may come to the notice of the AO in the course of proceedings of reassessment subject to the supervening requirement of the reassessment action itself having been validly initiated.

32. Explanation 3, cannot consequently be read as enabling the AO to attempt to either deviate from the reasons originally recorded for initiating action under Section 147/148 of the Act nor can those Explanations be read as empowering the AO to improve upon, supplement or supplant the reasons which formed the bedrock for initiation of action under the afore noted provisions.”

8. In view of the aforesaid, we answer the question which stands posited in the negative and against the appellant. The appeal fails and shall stand dismissed.”

9. Similar view has been taken by the Jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. Vs. CIT (supra) and the Hon’ble Bombay High Court in the case of Jet Airway (I) Ltd. (supra). Ratios of these decisions squarely apply to the facts of the assessee before us. Thus, respectfully following the decision of the Hon’ble Jurisdictional High Court (supra), we hold that the reassessment made u/s 143(3) r.w.s. 147 of the Act is bad in law and the same is hereby quashed.

10. Since we have quashed the reassessment order on legal issue in ground no.1, the other grounds raised by the assessee in its cross objection are not adjudicated.

11. Since we have annulled the reassessment allowing ground no.1 of cross objection of the assessee the Revenue’s appeal challenging the order of the Ld. CIT(Appeals) in deleting the disallowance made

while completing the reassessment becomes infructuous and the same is liable to be dismissed.

12. In the result, the cross objection filed by the assessee is partly allowed and the appeal of the Revenue is dismissed as infructuous.

Order pronounced in the open court on 23.07.2025

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 23.07.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**