

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

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI KRINWANT SAHAY, ACCOUNTNAT MEMBER

ITA No.1066/Del/2019
[Assessment Year: 2009-10]

M/s Singhal Fasteners Company Pvt. Ltd. 67-68, Rampuri, Govind Puri, Kalkaji, New Delhi-110019	Vs	Dy. Commissioner of Income Tax, Circle-24(2), Room No.248, C.R. Building, New Delhi-110002
PAN-AAACS1428H		
Appellant		Respondent

ITA No.1067/Del/2019
[Assessment Year: 2009-10]

M/s Shankar Radhey Finance and Investment Company Private Limited, AG-5, Shalimar Bagh, New Delhi-110088	Vs	Income Tax Officer, Ward-23(1), New Delhi-110002
PAN-AABCS0968H		
Appellant		Respondent

ITA No.8572/Del/2019
[Assessment Year: 2006-07]

M/s Raghvender Shankar Finance & Investment Company Private Limited, AG-5, Shalimar Bagh, New Delhi-110052	Vs	Income Tax Officer, Ward-15(1), New Delhi-110002
PAN-AABCS0968H		
Appellant		Respondent

Assessee by	Shri Abhishek Mathur, CA
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	27.08.2025
Date of Pronouncement	24.09.2025

ORDERPER ANUBHAV SHARMA, JM:

These three appeals have been preferred by three different assessee in ITA No.1066/Del/2019 for AY 2009-10, ITA No.1067/Del/2019 for Assessment year 2009-10, ITA No.8572/Del/2019 for Assessment Year 2006-07, arising out of the appeals decided by the Ld. CIT(A) having following particulars:-

Sl. No.	ITA No.	Jurisdictional CIT(A), Appeal No. and date of order	Assessment Year	Date of Assessment order	Jurisdictional Assessing Officer
1.	1066/Del/2019	CIT(A)-30, New Delhi dated 04.12.2018 IN Appeal no.146/16-17/2809	2009-10	29.12.2016	DCIT, Circle24(2), New Delhi
2.	1067/Del/2019	CIT(A)-30, New Delhi dated 04.12.2018 in Appeal No.142/16-17/2804	2009-10	30.12.2016	Income Tax Officer, Ward-23(1), New Delhi
3.	8572/Del/2019	CIT(A)-31, New Delhi dated 02.09.2019 in Appeal No.140/17-18/159/14-15	2006-07	20.01.2014	Income Tax Officer, Ward-15(1), New Delhi

2. On hearing both sides, we find that the cases of these three assessee have common question of law involved arising out of common set of facts in the background of which is the information which was received from the office of CIT, Central-II, New Delhi, which indicated the Shri Aseem Kumar Gupta had provided accommodation entries to various beneficiaries through many bank accounts opened in the name of several proprietorship concern, firms and companies having its employees/associates as directors and partners in them. The assessee company before this Tribunal were also alleged to be one of the beneficiaries, who allegedly had taken accommodation entries in several years. Accordingly, the cases of the assessee company were reopened and the additions were made, which have been sustained before the ld. CIT(A).

3. Now before us, the additional grounds have taken that the reopening is bad in law for fundamental reasons that there was non-application of mind in view of the fact that Shri Aseem Kumar Guptra had retracted the statement well before issuance of reopening notices in the case of these assessee. It being question of law that can be decided on admitted facts, the same is admitted

4. Now, this aspect has been defended by the Assessing Officer by filing a status report and as for convenience, the status report in the case of appellant Shri Shankar Radhey Finance & Investment Co. Pvt. Ltd. filed by ld. DR as received from the Assessing Officer, which on facts and law cover the case of *other two assessees also, is reproduced below:-*

“Madam/Sir,

Kindly refer to your e-mail dated 22.07.2025 on the subject cited above.

In this connection, it is submitted that, the assessment record is not traceable in the case of above mentioned assessee. The assessment order and Ld. CIT(A) order has been downloaded from the ITBA System as available on it. In view of this and as per the record available with this office the report of is as under:-

1. The assessee had filed its return of income on 10.09.2009 at a loss of Rs 4.81,604/- and the ITR was processed u/s 143(1) of the Act on 03.11.2010 at Nil income. Subsequent to the processing of the return of income on 03.11.2010, an information was received from the office of the Commissioner of Income Tax, Central-II, New Delhi vide letter No. letter F.No. CIT (C)-11/2011-12/2068 dated 15.03.2012 mentioning therein that a search operation was carried out in the case of Sh. Aseem Kumar Gupta Group (herein after known as Entry operator) wherein after intensive and extensive enquiry and examination of document seized during course of search, it has been noticed that the said group is involved in providing accommodation entries to the persons which were named in the report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries.

2. Reasons for issuance of notice u/s 148 for re-opening the assessment u/s 147 of the Act were recorded with proper application of mind after duly analyzing/considering the report of investigation wing/ITR filed by the assessee and as well as material available on record. Prior approval from competent authority was obtained u/s 151 of the Act before issuance of notice u/s 148 of the Act and notice u/s 148 was issued on 31.03.2016 and served upon the assessee.

3. Subsequently, notice u/s 142 (1) dated 24.10.2016 issued along with questionnaire fixing the case for hearing on 03.11.2016. In response to the notices issued the AR of the assessee attended the assessment proceedings. In response notice issued u/s 143(2) dated 24.10.2016, the assessee submitted vide letter dated 07.04.2016 that the return filed for A.Y. 2009-10 on 10.09.2009 may be treated as return filed in response to notice u/s 148 of the Act. Further, the assessee vide its reply also requested to provide the reasons recorded for reopening of assessment. The reasons recorded were provided to the assessee during the assessment proceedings vide order sheet entry dated 23.09.2016. It is pertinent to mention here that, the assessee did not filed any objection against the reasons recorded for reopening of the assessment u/s 147 of the I.T. Act, 1961.

4. A detailed show cause notice dated 13.12.2016 was issued to the assessee to furnish the reply on or before 20.12.2016, however no reply/non attended the proceedings on 20.12.2016. The AR of the assessee

attended the proceedings on 26.12.2016 and submitted the part reply. The assessee was asked to discharge its onus u/s 68 of the Act. However, it only resorted to filing only confirmation from investors and even no basic details viz. ITR, bank details were filed to prove the identity of investors, genuineness and creditworthiness of the transactions. The assessee, despite given specific opportunity to lead by positive evidence to controvert the evidence against it, did not file any specific details/evidences to prove identity, creditworthiness & genuineness of transactions. Assessee has failed to utilize the opportunity provided to it establish as to why the evidence discussed against it should not be used against it.

5. *Accordingly the A.O. vide its order dated 30.12.2016 completed the assessment u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 at an income of Rs. 99,58,174/- against the return loss of Rs. 4,81,604/- by making addition of Rs. 1,03,53,7781-u/s 68 of the I.T. Act, 1961.*

6. *Aggrieved with the order of A.O. dated 30.12.2016 u/s 143(3) r.w.s. 147 of the I.T. Act, 1961, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has raised the following grounds of appeal:-*

1. *The Assessing Officer has erred in law and facts of the case in initiating proceedings us 147/148 of the Income Tax Act, 1961 and passing subsequent assessment order, without assuming jurisdiction as per law and without complying with the mandatory conditions as envisaged under section 147 to 151 and the impugned order has been passed without recording valid reasons in the eyes of law and without obtaining valid approval as per law.*

2. *The ld. AO has erred in law and made addition of Rs.1,03,53,778/- without providing the material and witnesses to the assessee for rebuttal.*

3. *The ld. Assessing Officer has erred in law and made addition of Rs. 86,000/- to the returned loss of Rs.481604/- being alleged commission paid to make the alleged arrangement without providing opportunity to the assessee to explain the fact that the money received is a genuine investment and no commission was paid.*

4. *The order is bad in law and made without proper application of mind.*

5. *The ld. Assessing Officer has not followed various decisions of courts and appellate authorities on similar grounds and facts.*

6. *The assessee reserves the right to modify, delete or raise any other ground of appeal before the CIT(A)."*

7. On perusal of the Ld. CIT(A) order dated 04.12.2018 it is observed that, during the appellate proceedings assessee vide its reply stated that Sh. Aseem Kumar Gupta C.A. has filed a retraction statement with the AGIT, Central Circle- 9(Erstwhile) vide its letter dated 25.12.2011 (reply is incorporated in the Ld. CIT(A) order.

8. In respect of the assessee reply submitted before the Ld. CIT(A), it is submitted that, during the appellate proceedings assessee vide its reply only intimate the appellate authorities that Sh. Aseem Kumar Gupta C.A. has filed a retraction statement with the ACIT, Central Circle-9(Erstwhile) vide its letter dated 25.12.2011, however no such ground of appeal was taken by the assessee before the Ld. CIT(A) as grounds mentioned above.

9. That, it is again submitted that, assessee did not raised any kind of such objection at the time of assessment proceeding in respect of the reopening of assessment u/s 147 of the Act, as assessee [before the Ld. CIT(A) stated that, Sh. Aseem Kumar Gupta C.A. has filed a retraction statement with the ACIT, Central Circle-(Erstwhile) vide its letter dated 25.12.2011, while the search was conducted on 26.03.2010. It is to be noted that as per the reply of assessee before the Ld. CIT(A), Sh. Aseem Kumar Gupta has retracted from his statement on 25.12.2011 i.e. after 21 months from the date of search conducted. These facts may already been in the knowledge of the assessee when it's case was opened u/s 147 of the I.T. Act, but assessee did not raised such objection at the time of assessment proceedings as well as did not take such grounds at the time of Appellate proceedings.

10. The Hon'ble MarasS Hash Sourt in case of coomision of Sucome-tax v. MAC Public Charitable Trust (2022)144 taxmann.com 54 (Madras) has discussed the aspect of retraction as under:-

61. In view of the law discussed above, it must be held that statement recorded under section 132(4) of the Act and later, confirmed in statement recorded under section 131 of the Act, cannot be discarded simply by observing that the assessees have retracted the same, because such retraction ought to have been generally made within a reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duty sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessees in the belated filed affidavit have retracted from their statements. Such retraction is required to be made as soon as possible or immediately after the statement of the assessees was recorded. Duration of time when such retraction was made, assumes significance and in the present case, retraction has been made by the assessees after eight months to be precise, 237 days.

62. *It is settled position of law that the admission though important is not conclusive. It is open to the assessee who made the admission to show that it is incorrect as held by the Hon'ble Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala 1973) 91 ITR 18. The onus falls on the person who had earlier admitted to prove it wrong. Therefore, the statements could form the basis of assessment.*

63. *The statements given to the Assessing officer under section 132 (4) have legal force. Unless the retractions are made within a short span of time, supported by affidavit swearing that the contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, the same cannot be treated as retracted. This position laid down in catena of decisions by the various High Courts in Lekh Raj Dhunna (supra), Bachittar Singh (supra), Rameshchandra & Co. v. CIT [1987] 35 Taxman 153/168 ITR 375 (Bom.), Dr. S.C. Gupta (supra), CIT v. Hotel Meriya [2010] 195 Taxman 459 / [2011] 332 ITR 537 (Ker.), O. AbdulRazak(supra)*

*Hence, In view of the above, the additional grounds raised by the assessee before the Hon'ble ITAT are not acceptable as same were not raised before the Ld. CIT(A) and during the Assessment Proceedings. **Again it is submitted that, the assessment record is not traceable in this office.***

5. Similar reports were filed in case of other two assesseees also and primarily the decisions have been relied upon of various Hon'ble High Courts that retraction of statement is non-consequential if it is not justified or delayed. Further, the Assessing Officer has submitted that no material has been submitted to show there was any pressure or coercion while recording of the statement. The Ld. DR has also opposed the ground submitting that the statements were on oath and apart from the statement of Shri Aseem Kumar Gupta there was a statement of employee, which was retracted. It was also submitted that apart from the statement there other material which were relied at the time of assessment.

6. After taking into consideration, the facts and circumstances as cited in case of these assessee before us. Indeed, there is a delay in retracting of statement recorded on 23.11.2011 as retracted on 25.12.2011, however what is material for the issue in hand is how far the Assessing Officer can justify the reopening of the case of the assessee. We are of the considered view that when there was a retraction of statement and that alone is basis of forming *prima facie* opinion of escapement of income, then there is more onerous duty on the Assessing Officer to mention in reasons of reopening the fact of retraction and how even after retraction, the Assessing Officer has in possession of other corroborative evidences to draw inference of escapement of income. However, that seems not to have been the case here, since, from the copy of reasons for reopening made available by the assessee in paper book page no.3 to 5 in case of Raghvender Shankar Finance & Investment Co. Pvt. Ltd., page no.5 to 6 in case of Shankar Radhey Finance and Investment Co. Pvt. Ltd. and page nos.3 to 5 in case of M/s Singhal Fasteners Company Pvt. Ltd., make it apparent that foundation of reopening is only this statement of Aseem Kumar.

7. Now, in case of RNAM Finlease Pvt. Ltd vs ITO in ITA No7968 and 7969/Del/2019, a similar ground was raised in regard to reopening of the case of that the assessee, arising out of statement of Shri Aseem Kumar Gupta recorded on 23.11.2011 which he had retracted on 25.12.2011 and relying the decision of the Co-ordinate Bench in the case of Raghvi Finance & Investment

Co. Pvt. Ltd. vs ITO in ITA No.4565/Del/2014, order dated 27.09.2019 and a decision of another Co-ordinate Bench in the case of M/s Sungrow Impex Private Limited vs ITO, in ITA No.4183/Del/2019, the Bench had benefited the assessee by observing that the statement was retracted by letter dated 25.11.2011 and as the same only were relied for reopening, thus the reasons recorded were vitiated. As for convenience, the findings in para 3 to 5 in the case of RNAM Finlease Pvt. Ltd vs ITO (supra) are reproduced below:-

“3. Primarily, the contention of the ld. counsel is that the notice u/s 148 of the Act was issued on the basis of the reasons which were not recorded in accordance with the law, were mechanical and even the approval upon the same was mechanical. Though ld. DR has vehemently defended the issue by submitting that reasons are based on independent examination of information and not just the report of investigation wing. What we find is that at page Nos.334 to 336 the copy of reasons recorded u/s 147 is provided. The same is in fact the extract of the reasons submitted for obtaining approval of the competent authority u/s 151 of the Act. After going through the same and the reasons recorded in the two other years, we find that the different AOs have written and narrated the reasons verbatim the same. It is very much apparent from the reasons that it is merely a narration of the content of information received from the Investigation Wing. The reasons mentioned about escapement of income of Rs.45 lakhs on the basis of accommodation entries. However, what was the nature of accommodation entry has not been mentioned. Thus, there appears to be an absence of live link. The ld. AR has sufficiently established that in the reasons recorded, reference of receipt of amount of Rs.15 lakhs on 14.12.2004 and Rs.5 lakhs on 12.01.2005 were mentioned which actually were not received by the assessee. The ld. AR has established on the basis of the decision in the case of Raghvi Finance Ltd. vs. ITO, ITA No.4565/Del/2014 for AY 2005-06 that by order dated 27.09.2019, a verbatim written reasons were considered in the case of that assessee Raghvi Finance Ltd. and the Tribunal had found the reasons not recorded in accordance with the law. In this context, para 6.7 of the decision dated 27.09.2019 (supra) is reproduced:-

“6.7 In our considered view, the Ld AR has correctly argued that the reasons in present case are based on borrowed satisfaction of CIT (Central)/income tax investigation wing which is loosely referred to as "Aseem Gupta search operation u/s 132 of the Act". Here it is important to

highlight the striking features of the reasons recorded case which show that the reasons are based on borrowed satisfaction only: firstly reasons start with some search operation conducted on one Shri Aseem Gupta on 26.03.2010. What are the important findings of said search operations qua the assessee's subject transaction herein namely: i) existence of statement, if any, recorded of Shri Aseem Gupta during said search operation u/s 132 of the Act; ii) whether the said statement (if any) mentioned and correlated the assessee's impugned transaction; iii) existence of incriminating material (if any) unearthed from said search operation u/s 132 of the Act; iv) correlation of the said incriminating material to assessee's subject transaction; v) inquiry, if any, made by the AO on the subject matter with respect to the information received by the AO from another wing prior to the reopening of case u/s 148 of the Act; vi) any specific and particular tangible material to form valid belief to implicate the assessee's transaction as accommodation entry; and vii) live nexus between the search on Shri Aseem Gupta and the inference to hold the assessee's transaction as accommodation entry are left to guess work and nothing is divulged from the reasons recorded on the above said aspects which make the reasons recording exercise as invalid on well-settled parameters of section 148 of the Act. Second aspect which is notable in the reasons recorded is that there is no intelligible and rational connection in the reasons recorded and a mere conclusion is drawn from un-narrated information which does not fulfil the legal requirement u/s 148 of the Act. What we notice is that the reasons recorded mention conclusions drawn by the CIT Central/investigation wing only which is taken as good enough to draw reasons recorded u/s 148 of the Act. We are fully conscious of the fact that the investigation wing of the Income Tax department is very important organ and arm collecting lot of significant information/s under the Act. However, the requirement of recording the reasons u/s 148 of the Act is vested in the AO only and nobody else. In the present case, the AO should have given relevant details in the reasons recorded vis a vis the crucial aspects of information shared by the CIT Central/ investigation wing (if any) which in his own independent opinion led him to formulate the belief for assuming jurisdiction for re-assessment and sans which we cannot approve the present reasons as valid and correct.”

4. Further, the ld. AR has submitted that the statement of one Shri Aseem Gupta was relied and, in fact, the statement of Aseem Gupta was retracted well before the issuance of notice. In this context, the ld. DR has filed a report from the AO wherein the AO has submitted that there was no such retraction and even if there was such retraction that was delayed. However, what we find is that at page 83 of the paper book, there is a copy of submission made by Shri Aseem Gupta dated 25.11.2011 to ACIT, Central Circle-9, New Delhi, wherein he has mentioned that the statement dated 23.11.2011 was made by him under influence and citing reasons he has withdrawn the statement. Now, at the time of recording of the reasons, this

statement of Aseem Gupta was very much part of the record of the Department, but, seems to have been not considered. The ld. AR has supplied before us a decision in the case of M/s Sungrow Impex Private Ltd. vs. ITO, ITA No.4183/Del/2019 for AY 2010-11 wherein, on the basis of similar set of information arising out of the statement of Aseem Kumar Gupta, the Bench had benefitted the assessee M/s Sungrow Impex Pvt. Ltd., observing that this statement was retracted by letter dated 25.12.2011 and without making any reference of the retracted statement the reasons were recorded. The relevant finding of the coordinate Bench in the case of M/s Sungrow Impex Private Ltd. (supra) in para 6.1 are reproduced below:-

“6.1.The CIT, Central-2 has provided information to the A.O. with respect to escapement of income of Rs.50 lacs only vide his letter Dated 15.03.2012. Prior to that Shri Aseem Kumar Gupta has already retracted from his statement and A.O. has recorded the reasons for reopening of the assessment on 17.03.2017. Therefore, there is a non-consideration of material fact by the A.O. while recording the reasons for reopening of assessment because the A.O. did not refer to the retraction statement of Shri Aseem Kumar Gupta in the reasons. Therefore, statement recorded on oath of Shri Aseem Kumar Gupta would have no evidentiary value against the assessee because he himself has retracted from his statement recorded on oath. Therefore, on the day of initiation of reassessment proceedings by recording reasons on 17.03.2017 the A.O. was not having any such statement of Shri Aseem Kumar Gupta available with him so as to believe that he controlled various companies to provide accommodation entries to the assessee and others. Thus, there is no tangible material available with the A.O. on the date of recording of the reasons for reopening of the assessment and whatever reasons were recorded are found to be wrong, incorrect and non-existing. Thus, there is a total non-application of mind on the part of the A.O. while recording the reasons for reopening of the assessment.”

5. As a consequence of the aforesaid discussion, we are of the considered view that the assessee has sufficiently established that the reasons were recorded in a mechanical manner by merely relying the information of the Investigation Wing and there was no sincere attempt on the part of the AO to verify any fact of its own leading to the conclusion that the satisfaction was merely a borrowed satisfaction. We are inclined to allow grounds No.2 and 3 of the assessee. The appeals of the assessee are allowed. The impugned orders are quashed.

8. In the light of aforesaid, as there is no distinction of facts with regard to reopening relying the statement of Aseem Kumar, we are inclined to sustain the

additional grounds in case of respective appellants. Allowing their respective appeals the impugned assessment orders are quashed.

Order pronounced in the open court on 24th September, 2025.

Sd/-

Sd/-

[KRINWANT SAHAY]
ACCOUNTANT MEMBER

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: 24.09.2025

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi