IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA No. 7357, 7358 & 7359/DEL/2019
Assessment Year: 2008-09, 2009-10 & 2010-11

Partap Singh, **2405, Hudson Lane,** **Kingsway Camp,** **New Delhi-110009.** **PAN: ACAPS 6851 P**	Vs	ACIT, Circle-55(1), New Delhi
APPELLANT		**RESPONDENT**
Assessee represented by	None	
Department represented by	Ms. Harpreet Kaur Hansra, Sr. DR	
Date of hearing	16.09.2025	
Date of pronouncement	16.09.2025	

O R D E R

PER KRINWANT SAHAY, ACCOUNTANT MEMBER:

The instants appeals, preferred by the assessee, are directed against separate orders, all dated 28.06.2019, passed by the learned Commissioner of Income-tax (Appeals)-38, New Delhi against the orders of assessment for A.Y. 2008-09. 2009-10 & 2010-11. Grounds of appeal raised in all these appeals as well as the facts of the case are identical, therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. Grounds of appeal raised by the assessee in ITA No. 7357/Del/2019 for A.Y. 2008-09 are as under:

"1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.

1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act

1.3 That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 2,27,02,883/- representing foreign remittances received from Russia and held to be alleged unexplained credit u/s 68 of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the learned Assessing Officer has proceeded to make the impugned addition on mechanical basis without carrying out any further investigation and without appreciating the explanation tendered by the appellant that the credits as received by the appellant were representing receivables in respect of sales made during the earlier years which has been accepted as such and therefore, once credits represented receivables then it could not be brought to tax under section 68 of the Act.

3. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding addition of Rs. 31917901/- under section 68 of the Act

3.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that no addition can be made under section 68 of the Act on

presumptive basis that since DIR Authorities had concluded that all the exports had been over invoiced by 8 to 15 times, therefore, 8% of the remittances is being added under section 68 of the Act. The finding is factually incorrect, legally misconceived and wholly untenable apart from being arbitrary, unjustified, unreasonable and not in accordance with mandate of principles of natural justice.

4. That the learned Commissioner of Income Tax (Appeals) has overlooked relevant evidence placed on record and, drawn factually incorrect and legally unsustainable inferences based on irrelevant and extraneous consideration and thus, addition sustained is wholly unwarranted and not in accordance with law

4.1 That various adverse findings and conclusions recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect and contrary to record, legally misconceived and untenable

5. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the impugned order of assessment dated 30.3.2016 under section 147/143(3) of the Act without appreciating that no notice under section 143(2) of the Act was issued in response to return of income filed by the appellant under section 148 of the Act and therefore, in absence of any notice under section 143(2) of the Act having been issued and served on the appellant prior to the impugned order, the order of assessment so made is vitiated, void ab-initio and therefore, ought to have quashed as such.

3. Grounds of appeal raised in A.Y. 2009-10 & 2010-11 and facts of the case are identical, excepting figure of quantum, therefore, our decision in A.Y. 2008-09 shall follow mutatis mutandis in A.Y. 2009-10 & 2010-11.

4. Facts of the case in A.Y. 2008-09 as per the order of learned CIT(Appeals) are as under:

"2. Facts of the case

An information was received from Investigation Wing, New Delhi dated 23.03.2015 stating the information had been received from FIU-IND with the STR reference stating that significant high value cross border inward

remittances credited into the accounts of M/ Gouri International, Prop. Sh. Pratap Singh. In most of the case these significant amount are either withdrawn in cash or transferred to related entity M/s Sunshine International and to the account of Prop. Sh. Prartap Singh after which these were withdrawn in cash. During the period from 01 Jan, 2008 till 30 Sept, 2008, a total of around Rs.1.83 Cr. had been withdrawn in cash. There were various high value transfers between M/s Gouri International and M/s Sunshine International. Both the above firms were sold proprietorship firms and were in business of export of readymade garments. The proprietor of M/s Gouri International is Sh. Pratap Singh and that of M/s Sunshine International is Satmeet Singh.

The letter further states that during the course of investigation, unit was found that DRI had conducted a search operation on M/s Gouri International proprietorship concern of Sh. Pratap Singh on 10.02.2007, involving the similar issue as mentioned in present STR.

On perusal of documents obtained from DRI, it was noticed that specific information was received by the Delhi Unit of DRI, New Delhi regarding fraudulent availment of Duty Drawback and DEPB Credits by M/s Gouri International Inc. & M/s Malhotra Impex against their over-invoiced exports of readymade garments, leather goods of Russia, Afghanistan, UK etc. It was further gathered that the Russian companies had not imported any goods from these companies during the relevant period and therefore, the export incentives availed by the said Indian concerns were not bonafide.

During the course of search DRI officers also recovered some export invoices. While comparing the above seized invoices with the invoices which were used to receive Duty Drawback and DEPB from the customs, it was observed that identical consignments having same description, quantity, weight and same number & date of invoice show that the prices mentioned in the invoices submitted with the shipping bills were about ten times higher than the prices mentioned in the invoices recovered during the search.

It was also mentioned in the above letter that Sh. Pratap Singh showed his inability to furnish the documents required by the department citing reasons that the documents were seized by the DRI in 2007. Further, statement of Sh. Pratap Singh was recorded u/s 131(1A) on 24.07.2013, wherein he stated that all the ledger accounts, cash books etc was seized by the DRI, hence he

cannot produce it. Even after the imposition of penalty u/s 272A(1)(c), for non-compliance of summon, he did not appear at all.

Thus, it was evident that the modus operandi used by M/s Gouri International was that they declare the prices of export goods more than the actual negotiated price agreed with overseas buyers to avail/claim more DEPB/Drawback, the differential amount of the actual of the exported goods & inflated price used to be sent by them in the A/cs of overseas buyers through Hawala Channels & the said amount used to be received by them as export remittances in their firms bank A/cs

On perusal of the information & facts and evidences gathered, the AO recorded the reasons to believe that the assessee had suppressed primary facts and had income chargeable to tax which had escaped assessment and that it was a fit case for issue of notice u/s 148 of LT. Act, 1961 to the assessee. After obtaining necessary approvals, notice u/s 148 was issued and duly served upon the assessee. Return of income for A.Y. 2008-09, declaring business loss of Rs. 75,97,764/-was e-filed on 28/09/2008.

Subsequently, Notice u/s 142(1) of the LT. Act was issued on 10/08/2015 fixing the case for 18.08.2015.

Assessee filed a reply wherein it was stated that the original return filed on 31.03.2011 should be treated as return filed u/s 148. A copy of the reasons for reopening was also provided to the AR

During the year, the assessee had almost closed down his business but remittances to the tune of Rs.6,26,00,260/- were being received from different countries. The AR was asked to give a list of the parties from which the said remittances were received, but the AR did not furnish the said details.

From the information supplied by DRI the following points were noted by the Assessing Officer-

(i) The assessee was showing export to Moscow and remittances in return, but in reality, no goods ever reached Moscow as confirmed by the Russian Authorities (ii) All the export bills were inflated to fraudulently avail Duty Drawback. The bills were generally inflated form 800% to 1500% as was confirmed by the DRI Authorities.

(iii) The assessee was operating various benami concerns to show inflated bogus purchase, whereas in reality the purchases had been made at very low prices from local markets

As is clear from the information received from DRI, the goods allegedly exported by the assessee had never reached Russia. Thus, the remittances received from Russia were undisclosed income of the assessee. Accordingly, an amount of Rs.2,27,02,883/- was added back u/s 68 of the LT. act, 1961 as unexplained credit."

5. During proceedings before us the matter was discussed in detail by the learned Sr. DR as no one appeared on behalf of the assessee.

6. In appeal, ground no. 1 is against initiation of proceedings u/s 147 and completion of assessment u/s 147/143(3) of the Act. In the written submissions filed on behalf of the assessee it is emphasized that the case was reopened on the basis of information received from DRI that the assessee had claimed duty draw back on the basis of fake export. The DRI had made detailed investigation and after completing the investigation the matter was sent to Investigation Wing, Income Tax for action under the Income Tax Act. The Investigation Wing of the Income Tax forwarded the information to the Assessing Officer of the assessee and thus the case was reopened u/s 147. It is stated that although information was received from the DRI but the Assessing Officer himself had not made any investigation before using notice u/s 148.

7. Per contra, the learned DR argued that since there was a detailed investigation report prepared by the DRI, which was communicated to the Investigation Wing of the Department, which had verified and after due verification forwarded the information to the Assessing Officer, therefore the

assessee cannot claim that no investigation was done by the Income Tax Department.

8. We have considered the issue and the order passed by the Assessing Officer as well as the appellate order passed by the learned CIT(Appeals) and we find that before issuing notice u/s 148 of the Act, the Assessing Officer had sufficient material on his record making it a fit case for reopening. Therefore, appellant's appeal on this issue is dismissed.

9. With regard to ground no. 2 in its written submissions the assessee has emphasized that the learned CIT(Appeals) has failed to appreciate that the Assessing Officer has proceeded for making the impugned addition on mechanical basis without carrying out any further investigation and without appreciating the explanation tendered by the appellant. It was submitted that in fact the credits received by the appellant during the year under consideration were representing the receivable goods in respect of the sales made during earlier years and lastly it was submitted that since these credits were receivable for earlier years, therefore, they could not be brought to tax u/s 68 of the Act.

10. Per contra learned DR relied on the orders of the authorities below.

11. We have considered the submissions filed by the appellant on this issue and the arguments made by the learned DR during proceedings before us. We find that it is not clear from the assessment order or from the appellate order passed by the learned CIT(Appeals) as to what verifications were done in order to verify the claim of the assessee that credits during the year under consideration was receivable for sales made in earlier years, therefore, in the fitness of things we are

of the considered view that the matter should be remanded back to the Assessing Officer to verify the claim of the assessee after giving adequate opportunity of being heard to the assessee and pass appropriate order as per law. The same order shall follow mutatis mutandis in appeals for A.Y. 2009-10 & 2010-11. We order accordingly.

12. In the result appeals of the assessee in ITA Nos. 7357, 7358 & 7359/Del/2019 are allowed for statistical purposes.

Order pronounced in open court on 16.09.2025.

Sd/-	Sd/-
(MAHAVIR SINGH)	**(KRINWANT SAHAY)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 23.09.2025.
MP
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI