

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.1417/Del/2017

[Assessment Year : 2006-07]

ACIT, Circle-26(1), New Delhi.	vs	M/s. Vadehra Builders Pvt.Ltd., D-40, Defence Colony, New Delhi-110024. PAN-AAACV0694C
APPELLANT		RESPONDENT

C.O.No.110/Del/2017

[In ITA No.1417/Del/2017]

[Assessment Year : 2006-07]

M/s. Vadehra Builders Pvt.Ltd., D-40, Defence Colony, New Delhi-110024. PAN-AAACV0694C	vs	ACIT, Circle-26(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Ms. Harpreet Kaur Hansra, Sr.DR	
Respondent by	Dr. Rakesh Gupta, Adv., Shri Somil Agarwal, Adv, & Shri Deepesh Garg, Adv.	
Date of Hearing	16.07.2025	
Date of Pronouncement	30.09.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the Revenue as well Cross-objection is filed by the assessee against the order dated 30.11.2016 passed by Ld. Commissioner of Income Tax (A)-33, New Delhi [“Ld.CIT(A)”] in Appeal No.72/15-16 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 30.12.2011 passed u/s 143(3)/148 of the Act pertaining to assessment year 2006-07.

2. In CO assessee has supported the order of Ld. CIT(A) allowing the appeal of the assessee on the issue that no approval was obtained from Ld. JCIT for issue of notice u/s 147 of the Act. Besides this, the assessee also taken grounds on merits of the addition. The appeal by the Revenue delayed by 36 days for which prayer has been made. After considering the prayer of the Revenue, we condoned the delay and admit the appeal for hearing on merits.

3. Brief facts of the case are that the assessee is a company engaged in the business of interior works, dealers of paintings and export business. The return of income was filed on 30.11.2006, declaring total income at INR 29,30,88,518/- and the assessment was completed u/s 143(3) vide order passed on 24.12.2008 accepting the income declared by assessee. A survey operation was carried out u/s 133A on 23.12.2005 on the business premises of the assessee and during the course of survey excess stock of INR 3,59,89,312/- was found. The case of the assessee was re-opened by issue of notice u/s 148 of the Act on 30.03.2011 for the reason that the issues unearth during the survey were not considered in the assessment proceedings completed u/s 143(3) of the Act. After considering the submission made from time to time, re-assessment order was passed wherein an addition of INR 3,59,89,312/- was made on account of excess stock found during the survey.

4. Against the said order, assessee preferred an appeal before the Ld. CIT(A) who vide impugned order dated 30.11.2016 has allowed the appeal of the assessee by admitting the legal grounds of appeal that the re-opening was done without obtaining statutory approval

from the competent authority. However, Ld. CIT(A) has not decided the issue on merits.

5. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“On the facts and in the circumstances of the case and law, the Id. CIT(A) has erred in quashing the re-assessment framed under section 147/143(3) of the IT Act 1961 on the ground that the A O issued notice under section 148 of the IT Act 1961 without obtaining the approval of the JCIT under section 151(2) of the IT Act 1961.*
2. *The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”*

6. The assessee in its C.O. has taken following cross-objections:-

1. *“On the facts and circumstances of the case, the learned CIT (Appeals) has erred in law in not accepting appellant's claim that the notice under section 148 dated 30.3.2011, issued by the DCIT Circle 17(1), New Delhi, and the order under section 147/143(3) dated 30.12.2011 were bad in law;*
2. *On the facts and circumstances of the case, the learned CIT (Appeals) has erred in law in not accepting appellant's claim that there was no excess stock' found during survey conducted on 23.12.2005 and during the re assessment proceedings u/s 147 of the Act, which could have been assessed as income of appellant;*
3. *On the facts and circumstances of the case, the learned CIT (Appeals) has erred in law in not accepting appellant's claim that the addition of Rs. 3,59,89,312/- was arbitrary and was based on faulty, hypothetical and imaginary assumptions only and without any cogent material on record.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

7. During the course of hearing, in terms of letter dated 01.09.2021, assessee has taken following additional grounds of appeal and placed reliance on various judgements. The additional grounds raised by the assessee are as under:-

1. *“That having regard to the facts and circumstances of the case, the jurisdiction assumed u/s 147 to reopen the original assessment made u/s 143(3) is barred by limitation in as much as the jurisdictional conditions as prescribed under the first proviso to section 147 were not complied with &, the impugned reassessment order ought to be quashed on this ground itself.*
2. *That having regard to the facts and circumstances of the case, jurisdiction assumed u/s 147 to reopen a concluded assessment made u/s 143(3) is bad in law in as much as the jurisdictional conditions as prescribed u/s 147 to 151 are not complied with and there could be no reason to believe as to the escapement of income and impugned reassessment order is liable to be quashed on this ground itself.*
3. *That having regard to the facts and circumstances of the case passing of the impugned assessment order u/s 143(3) /148, dated 30-12-2011 is bad in law in as much as notice u/s 143(2) was not issued after the filing of the return.*
4. *In any view of the matter and in any case, assessment order u/s 143(3)/148, dated 30-12-2011 is bad in law.”*

8. First we take up Revenue’s appeal in **ITA No.1417/Del/2017 [AY 2006-07]** wherein the solitary ground of appeal is with respect to quashing of re-assessment order framed u/s 147/143(3) of the Act on the ground that notice issued u/s 148 of the Act was without obtaining approval of Ld. JCIT as provided u/s 151(2) of the Act.

9. Before us, Ld. Sr.DR for the Revenue vehemently supports the order of AO and submits that there was a survey carried out in the case of the assessee wherein excess stock of INR 3,59,89,312/- was found. The Director of the assessee company, Shri Aseem Vadehra

also admitted additional undisclosed income to the extent of INR 2.50 crores and deposited the tax on such additional income. However, the same income was not included in the total income declared by the assessee in the return of income filed nor any discussion was made in the assessment order passed u/s 143(3) of the Act passed in the case of assessee after the survey. All these facts remained unconsidered in the assessment proceedings completed u/s 143(3) therefore, AO re-opened the assessment after recording reasons which are reproduced in para 5.2 of the order of Ld. CIT(A). He submits that the case of the assessee is re-opened within four years from the end of the relevant assessment year and therefore, AO has recorded the reasons which action is in accordance with law and therefore, the action of Ld. CIT(A) in quashing the assessment order deserves to be held bad in law.

10. On the other hand, Ld. AR for the assessee vehemently supported the order of Ld. CIT(A) and submits that as per section 151(2) as existed at the relevant point of time, where the assessment is re-opened within a period of four years from the end of the relevant AY, the approval from Ld. JCIT/Adl. CIT is necessary. He further submits that order u/s 143(3) was passed by Adl. CIT and thereafter the case is reopened by the subordinate authority i.e. by DCIT, therefore, the reopening is bad in law in this case also. He prayed accordingly.

11. Heard the parties and perused the material available on record. In the present case, from the perusal of the reasons recorded as appearing at page 70A of the Paper Book, it could be

seen that there was no approval taken by the AO before issue of notice u/s 148 of the Act. Further from the perusal of the notice issued u/s 148 of the Act dated 30.03.2011, as available at page 70 of Paper Book, there is no mention of any approval obtained from Competent Authority before issue of notice u/s 148 of the Act. The Ld. CIT(A) after considering these facts quashed the reassessment order and the relevant observations of ld. CIT(A) as made in para 6 to 7.1 of the impugned order are extracted hereunder:-

6. "I have considered the reasoning of the A.O. and the submissions of the appellant in the peculiar facts and circumstances of this case. In view of the appellant's submission that the Ld. DCIT did not seek approval of the JCIT before issuing the notice u/s 147, the folders of original assessment proceedings as well as re-assessment proceedings were called for and examined. From the file as well as the order sheet, it is noted that vide order sheet entry dated 20.08.2010 a note by the DCIT was prepared for obtaining the approval but there is no evidence that it was submitted to anyone or that an approval was obtained. No proposal for approval is found on the records either. It is, further noted that even though the draft proposal for approval cited supra is dated 20.08.2010 the notice u/s 148 was issued more than 5 months later i.e. 30.03.2011.

6.1 Even in the re-assessment order passed on 30.12.2011 the Ld. ACIT has not mentioned that an approval of higher authorities was taken for issue of notice. For ready reference, the relevant excerpt assessment order 30.12.2011 is reproduced hereunder:-

"Considering all the facts and circumstances and after recording reasons u/s 148(2), action u/s 147 was taken in case of the Assessee for this assessment year and notice u/s 148 dated 30.03.2011 was issued and served upon the Assessee."

7. After considering the totality of the circumstances in which the DCIT Circle-17(1). having found that the survey report was not considered by the Addl. CIT Range -17 while framing the original assessment order u/s 143(3) and therefore, forming a belief that income of the appellant had escaped assessment and then issuing notice u/s 147 without obtaining approval for reopening the assessment, the issue of notice without obtaining the approval of JCIT as required u/s 151(2) is un-sustainable in law.

7.1 Under the circumstances, I am constrained to quash the order appealed against.”

12. Further, the notice u/s 148 of the Act issued alongwith reasons recorded wherein there was no whisper of any approval of any higher authorities. The copy of the reasons recorded before issue of notice u/s 148 is available at page 70 and 70A of the paper book.

13. In view of the above discussion and after considering the submission made before us, and also considering the fact that no any contrary material is brought on record by the Revenue to controvert the finding of Ld.CIT(A) who after verifying the facts from the original assessment records as well as re-assessment records reached to the conclusion that no approval was taken from the Competent Authority as prescribed u/s 151(2) of the Act before issue of notice u/s 148 of the Act and therefore, we find no infirmity in the order of Ld.CIT(A) which is hereby upheld. Ground of appeal No. 1 of the Revenue is accordingly, dismissed.

14. Since we have dismissed the appeal of the Revenue therefore, the Cross-objection appeal filed by the assessee became infructuous and hence, dismissed.

15. In the result, appeal of the Revenue in ITA No.1417/Del/2017 and Cross-objection of the assessee in C.O.No.110/Del/2017 [AY 2006-07], both are dismissed.

Order pronounced in the open Court on 30.09.2025.

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date-30.09.2025

Amit Kumar, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI