



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.866/PUN/2019

निर्धारण वर्ष / Assessment Year: 2009-10

Shri Narendra Kachrual Abad, Abad House, Nal Galli, Kadrabad, Jalna – 431203. Maharashtra.	V s	The Income Tax Officer, Ward-1, Jalna.
PAN: ACSPA9531C		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Hari Krishan – AR
Revenue by	Shri Arvind Renge –Addl.CIT(DR)
Date of hearing	28/07/2025
Date of pronouncement	06/10/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Assessee against the order of Id.Commissioner of Income Tax(Appeal)-1, Aurangabadpassed under section 250 of the Income Tax Act, 1961 for the A.Y.2009-10 dated 30.03.2019, emanating from order u/s.143(3) r.w.s 147of the Income Tax Act, 1961, dated 03.11.2017. The Assessee has raised the following concise grounds of appeal :



“The following grounds of appeal are taken independently and without prejudice to one another.

1. The reopening of assessment by issuing notice u/s 148 of the Income Tax Act is invalid and bad-in-law as; the notice has been issued on borrowed satisfaction, there was no tangible material before the Assessing Officer to arrive at the satisfaction and the Assessing Officer has not established any live link between the information and the satisfaction that the income of Rs.9,54,365/- has escaped assessment. The Notice u/s 148 and the consequential impugned assessment order may be quashed/cancelled.

2. The addition of Rs. 9,54,365/- made by the Assessing Officer on account of the alleged Client Code Modification (CCM), is without any basis, unjustified and unsustainable in law. The same may be deleted.

3. The Id. Commissioner of Income Tax (Appeals) has erred in making the enhancement of Rs. 29,12,602/- to the income of the assessee on account of the alleged accommodation losses in the future/ forward transactions. The same may be deleted.

4. The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal.”

Submission of Id.AR :

2. The Id.AR for the assessee filed paper book. Ld.AR submitted that the notice u/s.148 is bad in law as the reasons recorded by the Assessing Officer are without application of mind. Ld.AR submitted that there was report from the Investigation Wing which is at page no.1 to 3 of the paper book. The report specifically mentions about certain Annexures. However, no Annexures are enclosed with the said letter. No Annexures were provided to the Assessee by the Assessing Officer. The Assessing Officer has recorded reasons without referring the Annexures. Therefore,



Assessing Officer has not mentioned anything about the Shares wherein, alleged client code modification has been done. Therefore, the reasons recorded are based on incorrect/incomplete information. Ld.AR further invited our attention to page no.5 of the paper book which is the approval of Pr.CIT-Aurangabad. Ld.AR submitted that Pr.CIT has put a rubber stamp, there is no application of mind by Pr.CIT.

2.1 Synopsis filed by the Assessee reproduced as under :

“The assessment has been re-opened vide notice u/s 148 of the Income Tax Act dated 30-03-2016, which was served on 21-04-2016.

The assessment has been re-opened on the basis of a report (PB, page 1-3) of the Investigation Wing that the profit and loss has been manipulated by the Client Code Modifications (CCM).

The re-opening of the assessment was challenged before the Assessing Officer. In support the said challenge the assessee has relied upon the judgement of the Hon'ble Bombay High Court in the case of M/s. Coronation Agro Industries Ltd. dated 23-11-2016 in WRIT PETITION NO. 2627 OF 2016.

3. Reassessment was completed by making addition of Rs.9.54 lacs on account of profit and loss manipulation by Client Code Modifications (CCM)

4. Before the Commissioner of Income Tax (Appeals) the assessee has challenged.

(a) the re-opening of the assessment.

(b) the addition of Rs.9.54 Lakh made by the Assessing Officer on account of client code modification.

5. The Commissioner of Income Tax (Appeals) has;



(a) upheld the re-opening of the assessment.

(b) Confirmed the addition of Rs.9.54 Lakhs made by the Assessing Officer.

(c) further enhanced the income of the assessee by an amount of Rs.29,12,602/- on account of the alleged accommodation losses taken by the assessee from the broker M/s Sushil Financial Services Pvt. Ltd. in the future/forward transactions.

6. Before the Hon'ble Tribunal the assessee has challenged the;

(a) Re-opening of the assessment.

(b) Addition of Rs.9.54 lacs.

(c) enhancement made by the Commissioner of Income Tax

(Appeals).

Arguments/Submissions.

(a)

(i) Re-opening of assessment has been done by the Assessing Officer on borrowed satisfaction.

When the reasons to believe that income has escaped assessment are based, just on the information received from the Investigating Wing without any verification/examination of the facts of the assessee by the Assessing Officer, it means that the reopening is based on the borrowed satisfaction = Pioneer Town Planners Pvt. Ltd. (2024) 160 taxmann.com 652 (Delhi).

(ii) No tangible material before the Assessing Officer to arrive at the satisfaction/conclusion that income of Rs.9.54 lacs has escaped assessment.

Assessing Officer has written just a bare sentence that, information had been received from the Additional Director of Income Tax (ADIT) (Investigation) Wing wherein the Additional Director of Income Tax has observed that Client Code Modifications (CCM) has been used as a tool for tax evasion in many cases and the assessee has taken lossess of Rs.4,13,150/-and shifted out profit of Rs.5,41,215/- which resulted in net reduction in income due to CCM of Rs.9,54,365/-, therefore I have



reasons to believe that the income chargeable to tax at Rs.9,54,365/- has escaped assessment.

The Assessing Officer has not mentioned in respect of which transactions of the assessee the Client Code Modifications has been done. The Assessing Officer has also not mentioned as to in what fashion/manner the said transactions have been manipulated resulting in shifting out the profit of Rs.5,41,215/-and taking of losses of Rs.4,13,150/-.

(iii) The Assessing Officer has not established any live link between the information relied by upon him and the satisfaction/conclusion the income of Rs.9,54,365/- has escaped assessment in the case of the assessee.

No linking of the information has been established with the transactions in the case of the assessee and how the reduction of income of Rs.9,54,365/- has been achieved.

(iv) The approval u/s 151 of the Income Tax Act to issue the notice u/s 148 has been granted in a mechanical manner without application of mind and without examination of the relevant facts.

(b)

(1) The Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.9,54,365/- by merely observing on page 20 of the appellate order that the assessee has not challenged the quantum addition of Rs.9,54,365/-, even though in para 3 on page 2 of the appellate order, the Commissioner of Income Tax (Appeals) has himself observed that,

"the appellant is in appeal before the undersigned on the following grounds:-

O/On the facts and circumstances of the case, the Assessing Officer was not justified in making an addition of Rs. 9,54,365/- while completing the assessment u/s 143(3) r.w.s 147 of the Income Tax Act, 1961.

b) The appellant craves leave to add, amend, delete or alter all or any ground of appeal."

In para 4 on page 2 of his order the Commissioner of Income Tax (Appeals) has again mentioned that "In the solitary ground of appeal the appellant has challenged the action of the Assessing Officer in making an addition of Rs.9,54,365/-."



even tax consultant has argued this issue before the Commissioner of Income Tax (Appeals) (Page 2/4 of the assessment order).

(ii) The Assessing Officer has failed even to give the working/computation of the amount of Rs.9,54,365/-.

(iii) The Assessing Officer has further failed to spell out even the transactions relating to the assessee in respect of which the addition of Rs.9,54,365/- has been made.

(C)

(i) The item of income on which enhancement has been made, does not fall within the scope of the enhancement jurisdiction of the Commissioner of Income Tax (Appeals).

The appeal before the Commissioner of Income Tax (Appeals) was against the re-assessment order. In view of the explanation 3 to section 147 the item of income on which the Commissioner of Income Tax (Appeals) has made the enhancement, does not fall within the scope of reassessment u/s 147 of the Act. There was no information/record etc. before the Assessing Officer in there-assessment proceedings from which he could have noted that the item of income of Rs.29,12,602/- has also escaped assessment. Therefore the Assessing Officer himself did not have the jurisdiction to make the addition of Rs.29,12,602/- in respect of which enhancement is made by the Commissioner of Income Tax (Appeals).

It is settled law that, the Powers of the Commissioner of Income Tax (Appeals) are co-terminus with the Powers of the Assessing Officer. What the Assessing Officer could not have done in the reassessment, the Commissioner of Income Tax (Appeals) also could not do.

(ii) The enhancement has been made by the Commissioner of Income Tax (Appeals) on assumption of incorrect facts. Rs.29,12,602/- is the net loss computed under the head business and profession. It is not the accommodation loss in future trading of shares that has been intended to be disallowed by the Commissioner of Income Tax (Appeals).

(iii) The Ld. Commissioner of Income Tax (Appeals) has made the enhancement of Rs.29,12,602/- without application of mind and without examination of the relevant facts.

(iv) The Commissioner of Income Tax (Appeals) has further failed to spell out even the transactions relating to the assessee in respect of



which the accommodation loss of Rs.29,12,602/- has been taken by the assessee.

(v) The Commissioner of Income Tax (Appeals) has failed to confront the material, relied upon by him, to the assessee before making the enhancement of Rs.29,12,602/-.

(vi) The Commissioner of Income Tax (Appeals) has failed even to give the working/computation of the alleged accommodation loss of Rs.29,12,602/-.

2.2 Ld.AR for the Assessee relied on the following case laws and filed a short note on each case law :

- *PCIT Vs. Shodiman Investments Pvt. Ltd.*(2018) 93 taxmann.com 153/167 DTR 290(Bom HC)
- *S.Narayana Vs. CIT* 63 ITR 219
- *ITO Vs. LakhmaniMerwal Das* 103 ITR 437
- *CIT V. Kamdhenu Steel & Alloys Ltd.* (2012) 248 CTR 33 (Del)(HC)
- *CIT v. Multiplex Trading & Industrial Co Ltd* (2015) 128 DTR 217 (Del) (HC)
- *Pr. CIT vs. G. Pharma India Ltd.* (2017) 384 ITR 147 (Del) (HC)
- *CIT vs. Insecticides (India) Ltd.* (2013) 357 ITR 300 (Del) (HC)
- *Meenakshi Oversea's Pvt Ltd* (2017) 395 ITR 677 CIT (Del) (HC)
- *CIT vs. Fair Invest Ltd.* (2013) 357 ITR 146 (Del) (HC) Sarthank Securities Co. (P.) Ltd. Vs. ITO (2010) 329 ITR 110(Del.) (HC)
- *Pr. CIT vs. SNG Developers Ltd.* (2018) 404 ITR 312 (Del.) (HC)
- *M/s. Coronation Agro Industries Ltd. Vs. Deputy Commissioner of Income-Tax Circle-6(2)(1).*
- *Commissioner of Income Tax-13 Vs. Pat Commodity Services Pvt. Ltd.* Income Tax Appeal No.1257 of 2016
- *Akshar Builders and Developers Vs. ACIT-28(1), Mumbai & Anr Writ Petition No.14490 of 2018 (Bom HC)*
- *PCIT-5 Vs. Manxil Dineshkumar Shah R/Tax Appeal No.451 of 2018*
- *PCIT-4 Vs. G & G Pharma INDIA Ltd.*



- *Dilware Leasing & Investment Ltd. Vs. ITO in ITA No.3927/Del/2018*
- *Radiance Stock Traders Pvt. Ltd., Vs. ITO New Delhi ITA No.4542/Del/2018*
- *Shri Tulsi Dass Vs. ACIT in ITA No.6806/DEL/2017*
- *Monabenamitkumar Shah Vs. DCIT in ITA No.707/Ahd/2018*
- *M/s.Devansh Exports Vs. ACIT in ITA No.2178/Kol/2017*
- *Similar view has been seen on following case laws:-*
- *PCIT Vs. Meenakshi Overseas Ltd. 395 ITR 677 (Del.) (referred to para 19 till para 37).*
- *DCIT Vs. Greal Wall Marketing Pvt. Ltd. ITA No.660/Kol/2011 (referred to page 10 para11)*
- *Shri Raj Kumar Goel Vs. ITO ITA No.1028/Kol/2017 (referred to page 5-8 para11)*
- *Classic Flour & Food Processing Pvt. Ltd. Vs. CIT ITA Nos. 764 to 766/Kol/2014 (page 7 para 12 to16)*
- *PCIT Vs. Shodiman Investments (P) Ltd. (2018) 93 taxmann.com 153 (Bom) page 4 para 12 to 14) (*
- *KSS Petron Pvt. Ltd. Vs. ACIT ITA No. 224/Mum/2014 (referred to page 3 para 8-11)*
- *PCIT Vs. Tupperware India Pvt. Ltd. (2016) 236 Taxman 494 (referred to page 3 para 6 and9)*
- *DCIT Vs. National Bank for Agriculture Development 10-13 para12) and Rural ITA No.4964/Mum/2014*
- *M/s Balaji Health Care Pvt Ltd Vs. The ITO Ward -4(3) Jaipur, ITA. No.. 566 & 567/JP/2018.*
- *M/s.Setu Securities Pvt. Ltd. Vs. Dy.CIT in ITA No.5705/Mum/2017*
- *Honourable Punjab and Haryana High Court in the case of Rakesh Gupta vs. CIT (93 taxmann.com 271)*
- *Hon'ble CIT Vs. Kelvinator of India Ltd.*
- *Hon'ble Maadhya Pradesh High Court in the case of Dr. Lata Chouhan vs. ITO (189 taxman 45)*



- *Hon'ble ITO Vs. Selected Dalurband Coal Co. (P) Ltd.,*
- *Honourable Rajat Export Import India Private Limited Vs. IOT (341 ITR 135)*
- *Hon'ble Brij Mohan Agrawal Vs. ACIT (268 ITR 400)*

Submission of ld.DR :

3. Ld.Departmental Representative(ld.DR) for the Revenue merely relied on the order of the Assessing Officer and ld.CIT(A).

Findings & Analysis :

4. We have heard both the parties and perused the records. In this case, in ITA No.866/PUN/2019 for A.Y.2009-10 ITAT Pune decided the Assessee's appeal ex-parte vide order dated 26.05.2022. The Assessee filed a Miscellaneous Application vide MA No.365/PUN/2022 against the order in ITA No.866/PUN/2019. The ITAT recalled the order dated 26.05.2022 in ITA No.866/PUN/2019 for A.Y.2009-10. Accordingly, the case was rescheduled for hearing. The case was heard on 28.07.2025.

4.1 In this case, Assessing Officer- ITO, Ward-1, Jalna issued notice u/s.148 of the Income Tax Act, on 30.03.2016 for A.Y.2009-10. The Assessing Officer has recorded the reasons for reopening. Copy of the same has been filed by the ld.AR in the paper book.



The reasons recorded by the Assessing Officer are reproduced here as under :

4.2 Reasons for issue of Notice u/s.148 of the Act :

“Reasons for issue of notice u/s 148 of the I.T.Act, 1961.

Information has been received from the Office of the Assistant Director of Income Tax (Investigation), Unit 1(3), Ahmadabad that they have carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premises of 12 brokers and few of their clients across India on 23.03.2015 wherein the ADIT has observed that Client Code Modification (CCM) has been used as a tool for tax evasion in many cases. The above mentioned assessee have taken losses of Rs.4,13,150/- and shifted out profits of Rs 5.41,215/- which resulted in Net reduction in Income due to CCM of Rs 9,54.365/-

Therefore, I have reason to believe that within the meaning of Explanation 20 of section 147 of Income tax Act, 1961 assessee's income chargeable to tax at Rs 9,54,365/- has escaped assessment. On the basis of reasons recorded above, issue notice under section 148 of the Act 1961 for A.Y.2009-2010.

A proposal under section 151(1) of the income-tax Act, 1961 as amended by Finance Act, 2015 with effect from 1.6.2015 is being submitted to the Principle Commissioner of income-tax-1, Aurangabad through Additional Commissioner of Income-tax, Jalna Range, Jalna for favour of necessary sanction for issuance of notice under section 148 of the Income-tax Act, 1961 in this case as no notice under section 148 of the Income-tax Act 1981 can be issued after expiry of four years



from the end of the assessment year without the approval of the Principle Commissioner of income x-1, Aurangabad.”

5. The said reasons have been approved by Principal Commissioner of Income Tax, Aurangabad. Copy of the approval has been filed by the Assessee in the paper book. The same is scanned and reproduce as under :

Encl: Annexure-1

Place: Jalna
Date : 23.03.2016.

(5)

(Gous Mohiuddin)
Income-tax Officer,
Ward-1, Jalna

12 Whether the Addl.CIT is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 147/148 of the Income-tax Act, 1961.	Yes, I am satisfied with the reasons recorded by the AO that it is a fit case for issue of notice u/s 147 of the I. T. Act and hence recommended.
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(D. N. PARAKH)
Addl. Commissioner of Income-tax,
Jalna Range, Jalna.

Whether the Commissioner/ Board is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 147/148 of the Income-tax Act, 1961.	Yes, on the basis of above facts I am satisfied that it is a fit case to issue notice u/s 148.
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(S.D.Srivastava)
Principle Commissioner of Income-tax-1,
Aurangabad.

ssuanhere

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5.1 On perusal of the approval given by Pr.CIT-Aurangabad, it is observed that it is just a mere rubber stamp.

6. In this case, Assessing Officer has claimed receipt of information from Assistant Director of Income Tax(Investigation), Unit-1(3), Ahmedabad regarding a survey conducted on 23.03.2015. We have read the letter dated 18.03.2016 of the Assistant Director of Income Tax(Investigation), Unit-1(3), Ahmedabad forwarding the information. In the said report, it is specifically mentioned that “beneficiaries pertaining to your jurisdiction may be segregated by using the SORT TOOL of MS EXCEL”. Along with the said letter, there were Annexures.

6.1 The letter dated 18.03.2016 is reproduced here under “

Confidential

No.ADIT(Inv)1(3)/AHD/CCM/Dissemination/e-mail-15-16
18.03.2016

Date

To
The Assessing Officer
(of Beneficiaries as per Annexure-B)

Madam/Sir,

Sub: Forwarding of Survey Report in respect of Client Code Modification(CCM) – Dissemination of beneficiary clients who have taken contrived losses and shifted out profits during the F.Ys.2008-09 to 2011-12- reg.

Kindly refer to the above.



2 *Modification of the client codes is a practice under which brokers change the client codes in sale and purchase orders of securities after the trades are conducted. While it is legally permitted to rectify inadvertent errors in punching the orders, there were concerns that such modifications could be misused for manipulative activities in the market. SEBI conducted a probe into 'modification of client codes' by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the National Stock Exchange during March 2010.*

3 *The Ahmedabad Investigation Directorate, as an institutional response to the orchestrated misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premises of 12 brokers and few of their clients across India on 23.03.2015.*

4. *The survey report has been prepared by the ADIT(Inv) Unit-1(3), Ahmedabad on the basis of data received from National stock exchange(NSE). After analysis of data received from NSE and after considering the contention of brokers, it is concluded by the ADIT that CCM has been used as a tool for Tax evasion. The genuine contentions of the brokers have been duly addressed in the survey Report. Only settled trades have been considered to arrive at the beneficiaries.*

5. *After analysis of the data, the ADIT came to the conclusion that for the 4 years under analysis, 4890 assesseees have availed contrived losses of Rs 1206,18,25,287/- as under :*

<i>FY</i>	<i>Sum of Contrived Losses due to CCM</i>
<i>2008-09</i>	<i>580,12,39,534</i>
<i>2009-10</i>	<i>501,56,44,734</i>
<i>2010-11</i>	<i>81,56,23,279</i>
<i>2011-12</i>	<i>42,93,17,740</i>
<i>Total</i>	<i>1206,18,25,287</i>

6. *Soft copy of the Survey Report along with Annexures is appended to this email.*

Survey Report along with Annexures is appended to this email.

7. *Please also find Annexure-B as attachment to this letter Annexure-B to the survey report comprises the list of beneficiaries of CCM. In this list, the assesseees who have taken losses of Rs 100000 and above and assesseees who have shifted out profits of Rs. 100000 and above have been considered. The rationale of setting Rs. 100000/- as limit is the*



threshold monetary limit of Rs. 100000/- for reopening cases beyond four years. The detailed results of analysis would help you form independent opinion about tax-evasion by your assessees, by way of taking contrived losses.

8. Apart from above, complete data has been sent to the concerned Chief Commissioners of Income Tax, which is contained in a pen drive of 128 GB. Contents of pen drive are explained hereunder :

.....

9 The beneficiaries pertaining to your jurisdiction may be segregated by using the "Sort &...er" tools of MS excel. Net reduction in income due to CCM is mentioned year-wise in Annexure-B whereas net effect in all the four years is mentioned in column AA of Annexure-B.

10 The reopening of cases for FY 2008-09 is getting barred by limitation of time on 31.03.2016. You are, therefore, requested to initiate necessary action in the case of the beneficiary clients pertaining to your jurisdiction noted in the Pen Drive."

6.2 Thus, it can be seen from the letter of the ADIT that respective Assessing Officer had to find out specific details pertaining to their Assessee from the Annexures and the Pen drive. However, the Assessing Officer i.e.ITO, Ward-1, Jalan had not referred to the Annexures enclosed with the report of the Assistant Director of Income Tax(Investigation), Unit-1(3), Ahmedabad. The said document has not been referred anywhere even in the assessment order. It has been pleaded by the ld.AR that at the time of recording reasons, the ITO was not having Annexures. On perusal of the reasons recorded, it is observed that Assessing Officer has merely stated that Assessee has taken loss of Rs.4,13,150/- and shifted out



profits of Rs.5,41,215/- which resulted in reduction in income due to client code modification. Nowhere in the reasons, the ITO has referred to the Annexure which were forwarded by Assistant Director of Income Tax(Investigation), Unit-1(3), Ahmedabad. Nowhere in the reasons, Assessing Officer has mentioned how he has arrived at the figure of Rs.4,13,150/-! Nowhere in the reasons, the Assessing Officer has mentioned the name of the Scrip/Share in which the so-called client code modification was done. Thus, the reasons recorded are baseless and without application of mind.

7. During the Assessment Proceedings, Assessee had raised objections and challenged reopening. Assessee had also referred the decision in the case of M/s.Coronation Agro Industries Ltd. Vs. DCIT in Writ Petition No. 2624 of 2016 vide order dated 23.11.2016 of Hon'ble Jurisdictional High Court. This fact is recorded in the Assessment Order. The Assessee also challenged the issue of reopening before Id.CIT(A).

8. In this case, we have already reproduced the reasons recorded by the Assessing Officer. We have already brought on record that the Assessing Officer has not referred to any specific Scrip/Share



wherein, so-called client code modification was done. Based on our findings, we have specifically stated that there is no application of mind by the Assessing Officer at the time of recording reasons. We have also noted that the Pr.CIT has merely stated that he is satisfied. The Hon'ble Jurisdictional High Court in the case Coronation Agro Industries Ltd. Vs. DCIT(supra) has held as under :

“4. We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and/or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade. The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. Prima facie, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.

5. In the above view, prima facie, we are of the view that the Prima facie impugned notice is without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment.”



9. The Hon'ble High Court of Delhi in the case of PCIT Vs. G & G PHARMA INDIA LTD in ITA 545/2015 vide order dated 0810.2015 has held as under :

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which return, which was filed on 14th November 2004 and ee, which must have been tendered along with the Section 143(3) of the Act. Without forming a prima facie opinion, on the and was processed under basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.



13. Mr. Sawhney took the Court through the or how the CIT (A) discussed the materials produced during the hearing of the of the CIT(A) to show appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity.

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises.”

10. The Hon’ble Bombay High Court in the case of PCIT-5 Vs. Shodiman Investment Private Limited 422 ITR 337 (Bom) vide order dated 16.04.2018 has held as under :

“Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.”



11. The ITAT Delhi Bench in the case of Dilwara Leasing & Investment Ltd. Vs. ITO in ITA No.3927/Del/2018 for A.Y. 2009-10 vide order dated 11.01.2019 has held as under :

“6.2 Keeping in view of the facts and circumstances of the present case and case laws relied upon by both the parties, I am of the considered view that that case laws cited by the Ld. DR are on distinguished facts and circumstances of the case, however, the case law cited by the Ld. Counsel for the assessee are exactly on similar facts and circumstances of the present case, hence, respectfully following the precedent in the case of Radiance Stocks Traders Pvt. Ltd. in ITA No. 4542/Del/2018 (Supra), I am of the considered view that proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law, without jurisdiction and without applying his mind and AO issued notice without confronting the Appraisal Report of the Investigation Wing. Hence, the reassessment is quashed and accordingly I allow the legal ground no. 1 to 1.1 raised by the assessee. No other ground has been adjudicated as the same has not been argued by the Ld. Counsel for the assessee.

7. In the result, the Appeal filed by the Assessee stands allowed.”

12. The ITAT Delhi Bench in the case of Radiance Stock Traders Pvt. Ltd. Vs. ITO in ITA No.4542/Del/2015 for A.Y. 2010-11 vide order dated 29.11.2018 has held as under :

“6.3 I further note that in the reasons recorded assessee has relied upon the information by the Investigation Wing, Ahmedabad, the AO has stated that having perused and considered the information received from Investigation Wing he has reason to believe that income of the assessee has escaped which has not been conformed to the assessee



company, in the course of assessment proceedings, though in view of the judgment of Hon'ble Delhi High Court in the case of Sabh Infrastructure Ltd. Vs. ACIT reported in 398 ITR 198 the same was to be confronted alongwith reasons wherein it has been held as under:

"(ili) where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed alongwith the reasons."

6.3.1 Hence in the absence of such material, the allegation and assumptions are nothing but figment of Imagination as they are based on assumption and presumption, apart from being without basis.

6.4 It is further noted that the approval granted by the competent authority is a mechanical approval and action has been taken mechanically because on perusing the reasons recorded, it demonstrates that Pr. CIT has written "Yes, I am satisfied." which establishes that the competent authority has not recorded proper satisfaction / approval, before issue of notice u/s. 148 of the I.T. Act. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the (Inv.), Unit 1(3), Ahmedabad. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed."

13. The ITAT Delhi Bench in the case of Shri Tulsi Dass Vs. ACIT in ITA No.6806/Del/2017 for A.Y.2009-10 vide order dated 23.01.2019 has held as under :



“8. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case the facts of the case are that for the A. Y. 2009-10 the assessee had filed return income u/s 139 of the Act on 29.09.2009. The said return was accepted u/s 143 (1) of the Act. Thereafter the assessment for the aforesaid year was reopened by the recording the following reasons for reopening on 27.04.2016.

"The department is in possession of information that some brokers had misused client code modification facility (in short "CCM") to transfer loss and profits on account of share transactions from the client to the other.

These losses/profits were shifted to reduce the tax liability in hands of either the original client or modified client. The information received in the case of the assessee. Sh. Tulsi Dass is as under :

Sl. No	Pan no. & Name of the beneficiary	Name of Beneficiary Client	Address of Beneficiary	Name of broker	Ascertained reduction income due	Ascertained profit Shifted out	Net losses CCM shifted
1	ACJPD7746H	TULSI DASS	CR-204-LALITA PARK LAXMI NAGAR DELHI-110092	MODEX International Securities Ltd.	1420202.5	477732.5	(-) 1897935

The information received was examined with reference to the return of income filed by the assessee. On perusal of the ITR filed by the assessee for A. Y. 2009-10, it was noticed that the assessee was engaged in the business of online trading and commission agent. As per the details of scrips in the assessee's account, the gross receipts of the assessee from the transaction is



Rs.12,73,10,855/- whereas the assessee has shown sales gross receipts of business and profession at Rs.1,34,73,989/-. The assessee has shown profits and gains from business other than speculative business at Rs.10,05,287/-. Also, perusal of the various schedules of the return of income reveals that the assessee has not shown the said receipts under any head of income.

In view of the above mentioned facts and evidences gathered. I have reasons to believe that the income to the tune of at least Rs.1897935/-chargeable to tax has escaped assessment and this income needs to be assessed/reassessed u/s 147 of the Act. I am satisfied that it is fit case for issue of notice u/s 148 of the IT Act. 1961.

9. On perusal of the above recording shows that this was not at all a reason to believe envisaged u/s 147 of the Act. At best the same can be considered as reason to suspect only. The recording states that the assessee Sh. Tulsi Dass has suffered a loss of Rs.4,77,732.50/- in a transaction in which client code modification was involved and earned profit of Rs. 10,05,287/- in a transaction in which client code modification was involved. However, there is no material on record to show that prima facie the said client code modification was because of some malafide reason and the assessee has received cash in lieu of payment made for loss of Rs.4,77,732.50/- and profit of Rs.14,20,202.5 in which client code modification was involved. Thus, the above recording does not satisfy requirement of law mandatory for assuming jurisdiction to reopen the assessment. My above view is supported by the decision of the Bombay High Court in the case of Coronation Agro Industries Ltd. Vs. DCIT reported in 390 ITR 464. Therefore, the reassessment order passed pursuant to the above recording is hereby quashed and ground of the appeal of the assessee is allowed.”

14. No contrary decision has been brought to our notice by ld.DR for the Revenue.



15. In these facts and circumstances of the case, respectfully following the Hon'ble Bombay High Court(supra), Hon'ble Delhi High Court and ITAT Delhi, we hold that the reasons recorded for issuing notice u/s.148 were without application of mind, without verifying the Annexures, hence, the notice u/s.148 is bad in law. Accordingly, Ground No.1 raised by the assessee is allowed.

16. Since we have allowed the appeal of the assessee based on legal ground, we do not intend to adjudicate the remaining grounds and they are all left open.

17. In the result, appeal of the assessee partly allowed.

Order pronounced in the open Court on 06 October, 2025.

Sd/-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06 Oct, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

Sd/-

Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER