

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं.3503/दिल्ली/2025 (नि.व. 2012-13)
ITA No.3503/DEL/2025 (A.Y. 2012-13)

Agrawala Finservice P Ltd.,
413, Vikas Deep Building, District Centre,
Laxmi Nagar, Delhi 110092
PAN: AAACA-6624-K
बनाम Vs.

..... अपीलार्थी/Appellant

Income Tax Officer, Ward-1(4),
C R Building, IP Estate, Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/Appellant by : S/Shri Mukesh Kumar Jain & Atul Dhama,
Chartered Accountants
प्रतिवादीद्वारा/Respondent by : Ms. Sudha Gupta, Sr.DR

सुनवाई की तिथि/ Date of hearing : 29/07/2025

घोषणा की तिथि/ Date of pronouncement: : 24/10/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-29, New Delhi [in short 'the CIT(A)'] dated 25.03.2025, for Assessment Year 2012-13.

2. Shri Mukesh Kumar Jain, appearing on behalf of the assessee submitted that the assessee is a Non-Banking Finance Company (NBFC) duly registered with RBI vide Registration dated 23.05.2002. The assessee filed its return of income for the AY 2012-13 on 29.12.2012 declaring total income of Rs.5,90,650/-. The case of the assessee was selected for scrutiny and the assessment was completed u/s.143(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). In

original assessment proceedings, the Assessing Officer (AO) examined the issue of share capital and share premium. Notice u/s. 133(6) of the Act was issued to the share applicants. After considering the replies of the investor, the AO completed the assessment accepting returned income vide order dated 02.02.2015. The said assessment order is at page no.73 of the paper book. Thereafter, notice u/s.148 of the Act was issued to the assessee on 26.03.2019. The reasons recorded for reopening are at pages 6 to 8 of the paper book. The Id. AR of the assessee submitted that a bare perusal of reasons would show that the reason for which, assessment has been reopened has already been examined by the AO in scrutiny assessment proceedings. The Id. AR pointed that the AO in reasons recorded for reopening has referred to four names i.e. M/s. Sunrise Dealmark Ltd., M/s. Shyama Dealtrade P. Ltd., M/s. Midpoint Traders P. Ltd. and M/s Midway Commercial P. Ltd. who were allegedly providing accommodation entries to the beneficiaries through multi layering of transactions in the guise of bogus share, share premium and un-secured loans. The assessee is allegedly one of the beneficiaries of such transactions. It is further mentioned in the reasons recorded for reopening that the assessee is also one of the beneficiaries of accommodation entries provided by KCA Allied Services P. Ltd. Further, the assessee has been stated to have benefited from the bogus transactions provided by Adhik Multitrade P. Ltd. and Akul Multitrade P. Ltd. The Id. AR referring to the original assessment proceedings submitted that the AO in scrutiny assessment proceedings u/s. 143(3) of the Act, sought information u/s.133(6) of the Act from M/s. MJH Consultants P. Ltd. one of the investors who had contributed towards share capital/share premium/share application money in the assessee company. The said company reply dated 22.12.2014 confirmed that it has made investment in 45000 shares of the assessee company having face value of Rs.10/- each issued

at premium of Rs.30/- per share. Thus, the said company had confirmed that it subscribed to shares of the assessee with total investment of Rs.18,00,000/- during the period relevant to assessment year under appeal. The AO while completing the assessment u/s.147 of the Act has again made addition of Rs.3,00,000/- in respect of M/s. MJH Consultants P. Ltd. Further, addition of Rs.7,00,000/- from investment by M/s. Adhik Multitrade P. Ltd. and Rs.12,00,000/ investment by M/s. Akul Multitrade P. Ltd. has been made holding it to be accommodation entries. This is clearly a change of opinion. The AO in the reasons recorded for reopening has mentioned names of various companies from whom the assessee has purportedly obtained accommodation entries. Whereas, while passing assessment order addition is made in respect of three aforesaid companies only. The Id. AR further submitted that the condition set out by first proviso to section 147 of the Act, where assessment has been reopened beyond four years are not satisfied. Nowhere, in the reasons recorded for reopening it has been mentioned by the AO that on the failure on the part of assessee to disclose fully and truly all material facts at the time of assessment the income chargeable to tax has escaped assessment. The assessment reopened beyond four years without recording such observations is bad in law. To support this contention, the Id. Counsel placed reliance on the decision in the case of *PCIT vs. L&T Ltd. 113 taxmann.com 47*. The Id. AR pointed that the SLP filed by the Revenue against the said decision was dismissed by the Hon'ble Supreme Court of India. The said order has been reported as *268 Taxman 390 (SC)*. The Id. Counsel for the assessee support his submissions placed reliance on the various decisions of Hon'ble Jurisdictional High Court some of them are as under:-

- Haryana Acrylic Manufacturing vs. ACIT 175 taxmann.com 262 (Del);
- Coperion Ideal (P.) Ltd. vs. CIT, 80 taxmann.com 133; &

- CIT vs. Kelvinator India P. Ltd. 123 Taxman 433 (Del).

3. On merits, the Id. AR of the assessee submits that the AO was not having any relevant document before issuing notice u/s. 148 of the Act or even at the time of recording reasons for reopening. The Id. Counsel referred to the assessment order where in para 4, the Assessing Officer while replying to the request of assessee for inspection of records observed, that assessment order dated 02.02.2015 was readily available for inspection and the rest of the records are being fetched. The AO reopened the assessment merely on the basis of information received by the Investigation Wing. Such reopening or assessment where the 'reasons to believe' are not that of Assessing officer, the reason for reopening are unsustainable. The Id. Counsel thus prayed for quashing reassessment proceeding.

4. Per contra, Ms. Sudha Gupta representing the department vehemently defended the reassessment proceeding and assessment order. The Id. DR submitted that after completion of assessment, new information was discovered by Investigation Wing. The said information was forwarded to the AO. Thereafter, the Assessing Officer carried out his separate independent investigation and came to the conclusion that the income has escaped assessment. The reasons recorded by the AO are "his" reasons to believe that the income has escaped assessment. On merits of the addition, the Id. DR placed reliance on the findings of the AO and the CIT(A). The Id. DR vehemently asserted that the assessee could not produce the parties to prove genuineness of the transaction. The onus is on the assessee to prove genuineness and creditworthiness of the parties.

5. Both sides heard, orders of the authorities below examined. The primary contention of the assessee is that the assessment has been reopened beyond four

years by the AO merely on the basis of investigation report received from the Investigation Wing, no independent mind has been applied by the Assessing Officer on the information received. It is an undisputed fact that the assessment in the case of assessee has been reopened after four years. Whenever, the assessment is opened beyond four years, first proviso to section 147 of the Act gets triggered. Accordingly, the Assessing Officer has to show that income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment in the return of income for that assessment year. From the reasons recorded by the AO it is not emanating that the AO has complied with the conditions set out by the first proviso to section 147 of the Act. Per contra, the assessee has placed on record the inquiries made by the Assessing Officer during assessment proceedings u/s. 143(3) of the Act with respect to the issue of share capital/share application money received by the assessee. The assessee has specifically pointed to the notice issued u/s. 133(6) of the Act to one such investor i.e. M/s. MJH Marketing Consultant P. Ltd. The said notice is at page 78 of the paper book. In response to the notice u/s. 133(6) of the Act, the investor M/s. MJH Marketing Consultants P. Ltd. vide reply dated 22.12.2014 furnished necessary details, the said reply is at page 77 of the paper book. This shows that the AO has made inquiries on the issue which has now been again raised in assessment proceedings. This is clearly a case of change of opinion. It is no more *res integra* that assessment cannot be reopened merely on the basis of change of opinion. In light of above findings based on documents on record, reassessment proceedings in the instant case is held to be bad in law. Hence, the assessment order passed u/s.147 r.w.s. 143(3) is quashed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 24th day of October, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 24/10/2025

NV/-

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI