

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'E' NEW DELHI)**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 1256/Del/2025 (A.Y. 2012-13)**

M/s Marigold Merchandise Private Limited Shop No. 4/36, DDA Market, Dakshin Puri Extension, New Delhi-110062 <b>PAN: AAECM0483E</b>	Vs	Assistant Commissioner of Income Tax, Central Circle-II, Faridabad, Haryana-121001
<b>Appellant</b>		<b>Respondent</b>
Assessee by	Sh. S. S. Nagar, CA	
Revenue by	Ms. Suman Malik, CIT(DR)	
Date of Hearing	08/09/2025	
Date of Pronouncement	26/11/2025	

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The present appeal is filed by the Assessee against the order of Commissioner of Income Tax (Appeals), -3, Gurgaon ('Ld. CIT(A)' for short)- dated 23/01/2025 for Assessment Year 2012-13.

2. The grounds of Appeal are as under:-

*"1.0 That, on the facts and in the circumstances of the case, the disallowance, imposition of tax, and interest with reference thereto, as well as the quantification of taxable income and tax liability, are unjustified, erroneous, and unsustainable, and it is prayed that necessary directions be issued to the Learned Assessing Officer (Ld. AO) to grant appropriate relief in accordance with the law.*

2.0 That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that the assessment completed u/s 147 r.w.s 143(3) was bad in law on various technical and jurisdictional grounds.

3.0 That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without appreciating the fact that recourse to section 147 of the Act would be unavailable in cases where the AO is empowered to proceed u/s 153C of the Act.

4.0 That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without appreciating the fact that there was no failure on the part of the appellant to disclose fully and truly all material facts necessary for the assessment for the year under consideration and hence assumption of jurisdiction u/s 147 by issuance of notice u/s 148 beyond the period of 4 years was invalid and as such, could not be sustained in law.

5.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O without considering the fact that assumption of jurisdiction by issuing notice u/s 143(2) of the Act before supplying the reasons to believe to the appellant is bad in law.

6.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O without considering the fact that reasons recorded u/s 148 of the Act do not meet the requirement of law hence completely vague and untenable.

6.1 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of the Ld. AO without considering the fact, that the reasons to believe recorded by the Ld. AO for the initiation of reassessment proceedings u/s 147 of the Act was based on borrowed satisfaction and without application of mind.

6.2 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O without considering the fact that the reasons u/s 148 were recorded merely on the basis of suspicion and assumptions/

*presumptions derived from search conducted in case of M3M Group.*

*6.3 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of the Ld. AO without considering the fact that the material which has been made the basis of recording reasons to believe for initiation of proceedings u/s 147 of the Act has never been supplied to the appellant.*

*7.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of the Ld. AO without considering the fact that the objections raised by the appellant was not disposed by the Ld. AO by way of speaking order.*

*8.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O without considering the submissions furnished by the appellant before the Ld. AO as well as Ld. CIT(A).*

*9.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O without considering the fact that Ld. AO has changed his mind at each stage of assessment proceedings.*

*10.0 That on the facts and circumstances of the case, the Ld. CIT-(A) has erred without substantiate the fact that no approval accorded u/s 151 of the Act by the Ld. AO has been provided to the appellant.*

*11.0 That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO u/s 147 r.w.s 143(3) of the Act without considering the fact that no incriminating material was found towards rate of commission charged in respect of accommodation entries.*

*11.1 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding addition made by the Ld. AO on account of commission income amounting to Rs. 93,84,135/- @ 1% on total debits and credits transactions amounting to Rs. 9,38,41,353/-reflected in bank statement.*

*11.2 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in treating the appellant company as an*

*accommodation entry provider by relying on statement recorded at back of the appellant without providing an opportunity by the Ld. AO to cross examine the same.*

*11.3 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the observations of Ld. AO in respect of entries reflected in bank statement either debit or credit entries which in fact transactions within group companies or payment of expenses or deposit of tax etc. under normal course of business considered as accommodation entries.*

*12.0 That on the facts and circumstances of the case and without prejudice to above grounds, Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that the assessment order nowhere specify the section under which the addition was made.*

*13.0 That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

3. Brief facts of the case are that, the Assessee being Private Limited Company declared income of Rs. 'NIL'. An order u/s 153B(1)(b) of the Act r.w. Section 143(3) came to be passed on 29/03/2014. The case of the Assessee was reopened and a notice u/s 148 of the Act has been issued on 31/03/2019 i.e. after a period of 4 years. An assessment order came to be passed u/s 147 r.w. Section 143(3) of the Act vide order dated 24/12/2019 by making an addition of Rs. 93,84,135/-. The Assessee preferred an appeal before the Ld. CIT(A) which has been dismissed vide order 23/01/2025. As against the order of the Ld. CIT(A) dated

23/01/2025, the Assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the Assessee addressing on Ground No. 4 of the Assessee submitted that, the Ld. CIT(A) has erred in upholding the order of the Ld. A.O. without appreciating the fact that there was no failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment for the year under consideration and hence assumption of jurisdiction u/s 147 of the Act by issuance of notice u/s 148 of the Act beyond the period of 4 years was invalid and as such, could not be sustained in law. Thus, sought for allowing the Assessee's Ground No. 4.

5. Per contra, the Ld. Department's Representative relying on the findings and the conclusions of the Ld. CIT(A) sought for dismissal of Ground No. 4 of the Assessee.

6. Heard and perused. The case of the Assessee was reopened u/s 147 of the Act after the period of 4 years provided in the proviso to Section 147 of the Act. The assessment can be reopened after the period of four years only in the case where the Assessee failed to disclose fully and truly all material facts necessary for the assessment. In the present case, the assessment has been completed u/s 153B (1) (b) of the Act

vide order dated 29/03/2014. The reasons recorded for reopening the assessment that the A.O. suspected the transactions of the Assessee's bank account to be accommodation entries. During the original assessment proceedings, the Assessee gave explanation with supporting documents such as bank statements, audited financials and other details. While reopening the assessment of the Assessee, A.O. has not demonstrated/mentioned how the Assessee has failed to disclose material facts fully and truly in the reason to believe.

7. The Co-ordinate Bench of the Tribunal in the case of M/s SRS Buildcon Private Limited Vs. DCIT (ITA No. 7431/Del/2019).

*“8. In this regard, Assessee's contention is that the assessment is barred by limitation for the reasons that assessment was already framed in this u/s. 153A(1)(b) r.w.s. 143(3) vide order dated 27.3.2015 and the impugned notice u/s. 148 of the Act dated 30.3.2017 for AY 2010-11 has been issued after the expiry of the four years from the end of the relevant assessment year and there is no allegation by the AO in the reasons recorded that escapement of income is due to the failure of the assessee to disclose fully and truly all material facts necessary for assessment, as it evident from the reasons recorded reproduced as above. To support our aforesaid view, we draw support from the decision of the Hon'ble High of Punjab and Haryana Court in the case of Duli Chand Singania vs. APT, 269 ITR 0192 (P&H) wherein, it has been held that the reassessment cannot be sustained as original assessment was done u/s. 143(3) and four years thereafter reopening was done which is barred by limitation in view of the first proviso to section 147.*

*9. In the background of the aforesaid discussions and respectfully following the aforesaid precedents, we are of the considered view that the reopening is bad in law and barred by limitation in view of the first proviso to section 147 of the Act and therefore, the reassessment order deserves to be quashed. Accordingly, the reassessment order is hereby quashed and the appeal of the assessee is allowed.”*

8. In view of the above facts and circumstances, we find merits in Ground No. 4 of the Assessee and by respectfully following order of the Co-ordinate Bench of the Tribunal in the case of M/s SRS Buildcon Private Limited (supra), we allow the Ground No. 4 of the Assessee.

9. The Ld. Counsel for the Assessee canvassing on Ground No. 6.0 and 6.1 submitted that, while recording the reasons preliminarily A.O. has relied on the information provided by the JCIT (OSD), Unit 1(2) Investigation, New Delhi, without conducting any independent analysis or verification of the facts. The notice u/s 148 of the Act has been issued solely based on the data received regarding the credits and debits in the Assessee's bank account and the alleged nature of the transactions. The Ld. Counsel further contended that A.O. has not undertaken any independent inquiry to substantiate the claim that the transactions were not business-related or that the Assessee was engaged in providing accommodation entries. The conclusion of the A.O. that the Assessee was not carrying out real business activities and was merely facilitating accommodation entries has been drawn directly from the information provided by the JCIT without further corroboration or investigation.

10. The Ld. Counsel further submitted that, the A.O. has not provided any independent analysis to support the assertion that the Assessee must have earned commission income from these transactions. The

reasons recorded lack and detailed examination of the Assessee's financial records, business operations, or other relevant evidence that could independently validate the claims made in the information received. The Ld. Counsel has relying on the ratio laid down in the case of PCIT Vs. RMG Polyvinyl (I) Ltd. (396 ITR 5), sought for allowing Ground No. 6.0 and 6.1.

11. Per contra, the Ld. Department's Representative submitted that case of the Assessee has been reopened as per the provisions of Income Tax Act, the additions have been made on its merits, the Ground No. 6.0 and 6.1 are devoid of merit, thus sought for dismissal of same.

12. We have heard both the parties and perused the material available on record. The assessing Officer while recording the reasons preliminary relied on the information provided by JCIT (OSD) Unit-1(2) Investigation, New Delhi. As could be seen form the reasons recorded, A.O. has not made any independent analysis or verification of facts. The reasons recorded for issuing the notice u/s 148 of the Act was solely based on the data received regarding the credits and debits in the Assessee's bank account and regarding the nature of transaction. The A.O. came to a conclusion that the Assessee was not carrying out any business activities and merely facilitating accommodation entries without making any independent investigation to corroborate with the information provided

by JCIT. No independent analysis has been made to support the assertion that the Assessee has earned commission income from those alleged accommodation entries transactions.

13. The Hon'ble Jurisdictional High Court in the case of PCIT vs. RMG Polyvinyl (I) Ltd. (396 ITR 5).

*“10. In this context the following observations of this Court in CIT v. Suren International (2013) 357 ITR 24 (Del) are relevant:*

*“...In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded.”*

*11. There can be no manner of doubt that in the instant there was a ITA 29/2017 Page 6 of 7 failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises – one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.*

*12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions*

*“one after the other” and that the satisfaction arrived at by the AO was a “borrowed satisfaction” and at best “a reproduction of the conclusion in the investigation report.”*

*13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.”*

14. It is noteworthy to mention that similar ratio has been laid down by the Hon'ble High Court of Delhi in the case of Well Trans Logistics India (P.) Ltd. vs. addl. CIT (474 ITR 131) and by the Co-ordinate Bench of the Tribunal of Jaipur Bench in the case of Shri MukutBehari Aggarwal vs. DCIT (ITA No. 1067/IP/2024).

15. In view of the above discussion, we are of the opinion that, the initiation of reassessment proceeding was based on borrowed satisfaction and without application of mind. Therefore, we allow Ground No. 6.0 and 6.1 of the Assessee. In view of the above discussion, we set aside the assessment order and the order of the Ld. CIT(A).

16. Since we have allowed the Grounds No. 4, 6.0 and 6.1 of the Assessee's Appeal and deleted the addition, other Grounds of Appeal requires no adjudication.

17. In the result, Appeal of the Assessee is partly allowed.

**Order pronounced in the open court on 26<sup>th</sup> November, 2025**

**Sd/-**

**(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Date:- 26.11.2025

R.N, Sr.P.S\*

Copy forwarded to:

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

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI