

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं सुश्री पद्मावति यस, लेखक सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2223/Chny/2025  
निर्धारण वर्ष /Assessment Year: 2017-18

Sri Krishna Traders,  
119, Kilaiyur Colony,  
Thiruvalluvar Villakku, Llayangudi,  
Sivagangai District – 630 701.  
PAN: ACWFS 3617F

The Dy. Commissioner of Income  
Tax,  
Non Corporate Circle-1,  
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यर्थी की ओर से /Respondent by

: Mr. N. Vijay Kumar, C.A  
: Ms. Babitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.12.2025

घोषणा की तारीख /Date of Pronouncement

: 12.12.2025

**आदेश / ORDER**

**PER PADMAVATHY.S, A.M:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 ( in short "the Act") dated 09.06.2025 for Assessment Year (AY) 2017-18. The assessee has raised several grounds contending the addition made both on merits as well as legal grounds. The Ld. AR during the course of hearing submitted that the assessee has raised the legal contention that the assessment is bad in law on

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the ground that the A.O has not made any addition towards the reason for which the assessment was reopened, but has made another addition while concluding the assessment u/s. 147 of the Act which is not sustainable. The Ld. AR further submitted that the above ground if considered and allowed in favour of the assessee, the rest of the grounds would become academic. Accordingly, we first proceed to adjudicate the legal ground as described above.

2. The assessee for the year under consideration has not filed the return of income. The A.O based on information available with the Department noticed that the assessee has made cash deposits to the tune of Rs. 2,03,09,275/- in the bank account maintained with ICICI bank and had also made cash withdrawals to the tune of Rs.1,76,13,220/-. Accordingly, the A.O issued a notice u/s. 148 of the Act after recording the reasons "the assessee has made unexplained cash deposits to the tune of Rs.2,03,09,275/-". The assessee made detailed submissions before the A.O justifying the cash deposits stating that the assessee is in the business of buying used tyres and selling re-buttoned tyres, where the payments towards sales are made by the customers in cash. The assessee also submitted that sales and purchase register in support of the claim. After perusing the details submitted by the assessee, the A.O held that the assessee has made payments over Rs.20,000/- to various

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parties in a single day in cash and thereby the assessee has violated the provisions of Section 40A(3) of the Act r/w Rule 6DD of the Income Tax Rules, 1962 (in short "the Rules"). The A.O completed the assessment u/s. 147 of the Act by making an addition u/s. 40A(3) of the Act and the relevant observations of the AO in this regard are extracted as under:

*“6. It was mentioned by the ass that he was into the business of purchase and sale of old tyres. During the year under consideration, assessee had made total sales of Rs.2,94,80,070/-. No income tax return was filed by the assessee prior to the AY 2017-18, Further, the assessee had also not filed any income tax return for the succeeding years of A.Y. 2017-18. Despite having cash deposit exceeding Rs. 2.0 crores, the assessee did not file its return of income for the A.Y. 2017-18 u/s 139(1). The return was filed only after the issue of notice u/s 148. Further to that, assessee did not submit any documents proving that the transactions mentioned above were related to the business activities claimed by the assessee. Even though, the above transactions were considered as part of the business activities, the entire purchase consideration was paid by the assessee in cash and in violation of section 40A(3). Assessee also failed to bring out any evidence showing that suppliers were not having any bank accounts. The place of business seems to be in Madurai, an urban centre where all the banking facilities were available. Its beyond human probability that the entire purchases and sales would be made in cash. No VAT, no GST, no certificate of registration etc were produced by the assessee. The assessee had also failed to prove and submit any documents that the parties from whom the old tyres etc were purchased were not having any bank accounts in their name or there were no banking facility in the area.*

*7 Basing on the above and as per the information submitted by the assessee, it was found that the assessee had made payment in cash over and above Rs. 20,000/- to a single person in a single day during the F.Y. 2020-21 to the extent of Rs. 3,08,45,000/-. The payment made by the assessee was in violation of section 40A(3) and also not covered under the rule 6DD, the expenditure to the extent of Rs. 3,08,45,000/- is disallowed and added to the returned*

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*income. Penalty u/s 270A are initiated for under reporting of Income which was in consequence of mis-reporting of income.”*

3. On further appeal, the CIT(A) confirmed the addition made by the A.O. It is relevant to note here that the assessee has raised the legal contentions with regard to addition made by the A.O before the CIT(A) and that the CIT(A) has not given any specific findings in that regard. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. We have heard the parties and perused the material available on record. The Ld. AR, at the outset, submitted that the A.O reopened the assessment for the reasons that the assessee has made unexplained cash deposits, whereas while concluding the assessment he has made an addition u/s. 40A(3) of the Act towards cash payments made in excess of Rs. 20,000/- under Rule 6DD of the Rules. The ld AR argued that the addition made by the AO is not sustainable as has been held by the Co-ordinate Bench in the case of *Shri Murthy vs. ACIT (ITA No.490/Chny/2025 dated 23.04.2025)*. In this regard we notice that the coordinate bench in the above case has considered a similar issue of the A.O without making any additions towards the reasons for reopening has made a completely different addition while completing the reassessment proceedings. The relevant findings of the Co-ordinate Bench in this regard are extracted hereunder:

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6. *On the similar issue, the Hon'ble jurisdictional High Court in the case of Martech Peripherals (P.) Ltd. v. Deputy Commissioner of Income-tax, Company Circle IV(1), Chennai [2017] 81 taxmann.com 73 (Madras)/[2017] 394 ITR 733 (Madras) has held as under:*

*20. The petitioner/assessee, however, challenges this action of the respondents/Revenue, on the ground that it was not permissible for the respondents/Revenue to tax the forfeited share application money, by taking recourse to provisions of Section 147 read with Section 148 of the Act, unless it assesses to tax that income with reference to which the Assessing Officer had formed reason to believe (within the meaning of Section 147), that it had escaped assessment.*

*21. To my mind, a careful reading of Section 147 of the Act would show that it empowers an Assessing Officer to reopen the assessment, if, he has reason to believe, that any income chargeable to tax has escaped assessment for the relevant year, "and also bring to tax", any other income, which may attract assessment, though, it is brought to his notice, subsequently, albeit, in the course of the reassessment proceedings.*

*21.1 To put it plainly, the purported income discovered subsequently during the course of reassessment proceedings, can be brought to tax, only, if the escaped income, which caused, in the first instance, the issuance of notice under Section 148 of the Act, is assessed to tax.*

*22. Explanation 3, to my mind, supports this approach, which emerges upon a plain reading of the said provision, along with the main part of Section 147 of the Act. The emphasis in this behalf is on the expression "and also bring to tax" appearing in the main part of Section 147 in relation to the right of the Revenue to assess taxable income discovered during reassessment proceedings. In my view, Explanation its 3, clearly, expounds that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment and such other issue, that comes to his notice subsequently, albeit, in the course of proceedings held under Section 147 of the Act. In other words, if, notice for reopening of the assessment was issued on one aspect, and in the course of reassessment proceedings another aspect was discovered, the reassessment*

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*order would be valid, only if, the aspect, which led to the reopening of assessment, continues to form part of the reassessed income.*

*23. This view, as has been correctly submitted by the learned counsel for the petitioner/assessee, has found resonance with at least three (3) High Courts, i.e., the Bombay High Court, the Gujarat High Court and the Delhi High Court in the following cases: (i) Jet Airways (I) Ltd.'s case (supra) (ii) Mohmed Juned Dadani's case (supra) (iii) Oriental Bank of Commerce's case (supra).*

*23.1 The only High Court, which has taken a contrary view, as it were, is the Punjab and Haryana High Court in the matter of : Majinder Singh Kang's case (supra).*

*23.2 In my opinion, with respect, the Court, in rendering the judgment in Majinder Singh Kang's case (supra), ignored the fact that the provisions of Explanation 3 had to be read in conjunction with the main provision, and that, the said explanation cannot override the main provision.*

*23.3 This aspect of the matter has also been brought to fore by the Bombay High Court in : Jet Airways (I) Ltd.'s case (supra).*

*23.4 The relevant observations made in this behalf are extracted hereafter :*

*". . . . . However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess*

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*some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. . . .*  
*"(Emphasis is mine)*

7. *In the case of Anand Cine Services (P.) Ltd. v. Assistant Commissioner of Income-tax [2024] 169 taxmann.com 236 (Madras) the jurisdictional High Court held as under:*

8. *The next question to be examined is whether the impugned notice and proceedings consequent thereto are liable to be interfered with. Section 147 of the Income Tax Act, which is central to this determination, as it stood then, in relevant part, is set out below:*

*"147. Income escaping assessment - If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation 3 - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148."*

9. *The rival contentions pertain largely to the interpretation of Explanation 3. Section 147 and, in particular, Explanation 3 thereto was interpreted by the Division Bench of the Bombay High Court in Jet Airways (supra). Paragraphs 20 and 21 of the said judgment are set out below:*

*"20. Parliament, when, it enacted Explanation 3 to section 147 by the Finance (No.2) Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two*

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*separate questions. When it effected the amendment by bringing in Explanation 3 to section 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by Parliament in the form of Explanation 3 consequently provides that the Assessing Officer may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under section 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd., [2009] 179 Taxman 117/305 ITR 170 (Kerala) and of the Punjab and Haryana High Court in Vipin Khanna, [2002] 122 Taxman 1/255 ITR 220 (Punjab & Haryana) would, therefore, no longer hold the field. However, in so far as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh, [2008] 306 ITR 343 (Rajasthan), Explanation 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab and Haryana High Court in CIT v. Atlas Cycle Industries, [1989] 46 Taxman 315/180 ITR 319 (Punjab & Haryana). The decision in Atlas Cycle Industries, [1989] 46 Taxman 315/180 ITR 319 (Punjab & Haryana) held that the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under section 148 were incorrect or nonexistent. The decisions of the Punjab and Haryana High Court in Atlas Cycle Industries, [1989] 46 Taxman 315/180 ITR 319 (Punjab & Haryana) and of the Rajasthan High Court in Shri Ram Singh, [2008] 306 ITR 343 (Rajasthan) would not be affected by the amendment brought in by the insertion of Explanation 3 to section 147.*

*21. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment of reassessment on grounds other than those on the basis of which a notice was issued under section 148. Setting out the reasons, for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on*

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*a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance (No.2) Act of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147 and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147 as it stands postulates that assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion to Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh, [2008] 306 ITR 343 (Rajasthan). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of*

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*section 147 as they stood after the amendment of April 1, 1989, continue to hold the field."*

*10. When the same issue came up for consideration before the Division Bench of this Court in TAFE (supra), the Division Bench of this Court cited Jet Airways with approval and followed the ratio laid down therein. Paragraph 16 of the judgment of the Division Bench of this Court is as under:*

*16. The decision in the case of Jet Airways (cited supra) was referred to by the High Court of Delhi in the case of Ranbaxy Laboratories Limited v. CIT [2011] 12 taxmann.com 74/200 Taxman 242/336 ITR 136 (Delhi), wherein it was held that the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. Further, it was held that for every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148 of the Act. Thus, it was held that the Assessing Officer had jurisdiction to reassess the income other than the income in respect of which the proceedings under section 147 were initiated, but, he was not justified in doing so when the reasons for the initiation of those proceedings ceased to survive. Therefore, the argument advanced by the Revenue placing reliance on Explanation 3 to section 147 i of little avail."*

*11. In effect, both in Jet Airways and TAFE (supra), the Court held that Section 147 enables the assessing officer to travel beyond the reasons for initiating reassessment proceedings provided such reassessment is also carried out on the grounds or reasons on which reassessment was initiated. On the other hand, if the ground on which reassessment was initiated was no longer available to the assessing officer, the Court held that reassessment cannot be continued on the basis of the original notice under Section 148, and that a fresh notice is necessary.*

*8. In this present appeal, the case has been reopened for the reason that the assessee had purchased a property for a consideration of Rs.43,29,5000/- during FY 2010-11, which has*

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*been duly accounted for and hence no addition has been made in assessment in respect of the reasons recorded for reopening.*

*9. Therefore, in the light of the Hon'ble Jurisdictional High Court judgments referred supra, the ld. CIT(A) was not justified in relying upon the judgments of the other Hon'ble High Courts. Hence, respectfully following the judgment of the Jurisdictional High Court judgments referred supra we held that the reassessment cannot be continued on the basis of the original notice under Section 148. Consequently, we set aside the assessment order dated 31.12.2018 passed u/s 143(3) r.w.s 147 of the Act."*

5. The ratio laid down by the Jurisdictional High Court and the other judicial precedence mentioned therein is that when the A.O does not make any addition after accepts the submissions with regard to the reasons recorded cannot make any new addition for which the reasons were not recorded and that the explanation 3 to section 147 of the Act cannot be applied in such a scenario. In assessee's case from the perusal of the findings of the A.O, which is extracted the earlier part of this order, we notice that the A.O seem to have accepted the submissions by not making any addition towards cash deposits made by the assessee but the AO has proceeded to make a different addition u/s. 40A(3) of the Act for which the AO has not recorded any reason. Therefore in our considered view, the above ratio laid down would be applicable to assessee's case. Accordingly respectfully following above judicial precedence, we hold that the addition made u/s. 40A(3) of the Act cannot be sustained and A.O to delete the same. The ground raised by the assessee in this regard is allowed.

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6. Since, we have deleted the addition considering the legal contentions of the assessee, the other grounds on merits are become academic not warranting any separate adjudication.

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

*Order pronounced on 12<sup>th</sup> day of December, 2025 at Chennai.*

Sd/-  
(यस यस विश्वनेत्र रवि)  
(SS Viswanethra Ravi)

**न्यायिक सदस्य / Judicial Member**

Sd/-  
(पद्मावति यस)  
(Padmavathy.S)

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 12<sup>th</sup> December, 2025.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF