



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.86/LKW/2024  
Assessment Year: 2012-13

<b>Kashi Nath Seth Sarraf Pvt Ltd</b> C/o Sanjay Saxena, 12- Pratap Enclave, Bisrat G.T. Road, Shahjahanpur, Uttar Pradesh-242001.	v.	<b>DCIT, Sitapur</b> Income Tax Office, Sitapur, Uttar Pradesh-261001.
<b>PAN:AACCK3717F</b>		
(Appellant)		(Respondent)

Appellant by:	Shri Akshay Agrawal, Advocate
Respondent by:	Shri R. R. N. Shukla, Addl. CIT(DR)

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

(A). This appeal vide I.T.A. No.86/LKW/2024 has been filed by the assessee for assessment year 2012-13 against impugned appellate order dated 20.12.2023 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1058934744(1) of Ld. Commissioner of Income Tax (Appeals) ["CIT(A)", for short].

(B) In this case, assessment order dated 28.12.2019 was passed u/s 147 read with section 143(3) of the Income Tax Act, 1961 ("Act", for short) whereby the assessee's total income was determined at Rs.78,18,230/- as against income assessed at Rs.28,18,230/- vide earlier assessment order dated 18.02.2015 passed u/s 143(3) of I.T. Act. In the aforesaid assessment order dated 28.12.2019 a further addition of Rs.50,00,000/- was made u/s 68 of the Act. The aforesaid amount of Rs.50,00,000/- was received by the assessee from M/s. Sharma Hire Purchase Ltd ("SHPL", for short), as share application money. The assessee

filed appeal against the aforesaid assessment order dated 28.12.2019 in the office of the Ld. CIT(A). Vide aforesaid impugned appellate order dated 20.12.2023 of the Ld. CIT(A), the assessee's appeal was dismissed. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 20.12.2023 of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), the assessee filed a paper book containing the following particulars: -

1. Copy of Written Submission Before CIT(Appeals), NFAC dated 24-10-2023 ✓
2. Copy of Written Submission Before CIT(Appeals), Bareilly dated 26-02-2020. ✓
3. Copy of Original Assessment Order passed u/s 143(3) dated 18-02-2015.
4. Copy of notice u/s 142(1) of the I. T. Act, 1961 dated 07-01-2015 ✓  
issued by the Id. A.O. in Original Assessment Proceedings
5. Copy of submissions for the Notice u/s 142(1) of the I.T. Act, 1961 dated 07-01-2015 in original assessment proceedings
6. Copy of Notice u/s 148 of the I. T. Act, 1961 dated 30-03-2019 ✓  
along with reasons and approval u/s 151 of the I. T. Act, 1961 along with reason for Initiation of re-assessment proceedings.
7. Copy of Judgment of Delhi High Court in the case of Sabh Infratech Ltd. vs. ACIT, Delhi. Dated 25-09-2017
8. Copy of Supreme Court Judgment relied upon by the CIT (A), NFAC.

(B.1) The aforesaid paper book contained, a copy of the written submissions dated 24.10.2023 filed by the assessee in the course of appellate proceedings in the office of the Ld. CIT(A), relevant portion of which is reproduced below, for the ease of reference: -

*"1. The assessee company had submitted written submission dated 26-02-2020 in support grounds of appeal alongwith supporting documents and relevant case laws etc. during the course of physical hearing before the Id. CIT (A), Bareilly.*

*It is therefore requested that the same may kindly be considered. The copy of the submission is enclosed.*

*2. In continuation of above reply it is further bring to your kind notice that the appellant company has submitted all the information/documents during the assessment proceedings u/s 143(3) of the Income Tax Act, 1961 which is duly accepted by the Id. A.O. in the Assessment Order passed u/s 143(3) dated 18-02-2015. In support of this the copy of reply submitted during the assessment proceedings w/s143(3) is enclosed herewith for your kind perusal.*

3) Further, the Id. A.O. had issued notice u/s 148 of the Income Tax Act 1961, dated 30-03-2019 which is issued after the expiry of 4 years without having any fresh reasons/material information. The Id. A.O. has issued notice u/s 148 in continuation of material already available in the original assessment. Since the appellant company has already disclosed all the facts in financial statement as well as information submitted during the original assessment proceedings. The appellant company had successfully disclosed fully and truly all material facts at time of assessment.

4) It is also submitted that the similar facts had been in the following cases and additions had been deleted by the at higher forums:

*D The Hon'ble Bombay High Court in the case of PCIT vs. L&T Ltd. 2020.*

11) Further SLP of the revenue is also dismissed by The Hon'ble Supreme Court in the case of PCIT vs. L&T Ltd. 2020 of the judgment of The Hon'ble Bombay High Court.

5) Further, in the following cases it has been concluded that all the material facts were fully and truly disclosed by the assessee at the time of original assessment, invoking the provisions of Sec. 147 after the expiry of four years from the end of relevant assessment year is not valid. There had not been any failure of the part of the appellant company.

a. *German Remedies Ltd. vs. DCIT (2006) 287 ITR 494 (Bombay) (IIC).*

b. *CIT v Former France (2003) 264 ITR 566 (SC).*

c. *Tata Business Support Services Ltd. vs. Dy. CIT (2015) (Bombay) (HC).*

d. *Nirmal Band Securities (P) Ltd. vs ACIT (2016) 382 ITR 93 (Bombay) (HC).*

e. *Pandesara Infrastructure Ltd. v. Dy. CIT (2019) 263 Taxman 367 (Gujarat) (HC) (SLP of revenue is dismissed, Pandesara Infrastructure Lid. v. Dy. CIT (2019) 263 Taxman 366 (SC)*

**B) FOR THIRD GROUND OF APPEAL:**

*All the evidences in support of subscription of Share Capital of Rs. 50 lacs by Sharma Hire Purchase Ltd. were filed, which had not been doubted by the Id. AO. All of the them are fully verifiable from any of the records of department as well as Registrar of Companies and Reserve Bank of India being NBFC*

*The company. Sharma Hire Purchase Ltd. was having net worth of Rs. 81.73 crores as on 31-03-2012 and the investment of Rs. 50.00 lacs in our company is a very nominal amount and seeing this, the same was also accepted in the original assessment proceedings. The company is still an active company and is regularly assessed to tax.*

*The addition of Rs. 50,00,000/- may please be deleted.”*

(B.1.1) The aforesaid paper book also contained, a copy of the written submissions dated 26.02.2020, earlier filed by the assessee, in the course of appellate proceedings in the office of

the Ld. CIT(A), relevant portion of which is reproduced below, for the ease of reference: -

*"The Id. A.O. added Rs. 50,00,000/- treating 'Unexplained Cash Credit' being Share Application Money received from the company, Sharma Hire Purchase Ltd. (NBFC company) in spite of the fact that all the details in this regard had been filed during the course of original assessment proceedings.*

*The written submissions are as under:-*

*(A). FOR FIRST & SECOND GROUND OF APPEAL:*

*The return of income had been filed vide acknowledgement no. 506043461300912 dated 30.09.2012 declaring income of Rs. 28,18,230/- . The case had been selected for scrutiny through CASS. The reply of all the notices issued by the Id. A.O. had been filed on time. The assessment had been complete u/s 143(3) of the I.T. Act, 1961 on 18.02.2015. The full details in respect of shares allotted during the year had been filed in original assessment proceeding and had been accepted.*

*In the course of original assessment proceedings, the share application form, confirmation, source of amount given to the appellant company, Bank Statement, Balance Sheet, Detail of Investment, NBFC Registration Certificate and others showing net worth of Rs. 81.73 crores had been filed and only on the basis of information received from ITO (Investigation) unit-1, Kolkata, the notice for re-assessment had been issued on the basis of borrowed satisfaction. This was nothing but only change of opinion and the current re-assessment proceedings had been for current investigation i.e. second inning.*

*None of the above papers were found incorrect in spite of examining the same again in the re-assessment proceeding.*

*It is to bring to your kind notice that the Id. A.O. had clearly mentioned in the reasons that there had been failure on the part of the A.O. is not making the assessment and there was no failure by the appellant company. Thus the re-assessment proceedings are not valid in the eyes of law.*

*The Id. A.O. sent a letter dated 19.03.2019 to the company on old e mail ID enquiry about transaction with the firm, M/s. Gawaria Suppliers with whom no transaction had been done by the appellant company.*

*All the primary requirement of Section 68 of the Income Tax Act, 1961 had been complied and accepted in the original assessment proceedings. No failure of the appellant company had been found and all the material primary facts were disclosed in the original assessment proceedings. The failure of the A.O. cannot give jurisdiction to penalize the appellant company and it was the failure of the A.O. and not of the appellant company.*

*What is required to be disclosed is the primary facts and evidences and all of them had been filed in the original assessment proceeding and there was no failure on the part of the appellant company nor such facts had been narrated in the reason for re-assessment.*

*It was not obligatory on the appellant company to prove the source of source (though given in the original assessment proceedings) as well as origin of the source as per requirements of the Act. No defect had been*

*pointed out in the books of account and the entire findings are only on surmises. No statement or evidence had been given in the re-assessment proceeding in spite of the fact that they had been demanded in writing nor any reason of the same had been given in writing.*

*In spite of repeated requests, no statement of any person nor any evidence had been provided by the A.O., which is also violation of the principles of natural justice. In view of the hon'ble Supreme Court order in the case of Andman Timber Industries vs. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006 dated 02.09.2015, the re-assessment proceedings may please be cancelled.*

*(B). FOR THIRD GROUND OF APPEAL:*

*All the evidences in support of subscription of Share Capital of Rs. 50.00 lacs by Sharma Hire Purchase Ltd. were filed, which had not been doubted by the Id. A.O. All of them are fully verifiable from any of the records of department as well as from the Companies Act and Reserve Bank of India being NBFC.*

*The company, Sharma Hire Purchase Ltd. was having net worth of Rs. 81.73 crores as on 31.03.2012 and the investment of Rs. 50.00 lacs in our company is a very nominal amount and seeing this, the same was also accepted in the original assessment proceedings. The company is still an active company and is regularly assessed to tax.*

*The addition of Rs. 50,00,000/- may please be deleted.”*

(B.1.2) A synopsis was also filed by the learned Counsel for the assessee, which is reproduced below for the ease of reference:-

*“The appellant is engaged in the business of retail of Jewellery & Bullion having its registered business premises at Cinema Road, Hardoi- 241001. The assessment has been made for the A.Y- 2012-13 u/s 143(3) of the Income Tax Act, on 18/02/2015. All the details were filed before the learned Assessing officer including on the query of addition of capital.*

*On 30.3.2019 a notice u/s 148 has been issued. The reasons for reopening of the case are due to some information received from the investigation wing by the learned A.O.*

*Return in response u/s 148 was filed on 03/04/2019 and copy of reasons recorded was sought. After receiving the copy of reasons recorded the objection against the reasons recorded was filed on 12/12/2019 and on 18/12/2019, but the objections were disposed in a casual manner by the learned A.O without providing the source and evidence of information asked from the learned A.O and passed the order u/s 148 on 28/12/2019.*

*The addition has been made of Rs 50 lac of share capital received from M/s Sharma Hire Purhcase Ltd. The shares allocated to the aforesaid firm and the details are already verified by the learned A.O during the original assessment proceedings u/s 143(3) of the Income Tax Act, 1961.*

*Now under some borrowed information from the investigation and without application of mind w case has been reopened u/s 148 and the order has*

been passed merely relying on the incomplete information from the investigation wing.

That some of the major facts to be observed in the assessment proceedings and order passed by the learned A.O are as under:-

- a) That the facts on which the case has been reopened were already verified in original assessment made u/s 143(3). The copy of the order passed u/s 143(3) on 18/02/2015 is enclosed at **page no. 87-88** of paper Book.
- b) The copy of the notice issued u/s 142(1) dated 07/01/2015 is enclosed at **page No. 89-90** of the paper book. The query of the of shares allotment and creditworthiness are mentioned in the letter dated 07/01/2015.
- c) The reply of the notice is enclosed at **page No. 91** of the paper book. All the query was already answered in the reply.
- d) The case has been reopened on the same issue which is already been verified by the previous A.O. The case can be reopened u/s 148 beyond 4 years only in situation where the assessee has concealed some information. But no details were hidden by the assessee. In fact in reasons recorded the JCIT has accepted that there is a default on part of the A.O to have due diligence. Thus the case reopened u/s 148 is bad in law.
- e) The objections was filed before the A.O against the reasons recorded (**Pg No.- 21-22 of Pb**). However the objections are not disposed by the learned A.O, in fact a query letter was issued against the objections raised, (**pb 19-20**)
- f) The allegation that the appellant has routed his money through some broker M/s Gwarika Supplier and M/s Dharmik Vintrade Pvt Ltd to M/s Sharma Hire purchase Limited for purchase of shares. But no evidence has been placed on record regarding such transactions have made by the appellant.
- g) No details or information was ever provided by the learned assessing officer in support of his change of opinion and addition has been made merely on borrowed incomplete information from the investigation wing.
- h) That no details of the payment routed or reference of any statement has been mentioned in the order passed.
- i) That all the documents in respect of the creditworthiness were already provided during the original assessment ever occurred.
- j) That total 42,000 shares were allotted to M/s Sharma hire purchase Limited. Out of which for 20,000 no of shares Rs 50 lac has been received on 12/03/2012 and for 22,000 No of share a payment of Rs 50 lac received on 19/03/2012.
- k) It is strange that a company becomes default for allocation of shares but for which one 20,000 or 22,000 shares?? Which payment i.e 12/03/2012 or 19/03/2012 which one is wrong? There are no evidences and details of what transactions are wrong & right. There cannot be dual approach for same company and same nature of transactions. Thus, the learned A.O has made addition without application of mind merely on borrowed investigation without even verifying the details of the transaction.

This itself makes it clear that the addition made of Rs 50 lac and the assessment made by the learned assessing officer, merely on suspicion, borrowed information from the investigation wing, without application of mind.

*It is a pure change of opinion without any evidence on record and the assessment proceedings deserves to be quashed.”*

(C) At the time of hearing, the Ld. Counsel for the assessee submitted that the assessee had received a total amount of Rs.1,00,00,000/- from the aforesaid M/s. Sharma Hire Purchase Ltd. on account of share application money, in two instalments of Rs.50,00,000/- each. However, the reasons recorded for reopening of the assessment u/s 147 of the I.T. Act, as well as the assessment order, refer to only Rs.50,00,000/-. The reasons recorded are also silent as to which of the aforesaid two instalments of Rs.50,00,000/- was considered for re-opening of assessment u/s 147 of the Act; and for making aforesaid addition of Rs.50,00,000/- in the assessment order. He submitted was considered for making the impugned addition of Rs.50,00,000/-. He further submitted that the Ld. CIT(A) had also not discussed the aforesaid aspect in the appellate order dated 28.12.2019. He further contended that, in these given facts and circumstances, the reopening of the assessment u/s 147 of the Act, as well as the consequent assessment order, are vitiated for want of proper application of mind and are liable to be annulled. He further submitted that the issue relating to share application money received by the assessee from the aforesaid M/s. Sharma Hire Purchase Ltd. had already been examined in the earlier assessment proceedings resulting in the assessment order dated 18.02.2015 passed u/s 143(3) of the I.T. Act. In such circumstances, it was argued by Ld. Counsel of the assessee that the case of the assessee was protected by the first proviso to section 147 of the Act. He further contended that the addition of the aforesaid sum of Rs.50,00,000/- is merely on account of a “*change of opinion*” as the issue was already examined by the Assessing Officer during the original assessment proceedings. Such action, according to the Ld. Counsel, amounted to review of the earlier assessment order by the Assessing Officer; which was

not permissible in law, as the Assessing Officer has no power to review his own order under the guise of reassessment proceedings u/s 147 of the Act.

(C.1) The Ld. Departmental Representative supported the assessment order as well as the impugned appellate order passed by the Ld. CIT(A).

(C.2) Both sides have been heard. Materials on record have been perused. In this case, notice u/s 148 r.w.s. 147 of I. T. Act, dated 30.03.2019 was issued to the assessee. It is not in dispute that the Assessing Officer had examined the issue regarding share application money received by the assessee from the aforesaid SHPL, during the course of regular assessment proceedings culminating in the aforesaid earlier assessment order dated 18.02.2015 passed u/s 143(3) of the Act. Further, there is nothing on record to indicate that there was any failure on the part of the assessee to fully and truly disclose all material facts necessary for the purpose of assessment, which resulted in the earlier assessment order dated 18.02.2015. In these facts and circumstances, the contention of the assessee that the assessee's case is saved by the first proviso to section 147 of the Act deserves acceptance. Section 147 of the Act is the relevant provision of law for assessing income escaping assessment. As noted earlier, in this case notice u/s 148 r.w.s. 147 of the Act dated 30.08.2019 was issued to the assessee resulting in aforesaid assessment order dated 28.12.2019, leading to the dispute in the present appeal before us. The first proviso to section 147 of the Act, as it prevailed at the relevant time, clearly provided that no action could be taken u/s 147 of the Act after expiry of four years from the end of the relevant assessment year, in a case in which assessment order u/s 143(3) or u/s 147 of the Act had been already made, unless any income had escaped

assessment by reason of failure on the part of the assessee, to make a return u/s 139 or u/s 142(1) or u/s 148 of the Act; or to fully and truly all material facts. In the present case, it is not in dispute that the assessee had already made a return u/s 139 of the Act; resulting in aforesaid assessment order dated 18.02.2015 passed u/s 143(3) of the Act. It is also not in dispute that date of assessment order passed u/s 147 (ie.e. 28.12.2019) and date of issue of notice u/s 148 r.w.s 147 of the Act (i.e. 30.03.2019); both are after the expiry of more than two years from the end of the relevant assessment year (i.e. AY. 2012-13). There is no material to show that there was failure on the part of the assessee to disclose fully and truly, all material facts. Therefore, on applying relevant law to the facts and circumstances of the present case; it is obvious that the assessee is saved by the first proviso to section 147 of the Act.

(C.2.1) In view of the foregoing discussion, the impugned appellate order of Ld. CIT(A) is set aside; and the assessment order dated 28.12.2019 is annulled and the original assessment order dated 18.02.2015 is restored. In effect, the addition of Rs.50,00,000/- in assessment order dated 28.12.2019 on account of share application money received from SHPL, stands deleted. The view taken by us, is based on order of Hon'ble Supreme Court in the case of ITO vs Kayethwell Estate Pvt. Ltd 442 ITR 507 (SC)/139 taxmann.com 317 (SC).

(C.3) The learned counsel for the assessee had also contended that the addition of Rs. 50,00,000/- made in the assessment order dated 28.12.2019 passed u/s 148 of the Act was merely based on a change of opinion on the very same issue, which was already examined in the original assessment completed on 18.02.2015. It is settled position of law, as contended by Ld. Counsel for the assessee, that the Assessing Officer did not have

the power to review his own order in the guise of reassessment proceedings, u/s 147 of the Act. Moreover, Ld. Counsel for the assessee further contended that neither the Assessing Officer nor the Ld. CIT(A) discussed or specified which of the two instalments of Rs.50,00,000/- was considered for the purpose of reopening of assessment and for making the addition; and which instalment was not considered. In the absence of any such discussion or proper reasoning, the orders passed by the Assessing Officer and the Ld. CIT(A) suffer from lack of due application of mind, the Ld. Counsel for the assessee had contended. For these reasons also, Ld. Counsel for the assessee had contended, the assessment order dated 28.12.2019 deserved to be annulled. However, these submissions and contentions made on behalf of the assessee by the Ld. Counsel for the assessee are merely academic (hence, not being decided) as we have already annulled the aforesaid assessment order dated 28.12.2019 in foregoing paragraph (C.2.1) of this order; and we have already restored the original assessment order dated 18.02.2015, setting aside the impugned appellate order of Ld. CIT(A) and in effect, deleting the aforesaid addition of Rs.50,00,000/-.

(D) In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 12/03/2026.

Sd/-  
[KUL BHARAT]  
VICE PRESIDENT

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 12/03/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

//True Copy//