

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 2939/Del/2019
Assessment Year 2010-11

Natraj Products P. Ltd. 206, Hans Bhawan, 1-Bahadur Shah Zafar Marg, New Delhi-02	Vs.	ITO, Ward – 17(4) New Delhi
TAN/PAN: AAACN 4462 E		
(Appellant)		(Respondent)

Applicant by:	Shri Suresh Kumar Gupta, C.A.		
Respondent by:	Ms. Smita Singh, Sr. D.R.		
Date of hearing:	12	09	2024
Date of pronouncement:	30	09	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed at the instance of the assessee against the First Appellate Order passed by the Commissioner of Income Tax (Appeals)-37, New Delhi (‘CIT(A)’ in short) dated 21.02.2019 under section 250(6) of the Act arising from the re-assessment order dated 29.12.2017 passed by the Assessing Officer (AO) under Section 147 read with section 143(3) of the Income Tax Act, 1961 (‘the Act’) concerning A.Y. 2010-11 in question.

2. The grounds of appeal raised by the assessee reads as under:

- “1. *The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.60,00,000/- u/s.68 on account of share capital, treating the same as an accommodation entry.*
2. *The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.1,20,000/- u/s 69C as alleged commission paid for obtaining accommodation entries.*

3. *The information has been collected behind the back of the assessee and the assessee was never confronted with the same nor an opportunity provided for cross-examination of Jain Brothers, alleged intermediary and the relevant seized material relied upon has not been provided to the assessee.*
4. *The Ld. CIT(A) has erred on facts and in law in upholding addition irrespective of the fact that assessee has discharged onus u/s 68. No independent enquiry conducted.*
5. *The learned CIT(A) has erred on facts and in law in upholding the impugned order of the learned assessing officer where initiation u/s 148 & consequent proceedings are contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record.*
6. *The learned CIT (A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(1)(c) without any material on record.”*

3. The assessee has also raised additional ground of appeal touching the jurisdiction. Having regard to the submissions made that the relevant facts are available on record which may require for adjudication of additional ground, the prayer of admission of additional ground which is not set forth in memorandum of appeal is being admitted for adjudication in terms of Rule 11 of Income Tax [Appellate Tribunal] Rules, 1963. The additional ground so raised is reproduced hereunder:

“In the facts and circumstances of the case and under law, the Revenue was not justified in assuming jurisdiction u/s 147/148 of the Act in order to take cognizance of the alleged incriminating material found in the search of the other assessee in complete disregard of the provisions of specific section 153C(1) of the Act clearly applicable in the case.”

4. Briefly stated, the assessee company filed return of income for the Assessment Year 2010-11 in question on 15.11.2010 declaring total income of Rs.1,42,060/-. The return filed was processed under section 143(1) of the Act on 16.04.2011. Thereafter, certain information was received by the AO from the office of the director of Income Tax (Investigation-II), New Delhi vide

communication dated 12.03.2013 mentioning therein that a search operation was carried out in the case of Surender Kumar Jain group of cases, wherein it came to light that such group is engaged in providing accommodation entries to the persons which were named in the report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries provided by the group. Consequently, the case was reopened under section 147 of the Act after obtaining necessary sanction under section 151 of the Act from the competent authority. Notice under section 148 of the Act dated 25.03.2017 was consequently issued and served upon the assessee. The reassessment order was framed wherein an addition of Rs.60 lakhs were made towards share application money received from 4 entities; Victory Software P. Ltd. (Rs.10 lakhs), Zenith Automotive P. Ltd. (Rs.10 lakhs), Sunny Cast & Forge P. Ltd. (Rs.20 lakhs) and Attractive Finlease P. Ltd. (Rs.20 lakhs) aggregating to Rs.60 lakhs under section 68 of the Act. Provision of section 69C of the Act were also invoked and addition of Rs.1,20,000/- was made towards probable commission expenses incurred on such receipt of entries by the assessee. The income returned at Rs.1,42,060/- was thus assessed at Rs.62,62,060/-.

5. Aggrieved by the additions made in reassessment proceedings, the assessee preferred appeal before the CIT(A). The CIT(A) however, did not find any merit both on the points of lack of jurisdiction or merits of the additions. The CIT(A) thus endorsed the action of the AO.

6. Further aggrieved, the assessee preferred appeal before the ITAT.

7. The grounds of appeal raised by the assessee are three fold; (i) challenge to the assumption of jurisdiction under section 147/148 r.w.s 151 of the Act; (ii) wrong assumption of jurisdiction under section 147 instead of statutory path available under section 153C of the Act and (iii) the challenge to

the action of the Assessing Officer in making additions by invoking section 68 and 69C of the Act on merits in pursuance of the assumption of jurisdiction under section 147 of the Act.

8. When the matter was called for hearing, the learned Counsel for the assessee adverted to the main grounds and strongly voiced objection on legal ground of lack of jurisdiction available under Section 147 of the Act. The learned Counsel contended that the assumption of jurisdiction by the AO in the instant case is without meeting the pre-requisites ordained in Section 147 and section 151 of the Act. As per the additional ground, the assessee has impugned the action of the AO for exercising powers available under Section 147 of the Act rather than the legal recourse available under section 153C of the Act as per the scheme of the Act. The learned Counsel for the assessee made wide ranging objections towards lack of jurisdiction which are dealt with at appropriate place in the succeeding paragraphs. The learned Counsel also assailed the action of the AO and CIT(A) on aspects of merits.

9. The Revenue on the other hand, defended the action of the Assessing Officer and CIT(A) both on the point of jurisdiction as well as merits of the additions amounting to Rs.60 lakhs under Section 68 of the Act and Rs.1,20,000/- under Section 69C of the Act carried out by the AO.

10. As noted above, the assessee has *inter alia* challenged the jurisdiction of the Assessing Officer assumed under Section 147 r.w.s 148 r.w.s 151 of the Act.

10.1 Since, the challenge to the legality of reopening being jurisdictional one and goes to the root of the whole controversy, it may be appropriate to adjudicate this aspect of the appeal first.

10.2 The approval granted by the PCIT under Section 151 r.w.s 148 of the Act being germane to the adjudication of jurisdictional issue, are reproduced hereunder for ready reference :

“Form for recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of the Pr. Commissioner of Income tax/Addl. CIT

1.	Name and address of the assessee	M/s Natraj Products Pvt. Ltd. 206, Hans Bhawan, 1, Bahadur Shah Zafar Marg, New Delhi-110002
2.	PAN	AAACN4462E
3.	Status	COMPANY
4.	Circle/Range/Ward	Ward -17(4)
5.	Assessment year in respect of which it is proposed to issue notice u/s 148	2010-11
6.	The quantum of income which has escaped assessment	Rs. 60,00,000/-
7.	Whether the first proviso to section 147 is applicable?	No
7a	Whether the case is covered by the second proviso of section 147?	N.A
8.	Whether the assessment is proposed to be made for first time. If the reply is in the affirmative, please state: a) Whether any voluntary return had already been filed; and b) If so, the date of filing the said return:	Yes Yes 15.11.2010
9.	If the answer to item 8 is in the negative, please state: a) The income originally assessed: b) Whether it is a case of under- assessment,	143(1)

	<i>assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.</i>	
10.	<i>Whether the provisions of Sec. 150(1) are applying. If the reply is in the affirmative the relevant facts may be stated against item No. 11 and it may also be brought out that the provisions of Section 150(2) would not stand in the way of initiating proceedings u/s 147</i>	No.
11.	<i>*Reasons of the belief that income has escaped assessment</i>	<i>Annexure – 'A' Enclosed</i>
12.	<i>Whether the Addl. CIT is satisfied on the reasons on the reasons recorded by the AO that it is a fit case for the issue of notice under section 148 of the Income Tax Act, 1961</i>	<i>I have carefully examined the proposal of the AO, CIT is satisfied on and reasons recorded by the Assessing Officer for the reasons recorded initiating action u/s 147 of the Income Tax Act, by the AO that it is a 1961. It is seen that in this case information was fit case for the issue received from Investigation Wing along with of notice under incriminating documents seized during the course of section 148 of the search in case of Sh. S.K. Jain Group which provided Income Tax Act, accommodation entries to the assessee, in lieu of the 19617 cash payments. Subsequent to the information, the AO has made His own investigation by examining the information received from Investigation Wing. return of income, copies of relevant seized documents, findings of the Assessing Officer and</i>

		<p><i>CIT(A) in the case of Sh. S.K. Jain. After making further investigation, the AO has formed his belief that income amounting to at least Rs. 60,00,000/- has escaped assessment. Hence, from the reasons recorded by the AO, it is inferred that income to the extent of Rs. 60,00,000/- has escaped assessment. This issue needs detailed verification In view of reasons recorded by AO and records, it is requested that the proposal to issue notice u/s 148 for A.Y. 2010-11 may kindly be approved.</i></p>
12.	<p><i>Whether the Pr. CIT is satisfied on the reasons on the reasons recorded by the AO that it is a fit case for the issue of notice under section 148 of the Income Tax Act, 1961</i></p>	<p><i>Perused reasons recorded by the AO. For the reasons recorded by me separately in Annexure-1 (copy attached), I am satisfied that this is a fit case for issue of notice u/s 148 of the I.T. Act. Accordingly. Approval is accorded.</i></p>

Sd/-
 Pr. Commissioner of Income Tax
 Delhi-06, New Delhi

Dated: 21/3/2017”

10.3 The List of Credits received by way of share application money/loan etc. under dispute reads as under :-

NAME OF THE INTERMEDIARY	S.NO	NAME OF THE ENTRY GIVEN OF COMPANY	NAME OF THE BANK	NAME OF THE BENEFICIARY COMPANY	CHEQUE NO./RTGS	DATE	AMOUNT
Y.K. GUPTA	1.	Victory	AXIS	Natraj Products	310956	16.09.2009	10,00,000/-

		<i>Softwarde P. Ltd.</i>		<i>P Ltd.</i>			
<i>Y.K. GUPTA</i>	2.	<i>Zenith Automotive P. Ltd.</i>	<i>AXIS</i>	<i>Natraj Products P Ltd.</i>	310554	16.09.2009	10,00,000/-
<i>Y.K. GUPTA</i>	3.	<i>Sunny Cast & Forge P. Ltd.</i>	<i>AXIS</i>	<i>Natraj Products P Ltd.</i>	367013	23.01.2010	20,00,000/-
<i>Y.K. GUPTA</i>	4.	<i>Attractive Finlease P. Ltd.</i>	<i>AXIS</i>	<i>Natraj Products P Ltd.</i>	369038	23.01.2010	20,00,000/-

11. The contentions of the Assessee on lack of jurisdiction under Section 147 of the Act are broadly outlined hereunder :

- (i). The reasons recorded would make it evidently clear that the Assessing Officer has acted in a mechanical manner and without application of mind and without objectively ascertaining the facts before recording the reasons towards alleged escapement. The assessment has been reopened on the basis of borrowed satisfaction without independent application of mind and thus consequential action and proceedings are illegal and bad in law. On facts, the AO in para 8 of the reason recorded alleged accommodation entries of Rs.60 lakhs in the F.Y. 2008-09 from S.K. Jain Group of Companies. Thus, the AO, by his own reckoning, believed that the relevant assessment year *qua* escapement would be 2009-10 rather than 2010-11 in question. The assertion, made in para 8, thus, is not reconciled with underlying facts. Such contradiction indicates nothing but absence of any application of mind by the AO as to the timing of transaction which empowers the AO to reopen the case of a particular assessment year. The assessee had raised the objection vide his letter dated 22.09.2017 but the AO while disposing off this objection vide order dated 07.11.2017 glossed over this specific objection of the assessee.
- (ii). The AO has alleged receipt of accommodation entry by way of share application money based on borrowed findings of the Investigation Wing. The documents provided by the AO are

merely a chronological list and that the list of transactions done by searched group with the assessee. This list alone does not indicate involvement of the assessee in any clandestine transactions or accommodation entries *per se*.

- (iii). The entities who are stated to be bogus entities, have been assessed under Section 153C/143(3) of the Act on 28.03.2013 prior to initiation of reassessment proceedings on 25.03.2017. The obvious reason of action under Section 147 of the Act is some material found in the course of search on S.K. Jain Group. The information received by the AO was on 12.03.2013 whereas action under Section 147 of the Act was initiated in March, 2017 i.e. after a gap of 4 years or thereabout. In the meantime, the assessment of the lender / subscriber companies have naturally been completed which requires to be taken into account. The AO totally ignored such circumstances showing non-application of mind to the subject matter. A reference was made to the judgment of the Jurisdictional High Court in the case of *Rajiv Agarwal vs. ACIT 395 ITR 0255 (Del)* wherein it was observed that “*even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment.*” Thus, there is non-application of mind by the AO and the AO could not be said to have reason to believe as to justify reopening of assessment. Further, reliance was placed in the case of jurisdictional Delhi High Court in the case of *Well Trans Logistics India P Ltd vs. Addl. CIT 2024 (9) TMI-156 (Del)* wherein also it was held that having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.”

The assessee contends that the assessment of alleged entry provider Zenith Automotive P. Ltd. was completed under Section

153C [143(3)] and bare no adverse finding of such entity alleged to be conduit entity. Thus the theory propounded in the reasons recorded fall flat.

- (iv). The assessee further contends that approval has been routinely granted by the PCIT under Section 151 of the Act despite error / omission in the Performa placed by the AO through Addl. CIT(A) for approval of the PCIT. For instance, Row No. 9(b) of the Performa states *“whether it is a case of under-assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.”*

This question has been kept blank by the AO. Thus, it is not known as to what is the nature of the allegation i.e. whether it is a case of under – assessment or assessment at low rate of taxes etc. The PCIT has ignored such lack of information while granting the approval showing non-application of mind.

Furthermore, as per Row No.12, the Addl. CIT has forwarded the Performa for approval of PCIT for deriving satisfaction on the reasons recorded as per the observations made by the Addl. CIT, *“this issue needs detailed verification”*. The basis of satisfaction is thus not clear at the stage of seeking approval. Such statement of the Addl. CIT would give an impression that the factum of escapement of chargeable income, if any, would be discovered after verification and not available at the time of seeking approval under Section 151 of the Act. The assessee thus contends that sanction / approval under Section 151 of the Act has been obtained and granted without application of mind.

12. The assessee also forcefully contends that the correct statutory path available for action against the assessee, if any, is Section 153C of the Act as the material relied upon has been collected from the premises of the searched person who is susceptible to assessment under Section 153A of the Act. The assessee contends that in identical facts, re-assessment proceedings based on seized material from S.K. Jain Group initiated under Section 147/148 of the

Act were quashed in view of independent Code of Section 153C of the Act.

The decisions rendered by the Co-ordinate Benches include ;

- (i). *Shyam Sunder Khandelwal vs. ACIT D.B. W.P.(C) No. 18363/2019 dated 19.03.2024 (Raj.)*,
- (ii). *Shri Dinakara Suvarna vs. DCIT [2022(7) TMI 800 - Kar]*
- (iii). *Shri Karshni Metals P. Ltd. vs. ITO 2024 (8) TMI 1366 (ITAT Del)*
- (iv). *M/s. Mah Impex Pvt. Ltd. [2024 (1) TMI 411 – ITAT Delhi]*
- (v). *M/s. City Life Projects P. Ltd. ITA No.2668/Del/2019*
- (vi). *M/s. Saurashtra Color Tones Pvt. Ltd. vs. ITO ITA 6276/Del/2018 dated 22.01.2020 (SMC) relying on Shri Adarsh Arawal vs. ITO 2020 ITA No.777/Del/2019 dated 14.01.2020 (DB) and*
- (vii). *Nawal Oils & Containers P. Ltd. vs. ITO ITA No.852/Del/2019 dated 04.03.2020 (SMC).*

13. We shall address ourselves with the main objections raised on account of wrongful assumption of jurisdiction under section 147 of the Act without satisfying strict conditions of the jurisdictional provision of Section 147 r.w.s 151 of the Act. As noted above, the reasons recorded states that information has been received from Investigation Wing, New Delhi adverse to the assessee dated 12.03.2013 received by AO on 28.03.2013. However, no action of reopening was taken despite efflux of nearly 4 years and case was reopened only on 25.03.2017 / 30.03.2017 i.e. about the last day of the limitation period for issue of notice. Such conduct clearly reflects the reluctance of the AO to initiate reopening proceedings based on some generalized and uncorroborated information. The notice under Section 148 of the Act on the last day (despite availability of so called information) was impliedly under compulsion to save on limitation. No independent inquiry appears to have been made by the AO in

the long intervening period including the fate of assessment of the so called entry providers. Thus, the circumstances would show that the AO has proceeded on dotted lines as dictated in the information received.

14. To demonstrate the inherent lack of application of mind, firstly, by the AO under Section 148(2) and thereafter, by the PCIT under Section 151 of the Act, the assessee points out that the financial year is wrongly mentioned, approval granted by the PCIT based on incomplete Performa and also satisfaction of the Addl. CIT that the 'case requires verification' which is not the same expression as "the chargeable income has escaped" assessment referred to in the main provision of Section 148 of the Act.

15. On perusal of the objections raised on behalf of the assessee, we find that for multiple reasons, on standalone and cumulative basis, the reopening under Section 147 of the Act does not meet the strict requirement of law at all and thus, jurisdiction usurped under Section 147 is apparently without sanction of law.

16. We thus find overwhelming potency in the plea of the assessee that reasons recorded and approval granted thereon under Section 151 do not meet the requirement of law and hence the issuance of notice under Section 148 based on cryptic reasons combined with a mechanical approval of the Pr.CIT under Section 151 do not pass the test of judicial scrutiny. We thus have no hesitation to hold that the notice issued under Section 148 is without jurisdiction and consequently reassessment framed for Assessment Year 2010-11 based on invalid notice, is bad in law and hence quashed.

17. In the light of the delineations made above, we are not inclined to go to the other legal and factual aspects emerging from main grounds and additional

grounds. We are also not inclined to adjudicate the action of the Assessing Officer on merits.

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

Order pronounced in the open Court on 30.09.2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: 30.09.2024

Prati Yadav, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar