

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES,
NEW DELHI - [SMC]

BEFORE S.V. MEHROTRA, VICE PRESIDENT

ITA No. 5721/Del /2016
[Assessment Year: 2007-08]

M/s Commitment Commodities Pvt. Ltd
4346/4-C/1st Floor Ansari Road
Darya Ganj, New Delhi

Vs.

The I.T.O
Ward - 6(2)
New Delhi

PAN : AACCC 7773 R

[Appellant]

[Respondent]

Date of Hearing : 21.04.2017
Date of Pronouncement : 02.05.2017

Appellant by : Shri Sunil Arora, CA
Shri Akash Chugh, CA

Respondent by : Shri S.K. Jain, Sr. DR

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A)- 2, New Delhi, dated 31/08/2016 for A.Y 2007-08.

2. Brief facts of the case are that the assessee had filed return of income declaring total income of Rs. 96,895/- on 15.11.2007. The case was reopened by issuing notice u/s 148 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] on 27.03.2014 because of the information received from INV Wing of the department

in Delhi to the effect that the assessee had taken accommodation entries from the entry operators. The A.O has observed in the assessment order that search and seizure operation u/s 132 of the Act was conducted on the office premises of Shri Tarun Goyal, Chartered Accountant, 13/34, W.E.A, Arya Samaj Road, Karol Bagh, New Delhi by the Investigation Wing of the Department on 15.09.2008. During the course of post search investigation, it had emerged that Shri Tarun Goyal was engaged in the business of providing accommodation entries in lieu of cash to a large number of beneficiaries through numerous dummy companies floated and controlled by him. He pointed out that it was unearthed that Shri Tarun Goyal was providing accommodation entries through more than 90 companies/proprietary concerns/ partnership firms.

3. The A.O had recorded the following reasons for initiating the proceedings u/s 148 of the Act:

“It has been reported by the Addl. Director of income tax (Inv.), Unit-iy, New Delhi that a search u/s 132 of I.T. Act was conducted at the premises no 13/34, WEA Arya Samaj Road, Karolbagh, New Delhi in the case of Shri Tarun Goyal CA on 15.09.2008. During the course of search proceedings/ post search investigations, it is revealed that Shri Tarun Goyal created a number of private limited companies and firms for providing accommodation entries. The directors of these companies were his employees who worked in his office as peon, receptionist etc. All the documents were got signed from these employees. A number of bank accounts in various banks were opened

in the name of the companies whom operated by Shri Tarun Goyal and his employees. In these bank accounts huge cash were deposited and later on cheques were issued to various beneficiaries, disguising whole transaction as genuine. At the time of the search conducted on 15.09.2008 the statement of Shri Tarun Goyal was recorded on oath in which he has accepted that he provides accommodation entries and his various companies are being used for this purpose. He has also described the modus operandi for providing accommodation entries by way of cheques issued through the various paper companies controlled by him in lieu of cash.

During the course of search proceedings, it was established that Shri Tarun Goyal has floated about 90 companies, which are not carrying any genuine business activities. All the companies are being used to provide accommodation entries to various persons /companies /entities/firms etc. During the proceedings the statement of Shri Tarun Goyal was recorded on' oath in which he has admitted to have involved in the providing accommodation entries through various companies which are controlled by him. The name of the companies through which accommodation provided by him, has been admitted in his statement. M/s Sadguru Finman Pvt. Ltd. was one of the company through which accommodation entries were given. M/s Commitment Commodities Pvt. Ltd, one of the beneficiary has obtained accommodation entries in the form of share capital/premium/share application money/loan during the F.Y 2006-07 amounting to Rs. 10lacs from fv Finman Pvt. Ltd.

In view of the above mentioned facts, it is evidently clear that the undisclosed income of this beneficiary company which has been introduced by them in the form of share capital/premium/loan has escaped taxation. Hence, I have a reason to believe that income of Rs. 10 lacs as per table in preceding paragraphs has escaped assessment in the case of assessee relevant to A.Y. 2007-08.

As per records of this ward, scrutiny assessment u/s 143(3) was completed 13.11.2009 for the A.Y. 2007-08 in this case, hence if approved, in terms of provisions of sec. 151(1) sanction may kindly be accorded for issue of notice under section 148 for A.Y 2007-08 in the case of assessee company.”

4. The A.O, after considering the assessee’s objections and relying on the decision of the Hon'ble Allahabad High Court in the case of Brij Mohan Agarwal Vs. ACIT reported in 268 ITR 400 held that the report of the Investigation Wing was sufficient material on the basis of which notice under section 148 could be issued. He, accordingly, held that the proceedings had validly been initiated.

5. Before the ld. CIT(A), the assessee had requested for admission of the following additional grounds of appeal:

“1. Under the facts and circumstances of the case, the A.O has grossly erred in assuming the jurisdiction of reopening the concluded assessment after the expiry of four years from the end of the relevant A.Y which is grossly injudicious, unwarranted, against the facts of the case and bad in law.

2. Under the facts and circumstances of the case, the A.O has grossly erred in opening the assessment merely on the basis of change of opinion which is not permissible as per law.”

6. The Id. CIT(A) admitted both the additional grounds of appeal and upheld the reassessment proceedings, inter alia, by observing as under:

“The notice u/s 148 of the Act was issued on 27.03.2014 which is well within the time limit of six years from the end of the A.Y. 2007-08 under appeal. As mentioned in the impugned order, the appellant was provided the reasons for reopening of the assessment, which had earlier been completed u/s 143(3). The reason for reopening of the completed assessment u/s 143 (3) after a period of four years from the end of the relevant assessment year was the receipt of information from the Investigation Wing of the Department that the appellant was beneficiary during the year of accommodation entry worth Rs.10 lacs in the garb of share capital from a company controlled by Sh. Tarun Goyal. Since this information was not in possession of the A.O. while completing the original assessment u/s 143 (3) dated 13.11.2009, this constituted prima-facie reason enough to reopen the assessment. Hence, the reopening was not based on change of opinion as alleged by the appellant, but on information to the effect that the appellant had routed its own unaccounted money as share capital during the year. There was failure on the part of the appellant to disclose fully all facts material to the computation of its income during the original assessment proceedings as the fact of taking accommodation entry in the form of share capital was not brought to the notice of the A.O. by the appellant. Therefore, the contention of the appellant is rejected and the grounds of appeal are dismissed.”

7. Being aggrieved, the assessee is in appeal before the Tribunal and has taken the following grounds of appeal:

“1. Under the facts and circumstances of the case, Id. First Appellate Authority grossly erred in affirming the action of Id. A.O. assuming jurisdiction for reopening the concluded assessment after the expiry of 4 years from the end of the relevant assessment year which is grossly injudicious, unwarranted, against the facts of the case and bad at law.

2. Under the facts and circumstances of the case, Id. First Appellate Authority has grossly erred in confirming the action of Id. A.O. re-opening the concluded assessment and making addition amounting to Rs. 10,00,000/- u/s 68 of the Act, which was merely change of opinion which is not permissible as per law.”

8. The Id. counsel for the assessee referred to page 56 of the paper book wherein notice u/s 142(1) of the Act dated 15.01.2009 issued during the course of original assessment proceedings is contained wherein the A.O, inter alia, had required the assessee to furnish complete list of share holders with their respective share holding as on 31.03.2007. The Id. counsel for the assessee referred to page 58 of the paper book wherein notice u/s 143(2) of the Act dated 17.07.2009 is contained wherein again the A.O, inter alia, had required the assessee to furnish complete list of share holders with their respective share holding as on 31.03.2007.

9. The Id. counsel for the assessee referred to pages 60 to 64 of the paper book wherein the reply of the assessee for A.Y 2007-08 is contained in response to notice issued u/s 142(1) of the Act and

pointed out that the assessee had furnished complete details of share holders with their respective share holding as on 31.03.2007 which is reproduced hereunder:

Sr. No.	Name	Number of Equity shares held	% of total
1.	Sukesh Kumar Gupta	50000	01.90
2.	Shobha Gupta	30000	01.14
3.	Sukesh Kumar Gupta HUF	1320000	50.20
4.	Ashok Kumar Gupta	10000	00.38
5	Rubai chemicals (P) Ltd.	50000	01.90
6	K.B. Lai & Co. (P.) Ltd.	50000	01.90
7	Thar Steel (P) Ltd.	250000	09.52
8	Jai Baba Traders (P.) Ltd.	60000	02.28
9	PMP Farms (P) Ltd.	120000	04.56
10	R.M. Electricals (P) Ltd.	120000	04.56
11	B.P. Entertainment (P) Ltd	20000	00.76
12	Choice Electricals (P) Ltd	100000	03.80
13	Fort Leather (P) Ltd	100000	03.80
14	Jiwan Flora Ltd.	130000	04.94
15	Sadpuru Finman (P) Ltd	100000	03.80
16	Silverline Automotive (P) Ltd	50000	01.90
17	Rakesh Suri	60000	02.28
18	Pramila Chaudhary	10000	00.38
TOTAL		2630000	100.00%

10. The ld. counsel for the assessee referred to the reply filed by the assessee in response to notice issued u/s 143(2) of the Act dated 11.09.2009 contained at pages 65 to 69 of the paper book wherein again the assessee had furnished details of shareholders and their respective share holding as on 31.03.2007. The ld. counsel for the assessee referred to page 70 of the paper book wherein the details of addition in paid share capital was furnished before the A.O giving the following details in respect of Sadguru Finman [P] Ltd:

Name : Sadguru Finman [P] Ltd
Address : 13/34, W.E.A, Arya Samaj Road,
Karol Bagh, New Delhi
Paid up share capital : 100000
Cheque No. : 512789
PAN : AABCS 4800 J

11. The ld. counsel for the assessee further referred to page 34 of the paper book wherein the A.O in the course of assessment proceedings had sought information u/s 133(6) of the Act vide letter dated 12.10.2009 from Sadguru Finman [P] Ltd as under:

“In connection with certain proceedings under the I.T. Act, 1961 in the case of M/s Commitment Commodities (P) Ltd for the A. Y 2007-08 relating to the F.Y 2006-07 the following information is desired:

- i) Whether any amount has been given by you in share capital to the above mentioned company. If yes, please mention the amount so given.*
- ii) Copy of the relevant extracts of your bank statement reflecting the said payments.*
- iii) Your current I.T. particulars including the circle/ward where assessed to tax.*

The above information may be furnished this office on or before 21.10,2009.

In case of any failure to submit the above information by the designated date, suitable action under the law shall be initiated against you.”

12. The ld. counsel for the assessee further referred to page 35 onwards of the paper book wherein the required informations were furnished before the A.O. The said informations contains the copy of the Income-tax return of Sadguru Finman [P] for A.Y 2007-08; confirmation from Sadguru Finman [P] regarding subscribed 10000 equity shares of Rs. 1 each at a premium of Rs. 9/ each of M/s Commitment Commodities Pvt. Ltd vide cheque No. 51278 dated 08.09.2006 alongwith PAN. Copy of bank statement of Sadguru Finman [P] is also contained at page 33 of the paper book depicting withdrawal of Rs. 10 lakhs from their account. The ld. counsel for the assessee further referred to the Annual Report of Sadguru Finman [P] contained from page 40 onwards and pointed out at page 51 where the details of share holding of Sadguru Finman [P] is contained, the name of the assessee appears. The ld. counsel for the assessee submitted that after considering all these details, the information furnished by the assessee, the A.O completed assessment u/s 143(3) of the Act without making any additions on this count.

13. The ld. Counsel relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Multiplex Treading and Industrial Co. Ltd reported in [2015] 63 Taxmann.Com 170 [Delhi] which is contained at pages 72 to 82 of the paper book and the decision in the case of Allied Strips Ltd Vs. ACIT [2016] 69 Taxmann.Com 444 [Del]. The ld. counsel

for the assessee pointed out that identical queries were raised by the A.O in the case of Allied Strips Ltd [supra] which have been reproduced by the Hon'ble Delhi High Court in its judgment and the proceedings had been reopened after four years as in the present case. The ld. counsel for the assessee pointed out that the Hon'ble Delhi High Court in the said case held that the present case is one of change of opinion by observing as under:

“10. It is clear from the above, that the present case is one of change of opinion. The questionnaire and particularly question B.1 specifically raise the issue with regard to share capital. It requires the petitioner to give a list, source, genuineness, identity of the share holders along with confirmation copies of the ledger account of the party including confirmation of the mode, date, address and acknowledgement of return, etc. from the said party along with source and relevant bank entries. The said information was provided by the assessee. After receipt of the said information, Assessing Officer did not think it fit to make an addition and, under these circumstances, no addition itself amounts to forming an opinion as has been held in Usha International Ltd. (supra).

11. Therefore, in our view, the present exercise of issuing the notice under [Section 148](#) of the Act would amount to nothing but a change of opinion, which is not permissible.”

14. The ld. counsel for the assessee further referred to reasons recorded by the A.O reproduced earlier and pointed out that in the reasons recorded, the A.O has nowhere made any allegation that

there had been failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. He submitted that in the case of Allied Strips Ltd [supra] also, the situation was identical and the Hon'ble Delhi High Court has, following the decision in the case of Haryana Acrylic Manufacturing Company Vs. Commissioner Of Income-tax reported in [2009] 308 ITR 38 that initiation of proceedings was without jurisdiction when there was no allegation of any failure on the part of the assessee to disclose fully and truly all material facts in the reasons recorded by the A.O. He, therefore, submitted that the present case is fully covered by the decision of the Hon'ble Delhi High Court on all four corners.

15. The ld. DR, on the other hand, referring to para 3.1.2 of the ld. CIT(A)'s order pointed out that since the income escaped was more than Rs. 1 lakhs, therefore, in view of the provisions of section 149(1)(b) of the Act, the reassessment proceedings were rightly initiated within six years. The ld. Sr. DR referred to page 20 of the paper book wherein the assessment order passed u/s 143(3) of the Act dated 13.11.2009 in the case of the assessee is contained wherein the A.O had, inter alia, observed as under:

“Necessary details and information as called for have been filed and placed on record. Bank details have been called for and examined. Books of accounts consisting of cashbook, bank book,

ledger and journal were called for and examined on test check basis.”

16. With reference to the above observations of the A.O, the ld. DR submitted that there was no opinion formed by the A.O in respect of findings of the INV Wing. He pointed out that the investigation in the case of Shri Tarun Goyal clearly established the fact that he was running shell companies and the assessee was one of the beneficiaries of accommodation entries. The ld. DR further referred to page 7 of the ld. CIT(A)'s order and pointed out to para 4.1.6 wherein he has observed that in the instant case, after receipt of information from the INV Wing, the A.O sent summons u/s 131 of the Act to which no compliance was made by Sadguru Finman Pvt. Ltd. Thereafter, the A.O informed the appellant of this fact and asked the assessee-appellant to produce share applicant to prove its identity and existence which requirement the assessee-appellant failed to comply with.

17. In rejoinder, the ld. counsel for the assessee submitted that the ld. CIT(A) ignored the proviso to section 147 of the Act. He submitted that neither the statement of Shri Tarun Goyal was confronted nor any cross examination was made before recording satisfaction by the A.O. He, therefore, submitted that the main issue in the present appeal is regarding assumption of jurisdiction.

18. I have considered the submissions of both the parties and have perused the records of the case. The initiation of reassessment proceedings has been assailed on two counts, viz., firstly the initiation of reassessment proceedings was on account of change of opinion and secondly in view of proviso to section 147 of the Act the initiation of reassessment proceedings was bad in law because there was no allegation of the A.O in the reasons recorded that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The submission of the ld. counsel for the assessee is that on both the counts, the issue is squarely covered by the decision of the Hon'ble jurisdictional High Court of Delhi in the case of Allied Strips Ltd [supra].

19. As far as the issue regarding change of opinion is concerned, it depends on facts of each case as to whether in course of original assessment proceedings any opinion was formed by the A.O or not and this depends upon the enquiries conducted by the A.O in course of original assessment proceedings, qua the issue with reference to which reassessment proceedings have been initiated. In this regard I may refer to the decision of the Hon'ble Delhi High Court in the case of AGR Investment Ltd Vs. Addl. CIT & Anr 333 ITR 146 wherein it has been held as under:

“The transactions involving Rs. 27 lakhs constituted fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represented undisclosed income. There was specific information received from the office of the Directorate of Investigation as regards the transactions entered into by the assessee with a number of concerns which had made accommodation entries and they were not genuine transactions. It was neither a change of opinion nor did it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceedings under section 147 of the Act. The reason to believe had been appropriately understood by the Assessing Officer and there was material on the basis of which the notice was issued. In exercise of the jurisdiction under article 226 of the Constitution, the sufficiency of reasons for formation of the belief could not be considered. It was open to the assessee to participate in the reassessment proceedings and put forth its stand in detail to satisfy the Assessing Officer that there was no escapement of taxable income.”

20. In this case, the assessee had, inter alia, taken the following objections:

“During the year the petitioner has neither received any gift nor any share application money nor any loan.

(ii) There was no change in share capital during the year as compared to immediately preceding year. The petitioner being a public limited listed company is regulated by the rules and regulations of SEBI and cannot accept share application money or issue share capital except with the prior approval of SEBI.

(iii) Neither any loan was borrowed nor has any payment been repaid during the year. Reference was made to clause 23(a) of Tax Audit Report.

(iv) It was explained that during the year, investment in shares held by the petitioner was sold. From the audited balance sheet, it is evident that the petitioner was having shares of three limited companies, namely, Lakshmi Float Glass Limited, Bawa Float Glass Limited and KPF Finances Limited of the face value of Rs.1,40,00,000/-. It was these shares that were sold at the face value only. It is out of sale of these shares that sale to the extent of Rs.27,00,000/- has been alleged in the reasons as accommodation entry.

(v) Amount received on sale of investments was utilized to give loans and the same appear in the balance sheet under the head „loans and advances.“

21. In that backdrop, it was held that it was not a case of change of opinion. But unlike the present case, there were no detailed enquiries in original assessment.

22. Thus it is evident that in each case facts have to be examined in detail before arriving at any conclusion.

23. While considering the submissions of both the sides, I have in extenso reproduced the details of enquiry conducted by the A.O during the original assessment proceedings u/s 143(3) of the Act. In the case of Allied Strips Ltd [supra] also similar queries were raised which would be evident from the following observations of the Hon'ble Delhi High Court:

"The original assessment under [Section 143\(3\)](#) of the Act was completed on 07.10.2009. The return of income was filed on 16.11.2007. On 15.07.2009 a detailed questionnaire was issued by the Assessing Officer during the original proceedings under [Section 143\(3\)](#) of the Act raising specific queries with regard to share application money. The specific query raised by the questionnaire dated 15.07.2009 pertaining to the share application money is as under:-

"B.1 For share capital, loans other than banks and inter corporate deposits, introduced/taken during the year and also in the period after passing of last order U/s' 143(3) give list, source genuineness, identity of the same. Please note you are to give confirmed copy of ledger A/c. from the credit or/party including confirmation of mode, date, address and acknowledgement of return etc' from the said party along with source and relevant bank entries. Same information may please be given in respect of squared up loans if any during the year.

Please give a detailed note with regard to advance from customer vis-a-vis the policy of company with regards to recognition of income and treatment in accounts.

Complete detail of fresh security deposits made by you during the year. File copy of ledger account and purpose of making deposit and of interest earned thereon, if any."

In response to the said query raised in the questionnaire, the assessee vide its response dated 07.08.2009 furnished the details of the share capital raised during the year. Alongwith with the response complete details of the shareholders, their addresses, PAN numbers and number of shares were furnished. In addition thereto, a confirmation letter from each of the shareholders was filed, providing the details of the shares,

investment made, mode of payment and the bank through which the payment was made. In addition thereto, the acknowledgement of e-returns of each of the shareholders was also furnished. The following annexures were annexed to the response dated 07.08.2009:-

Name of Shareholder	Address	PAN	No. of Shares
M/s Monisha Granit Ltd.	2A/65, Ground Floor, Ramesh Nagar, New Delhi-110 015	AABCM7083P	26700
M/s Monisha Impex Ltd.	2A/65, Ramesh Nagar, New Delhi-110 015	AAF0694J	66700
M/s Bhalotia Agro Industries Ltd. New Delhi	WZ-241/S, Ground Floor, Inderpuri,	AABCB0388G	60000
M/s Elbee Portfolio Ltd.	WZ-134, Plot No. 170, Vishnu Garden, New Delhi-110018.	AABCH0899D	50000
M/s First Hi-Fin Ltd.	73, Triloki Apartment, Plot No. 85, I.P. Extn. New Delhi-110 092	AAACF2099M	56700
M/s Salwan Developers & Promoters (P) Ltd.	A-4/181, Sector-17, Rohini, Delhi-110085	AAACS1320E	13400
M/s Paras Infotech (P) Ltd.	E-71, Amar Colony, Lalpat Nagar, New Delhi-110024	AACCP9931C	60000
M/s Rubik Export Ltd.	Shop No. 20, Krishna Market, Bawana Road, Pooth Khurd, Delhi.	AABCR8845A	93400
M/s M.V. Marketing Ltd	WZ-134, Plot No. 170, Pvt. Vishnu Garden, New Delhi-110018.	AAACM8918J	56700
M/s U.P.	2A/55, Ground Floor,	AAACU0290M	33400

<i>Electricals Ltd.</i>	<i>Ramesh Nagar, New Delhi-110 015</i>		
<i>M/s B. Fin-Lease Pvt. Ltd.</i>	<i>1/16 1st Floor, Asaf Ali Road, New Delhi- 2</i>	<i>AAACB6410C</i>	<i>43400</i>
<i>M/s Tashi</i>	<i>Shop No. 20, Krishna</i>	<i>AAACT6039R</i>	<i>33400</i>
<i>Contractors (P) Market, Bawana Road, Ltd. Pooth Khurd, Delhi M/s Akshay Sales 2A/65, Ground Floor, AAICA6630Q 16700 Pvt. Ltd. Ramesh Nagar, New Delhi-110 015 M/s G.C. B-348, 11rd Floor, AABCG3647B 73400 Technology (India) Hari Nagar, New Pvt. Ltd. Delhi.</i>			
<i>M/s Arun Finvest Pvt. Ltd.</i>	<i>50/12, Ashok Nagar, New Delhi-110 018</i>	<i>AABCA3510H</i>	<i>83400</i>
<i>M/s Maestro Mktg. & Adv. Pvt Ltd.</i>	<i>A-4/181, Sector-17, Rohini, Delhi-110085</i>	<i>AACCM0826H</i>	<i>40000</i>
<i>M/s Polo Leasing & Finance Pvt.</i>	<i>A-24, 11nd Floor, Tagore Market, Kirti Ltd. Nagar, New Delhi-110015</i>	<i>AABCP8345D</i>	<i>23400</i>
<i>M/s Shashi Sales & Mktg. Pvt.Ltd.</i>	<i>RZ-41A, Mohan Nagar, Pankha Road New Delhi</i>	<i>AAFCS8352R</i>	<i>83400</i>
<i>M/s Rajkar Electri & Elect (P) Ltd. New Delhi-110 018</i>	<i>5012, Ashok Vihar,</i>	<i>AABCR4897G</i>	<i>70000</i>
<i>M/s Shattarchi Finance & Leasing Ltd.</i>	<i>726, Pocket 11rd Sector-19, Dwarka, New Delhi-110045.</i>	<i>AAFCS8159Q</i>	<i>15900</i>
			<i>1000000</i>

5. The confirmation letters issued by the shareholders are similar and one such letter is extracted herein below. The same reads as under:

"TO WHOM SO IT MAY CONCERN This is confirm that we have made investment in shares, the particulars of which are given hereunder, our own declared sources.

Name of Company : Allied Strips Ltd.

No. of Shares

No. of Shares : 26700 Equity Shares of Rs. 10/- each
At a premium of Rs. 20/- per share

Amount invested in Rupees : 8,01,000/-

Particulars of Remittance :

Cheque /DD/Pay Order No. : 453976, 453977

Dated : 29/01/2007

Amount : 4,00,000/- each and 1,000/- each

Bank Particulars : The Bank of Rajasthan Ltd. VIKASPURI, Delhi
PAN/GIR No. : AABCM 7083 P
Share Certificate Received :

Share Certificate No. :

Share Distinctive No. :

I hereby confirm that the information furnished above is correct.

For Monisha Granite Ltd.

For MONISHA GRANITE LTD.

DIRECTOR"

6. After the above-mentioned information was received by the Assessing Officer, the assessment was framed under [Section 143\(3\)](#) of the Act on 07.10.2009. In the assessment order, the AO has recorded as under:

"Assessment Order Return declaring an income of Rs. 46,42,540/- was filed on 16.11.2007 and the same was processed u/s 143(1) at returned income on 21.02.2009. Subsequently, the case was selected for scrutiny. Notice u/s 143(2) & 142(1) along with detailed questionnaire was issued to the assessee. In response to this notice, Shri N.C. Jain, CA/AR attended from time to time and filed details as called for vide letter dated 07.08.2009, 20.08.2009, 31.08.2009, 09.09.2009, 23.09.2009 and 07.10.2009 (Details are in part-I, II & III of record). The assessee is engaged in the business of Re-rolling in C.R. Strips. The Company has got its accounts audited u/s 44AB of the I.T. Act, 1961 as per audit report dated 31.08.2007 filed with the return of income.

After discussion and considering the details filed by the assessee in support of the balance sheet and profit & loss account, the taxable income declared by the assessee is accepted."

7. Perusal of the questionnaire along with the response furnished and the assessment order reveals that the Assessing Officer after examining the aspect of share application money received by the assessee through the issuance of the questionnaire and notices framed the assessment under [Section 143\(3\)](#) on 07.10.2009. The returned income was accepted and no addition was made on account of the share application money.

8. In [CIT vs. Usha International Ltd.](#) (2012) 348 ITR 485 (Delhi) (FB), a full bench of this Court held:-

"Re-assessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be

accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The re-assessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."

24. The facts being identical, it is held that the present case is one of change of opinion. Further, as regards the requirement of true and correct disclosure by the assessee, I find that in the reasons recorded, reproduced above, the A.O has nowhere made any allegation on this count.

25. In the case of Allied Strips [supra] the Hon'ble Delhi High Court has held as under:

"12. Another reason why the impugned notice under [Section 148](#) and the proceedings consequent thereto have to be set aside is that the pre-condition of there being a failure on part of the assessee to fully and truly disclose all the material particulars necessary for assessment has not been made out.

13. Perusal of the reasons for initiating re-assessment shows that there is not even an allegation that there has been failure on the part of the petitioner/assessee to fully and truly disclose all the material particulars necessary for re-assessment.

14. In Haryana Acrylic Manufacturing P. Ltd. Co. Vs. CIT 2009 (308) ITR 38 (Delhi), this Court held as under:-

"29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to [section 147](#). If this condition is not satisfied, the bar would operate and no action under [section 147](#) could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in *Wel Intertrade Private Ltd.* [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of *Duli Chand Singhania* [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under [section 147](#) beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under [section 148](#) based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under [section 147](#) could be taken beyond the four year period in the circumstances narrated above."

Thus, on this count also, the assessee is to succeed.

26. Accordingly, respectfully following the decision of the Hon'ble Delhi High Court in the case of Allied Strips Ltd [supra], the grounds raised by the assessee are allowed.

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

The order is pronounced in the open court on 02.05.2017.

Sd/-

**[S.V. MEHROTRA]
VICE PRESIDENT**

Dated: 02nd May, 2017

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi