

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1467/Del/2020
Assessment Year: 2013-14

Manish Mittal Mohalla Faraskhana, Narnaul, Mittal Gali, Mohindergarh, Haryana 123001 PAN No.AFIPM4958C	Vs	ITO Ward- 1 Narnaul
(APPELLAN		(RESPONDENT)

Appellant	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA
Respondent	Sh. Amit Shukla, Sr. DR

Date of hearing:	03/08/2022
Date of Pronouncement:	08/08/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A), Rohtak dated 04.02.2020 pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

Ground No.	Grounds of Appeal	Tax Effect																								
1	That both the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act were without jurisdiction and hence deserve to be quashed as such.	Jurisdictional ground therefore not considered separately																								
1.1	That since there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal u/s 147 of the Act, untenable and therefore unsustainable.																									
1.2	That reasons were recorded mechanically without application of mind and therefore do not constitute valid "reason to believe" for assumption of jurisdiction u/s 147 of the Act.																									
1.3	That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.																									
1.4	That even otherwise, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of service of notice under section 148 of the Act, there was no valid assumption of jurisdiction to frame the impugned assessment and as such, the proceedings initiated were not in accordance with law and therefore, unsustainable.																									
2	That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding adhoc disallowance of Rs. 30,91,730/- being 25% of the expenses incurred of Rs. 1,09,08,620/- and claimed by the appellant in the instant year	712585																								
	<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Head of Expenses</th> <th>Amount (Rs.)</th> <th>Adhoc disallowance</th> </tr> </thead> <tbody> <tr> <td>i)</td> <td>Plot Boundary expenses</td> <td>45,91,846</td> <td>11,47,962 (@25%)</td> </tr> <tr> <td>ii)</td> <td>Rasta Making expenses</td> <td>31,03,465</td> <td>7,75,866 (@25%)</td> </tr> <tr> <td>iii)</td> <td>Sewarage & Water pipe line expenses</td> <td>16,86,644</td> <td>4,21,661</td> </tr> <tr> <td>iv)</td> <td>Wall boundary expenses</td> <td>10,40,565</td> <td>2,60,141 (@25%)</td> </tr> <tr> <td></td> <td>Total</td> <td>1,04,22,520</td> <td>26,05,630</td> </tr> </tbody> </table>	Sr. No.	Head of Expenses	Amount (Rs.)	Adhoc disallowance	i)	Plot Boundary expenses	45,91,846	11,47,962 (@25%)	ii)	Rasta Making expenses	31,03,465	7,75,866 (@25%)	iii)	Sewarage & Water pipe line expenses	16,86,644	4,21,661	iv)	Wall boundary expenses	10,40,565	2,60,141 (@25%)		Total	1,04,22,520	26,05,630	
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2.1	That the learned Commissioner of Income Tax (Appeals) has further erred in making the disallowance on an incorrect assumption that "assessee's contention that this addition is adhoc and without any basis is not acceptable as during the remand proceedings specific enquiry was made and assessee was asked to substantiate the expenditure and produce the concerned parties as per the assessee's submission regarding purchases and expenses made but there was no compliance". In doing, so he has failed to appreciate that, expenditure incurred by the appellant was for the business of the appellant and, there was absolutely no justification to have made any adhoc disallowance and, therefore the same was unsustainable.																									
2.2	That even otherwise the conclusion is not based on any correct appreciation of facts on record and therefore unsustainable.																									
2.3	That while confirming the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the factual substratum of the case, statutory provisions of law and as such, disallowance so made and sustained is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.																									
3	That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding a disallowance of Rs. 4,86,100/- representing the sale brokerage expenses in the ordinary course of business by the appellant.	132938/-																								
3.1	That while upholding the aforesaid disallowance, conclusion of the learned Commissioner of Income Tax (Appeals) that aforesaid expenditure was not verifiable as even the names of parties were missing in the ledger is an incorrect basis in law and on facts and therefore, untenable.																									
4.	That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in not deleting the following disallowances made on adhoc basis by the learned Officer in the order of assessment:	69173																								
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5.	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the disallowances made and sustained relating to expenses claimed by the appellant in the return of income are without jurisdiction and untenable as they are beyond the scope of order of assessment framed under section 147/143(3) of the Act.																									
5.1	That the learned Commissioner of Income Tax (Appeals) has failed to																									

	appreciate that since the proceedings under section 148 of the Act had been initiated on the basis of cash deposits in the bank account and purchase of immovable property in respect of which, no addition had been made in the impugned order of assessment, disallowances made in the order of assessment and sustained in appeal are perse without jurisdiction and therefore, unsustainable.	
6.	That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.	
Prayer	It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.	

3. Ground No.1 to 1.4 were not pressed by the Counsel and, therefore, the same are dismissed as not pressed.

4. Ground No. 2 to 4 relates to the disallowance of expenses. However, the Counsel vehemently argued ground No.5 which reads as under :-

“5. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the disallowances made and sustained relating to expenses claimed by the appellant in the return of income are without jurisdiction and untenable as they are beyond the scope of order of assessment framed under section 147 / 143 (3) of the Act.”

5. Representatives of both the sides were heard at length. Case records carefully perused.

6. Briefly stated the facts of the case are that as per information available with the AO it came to his notice that the

assessee has deposited cash in his savings Bank account amounting to Rs. 53.73 lacs during financial year under consideration. It also came to the notice of the AO that the assessee has purchased immovable property amounting to Rs.27.63 lacs. Since no return was filed by the assessee notice u/s. 148 of the Act was issued to the assessee on 06.01.2016. In response to the notice the assessee filed his return of income declaring income of Rs.182180/-.

7. The assessment was completed vide order dated 27.12.2016 framed u/s. 147 r.w.s. 143 (3) of the Act by making following additions :-

With the above observations, income of the assessee is computed as under:-

Income as per return of income	Rs.	1,82,180/-
Add: Addition as discussed in para 3 above	Rs.	18,490/-
Add: Addition as discussed in para 4 above	Rs.	1,87,647/-
Add: Addition as discussed in para 5 above	Rs.	46,782/-
Add: Addition as discussed in para 6 above	Rs.	69,01,492/-
Total Income	Rs.	73,36,611/-

8. The assessee challenged the validity of the assessment order before the CIT(A) but without any success.

9. Before us the Counsel for the assessee vehemently stated that the entire assessment is devoid of any addition relating to the reasons which prompted the AO to reopen the assessment. It

is the say of the Counsel that such assessment order is bad in law and deserved to be quashed.

10. Strong reliance was placed on the decision of the Hon'ble Bombay High Court in the case of Jet Airways India Limited 331 ITR 236 and Ranbaxy Laboratories Limited 336 ITR 136 (Del).

11. Per contra the DR strongly supported the findings of the AO and the CIT(A).

12. As mentioned elsewhere the reasons for reopening the assessment/ was cash deposit in the Savings Bank account amounting to Rs.53.73 lacs and purchased of immovable property amounting to Rs.27.63 lacs. However, the assessment has been completed by making addition on account of disallowance of the claim of expenditure as mentioned elsewhere.

13. On the given set of facts in our considered opinion the decision of the Hon'ble Bombay High Court in the case of Jet Air Ways (supra) squarely apply. The relevant findings of the Hon'ble High Court read as under :-

9. The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under section (1) of section 148; (iii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. (u)

XXXX

15/ Parliament, when it enacted the *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 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.'s case (supra)* and of the Punjab & Haryana High Court in *Vipan Khanna's case (supra)* would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in *Shri Ram Singh's case (supra)*, *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 & Haryana High Court in *CIT v. Atlas Cycle Industries [1989] 180 ITR 319¹*. The decision in *Atlas Cycle Industries' case (supra)* 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 non-existent. The decisions of the Punjab & Haryana High Court in *Atlas Cycle Industries' case (supra)* and of the Rajasthan High Court in *Shri Ram Singh's case (supra)* would not be affected by the amendment brought in by the insertion of *Explanation 3* to section 147.-

16. *Explanation 3* lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or 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 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 Act (No. 2) 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.

17. 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(1) 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(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped 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 of *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's case (supra)*. Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to its plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field.

14. Similar view was taken by the Hon'ble Jurisdictional High Court of Delhi in the case of Ranbaxy Laboratories. The relevant findings read as under :-

18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of *Jaganmohan Rao (supra)*. We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Section 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per *Explanation (3)* if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, 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. For every new issue coming before 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.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per *Explanation 3* to reduce the claim of deduction under sections 80HH and 80-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of revenue and the second part of the question against the revenue.

15. Finding parity of facts, respectfully following the decision of the Hon'ble High Court (supra) we have no hesitation in holding that the AO was not justified in making the impugned additions/disallowances when the reasons for the initiation of reassessment proceedings ceased to survive. The appeal is accordingly allowed

on ground No.5.

Order pronounced in the open court on 08.08.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .08.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.08.2022
Date on which the typed draft is placed before the dictating Member	03.08.2022
Date on which the typed draft is placed before the Other member	03.08.2022
Date on which the approved draft comes to the Sr.PS/PS	03.08.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	03.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	08.08.2022
Date on which the final order is uploaded on the website of ITAT	08.08.2022
Date on which the file goes to the Bench Clerk	08.08.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	