

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND**

SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos.3675 & 3676/Del/2024

निर्धारणवर्ष/Assessment Years: 2013-14& 2014-15

Atiq Ahmed House No.333, Bhamda Patti, PattharWalaKaun, Hapur, Uttar Pradesh.	बनाम Vs.	Income Tax Officer, Ward-2(3)(4), AaykarBhawan, Teachers Colony, Bulandshahr, Uttar Pradesh.
PAN No. AIFPA8796G		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे / Assessee by	Sh. K M Gupta, Adv. & Sh. Muninder Kumar, Adv.
राजस्वकीओरसे / Revenue by	Sh. Rajesh Mahajan, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	17.12.2024
उद्घोषणाकीतारीख/Pronouncement on	27.12.2024

आदेश /O R D E R

PER SHRI MAHAVIR SINGH, V.P.

These two appeals by Assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-NFAC, Delhi in Appeal Nos. NFAC/2012-13/10127954 and NFAC/2013-14/10147813 vide order of even dated 19.06.2024. Assessments were framed by National Faceless Assessment Centre (NFAC), Delhi for the assessment years 2013-14 and 2014-15 u/s 147 r.w.s. 144B of the

Income Tax Act, 1961 (hereinafter referred to as the “Act”) vide his orders of even dated 31.03.2022.

2. The facts and circumstances and grounds raised are identically worded and hence will take facts from lead year i.e. AY 2013-14 in ITA No.3675/Del/2024. The first issue, which is common in both these appeals, is raised by assessee is as regard to assumption jurisdiction by the Assessing Officer for reopening of assessment u/s 147 r.w.s. 148 of the Act. For this assessee has raised ground nos. 1, 2, 2.1 and 2.2, which are argumentative and exhaustive and hence, need not be reproduced.

3. The brief facts are that the assessee is an individual and has filed his original return of income for AY 2013-14 on 05.08.2013. Subsequently the information was received by Assessing Officer through STR Report of the Deputy Director of Income Tax (Inv.) Unit-1, Ghaziabad that the assessee has maintained three bank accounts with bank of Maharashtra and there is huge cash deposit in these bank accounts. Subsequently this cash was transferred by RTGS and cash was withdrawn during the year under consideration. The Assessing Officer noticed that total credit entries in his bank account are to the tune of Rs.26,91,95,139/- including cash deposit of Rs.38 lakhs. The Assessing Officer noted that the assessee is

engaged in the business of wholesale trading in raw meat, which is traditional family occupation in the area of District Hapur, Uttar Pradesh. The Assessing Officer, thereafter, recorded the reasons for reopening of assessment and then issued notice u/s 148 of the Act dated 30.03.2021. The Assessing Officer, accordingly, framed assessment u/s 147 r.w.s. 144B of the Act as the assessee failed to provide information of huge cash purchases and sales undertaken during the year. The assessee contended before the Assessing Officer that this bank credit entries of Rs.26,91,95,139/- is arising out of sales reflected in the books of accounts of Rs.28,75,85,392/- . The Assessing Officer noted that purchases have been made in cash which is in the violation of provision of section 40A(3) of the Act and considering all the reasons he disallowed 10% of expenditure as reasonable and thereby he disallowed a sum of Rs.2,86,21,444/- by observing in para 9 as under:

“9. As it is seen that purchases of Rs.28,62,14,447/- during the year under consideration. The issues of purchases have been examined in details during the course of proceedings. It is seen that all the purchases have been made in cash which is the violation of provisions of section 40A(3) of the Income tax Act, 1961. In response to the notices issued the assessee has brought on record the fact that it is involved in the business of purchases of livestock like sheep includes, buffalow, sheep and goat etc. which are purchases made during the year and all these purchases have been made from the persons residing in villages who are involved in rearing all

these livestock for generations. Considering the provisions of section 40A(3) as well as the facts of the case, it is surprising to observe here that the assessee has not placed on record even a single purchase bill which could show the animals purchase, date of purchase, mode of carrying of these live stocks and the evidence of cash payments made to the owners against these purchases which however constitute the basic supporting materials and in the absence of the same there is every reason to doubt the volume as well as the genuineness of the purchases claimed. Thus considering the facts and circumstances of the case, it is reasonable to disallow 10% of the expenditure so claimed against the purchases which is being added back to the taxable income of the assessee. During the year the assessee has claimed purchase of Rs.28,62,14,447/-. Hence 10% of the purchases i.e. Rs.2,86,21,444/- is being added back to the taxable income of the assessee under the head "Business Income". Along with penalty proceedings under section 271(1)(c) is separately initiated for inaccurate particulars of income."

3.1 Aggrieved assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the Assessing Officer exactly on identical all the facts.

4.1 Aggrieved assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the CIT(A) has confirmed the reopening u/s 147 of the Act by relying on the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) [291 ITR 500 (SC)]. Before us Ld. Counsel for the assessee took us through the order of

the Assessing Officer and stated that reopening was made on the premise of credit entries of Rs.26,91,95,139/- escaped assessment in the case of the assessee and hence reopening was done but the Assessing Officer disallowed 10% of purchases as an expenditure and thereby added a sum of Rs.2,86,21,244/-. Ld. Counsel for the assessee drew our attention to reasons recorded which read as under:

“As per record, the assessee having PAN: AIFPA8796G and return of income has been filed by the assessee on 28.03.2015 disclosing total income of Rs.1,98,140/- only for the Assessment Year 2013-14. Further, assessee has been working as a raw meat trading agent.

In this case, financial information received through STR report of the Deputy Director of Income Tax(Inv.), Unit-1, Ghaziabad, wherein it is mentioned that aforementioned assessee has maintained three bank accounts, having accounts no. 20166725791, 20166733406 & 20166700720. It is further informed that, in all these bank accounts huge credit entries are appearing which are subsequently followed by RTGS transfer and cash withdrawals during the year under consideration.

On perusal of return of income & bank details available on record, it is found that assessee has received total credit entries in his bank accounts Rs.26,91,95,139/- [including cash deposit of Rs.38,00,000/-]. To verify the aforesaid information, verification notice u/s 133(6) of the I.T. Act, 1961 dated 10.02.2020 was issued to the assessee after obtaining the necessary approval from Ld. Pr. CIT, Ghaziabad, which was served through speed post services or by hand. Vide the above said verification notice, the assessee was asked to furnish the copy of ITR, computation of income and nature & source of amount of Rs.26,91,95,139/- credited

in his bank accounts along with supporting documentary evidences. However, on the date so fixed, no compliance made be the assessee firm. Further it is noted that, the above stated huge credit & cash entries, appearing in bank account of assessee, do not commensurate with the income disclosed by assessee in his return of income. As, no satisfactory explanation is available on record that may justify the nature & source of these credit entries, hence, all these credit entries found to be unexplained. Therefore, I have reason to believe that credit entries including cash deposit to the tune of Rs.26,91,95,139/- received in bank accounts are unexplained investment and liable to be added in this income u/s 69 of I.T. Act. 1961.

To conclude, I have independently examined the entire gamut of facts and circumstances of the case as also the material available on record and after due application of mind on the same as brought out above, I, therefore, have reasons to believe that income of more than Rs.01 lakhs in the case of assessee that was chargeable to tax, under the provisions of Income Tax Act, 1961 has escaped assessment during the A.Y. 2013-14 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. Hence, it is a fit case for initiation of proceedings in terms of Explanation 2(b) of section 147 of the Income Tax Act, 1961, so as to bring to tax the income emanating of Rs.26,91,95,139/- and any other income which comes to my notice subsequently during the course of assessment proceedings.

Further, I have reason to believe that above discussed credit entries including cash deposit aggregating to Rs.26,91,95,139/- is income of the assessee out of the undisclosed sources that is liable to be added in his income u/s 69 of I.T. Act, 1961 as unexplained investment, which has escaped assessment for A.Y. 2013-14 within the meaning of section 147 of Income Tax Act, 1961. Therefore, I have reason to believe that income of Rs.26,91,95,139/- chargeable to tax has escaped assessment.

Accordingly, necessary approval u/s 151(1) of Income Tax Act, 1961 is solicited to issue notice u/s 148 of the Income Tax Act, 1961 to re-open the assessment u/s 147 of Income Tax Act, 1961, so as to bring tax the income escaping assessment.”

7. Ld. Counsel for the assessee stated that the reason for which reopening was done was to bring the tax escaped income of credit entries appearing in the bank account of Rs.26,91,95,139/-. He stated that actually addition made by the Assessing Officer by making disallowance of expenditure so claimed against purchases at 10% being cash payments. He stated that the original issue raised by the Assessing Officer in the reasons recorded is not at all added and replied by Assessing Officer and altogether different addition is made. For this purpose the Ld. Counsel for the assessee relied on the decision of the Hon’ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT (2011) [336 ITR 136 (Del.)]. He also relied on the decision of the Hon’ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. (2011) [331 ITR 236]. Ld. Counsel for the assessee stated that the Hon’ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra) has considered this issue and the Hon’ble High Court held as under:

“9. The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarized 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 re-computation, the Assessing Officer has to serve on the assessee a notice under sub-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."

8. Ld. Counsel also relied on the decision of Ranbaxy Laboratories Ltd. (supra) and he drew our attention to para 18, 19 & 20 which read as under:

"18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of VI 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 re-compute 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 80-1 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 80-1 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 80-1 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 be justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-1 as well."*

9. The Ld. Sr. DR again relied on the decision of Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra). We noted that the decision of the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) was in the case of where return of income was processed u/s 143(1) of the Act and not the assessment framed u/s 143(3) of the Act. Moreover, there is no issue regarding that the main issue of reasons recorded is left out or not adjudicated. In the present case before us admittedly the reasons recorded for the purpose of bringing to tax the credit entries in assessee's bank account of Rs.26,91,95,139/- as against which the assessment was framed on the disallowance of expenses of purchases at 10%. We noted that as per Explanation 3 of the section 147 of the Act, if during the course of assessment 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, hence, the notice, he would be competent to make assessment to those items. The Hon'ble Delhi High Court has interpreted this that the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction u/s 147 of the Act regarding reassessment of escaped income, he would keep on making roving enquiry and thereby

including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. As in the present case, the issue is exactly identical what was before the Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd. (supra) and of Jet Airways (I) Ltd. of Bombay High Court (supra). Since the issue, is in favour of the assessee, we quash the reassessment framed by Assessing Officer as bad in law.

10. Similar are the facts in ITA No.3676/Del/2024 for AY 2014-15, respectfully following the above decision, we allow this appeal also.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 27/12/2024

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 27/12/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi