

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

**BEFORE SH. SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 5782/Del/2024
(Assessment Year : 2005-06)**

V & S International Pvt. Ltd. House No.1, Near MCD Primary School, Samalka Village, New Delhi - 110037 PAN No. AAACV 0030 A (APPELLANT)	Vs.	DCIT Circle - 17(1) New Delhi (RESPONDENT)
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Assessee by	Shri Salil Kapoor, Adv. Ms. Ananya Kapoor, Adv. and Shri Shivam Yadav, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	09.04.2026
Date of Pronouncement:	09.04.2026

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER :

This captioned appeal has been filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-33, New Delhi ['CIT(A)' in short] dated 29.08.2018 arising from the assessment order dated 28.03.2013 passed by the DCIT, Circle - 17(1), New Delhi

under Section 143(3)/147 of the Income Tax Act, 1961 ('the Act') concerning Assessment Year (A.Y.) 2005-06.

2. The grounds raised by the assessee are as under :

1. *"That the assessment order dated 28.03.2013 passed under Section 143(3)/147 of the Income Tax Act, 1961 ('the Act') by the Assessing Officer for Assessment Year ('A Y') 2005-06, and the additions/disallowances made therein are illegal, bad in law, without jurisdiction, and not in accordance with the provisions of the Act.*
2. *That in view of the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) vide order dated 29.08.2018 has erred in confirming the additions/disallowances made by the Assessing Officer.*
3. *That the notice dated 23.03.2012 issued under Section 148 of the Act by the Assessing Officer is illegal, bad in law, and without jurisdiction.*
4. *That the mandatory approval under Section 151 of the Act for issuing the notice dated 23.03.2012 under Section 148 of the Act is illegal, bad in law, mechanical in nature, and without any application of mind.*
5. *The Commissioner of Income Tax (Appeals) has erred in affirming the addition of Rs. 1,49,50,000/- made by the Assessing Officer under Section 68 of the Act, purportedly on account of unexplained credits. The addition made is unjust, illegal, and arbitrary. Hence, the same is liable to be deleted.*
6. *The Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the Assessing Officer on the one hand is accepting the capital gain and simultaneously assessing the sale consideration of Rs. 1,49,50,000/- under Section 68 of the Act.*
7. *That the lower authorities failed to appreciate that a mere change of opinion does not constitute a valid ground for reopening the assessment.*
8. *The Commissioner of Income Tax (Appeals) has erred in affirming the addition of Rs. 5,23,250/- made by the Assessing Officer under Section 69C of the Act, purportedly on account of unexplained expenditure. The addition made is unjust, illegal, and arbitrary. Hence, the same is liable to be deleted.*
9. *The Commissioner of Income Tax (Appeals) has erred in affirming the disallowance of Rs. 2,12,746/- (amount wrongly mentioned in the Assessment Order as Rs. 2,75,781/-) made by the Assessing Officer on account of depreciation out of the total depreciation claimed at Rs. 4,88,527/-. The disallowance made is unjust, illegal, and arbitrary. Hence, the same is liable to be deleted.*
10. *That in view of the facts and circumstances of the case and in law, the Assessing Officer and the Commissioner of Income Tax (Appeals) have erred in not granting reasonable and sufficient opportunity to the Appellant to place on record the documents or evidence in support of its submissions and the same are in gross violation of principles of natural justice.*
11. *That the additions/disallowance made by the Assessing Officer are unjust, illegal, arbitrary, bad in law, highly excessive, and based on surmise conjecture.*

12. *That in the view of the facts and circumstances of the case, the documents, explanations filed by the Appellant, and the material available on record have not been properly considered and judicially interpreted by the Assessing Officer and the same has been wrongly ignored.*
13. *That in view of the facts and circumstances of the case, the Assessing Officer has erred in charging the interest under Sections 234A, 234B, 234C, and 234D of the Act.*
14. *The Assessee craves leave to add to, alter, amend, and/or withdraw any ground or grounds of appeal either before or during the course of hearing the appeal."*

3. Brief facts of the case is that the assessee is in the business of manufacturing of Readymade Garments and export thereto. For the instant A.Y. 2005-06, the assessee had filed return of income on 28.10.2005 declaring an income of Rs.2,03,70,330/-. Its return for A.Y. 2005-06 was accepted at the income declared u/s 143(3) of the Act dated 28.12.2007.

4. The AO subsequently, received information, from the Investigation Wing, Delhi, in respect of bogus accommodation entries provided by Surender Kumar Jain Group to the assessee amounting to Rs.1,49,50,000/- The case was reopened on the basis of this information and notice u/s 148 dated 30.03.2012 was issued to the assessee. The AO in the reassessment order, made an addition of Rs.1,49,50,000/- on account of accommodation entry in respect of shares sold to Steller Investment Ltd. Rs.84,50,000/- and Besty Growth Finance Ltd. Rs.65,00,000/-. On appeal, the additions were confirmed by the CIT(A). Aggrieved, assessee is now before us.

5. At the outset, learned Counsel of the assessee challenged the validity of reasons recorded for reopening of the assessment. It was submitted that the notice u/s 148 of the Act dated 30.03.2012 is barred by limitation as the notice was received by the assessee on 07.04.2012. The ld AR argued that the mere fact that assessee participated in the Assessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice issued u/s 148 of I.T. Act. Further the provisions of Section 292BB are prospective. The ld AR relied on the following cases:

- (i) CIT Vs. Vishnu & Co. P. Ltd. (Delhi High Court) 319/ITR/151
- (ii) Bhpe kinhill Joint Venture Vs. Addl. CIT (ITAT Delhi) 304/ITR/285
- (iii) CIT Vs. Lunar Diamonds Ltd. (Delhi High Court) 281/ITR/1
- (iv) Ashoka Industrial Corporation Vs. ITO (ITAT - Amritsar) in ITA No. 694/2014
- (v) CIT Vs. Silver Streek Trading (P) Ltd. (Delhi High Court) 216/ITR/260
- (vi) CIT vs. Chetna Gupta (Delhi High Court) ITA No.72 of 2014

6. It is further stated that the notice u/s 143(2) was never issued which is mandatory for framing the assessment and relied on the decision of *Hotel Blue Moon* 321 ITR 362(SC) and *PCIT vs. Shri Jai Shiv Shankar Traders (P.) Ltd.* [2016] 383 ITR 448. The learned Counsel of the assessee further submitted that the AO did not provide the reasons recorded nor made any independent enquiry. It is further stated that the AO did not dispose of the objections before framing the

assessment and relied on the decision of Sarthak Securities Co P Ltd WP(C) 6087/2010.

7. The Id AR further submitted that proceedings u/s 147/148 is in respect of income already declared and assessed u/s 143(3). The assessee company purchased shares of M/s Destini India Limited during the Financial Year 2001-02. These shares were kept by the appellant as Investment in the Balance Sheet Year after year. During the year under consideration the shares were sold to two companies and payments were received in the bank Account and Shares were removed from the Balance Sheet. The resultant consideration of Rs. 1,49,50,000/- was duly reflected in the return under Capital Gain income and after reducing the cost of acquisition, the resultant capital gain has been offered for tax and tax has been duly paid on same which was also accepted and assessed u/s 143(3) of I.T.Act. The Id AR forcefully submitted that full and true disclosure was made by Assessee in Return of Income of all material and primary facts at the time of filing of Income Tax Return in original assessment.

8. Per contra, learned DR relied on the orders of authorities below.

9. We have heard the rival submissions and perused the material available on record. First we deal with the legal arguments raised with regard to the validity of the proceedings u/s 148 of the Act. As far as

the issuance of notice u/s 148 being barred by limitation is concerned, we find that the notice u/s 148 was issued on 30.03.2012 and was dispatched by the AO through registered post on 31.03.2012 at 07.27 pm. In such situation, the hon'ble Madras High Court in the case of *Abab Offshore Ltd. Vs DCIT* [2017] 78 taxmann.com 37 (Madras) [08-11-2016] has held that when postal authorities collected notice from revenue on 31-3-2015 (last date of expiry of six years from end of relevant assessment year) as per arrangement between revenue and postal department, though such notice was served to assessee later, such notice under section 148 of Income Tax Act, 1961 was not barred by limitation. In view of the same, this argument is rejected.

10. In so far as the argument of the assessee that assessment order u/s 147/143(3) has been passed without issuance of any notice u/s 143(2), we find that it has no force. We find from the reassessment order dated 28.03.2013, that the AO has noted that notice u/s 148 of I.T. Act dated 30-03-2012 was issued calling for filing of return of income. The uncontroverted fact however remains that the assessee never filed any return in response to the notice u/s 148. The assessee, instead of filing the return in response to the notice u/s 148, contested the same being barred by limitation. It however, furnished its explanation with regard to the issues raised in the notices u/s 142(1).

11. In such factual matrix, we note that Section 143(2) of the Act mandates issuance of notice only when the return is filed u/s 139 or u/s 142(1) of the Act. The return filed in response to notice u/s 148 is also treated as return filed u/s 139 by deeming fiction. In the present case, since the return has not been filed in response to section 148, the provisions of section 143(2) does not get triggered at all. We find that judicial precedents relied upon on behalf of the assessee is of bereft of any assistance and are distinguishable on facts. The facts available in the case of ***Hotel Blue Moon*** (*supra*) and all other decisions relied upon by the ld AR for the assessee, shows that in those cases, the return was duly filed in response to section 148 or a valid under section 139 was in existence and on these facts the Hon'ble Courts have held that issuance of notice u/s 143(2) is mandatory and cannot be disregarded and bypassed. In view of the same, this argument is also rejected.

12. Coming to the validity of reasons recorded, it would be prudent to reproduce the reasons recorded by the AO for reopening the assessment for A.Y. 2005-06 as follows:

“Certain investigations were carried out by the Directorate of Investigation, New Delhi in respect of the bogus accommodation entries provided by Shri Surender Kumar Jain Group. The name of the assessee Le. M/s V and S International Pvt. Ltd. as one of the beneficiaries of these alleged bogus transactions as per information given by the DIT (Inv), New Delhi after making the necessary enquiries. It has been revealed that entry

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of Rs 1,49,50,000/-has been received by the assessee during the Financial Year 2004-05 relevant to Assessment Year 2005-06.

In view of the above facts, I have therefore, reason to believe that by reason of omission or failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and by claiming wrong deductions, Income chargeable to tax has escaped assessment."

Sd/-

(N. D. Gupta)

Asstt. Commissioner of Income Tax,
Circle-17(1), New Delhi

13. We note that law evolved on the subject of reopening of assessment under Section 148 of the Income Tax Act mandates that the reopening requires a "live link" between specific, tangible material and the Assessing Officer's (AO) "reason to believe" that income has escaped assessment. Further the jurisprudence on this issue is reopening based solely on information from the Investigation Wing, without the AO applying his own mind or gathering corroborative evidence, has been considered as invalid. Further the reopening is invalid if based solely on suspicion, borrowed satisfaction, or in the absence of quantified escaped income.

14. On perusal of the reasons recorded, first of all we find that the same are undated, hence it is unclear whether the reasons were recorded before the issuance of the notice u/s 148 dated 30.03.2012. We find, in the instant case, that the AO had received information from the Investigation Wing but has made no effort to apply his own

mind or gather any corroborative evidence to substantiate the information. It was incumbent upon the AO to establish a 'live link' between the specific, tangible materials found and the 'reasons to believe' recorded for reopening the assessment. From the perusal of the reasons recorded by the AO, we find that there is absence of any 'live link' between the tangible materials/information found with escaped income. The AO has not even recorded the name of companies from whom the alleged accommodation entries were obtained as well as how and when such entries were received. The only basis on which the reasons recorded by the AO was based on the DDIT(Inv.) report. The AO has not even given the details of the report which is the basis for reopening of assessment to believe that there is escapement of income. In fact, the AO has not even quantified escapement of income. The only detail recorded is that the assessee is beneficiary of accommodation entries of Rs 1.49 crore from S.K.Jain Group. In our considered view, such failure to establish a 'live link' between the specific, tangible materials found and the 'reasons to believe' and absence of AO's application of mind on such information, has rendered the entire process of reopening of assessment as invalid and unsustainable under the eyes of law. In such facts and circumstances, following the jurisprudence laid down by the hon'ble Delhi High Court

in *CIT v. Kamdhenu Steel & Alloys Ltd.* (2012) 248 CTR 33 (Delhi HC)

and *Pr. CIT vs. RMG Polyvinyl (I) Ltd.*, (2017) 396 ITR 5 (Del.), we

hold that that reopening based solely on information from the Investigation Wing, without the AO applying his own mind or gathering corroborative evidence, was not valid. We accordingly, quash the notice u/s 148 of the Act and the resultant reassessment order. Appeal of the assessee is disposed off in the aforesaid terms.

15. As the appeal is allowed on legal grounds, no adjudication is made on merits.

16. In the result, appeal of the assessee in ITA 5782/Del/2024 is allowed.

Order pronounced in the open court on 09.04.2026

Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Date:- 01.07.2026

Sd/-

(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Priti Yadav, Sr. Ps*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI