

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI

BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 5322/DEL/2015 (A.Y 2007-08)

DCIT Circle-4(2) New Delhi  (APPELLANT)	Vs	Bhaijee Portfolio Pvt. Ltd. (Now known as Bhaijee Portfolio Ltd.) AG-401, Shalimar Bagh New Delhi AACCB9390H (RESPONDENT)
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C.O No. 10/DEL/2016 (A.Y 2007-08)

Bhaijee Portfolio Pvt. Ltd. (Now known as Bhaijee Portfolio Ltd.) AG-401, Shalimar Bagh New Delhi AACCB9390H (APPELLANT)	Vs	DCIT Circle-4(2) New Delhi  (RESPONDENT)
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Appellant by	Sh. N. K. Bansal, Sr. DR
Respondent by	Sh. R. S. Singhvi & Sh. Satyajit Goel, CA

Date of Hearing	04.04.2019
Date of Pronouncement	04.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

The appeal is filed by the Revenue and the Cross Objection is filed by the assessee against the order dated 29/05/2015 passed by CIT(A)-II, New Delhi for Assessment Year 2007-08.

2. The grounds of appeal are as under:- I.T.A. No. 5322/DEL/2015

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.70,000,000/- made u/s 68 of the Income Tax Act, 1961 on account of share capital.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has deleted the additions u/s 68 without appreciating the fact that the assessee failed to prove the genuineness and creditworthiness of the shareholders who have invested in the Company.*

*3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that summons u/s 131 issued to Sh. Satish Gupta, Director of assessee company and also to the shareholder, remained uncomplied with.*

*4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) failed to appreciate that in case of share subscriber viz. Venus Insec Pvt. Ltd. the accounts were signed by Ms. Ritu Saxena in capacity of Director against whom the department had received specific information from Investigation wing as being receptionist of Sh. Tarun Goyal, who had been proved to be engaged in providing accommodation entries."*

**C.O No. 10/DEL/2016**

*"1. That as per facts and circumstances of the case and under the law, the Ld.CIT(A) has erred in sustaining the reopening of the case u/s 147/148 of the Income Tax Act, 1961.*

*2. That initiation of reassessment proceedings are without any tangible material and even without approval of designated authority and as such reassessment proceedings are illegal and without jurisdiction."*

3. Firstly, we are taking up the Cross Objection, as Ld. AR is challenging reopening u/s 147/148 of the Act. The assessee is a private limited company which was incorporated on 30.08.2006 and this is the first year of the company. The company was incorporated for carrying out brokerage activities relating to purchase and sale of shares. However, this being the first year, no such activity was carried out during the year. The return of income on the basis of audited accounts was duly filed on 23.10.2007 and same was processed u/s 143(1) on 26.08.2008. A search/survey operation u/s 132/133 A of the Income Tax Act, 1961 was conducted by Investigation Wing of Income Tax Department on 15/09/2008 at the office premises of Shri Tarun Goel. Various incriminating documents were seized and amended. In the present case of the assessee company, proceedings u/s 147/148 were initiated vide notice dated 26.03.2014 by recording reasons and satisfaction that income has escaped assessment within the meaning of Section 147 of the Act based on the evidence contained in the report of Investigation Wing and after taking necessary approval from the competent authority. The Assessing Officer made the addition u/s 68 in respect of share capital amounting to Rs. 70,00,000/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the reasons are reproduced in the assessment order, but there was no mention of date when the same was recorded. During the hearing, the assessee produced certified copies of the reasons recorded for initiation of Section 148 proceedings, the same bares approval of the concerned CIT(A) dated 27/3/2014 which was proposed by the DCIT on 26/3/2014. The Ld. AR also pointed out notice u/s 148 dated 26/3/2014. Thus, the Ld. AR is taking technical ground that before the approval of the CIT how notice can be issued by the Assessing Officer. Besides that in the reasons, the assessee's name has been entered at Page 2 of the reasons and the rest of the contentions set out by the Revenue are identical to the other group cases of Tarun Goel

Group. Thus, the Ld. AR submitted that the initiation of reopening u/s 148 is itself bad in law.

6. The Ld. DR submitted that the reasons were properly recorded and the initiation of reopening is valid.

7. We have heard both the sides and perused the material available on record. From the records, it can be clearly seen that the notice has been issued prior to the approval. Thus, reopening u/s 148 is without the approval of the designated authority and as such reassessment itself is bad and without any jurisdiction. The mandatory conditions of Section 148 has not at all followed by Revenue. Therefore, the re-opening itself is void ab initio and does not survive. Thus, the Cross objection filed by the assessee is allowed. Since the inception of the challenge of the order of CIT(A) in Revenue's appeal itself is void ab initio, the Revenue's appeal is dismissed.

8. In result, appeal of the Revenue is dismissed and cross objection of the assessee is allowed.

**Order pronounced in the Open Court on 04<sup>th</sup> June, 2019.**

Sd/-

**(G. D. AGRAWAL)  
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 04/06/2019

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	04.04.2019
Date on which the typed draft is placed before the dictating Member	04.04.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	