# IN THE INCOME TAX APPELLATE TRIBUNAL
# DELHI BENCH : C : NEW DELHI

## BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
## AND
## SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No.1891/Del/2020
Assessment Year: 2010-11

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| GM Overseas,<br>A-2/132, Prateek Apartments,<br>Paschim Vihar,<br>New Delhi. | Vs | ACIT,<br>Circle-48(1),<br>New Delhi. |

PAN: AAAFG2529A

(Appellant) (Respondent)

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| Assessee by | : | Shri Suresh Gupta, CA |
| Revenue by | : | Shri Hemant Gupta, Sr. DR |
| Date of Hearing | : | 15.02.2022 |
| Date of Pronouncement | : | 21.03.2022 |

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 26th February, 2019 of the CIT(A)-16, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading of rice and other food grains and sorting of rice. It filed its return of income on 27th September, 2010 declaring the income at Rs.25,85,610/-. The assessment was completed u/s 143(3) vide order dated

01.02.2013 determining the total income at Rs.27,10,350/-. Subsequently, the AO, on the basis of the information received from the Investigation Wing of the Department that the assessee has received credit of Rs.4,00,00,112/- from M/s Index Securities and Research Pvt. Ltd., during FY 2009-10 which is nothing, but, an accommodation entry, recorded the following reasons to reopen the assessment u/s 147:-

> " As per the information received from ADIT(Inv), Unit-5(3), New Delhi vide letter No.ADIT(Inv.)/Unit-5(3)/Asharam/2016-17/278 dated 27.03.2017, M/s GM Overseas has received credit of Rs.4,00,00,112/- from M/s Index Securities & Research Pvt. Ltd. During FY 2009-10 relevant to A.Y. 2010-11.
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> As per the information received, the statement of one Sh. Devidas Tikamdas Chattani alias Dev Kumar was recorded u/s 131A r.w.s. 131 of the I.T. Act, 1961 on 25th and 26th September 2015. He was one of the most confidant people of Asharam Bapu and on Asharam's instance he had conducted an audit of Cash loans account. Sh Devidas, while explaining the contents of the data identified the ledger bearing title "Bhagat" as that pertained to the funds managed by Shri Santlal Agarwal alias Bhagat amounting to Rs. 200 Crores.
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> On the basis of the information, a survey action was conducted on office premises of Shri Santlal Agarwal on 09.03.2016 including 5586, Lahori Gate, Naya Bazar, Delhi and 802, Arnbadeep Building, Connaught Place, Delhi. Sh. Santlal Agarwal was one of the directors in M/$ Jagat Agro Commodities Pvt. Ltd. And a partner in M/s Jagat Overseas. From the office premise of M/s Jagat Agro Commodities Pvt. Ltd at 802, Arnbadeep Building, Connaught Place, Delhi a part copy of account statement of M/s Index Securities and Research Pvt. Ltd was found and impounded. On perusal of the bank account statement it was observed that the account is credited mainly with cheque and transfers are through cheque or RTGS leaving a minimum balance.
>
> It was gathered that the DDIT (Inv.,) Unit-6(3), Delhi carried out search and seizure action at premises of M/s KBRL, During this operation it was found that M/s Index Securities & Research Pvt. Ltd has provided accommodation entry to KRBL Group of Companies. A survey u/s 133A of the IT Act, 1961 was also carried out the business premise of M/s Index Securities and Research Pvt. Ltd. Further search action was also conducted

at the residence of the directors of M/s Index Securities & Research Pvt. Ltd. During the search operation, statements of the Directors of M/s Index Securities and Research Pvt. Ltd namely Sh. Vinod Kumar Taneja and Smt. Chanchal Taneja were recorded on oath. They have in statement on oath admitted that it is Paper Company and doing no business in actual and is involved in providing loans to various companies. Shri Santlal Aggarwal and Shri Satish Pahwa are the only persons who run this company.

From the statement of Sh. Vinod Kumar Taneja and Chanchal Taneja, directors in M/s Index Securities & research Pvt. Ltd. it is clear that both of them did not have any knowledge about the financials of M/s Index Securities & Research Pvt. Ltd. They both have also accepted that the company is not doing any business activity in reality. It is observed that the bank accounts statement number 00000065056415724 in the name of M/s Index Securities & Research Pvt. Ltd, is immediately debited once an amount is credited leaving a minimum balance. Thus it is clear that the company is involved in providing accommodation entries to various beneficiaries.

In view of the above, M/s G M Overseas is one of the entity who has received credits amounting to Rs. 40000112/- during FY 2009-10 from the above mentioned account in the name of M/s Index Securities & Research Pvt. Ltd. and is one of the beneficiary of the accommodation entries from M/s Index securities and Research Pvt. Ltd. Thus it is clear that it has routed its unaccounted income through M/s Index Securities and Research Pvt. Ltd. Thus the amount of Rs.4,00,00,112/- credited in the account of M/s G M Overseas is the unaccounted income of the entity during FY 2009-10. The details of the amount credited in the account of M/s G M Overseas from the account of M/s Index Securities' and Research Pvt. Ltd. is as under:-

| S.No. | Date | In favour of | To Account No. | Dr. Amount (in Rs.) |
|---|---|---|---|---|
| 1. | 05/01/2010 | GM Overseas | RTGS | 25000056 |
| 2 | 11/01/2010 | GM Overseas | RTGS | 15000056 |
| | | TOTAL | | 40000112 |

Therefore, I have reasons to believe that the income of the assessee to the extent of Rs.4,00,00,112/- has escaped assessment for A.Y. 2010-11. Hence, it is a fit case for initiation of proceedings in terms of section 147 of the IT Act, 1961.

It is pertinent to mention that in the case of CIT v Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long

as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

*"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment.*

Furthermore, in the case of Jyoti Goyal vs ITO (ITA No. 1259/Del/2010), the Hon'ble ITAT Delhi held that

*"As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity of reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement with finding of the Ld CIT (A) that the reopening of assessment u/s 141 of the Act was valid."*

The live link between the material provided by the Investigation Wing and the reasons for belief that income has escaped assessment has been sufficiently demonstrated. Accordingly, necessary approval u/s 151 of the IT act, 1961 is solicited to issue notice u/s 148 of the IT act to re-open the assessment u/s 147 of the IT act, 1961."

2.1 The assessee asked for supply of the reasons which were provided to the assessee. Thereafter, the assessee filed objections to the re-opening which was disposed of by passing a speaking order. The AO, thereafter, issued statutory notices u/s 143(2). In response to the statutory notices issued by the AO, the AR of the assessee appeared from time to time and filed the requisite details.

3. During the course of assessment proceedings, the AO asked the assessee to substantiate with evidence to his satisfaction regarding the amount received from

M/s Index Securities and Research Pvt. Ltd. Rejecting the various explanations given by the assessee and observing that the assessee failed to substantiate with evidence to his satisfaction regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction, the AO, invoking the provisions of section 68 of the IT Act r.w.s 115BBE, made an addition of Rs. 4 crore to the total income of the assessee which was earlier determined at Rs.27,10,350/-. Accordingly, the AO determined the total income of the assessee at Rs.4,27,10,350/-.

4. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the ld.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings and also sustained the addition on merit.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> " 1. The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of section 147/148 of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.
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> 2. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings-initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without application of independent mind on the material, if any, provided by the Inv. Wing of the department. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.
>
> 3. The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the

sanction u/s 151 of IT Act as provided with the copy of the reason recorded shows mechanical satisfaction by the Pr CIT, New Delhi.

4. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings u/s 147 of the IT Act which is not properly initiated and therefore need be quashed as the appellants case is covered by proviso to section 147 of the IT Act and that being the case the AO has failed to give a finding as which material facts the appellant failed to disclose fully and truly during original proceedings and in the absence of any such finding, the initiation of reassessment proceedings and the impugned assessment order both are bad in law because such proceedings are as a result of change of mind by the successor incumbent on the same set of facts.

5. The Ld. CIT(A) on the facts and circumstances of the case has erred in upholding the validity of impugned assessment order passed u/s 143(3)/147 of the Act on the ground that the AO was not entitled to take cognizance of the material seized from the third party by invoking provisions of sec 147/148 of the Act ignoring the specific provision u/s 153C of the Act dealing with such material.

6. The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding the reassessment proceedings without confronting adverse material to the appellant and providing opportunity of persons whom statements were relied therefore action of the AO is in contravention of the principals of natural justice.

7. The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding the addition of Rs.4,00,00,000/- u/s 68 r.w.s 115BBE of the IT Act holding the unsecured loan as unexplained cash credit ignoring the fact that the assessee has discharged its initial onus u/s 68 of the IT Act explaining nature and source of the credits by filing requisite documents proving identity and creditworthiness of the lenders and also to establish genuineness of the transaction during assessment proceedings.

8. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."

6. The ld. counsel for the assessee, at the outset, submitted that the reopening of the concluded assessment has been undertaken u/s 147 of the Act without application of mind by the AO, much less, independent application of mind. Relying on various decisions, he submitted that when the loan amount consists of Rs.4 crores and bank charge was Rs.112/- debited in the account of the remitter M/s Index Securities & Research Pvt. Ltd., the AO has recorded the reason that the

assessee has accepted unsecured loan of Rs.4,00,00,112/-. Therefore, the above mistake of quantification makes the reassessment invalid. Relying on the following decisions, he submitted that incorrect quantification of income in the reason can be a valid ground for quashing of reassessment proceedings:-

(i) Shamshad Khan vs ACIT 395 ITR 265 (Del);

(ii) Pr CIT vs M/s SNG Developers Ltd, 404 ITR 312 (Del);

(iii) CIT vs Suren International Pvt Ltd., 357 ITR 24 (Del);

(iv) Pr. CIT vs. RMG Polyvinyl (I) Ltd (2017) 396 ITR 5 (Del);

(v) CIT vs. Atlas Cycle industries (1989) 180 ITR 319 (P&H);

(vi) Siemens Information System Ltd., vs. ACIT & Others (2007) 293 ITR 548 (Bom.);

(vii) Ankita A. Choksey vs. Income Tax Officer And Others (2019) 411 ITR 207 (Bom.);

(viii) DCIT vs M/s KLA Foods (India) Ltd and othrs ITA No.2846/Del/2015 dt: 08.04.2019;

(ix) M/s SPJ Hotels P Ltd ITA No.2857/Del/2017;

(x) M/s Superior Buildwell P Ltd ITA No.3301/Del/2017;

(xi) M/s Superior Technologies P Ltd ITA No.2269/Del/2017;

(xii) M/s Shiv Sai Infrastructure P Ltd ITA No.2527/Del/2017;

(xiii) ITO vs Randeep Investment (P) Ltd ITA No.4365 & 4005/Del/2015 dt: 26.03.2019; and

(xiv) Shree Balkrishan Aggarwal Glass Industries Ltd ITA No.5798/Del/2016 dt: 21.09.2020.

7. The ld. Counsel for the assessee submitted that the AO, in the reasons recorded omits to make any reference of return of income filed u/s 139(1) of the Act and also of the assessment completed u/s 143(3) at assessed income of Rs.27,10,350/- vide order dated 01.02.2013 by the ACIT, Circle-28, New Delhi. He submitted that it is a case of reopening of a completed assessment and the reassessment proceedings are initiated after expiry of four years from the end of the relevant assessment year. Therefore, it is a case where the first proviso to section 147 is clearly applicable, according to which, the reassessment proceedings could not be initiated unless the AO is satisfied that income has escaped assessment due to the reason of the failure of the assessee to disclose all material facts fully and truly and such disclosure was necessary for his assessment. Referring to the reasons recorded, copy of which is placed at pages 42-45 of the paper book, he submitted that a perusal of the reasons would show that there is not even a whisper of such failure attributable to the assessee. He submitted that in the absence of any allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, the AO has no jurisdiction to reopen the assessment after expiry of four years. For the above proposition, the ld. Counsel relied on the following decisions:-

(i) CIT vs. Viniyas Finance & Investment Pvt. Ltd., ITA No.271/2012 (Del), order dated 11.02.2013;

(ii) CIT vs DCM Ltd., 24 DTR 72 (Del);

(iii) Haryana Acrylic Manufacturing Co. vs. CIT and Anr., 308 ITR 38;

(iv) Wel Intertrade (P) Ltd. & Anr. Vs. ITO, 308 ITR 22 (Del);

(v) CIT vs. Purolator India Ltd., 343 ITR 0155 (Del); BLB Limited vs. ACIT, 343 ITR 0129 (Del);

(vi) JSRS Udyog Limited & Another vs. ITO, 313 ITR 321 (Del); and

(vii) Atma Ram Properties Pvt. Ltd. Vs. DCIT, 203 Taxman 408 (Del).

8. Referring to the decision of the Hon'ble Supreme Court in the case of NDTV vs. DCIT, reported in 424 ITR 607, he submitted that the Hon'ble Supreme Court in the said decision has quashed the reassessment proceedings for not mentioning the first proviso in the reasons recorded. He submitted that facts of the instant case are identical to the facts of the cases decided by the Hon'ble Delhi High Court and the Hon'ble Apex Court. Therefore, on this count itself the reassessment proceedings are held to be *void ab initio*.

9. The ld. Counsel for the assessee, in his another plank of argument, submitted that a perusal of the reasons recorded would show that the AO does not dispute the fact that the transaction of loan of Rs.4,00,00,112/- was part of the disclosure made in the return of income in the annexure to the tax audit report at page 26. It is not, therefore, disputed that the assessment has been completed after considering the

material available in the return of income. He submitted that during the course of original assessment proceedings, confirmation of the loan along with supporting evidence was provided vide letters dated 11.10.2012 and 29.10.2012. The AO did not look into the assessment records which he was supposed to do as per the requirement of first proviso to section 147 and also Explanation 2(c) to section 147. He submitted that even if it is assumed that confirmation from ISRPL was not available in assessment records and the Department feels that this enquiry was not made, the only course available with the Department was to invoke revisionary jurisdiction u/s 263 of the Act and not under section 147 of the Act. He submitted that the absence of such action by the Department shows that the information provided in the course of original proceedings were adequate and assessment proceedings were completed after due enquiry. In such a case, the action u/s 148 could not have been taken. For the above proposition, he relied on the decisions of the Hon'ble Delhi High Court in the case of Dushyant Kumar Jain vs. DCIT, reported in 381 ITR 428 and CIT vs. Usha International Ltd., 348 ITR 485. He also relied on the decision of the coordinate bench of the Tribunal in the case of M/s AST Pipes Pvt. Ltd., vide ITA NO.8312/Del/2019, order dated 27th October, 2020.

10. The ld. Counsel for the assessee submitted that the assessee, during the course of assessment proceedings has requested the AO, vide letter dated 20th December, 2017, copy of which is placed at pages 61 and 62 for providing opportunity of cross-examination of persons whose statements are relied. Similar

request was also made while filing the objection to notice issued u/s 148. However, the AO, while disposing of the objection, vide order dated 17th August, 2017 and also during passing of the assessment has not allowed such cross-examination of the persons whose statements were the basis for making the addition. Relying on the following decisions, he submitted that when the AO proceeded with the assessment taking adverse view of the material which remained unconfronted with and without providing opportunity of cross-examination of the persons making statements such additions cannot be sustained:-

(i) Andaman Timber Industries vs CCE 281 CTR 241 (SC);

(ii) Kishinchand Chellaram v. CTT [1980] 125 ITR 713 (SC);

(iii) CIT v. Ashwani Gupta [2010] 322 ITR 396 (Delhi);

(iv) CIT vs SMC Share Brokers Ltd 288 ITR 0345 (Del);

(v) Swadeshi Cotton Mills Company Ltd. vs UOI 51 ITC 210 (SC);

(vi) Tin Box Company vs CIT 116,Taxman 419 (SC);

(vii) AluDwyandra Kumar Bhattacharya vs Supdt. Of Income Tax 1990 78 STC (393); &

(viii) Pr CIT vs Best Infrastructure (India) Pvt Ltd in ITA No.13,11,12,20,14,15,16,17,18, 19,21 & 22/2017 dated 01.08.2017 (Del).

11. So far as the merit of the addition is concerned, he submitted that the assessee, during the course of assessment proceedings has filed various documents substantiating the identity and credit worthiness of the loan creditor and

genuineness of the transaction. The assessee has accepted the loan amount of Rs. 4 crores in two tranches i.e., Rs.2,50,00,000/- and Rs.1,50,00,000/- on 05.01.2010 and 11.01.2011 respectively and repaid the entire loan on 18.01.2010 by payng interest of Rs.1,79,166/- after deducting TDS of Rs.17,917/- u/s 194A of the Act. The assessee had filed the confirmation of loan of ISRPL, Copy of the ITR of the above lender entity for AY 2010-11, Copy of PAN, Bank statement of the relevant period, Master Data from MCA Site and Form 16A issued as certificate of deduction of TDS, etc. Referring to the decision of the Hon'ble Delhi High Court in the case of Director of Income-tax vs. Modern Charitable Foundation, 335 ITR 105, and the decision of Hon'ble Mumbai High Court in the case of Pr.CIT Vs Skylark Build 2018-TIOL-2323-HC-MUM, he submitted it has been held in the above decisions that 'when unsecured loans were paid back even in subsequent years, it shows that these were genuine loans taken by the assessee. Relying on various other decisions, he submitted that when the Department has accepted the factum of repayment, the additions under section 68 is not sustainable in law. For the above proposition, he relied on the decisions of (i) the Hon'ble Gujarat High Court in the case of CIT vs. Ayachi Chandrasekhar Narsangji, 42 Taxmann.com 251; and CIT vs. Mahavir Crimpers, 95 Taxman.com 323; (ii) the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Karaj Singh (2011) 15 taxmann.com 70 (P&H); and (iii) the decision of the Hon'ble Bombay High Court in the case of Panna Devi Chowdhary vs. CIT, 208 ITR 849 (Bom.).

12. He submitted that the AO should have enquired from the AO of the loan creditor as to the genuineness of the transaction as to whether the loan creditor's AO has accepted the loan transactions as genuine or not. The AO, in the instant case, without doing this exercise made the addition u/s 68 r.w.s. 115 BBE of the Act which is not justified. Referring to the decision of the Hon'ble Calcutta High Court in the case of CIT Vs Dataware Pvt Ltd., ITA 263 of 2011 ldated 21/09/2011, he drew the attention of the Bench to the following observations:-

> ".…….So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established."

13. Referring to various other decisions, the ld. Counsel for the assessee submitted that when the the assessee has fulfilled all the three ingredients i.e., identity and creditworthiness of the loan creditors and the genuineness of the transaction by producing documentary evidence on record such as Copy of A/c of the lender for the succeeding financial year showing repayment of loan through banking channel and the TDS duly deducted on the interest paid on the unsecured loan and thus the unsecured loan stands explained. For the above proposition he relied on the following decisions:-

(i) Subash Dali Mill vs. CIT 257 ITR 115 ITAT Agra Bench;

(ii)CITVs. Metachem Industries (2000) 245 ITR 160 (All);

(iii) CIT Vs Avant Grade Carpet Ltd. (2015) 54 taxman.com 216 (All);

(iv) Pankaj Hospital Ltd. vs. C.I.T Writ Tax No. 83 of 2014- All. High Court;

(v) Prem Casting Pvt Ltd. vs C.I.T —ITA No. 34 of 2016 - All. High Court;

(vi) M/s Vimal Organics Ltd. vs CIT - ITA No. 22 of 2015 - All. High Court;

(vii) CIT Vs. Shiv Dhooti Pearls & Inv. Ltd. (2015) 64 Taxmann 329 (Del)

14. Relying on various other decisions, he submitted that when the assessee having shown that the creditor had sufficient balance in his bank account immediately before advancing of loan to the assessee and furnished all material particulars showing credit worthiness of the creditor and the genuineness of the transaction, tthe action of the appellate authorities upholding the similar addition were faulted with and it was accordingly held that no substantial question of law arose. He submitted that under the facts and circumstances of the case the reassessment proceedings are invalid and the addition sustained by the AO and the CIT(A) also deserves to be deleted on merit.

15. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that the assessee, in the instant case, has failed to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditors and the genuineness of the transaction, therefore, the AO was fully justified in making the addition and the ld.CIT(A) was fully justified in sustaining the addition. So far as the validity of the reassessment proceedings are concerned, he submitted that due procedure has been followed for

reopening of the case and, therefore, the same being in order has to be upheld and the grounds raised by the assessee on this issue are also required to be dismissed.

16. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has filed the original return of income on 27th September, 2010 declaring an income of Rs.25,85,610/-. The order u/s 143(3) was passed on 01.02.2013 determining the total income of the assessee at Rs.27,10,350/- and the assessment year involved is 2010-11. We find, the AO in the instant case, reopened the assessment on the basis of the information received from the Investigation Wing, the reasons of which have already been reproduced in the preceding paragraph. A perusal of the notice issued u/s 142(1) by the AO vide notice dated 16.10.2012 during the course of original assessment proceedings shows that the AO, in question No.1 has asked the assesee to furnish the details of unsecured loans taken from others worth Rs.3.09 crores and also to furnish as to whether these are related party or not. Similarly, the AO, in the notice issued u/s 142(1), vide noticed dated 28th February, 2012 has also asked the assessee to furnish the details of unsecured loan. We find, the assessee, during the course of original assessment proceedings, vide various replies has given, the details of such unsecured loan. A perusal of the reasons recorded show that there is not even a whisper in the reasons recorded of any failure on the part of the assessee to

disclose fully and truly all material facts necessary for completion of the assessment. As per first proviso to section 147 where an assessment u/s 143(3) has been made for the relevant assessment year, no action shall be taken u/s 147 of the Act after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year for the reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Since the original assessment has been completed u/s 143(3) and the reopening has been made after a period of four years from the end of the relevant assessment year and in the reasons recorded there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, therefore, we are of the considered opinion that the reassessment proceedings initiated by the AO and upheld by the CIT(A) are not in accordance with the law.

16.1 We find, the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (supra) has observed as under:-

> "19. Examining the proviso [set out above], we find that no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year if the following conditions are satisfied:
>
> (a) an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year; and
>
> (b) unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee:

(i) to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148; or

(ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year. Condition (a) is admittedly satisfied inasmuch as the original assessment was completed under section 143(3) of the said Act. Condition (b) deals with a special kind of escapement of income chargeable to tax. The escapement must arise out of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. This is clearly not the case here because the petitioner did file the return. Since there was no failure to make the return, the escapement of income cannot be attributed to such failure. This leaves us with the escapement of income chargeable to tax which arises out of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. If it is also found that the petitioner had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 could have been taken after the four year period indicated above. So, the key question is whether or not the petitioner had made a full and true disclosure of all material facts.

20. 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 (P.) Ltd.'s we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania 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 viewpoint, we hold that the notice dated 29-3-2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 2-3-2005

> are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

17. The various other decisions relied on by the ld. Counsel for the assessee also support his case to the proposition that in absence of any allegation of failure on the part of the assessee to disclose fully and truly all material facts necessary for the completion of the assessment, no reassessment proceedings can be initiated after a period of four years from the end of the relevant assessment year when the original assessment has been completed u/s 143(3) of the Act. We, therefore, hold that the re-assessment proceedings initiated in the instant case by the AO is not in accordance with the law and, therefore, we quash the same. Since the assessee succeeds on this legal ground, the various other grounds challenging the validity of reassessment proceedings as well as the addition on merit become academic in nature and, therefore, the same are not being adjudicated.

18. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 21.03.2022.

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| Sd/- | Sd/- |
| (N.K. CHOUDHRY)<br>JUDICIAL MEMBER | (R.K. PANDA)<br>ACCOUNTANT MEMBER |

Dated: 21st March, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi