

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2698/DEL/2018  
Assessment Year 2010-11

Captive Commerce Pvt. Ltd., 4735/11, 22 Ansari Road, Darya Ganj, New Delhi.	Vs.	ACIT Central Circle-26 New Delhi.
TAN/PAN: AABCC0820A		
(Appellant)		(Respondent)

Appellant by:	Shri Ashu Goel, CA		
Respondent by:	Shri Vivek Kumar Upadhyay, Sr.DR		
Date of hearing:	31	07	2023
Date of pronouncement:	09	08	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-XXVI, New Delhi ('CIT(A)' in short) dated 26.02.2018 arising from the assessment order dated 09.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. As per the grounds of appeal, the assessee has challenged the assumption of jurisdiction under Section 147 of the Act as well as confirming notional income of Rs.41,48,008/- on account of client code modification.

3. We have heard the parties in length and perused the first

appeal order and re-assessment order. The material referred and relied upon in the course of hearing has also been taken into consideration.

4. Since the assessee has raised the legal question of usurpation of jurisdiction by the Assessing Officer to reopen the completed assessment under Section 143(3) of the Act in the instant case, it would be pertinent to deal with the aforesaid question at the outset as it goes to the root of the matter. The Id. counsel for the assessee submits at the outset that Assessing Officer has wrongly assumed jurisdiction by issuing notice under Section 148 of the Act without authority of law. The Id. counsel further submits that the ingredients of Section 147/148 of the Act are not fulfilled in the instant case to enable the Assessing Officer to exercise jurisdiction and to proceed with the re-assessment proceedings. The Id. counsel thereafter submits that the assessment in the instant case was completed under Section 143(3) of the Act but the case was however reopened albeit within four years from the end of the relevant Assessment Year 2010-11 by issuing notice dated 30.12.2015. This notwithstanding without fulfillment of the indispensable requirement of formation of 'reason to believe' that chargeable income has escaped assessment, the issuance of notice under Section 148 r.w. Section 147 is not permissible in law.

5. Adverting to the reasons recorded by the Assessing Officer under Section 148(2) of the Act, the Id. counsel submits that the completed assessment in the instant case has been reopened on vague and non descript reasons which is not permissible in law.

6. The reasons recorded for conferment of jurisdiction to reassess the completed assessment in terms of Section 148(2) of the Act is reproduced hereunder for ready reference.

“Reasons for issue of notice us 148 in the case of M/s. Captive Commerce Pvt. Ltd., PAN AABCC0820A for the assessment year 2010-11

*Return of income in this case was filed on 24.09.2010 declaring income of Rs.2,89,349/-. The case was selected for scrutiny and assessed u/s. 143(3) at returned income of Rs. 2,89,349/-.*

*2. Subsequently, information was gathered by the Department which revealed that some share brokers are indulged in the activity of creating fictitious profits and loss by misusing the client code modification facility in F & O segment on National Stock Exchange (NSE) during March 2010. On investigation and analysis of client code modification (CCM) date and transactions pertaining to F.Y. 2009-10 obtained from the NSE by the Department, it has been established that certain brokers had misused client code modification facility and were indulged in transferring fictitious non-genuine losses and profits to various clients/beneficiaries to reduce their tax liability whereas fictitious profits were provided with a view to cover up undisclosed income or to set off huge losses.*

*3. Further on spot verification W/s 131(1) was carried out by the Department in case of some of these brokers allegedly transferring fictitious losses/profits and these brokers confirmed having misused CM facility to create bogus losses/profits for their clients and in return received commission at the rate varying from 0.5% to .2% on the amount of losses/profits from such clients. These brokers thereafter submitted revised computation of their income for F.Y. 2009-10 relevant to A.Y. 2010-11 declaring the commission income earned by them and also paid taxes thereof. Thereafter, enquiries were also conducted in cases of few beneficiaries/clients and these clients also admitted to have obtained fictitious losses/profits from these brokers and accordingly revised their computation of income and paid taxes for A. Y.2010-11.*

*4. On perusal of the information containing names / particulars of brokers and clients/beneficiaries indulged in the activity of carrying out non-genuine CM modification during the F.Y. 2009-10 it is found that the assessee, Ms Captive Commerce Pvt. Ltd. during the said financial year relevant to A.Y. 2010-11 has also obtained fictitious non-genuine losses to the tune of Rs.47,38,115/- for reducing its tax liability.*

*5. In view of these facts and material available on record, I have reason to believe that in this case income of Rs. 47,38,115/- which was chargeable to tax has escaped assessment year 2010-11 within the meaning of provisions of section 147 of the IT Act, 1961 and therefore the income of the assessee company for the A.Y. 2010-11 needs to be*

*assessed / reassessed as per the provisions of section 147 of the IT Act, 1961.*

*Accordingly, notice u/s. 148 of the Income Tax Act, 1961 is being issued in this case for AY 2010-11.”*

7. A bare perusal of the reasons recorded suggests that the Assessing Officer has propelled himself to reopen the completed assessment on the grounds of doubts on the correctness of losses claimed in the transactions carried on the platform of the National Stock Exchange. At the first glance of the reasons recorded (supra), it can be seen that the Assessing Officer has merely made averments towards the *modus operandi* used by the different brokers for transfer of profit and loss of one constituent to another by modification of the client code but however, there is no reference to any relevant material which can give rise to *prima facie* belief of an escapement resulted to the Revenue. There is no iota of reference to any transaction wise detail where the client code of the assessee is undergone any modifications causing transfer of profits from assessee to any other party/constituent. The name of the broker facilitating such alleged client code modification is also not mentioned in the reasons recorded. It is a classic case of assumption of jurisdiction under Section 147 by recording ‘believe’ based extremely vague and non-descript reasons. No reference to any material providing foundation for holding belief is available.

8. Needless to say, the allegation towards escapement of income must be backed by expression ‘reasons to believe’ and such belief requires to be based on some credible or relevant material. A completed assessment cannot be disturbed based on

fancy or whimsical grounds or on the basis of 'reason to suspect' towards alleged escapement without giving reference to any relevant material which may give rise to a *bona fide* believe towards escapement to a reasonable person instructed in law. It is a case where one cannot decipher the reasons based on any objective material or relevant which may give rise to believe towards escapement. There is no clarity on the nature of information received by the Assessing Officer. The Assessing Officer is expected to exercise jurisdiction under Section 147 of the Act with scrupulous care and based on material which are clear and beyond reasonable doubt. The reasons recorded in the instant case are in complete disarray. Mere reiteration of statutory language employed in Section 147 of the Act that the Assessing Officer has 'reason to believe' towards escapement of income is not, by itself, adequate. The instances of transactions resulting in loss/profit to the assessee on account of client code modification do not feature in the reasons at all. The reasons recorded appears to be a token exercise for assumption of jurisdiction and without compliance of jurisdictional parameters. The Assessing Officer in the instant case has proceeded on a hypothesis flowing from a generic information rendering the whole exercise to be arbitrary and unsustainable in law.

9. The believe towards escapement in the instant case is only pretense and a mere doubt and suspicion towards probable escapement though worded as 'reasonable to believe'. The Hon'ble Supreme Court in *Lakhmani Mewal Das (1976) 103 ITR 437 (SC)* has underscored that the word of the statute 'reason to

believe' are not 'reason to suspect'. The vague feeling or suspicion of the Assessing Officer towards possible escapement would not permit to reopen a completed assessment in defiance of statutory requirement of substantial nature. The notice issued under Section 148(1) is thus *ultra vires* the provision of Section 147 of the Act. Therefore, we see considerable force in the plea of the assessee for non maintainability of re-assessment order passed in pursuance of a notice under Section 148 of the Act which is vitiated in law.

10. Hence, the re-assessment notice under Section 148 giving rise to the jurisdiction under Section 147 of the Act is quashed and consequently the re-assessment order appeal against is also similarly quashed and set aside.

11. The objection on assumption of jurisdiction under Section 147 of the Act thus succeeds. Having held that the re-assessment order is bad in law, we do not see any warrant to look into other grounds of the appeal.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 09/08/2023**

**Sd/-**

**[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER**

DATED: /08/2023

*Prabhat*

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**