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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 12.11.2024

+ **ITA 222/2022**

PR. COMMISSIONER OF INCOME TAX -7Appellant

Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Monica Benjamin,
Ms Priya Sarkar and Ms Pratistha
Chaudhary, Advocates.

versus

SUNLIGHT TOUR AND TRAVELS PVT. LTD.Respondent

Through: Ms Kavita Jha, Sr. Advocate with Mr
Vaibhav Kulkarni and Mr Udit
Naresh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J.

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act 1961 (hereafter *the Act*) impugning an order dated 15.11.2021 passed by the learned Income Tax Appellate Tribunal [ITAT] in ITA No. 5739/DEL/2016 captioned *The Income-tax Officer Ward 24(3) New Delhi v. M/s Sunlight Tour & Travels Pvt. Limited.* The Revenue had preferred the said appeal against the order dated 12.08.2016 passed by the Commissioner of Income Tax (Appeals) [hereafter *the CIT(A)*] partly allowing the Assessee's appeal against an assessment order dated 26.03.2015 in respect of Assessment Year (AY) 2007-08, passed under



Section 147 of the Act.

2. The assessment of the income chargeable to tax in the previous year relevant to AY 2007-08 was sought to be reopened by issuance of notice under Section 148 of the Act. The Assessing Officer (AO) found that there were reasons to believe that the income of the Assessee for the relevant year had escaped assessment. The relevant extracts of the reasons recorded by the AO for reopening the assessment are set out below.

“Reasons for issue of notice u/s 148 of the I.T.Act, 1961 in the case of M/s Sunlight Tour & Travels Pvt. Ltd. for the A.Y. 2007-08-reg.

Information about entry operators and their beneficiaries of Delhi has been received from the office of the DGIT (Inv.) 3rd Floor, Scindia House, Ballard Estates, Mumbai vide letter F.No. DGIT(Inv.)/Information/PJ/2013-14/ dated 07.03.2014 and F.No. Addl. DIT(Inv.)/U-IV/u/s 148/2013-14/335 dated 10.03.2014 along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries the Addl. Directors Income Tax, Unit-VI of Investigation in their report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries, it is revealed from the list that the assessee company M/s Sunlight Tour & Travels Private Limited (termed as beneficiary) during the previous year 2006-07 relevant to A.Y 2007-08 had taken accommodation entries totaling Rs. 88,00,000/- from the persons/parties (termed as entry operators). This entry has been investigated by the Investigation Wing and found to be given as accommodation entry from entities operators and controlled by Praveen Kumar Jain. The details of which is mentioned below:

Beneficiary's Name	Amount	Entry Operator	Bank	Dated
M/s Sunlight Tour &	24,00,000	Vanguard Jewels Limited	United Bank of India	23.09.2006



Travels Private Limited				
M/s Sunlight Tour & Travels Private Limited	31,00,000	Alka Diamond Industries Limited	United Bank of India	14.09.2006
M/s Sunlight Tour & Travels Private Limited	33,00,000	Nakshatra Business Private Limited	United Bank of India	29.08.2006

TOTAL 88,00,000''

3. The Assessee had filed its return under Section 139 of the Act in the normal course which was picked up for scrutiny and an assessment order dated 29.05.2009 was framed under Section 143(3) of the Act determining the income of the Assessee at ₹2,09,361/-. However, in view of the information available with the AO, the said assessment was reopened for the reasons as briefly noted above.

4. The Assessee objected to the reopening of the assessment on the ground that the information on the basis of which assessment was reopened, is erroneous. The Assessee claimed that there was no such transaction, whereby the Assessee had received sum of ₹88,00,000/- from the entities, namely, M/s Vanguard Jewels Limited, M/s Alka Diamond Industries Limited, and M/s Nakshatra Business Private Limited as assumed by the learned AO. However, the Assessee's objections were not entertained.



5. During the assessment proceedings, the AO did not make any addition of an amount of ₹88,00,000/-. However, the AO noted that the balance sheet of the Assessee reflected an amount of ₹6,01,00,000/- as security premium. According to the AO, the Assessee has failed to justify the same or establish the genuineness of the said premium. Accordingly, the AO passed an assessment order dated 26.03.2015 under Section 147 read with Section 143(3) of the Act assessing the total income of the Assessee at ₹6,03,09,361/- which comprised of the income of ₹2,09,361/- as originally assessed and ₹6,01,00,000/- which was added under Section 68 of the Act.

6. The Assessee appealed the said decision before the learned CIT(A) on the ground that the AO had no jurisdiction to make any addition after finding that no addition could be made on account of the reasons, which had prompted the AO to reopen the assessment under Section 147 of the Act. The Assessee also challenged the addition made on merits.

7. The Assessee challenged the assessment order dated 26.03.2015 on the ground that the AO did not have the jurisdiction to proceed with the reassessment, and that the AO had not applied its mind to the material on record, which had no live nexus with the reason to believe that the Assessee's income had escaped assessment. As noted above, it was the Assessee's case that the alleged transactions on the basis of which notice under Section 148 of the Act was issued, were non-existent. The Assessee also challenged the merits of the addition and contested the AO's decision to make an addition of ₹6,01,00,000/- under Section 68 of the Act.

8. Whilst, the learned CIT(A) rejected the Assessee's challenge on the ground of the jurisdiction, it accepted that the addition of ₹6,01,00,000/-



under Section 68 of the Act was not sustainable.

9. The Revenue proceeded to file an appeal against the order dated 12.08.2016 passed by the learned CIT(A) before the learned ITAT. In the said appeal, the Assessee raised an additional ground for supporting the order dated 12.08.2016 passed by the learned CIT(A) by invoking Rule 27 of the Income Tax Appellate Tribunal Rules, 1963. The Assessee contended that since no addition had been made on account of the reasons on the basis of which the reopening of the assessment was sustained no other addition was permissible.

10. The learned ITAT following the decision of the Bombay High Court in *Commissioner of Income Tax v. Jet Airways (I.) Ltd.: (2011) 331 ITR 236* as well decision of this court in *Ranbaxy Laboratories Limited v. CIT: (2011) 336 ITR 136* accepted the aforesaid contention.

11. In the aforesaid context, the Revenue has projected the following questions for consideration of this Court:

“i. Whether on the facts and in law, the Hon'ble ITAT has erred in quashing the order passed by the assessing order passed by the Assessing Officer under Section 147/148 by relying on the judgement of the Hon'ble Delhi High Court in the case of CIT vs. Ranbaxy Laboratories 336 ITR 136 and not on merits of the case.

ii. Whether on the facts and in law, the Hon'ble ITAT has erred in deleting the addition of Rs. 6,01,00,000/- made by the Assessing Officer on account of unexplained share capital by treating as unexplained credit in the books of the Assessee within the meaning of Section 68 of the Income Tax Act, 1961?

iii. Whether on the facts and in law, the Hon'ble ITAT has erred in law in deciding the case without going into merits of the case?”



12. Mr Aseem Chawla, learned counsel appearing for the Revenue did not dispute that the issue involved is squarely covered by the earlier decisions of this Court in *Ranbaxy Laboratories Limited v. CIT (supra)*; *PCIT v. Jaguar Buildcon Pvt. Ltd. in ITA 756/2023 decided on 01.08.2024*; and a recent decision of this court in *The Principal Commissioner of Income Tax-1 v. Naveen Infradevelopers & Engineers Pvt. Limited, Neutral Citation No.: 2024:DHC:7997-DB*. He, however, submitted that in the case of *Principal Commissioner of Income Tax (Central)-3, New Delhi v. Jakhota Plastics Pvt. Ltd.: Order dated 22.01.2018 in ITA 727/2017*, this court had doubted the correctness of the decision in the case of *Commissioner of Income Tax v. Jet Airways (I) Ltd. (supra)* and the decision of this court in *Ranbaxy Laboratories Limited v. CIT (supra)*. He submitted that the court had observed that the narrow interpretation of Section 147 of the Act would undermine its essential object. However, the said appeal was disposed of on account of low tax effect.

13. In *ATS Infrastructure Ltd. v. Assistant Commissioner of Income Tax, Circle 1 (1) Delhi & Ors.: Neutral Citation No. 2024:DHC:5474-DB*, a coordinate bench of this court had noted the decision in the case of *Principal Commissioner of Income Tax vs. Jakhota Plastics Pvt. Ltd. (supra)*, and had concurred with the decision in *Ranbaxy Laboratories Limited v. CIT (supra)*, which is binding.

14. It is relevant to refer to the main provision of Section 147 of the Act as applicable at the material time. The same is set out below:

“147. Income escaping assessment.



If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income **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 this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 and 153 referred to as the relevant assessment year...”

[emphasis added]

15. In *Ranbaxy Laboratories Limited v. CIT* (*supra*), this court had noted and interpreted the import of the word “and also any other income chargeable to tax” and had concluded that the said word clearly indicate that other income could be brought to tax provided an addition was made on the ground on which the assessment was reopened. We consider it apposite to set out the following extracts of the decision in the case of *Ranbaxy Laboratories Limited v. CIT* (*supra*).

“17.Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment, and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words 'assess or reassess such income and also any other income chargeable to tax which has escaped assessment', the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not



used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in conjunction.. ..

Evidently, therefore, what Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess : (i). 'such income' ; and also (ii) 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. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from April 1, 1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter. ..

Section 147 has this effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of the formation of belief



and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

16. In *ATS Infrastructure Ltd. v. ACIT (supra)*, this court once again examined the interpretation of plain language of Section 147 of the Act as applicable at the material time and also noted the decision of the Bombay High Court in *CIT v. Jet Airways (I) Limited (supra)*. It would also be relevant to refer to the following extracts of the said decision:

"13. Similar contention was raised before the Division Bench of the Bombay High Court in the case of Jet Airways (2011) 331 ITR 236 (Bom). The court referred to the interpretation by the Rajasthan High Court in Ram Singh (2008) 306 ITR 343 (Raj) wherein it was observed as under (page 246):

"It is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147."

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his 'reason to believe', had escaped assessment for any



assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.”

14. The Bombay High Court also discussed the case of V. Jaganmohan Rao (1970) 75 ITR 373 (SC) and Sun Engineering (1992) 198 ITR 297 (SC) of the apex court. In the case of Sun Engineering (1992) 198 ITR 297 (SC), the issue before the Supreme Court was whether in the course of reassessment on an escaped item of income an assessee could seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of section 147, as they stood prior to the amendment on April 1, 1989. In this context, the Supreme Court held that the expression "escaped assessment" includes both "non- assessment" as well as "underassessment". The expression "assess" was defined as referring to a situation where the assessment is made for the first time under section 147, whereas "reassess" as referring to a situation where the assessment has already been made, but the Assessing Officer has reason to believe that there is underassessment on account of the existence of any of the grounds stipulated in section 147. The Supreme Court referred to the judgment in the case of V. Jaganmohan Rao (1970) 75 ITR 373 (SC) wherein it was held that the object of section 147 enures to the benefit of the Revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

15. In Dr. Devendra Gupta's case (supra), the learned Tribunal has relied upon the judgment of the Punjab and



Haryana High Court in Atlas Cycle Industries case (1989) 180 ITR 319 (P&H), and concluded that the basic condition is that the Assessing Officer has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found that the section puts no bar on the powers of the Assessing Officer to put to tax any other income chargeable to tax, which has escaped assessment, and which subsequently comes to his notice in the course of the proceedings, but then the prefixing words "and also" which succeeded "any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income". This expression was found to be making clear that existence of the income for which the Assessing Officer formed belief to have escaped assessment, is a precondition for including any other income chargeable to tax, escaping assessment, and coming to the notice of the Assessing Officer subsequently, in the course of the proceedings. Thus, unless and until such income, as giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject-matter of assessment, under section 147 "no other income" coming to the notice of the Assessing Officer, during the course of the proceedings, can be roped in.

16. In the case of C. J. International Hotels Ltd. (supra) before the Tribunal, the facts were almost similar as in the present case. The Tribunal relied upon the case of CIT v. Shri Ram Singh (2008) 306 ITR 343 (Raj) while holding that the Assessing Officer was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion that the income with respect to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction to put to tax any other income which subsequently came to his notice in the course of the proceedings, which were found by him, to have escaped assessment.



“18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (1) Limited (2011) 331 ITR 236 (Bom). 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". Sections 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 recompute the 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 the 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 the 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 afresh notice under section 148.”

17. The said view has also been consistently followed by this Court including recent decisions in *The Principal Commissioner of Income Tax-1*



v. Naveen Infradevelopers & Engineers Pvt. Ltd. (supra) and *PCIT v. Jaguar Buildcon Pvt. Limited (supra)*. We concur with the aforesaid view. It is well established that Section 147 of the Act enables the reopening of concluded assessments only in exceptional cases, where there the AO has reason to believe that Assessee's income for the relevant period has escaped assessment. It is trite law that concluded assessment should not be lightly interfered with. If the ground on which the concluded assessment is sought to be re-opened, cannot be sustained, there would be little rationale for expanding the reassessment proceedings. In our view, it would not be apposite to accept an expansive interpretation to the provision of Section 147 of the Act. Given that the nature of the proceedings is to unsettle concluded assessment, a strict interpretation of the plain language of Section 147 of the Act, is warranted. We respectfully concur the view of this court as articulated in *Ranbaxy Laboratories Limited v. CIT; ATS Infrastructure Ltd. v. ACIT*; and *PCIT v. Jaguar Buildcon Pvt. Limited (supra)*.

18. It is also relevant to note that various courts had taken a view that the reassessment proceedings were confined under Section 147 of the Act only to the issues (reasons to believe) on the basis of which the assessments were reopened. Thus, there was no scope for making any addition other than those which were circumscribed by the reasons to believe as recorded by the AO prior to the issuing a notice under Section 148 of the Act. However, this controversy was set at rest by introduction of Explanation 3 by virtue of the Finance Act, 2009 with retrospective effect from 01.04.1989. Explanation 3 to Section 147 as applicable at the material time reads as under:

“Explanation 3. – For the purpose of assessment or reassessment



under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.”

19. It is apparent from the above that the said explanation merely clarified that the AO would assess or reassess the income in respect of the issue which had escaped assessment and such other issue, which came to the notice subsequently. However, the said explanation does not control the import of the plain language of Section 147 of the Act. Explanation 3 to Section 147 of the Act, merely clarifies that the jurisdiction of the AO was not confined to assessing or reassessing of the income of an Assessee only in respect of the issue, which formed a part of the reasons recorded for reopening the assessment. The said explanation cannot be interpreted to mean that the AO could assess other incomes of the Assessee even in cases where no addition is made on account of the reasons for which reassessment was initiated.

20. The Bombay High Court in *Commissioner of Income Tax v. Jet Airways (I) Limited (supra)* had examined the import of Explanation 3 that was introduced to Section 147 of the Act by virtue of Finance (No.2) Act of 2009. It would also be relevant to refer to the following extracts of the said decision:

“22. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment of reassessment on grounds other than those on the basis of which a notice was issued under section 148. Setting out the reasons, for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the



ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance (No. 2) Act of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

[Emphasis added]

21. In view of the above, no substantial question of law arises in the present appeal. Therefore, the same is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 12, 2024

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[Click here to check corrigendum, if any](#)