

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 7646/DEL/2019  
[Assessment Year: 2010-11]

M/s Nishit Fincap P. Ltd. B-1/14, Rana Pratap Bagh, Delhi-110007	Income Tax Officer, Ward-18(3), C.R. Building, New Delhi-110002
<b>PAN-AAACN3687M</b>	
Appellant	Respondent

SA No.919/Del/2019  
(Arising out of ITA No. 7646/DEL/2019)  
[Assessment Year: 2010-11]

M/s Nishit Fincap P. Ltd. B-1/14, Rana Pratap Bagh, Delhi-110007	Income Tax Officer, Ward-18(3), C.R. Building, New Delhi-110002
<b>PAN-AAACN3687M</b>	
Appellant	Respondent

Appellant by	Shri S. K. Gupta, CA
Respondent by	Shri Rakhi Vimal, Sr. DR

<b>Date of Hearing</b>	<b>05.01.2021</b>
<b>Date of Pronouncement</b>	<b>05.01.2021</b>

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the CIT(A)-37, New Delhi, dated 31/07/2019, pertaining to Assessment Year 2010-11.

2. The grievance of the assessee reads as under:-

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.*

2. *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 after recording the fact that in the seized material from third party, the name of the appellant appears but the provision of sec 153C of the Act does not apply as the document seized don't belong to the appellant. The Ld CIT(A) has ignored the amendment to sec 153C(1) w.e.f 01.06.2015 where the seized documents from third party relating to the assessee rules out action u/s 147 of the Act.*

3. *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 th compliances the resultant reassessment proceedings are required to be set aside.*

3.1. *The action of the Ld. AO u/s 147/148 suffers from non-application of mind in as much as reason fails to bring on record essential details of so called accommodation entries accepted by appellant and in the absence of these details forming part of the reason, the reason recorded is vague and incoherent.*

3.2. *The action of the Ld. AO u/s 147/148 further suffers from non-application of mind as the income escaping assessment quantified by the AO at Rs.1,40,00,000/- is found to be incorrect which is evident from the addition of Rs.1,00,00,000/- made by the AO which show that the primary information/material not discussed in the reason, was deficient and action of the AO was based on mere suspicion and surmise which is evident form further enquiry made by the AO from investigation wing during assessment proceedings.*

3.3. *The Action of the Ld. AO u/s 147/148 also suffers from non-applictaion of mind and therefore need be quashed on the ground that the AO has relied on certain other material subsequently while disposing off objection of appellant, the material which is not discussed in the reason recorded. The AO is not entitled to support the reason recorded on the material which is not mention in the reason itself and in that case the reason suffers from either absence of relevant material at the time of recording of reason or reason not based on such material.*

3.4. *The action of the AO u/s 147/148 is not in accordance with the provisions of the Act as the action has been taken by the AO to verify information from investigation wing which is evident from the note of satisfaction given by Addl CIT/PrCIT u/s 151(1) of the Act.*

4. *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 C1T, Delhi-6, New Delhi and the Ld. C1T(A) have held that such mechanical satisfaction are procedural infirmity which does not invalidate the reassessment proceedings*

5. *The Ld. C1T(A) has erred both in law and circumstances of the cases in upholding the addition of Rs. 1,00,00,000/- u/s 68 of the IT Act holding the share capital respectively 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 tiling requisite documents proving identity and creditworthiness of the lenders and also to establish genuineness of the transaction during assessment proceedings.*

6. *The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding action of the AO, in making addition u/s 68 of the IT Act of Rs. 1,00,00,000/- IS erroneous as the evidences filed by the appellant in support of above cash credits have been rejected by the AO without conducting any enquiry thereon in discharge of onus shifting on the revenue after the initial onus discharged by the appellant.*

7. *The Ld. CIT(A) has erred both in law and circumstances of the cases in reliance on the material to take view adverse to the appellant without confronting the same and therefore action of the AO is in contravention of the principals of natural justice.*

8. *The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding action of the assessing officer in making an addition of Rs. 1,75,000/- being 1.75% of the alleged accommodation entries of Rs. 1,00,00,000/- is arbitrary and without basis and therefore need be quashed.*

3. Representatives of both the sides were heard at length, the case records carefully perused. We also had the benefit to go through the assessment records produced by the DR.

4. On perusal of the assessment records, we found that the reasons of reopening of assessment are materially different from the reasons extracted in the assessment order. In our considered view, when an assessment is reopened and reassessment order is framed, the entire quarrel revolves around the reasons recorded for reopening the assessment. Since, there is difference in the reasons recorded for reopening the assessment as found in the assessment records from the reasons extracted in the

assessment order, neither the assessee could defend its case properly nor the appellate authorities can adjudicate the matter.

5. The counsel referring to various judicial decisions vehemently stated that the assessment order framed u/s. 147 r.w.s. 143(3) of the Act should be quashed.

6. In our considered view all the decisions relied upon by the Counsel are facts specific. The peculiar facts of the case in hand is that there is material difference between the reasons extracted in the assessment order and the reasons recorded for reopening the assessment found in the assessment record. In the interest of the justice and fair play, we restore this issue to the files of the AO. The AO is directed to frame the assessment as per reasons recorded for reopening the assessment and supply the copy of the same reasons to the assessee, so that the assessee can defend itself.

7. With these directions, the legal grounds raised by the assessee are allowed for statistical purposes.

8. Coming to the merits of the appeal, we find that the appellant has furnished plethora of evidences which have not been considered by the AO. We find that there is not even a whisper of the evidences filed by the assessee during the course of the reassessment proceedings, neither in the assessment order nor in the order of the First Appellate Authority. Therefore, again in the interest of justice and fair play we restore this issue to the files of the AO. The AO is directed to examine and verify all the documentary evidences furnished by the assessee and decide the issue afresh after giving reasonable and sufficient opportunity of being heard. Needless to mention, the AO shall also supply

the materials collected during some search proceedings which have been used against the assessee and also any statement recorded behind the back of the assessee.

9. With these directions, the grounds on merit are also set-aside to the files of the AO and are allowed for statistical purposes.
10. In the result, the appeal of the assessee is allowed for statistical purposes.
11. Stay application is accordingly disposed of.

Decisions announced in the open court in the presence of representatives of both the sides on 05/01/2021.

Sd/-

**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

**Delhi;** Dated: 06/01/2021.

*Shekhar, S. P.S*

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi