

आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ब्रजेश कुमार सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

आअसं.1636 /दिल्ली/2023(नि.व. 2010-11)
ITA No.1636/DEL/2023 (A.Ys. 2010-11)

Lalit Kumar Modi,
A-1, Maharani Bagh, New Delhi 110065

PAN: AAPPM-4175-M

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Circle 11(1), CR Building, IP Estate,
New Delhi 110002

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by:

Shri Sachit Jolly, Sr. Advocate with
Ms. Sherry Goyal, S/Shri Viyusti Rawat &
Sarhak Abral, Advocates

प्रतिवादीद्वारा/ Respondent by:

Shri M.S Nethrapal, CIT-DR

सुनवाई की तिथि/ Date of hearing

: 10.12.2025

घोषणा की तिथि/ Date of pronouncement

: 06.03.2026

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-28, New Delhi (hereinafter referred to as 'the CIT(A)') dated 29.03.2023, for AY 2010-11.

2. Shri Sachit Jolly, Sr. Advocate appearing on behalf of the assessee submitted that the assessee in appeal has *inter alia* assailed validity of assessment proceedings-initiated u/s.143 r.w.s. 147 of the Income Tax Act,1961(hereinafter referred to as 'the Act'). Narrating facts of the case, the Id. Counsel submits that

the assessee filed his return of income for AY 2010-11 u/s. 139(1) of the Act on 28.07.2010 declaring income of Rs.54,81,699/-. The return of the assessee was selected for scrutiny assessment and notice u/s. 143(2) of the Act was issued to the assessee on 27.07.2011. During pendency of scrutiny assessment proceedings, the Assessing Officer (AO) issued notice u/s.148 of the Act on 29.03.2012. The reasons for reopening were provided to the assessee on 21.01.2013 (at page 6 of the paper book). Thereafter, show cause notice was issued by the AO on 25.02.2013. A copy of show cause notice is at page 7 and 8 of the paper book. The assessee filed objections against reopening of assessment on 22.03.2013. A copy of objections against reopening of the reassessment are at pages 9 to 31 of the paper book. The AO without deciding objections of the assessee proceeded to complete the assessment and vide order dated 28.03.2013 completed the assessment determining total income at Rs.20,12,27,840/-.

2.1. The Id. Counsel for the assessee made two-fold submissions challenging validity of the assessment order. The first contention raised by Shri Sachit Jolly is, that the AO has wrongly assumed jurisdiction u/s.147 of the Act for reopening assessment when the proceedings u/s. 143(3) of the Act were pending and ample time was available with the AO to complete regular assessment u/s.143(3) of the Act. To support his argument, the Id. Counsel placed reliance on the decision rendered in the case of *KLM Royal Dutch Airlines vs. Asst. DIT, 292 ITR 49 (Del.)*.

2.2. The second argument made by the Id. Counsel for the assessee challenging validity of assessment proceedings u/s.147 of the Act is that the assessment has been completed u/s.147 r.w.s. 143(3) of the Act without deciding objections of the assessee, as mandated by the Hon'ble Supreme Court of India in the case of *GKN*

Driveshafts (India) Ltd. reported as 259 ITR 19 (SC). The Id. Counsel submits that in First Appellate proceedings the assessee assailed validity of reopening of assessment, on the ground that objections against reopening were not decided by the AO. The CIT(A) sought remand report from the AO with regard to fate of assessee's objections against reopening of assessment. The AO in remand report admitted that no document is available with the office which could establish whether the objections were disposed or not by the AO. The above admission made by the AO clearly establishes that the assessment u/s.147 r.w.s. 143(3) of the Act was completed without following due procedure as laid down by the Hon'ble Apex Court. The CIT(A) thereafter, to cover up fault of the AO and in order to justify validity of assessment order held that the assessment order was passed u/s.143(3) of the Act and the contention of the assessee that the proceedings were initiated u/s. 148 of the Act is unfounded and baseless. The Id. Counsel submitted that above findings of the CIT(A) are contrary to the documents and facts on record. Referring to the Remand Report (supra), the Id. Counsel submits that nowhere in the remand report, the AO has held that the assessment was made u/s.143(3) of the Act, hence, there was no requirement for deciding objections of the assessee against reopening of assessment. The Id. Counsel submits that once it is proved that the assessment has been framed without deciding objections of the assessee against reopening of assessment, the assessment is liable to be quashed. In support of his submissions, he placed reliance on decision of the Tribunal in the case of Anita Jha vs. DCIT, ITA No. 2344/Del/2024 for AY 2015-16, decided on 27.06.2025. He thus prayed for quashing the assessment order.

3. On merits of the additions, the Id. Counsel submits that the AO has made addition primarily on three counts i.e.

(i) Disallowance of unexplained expenditure by credit cards	Rs.4,24,83,676/-
(ii) Disallowance on account of lease rental and fuel expenses of private jet	Rs.9,65,61,352/-
(iii) Liability of Golden Wings Pvt. Ltd.	Rs.5,66,91,370/-

3.1. The Id. Counsel for the assessee submits that in so far as addition on account of unexplained expenditure by credit cards is concerned, an identical issue was decided by the Tribunal against the assessee, in assessee's own case for AY 2008-09 in ITA 8466/Del/2019 vide order dated 06.11.2024. With regard to disallowance of Rs.9,65,61,352/- and liabilities of Golden Wings P. Ltd. Rs.5,66,91,370/- both these issues were decided in favour of the assessee by Mumbai Bench of the Tribunal in cross appeals in the case of Golden Wings P. Ltd. in ITA No. 5979/Mum/2014 and 6228/Mum/2014 decided on 07.12.2017. He further contended that no such disallowance/addition was made by the AO from AY 2012-13 onwards in the hands of the assessee.

4. Per contra, Shri M.S Nethrapal, representing the department vehemently defended the impugned order and filed detailed written submissions. The relevant extract of the written submissions filed on behalf of the Department are reproduced herein below:-

"2. Legal Submission It is the humble submission of the Revenue that the notice u/s 148 is valid in law. The Income Tax Act provides for multiple streams of assessment which can exist simultaneously and subsequently merge into a single order u/s 143(3). The mere pendency of proceedings u/s 143(2) does not fetter the powers of the AO to initiate proceedings u/s 147/148 if the ingredients of escapement of income are satisfied.

3. Judicial Precedent: DCIT v. C. Gangadhara Murthy (ITAT Bengaluru) Reliance is placed on the recent judgment of the Coordinate Bench in DCIT v. C. Gangadhara Murthy [2022] 141 taxmann.com 330 (Bengaluru - Trib.), where the Tribunal decided this exact issue in favour of the Revenue.

The Hon'ble Tribunal held that notice under section 148 can be issued by the Assessing Officer even if the time limit for issuance of notice under section 143(2) has not expired or proceedings are pending.

4. The Doctrine of "Merging Streams" of Assessment The Tribunal in the cited case clarified that the statute provides for the commencement of assessment proceedings in at least three ways. Crucially, the Tribunal held:

"They can merge into each other but they do not cancel each other. Ultimate object is to make assessment of correct income and, therefore, Legislature has thought it fit to consider commencement of assessment or reassessment proceedings in at least three streams which can subsequently merge into one, if they are pending at the same time."

It was further held that these proceedings "will ultimately result in an order under section 143(3)."

Therefore, the fact that the AO passed a final order on 28.03.2013 (merging the findings) is procedurally correct.

5. The "Two Options" Available to the AO The Tribunal explicitly analyzed the scenario identical to the present case—where a return is filed and notice u/s 143(2) is issued—and held that the AO is not barred from issuing 148. The order states:

"(i) Where return of income is filed... but notice under section 143(2) is issued. If Assessing Officer still finds escapement of income then he has two options. He can cover such escaped income in the proceedings initiated under section 143(2) or he can initiate proceedings under section 147 read with Explanation 2(b) as assessment is not complete and there is a case of deemed escapement of income."

Thus, the AO exercised his valid statutory option to initiate proceedings u/s 147 upon receipt of investigation material, despite the prior issuance of notice u/s 143(2) on 27.07.2011.

6. Applicability of Explanation 2(b) to Section 147 The Assessee's contention that Section 147 cannot apply because the assessment was "pending" is incorrect. The Tribunal held that such arguments would add a condition to Explanation 2(b) that was not inserted by the Legislature. The order clarifies:

"The Assessing Officer has only to show that there is a case of under assessment as mentioned in either of the three clauses to Explanation 2 to section 147."

"Clause (b) to Explanation 2... clearly provides that where assessment is not completed, still there could be a case of deemed escapement of income and notice under section 148(1) can be issued irrespective of fact whether... assessment proceedings by way of issuance of notice under section 143(2) are concluded or not".

Hon'ble CIT-Appeals discussed the jurisdictional issue in detail in para 5.2, 5.3,5.4 and para 5.5 wherein clearly the jurisdictional objection raised by the assessee is disposed off."

4.1. On merits of the addition, the Id. DR submits that the issue of addition in respect of unexplained expenditure by credit cards, has been decided in favour of the Department by Coordinate Bench of the Tribunal in assessee's own case for AY 2008-09. He placed reliance on the order of Tribunal in ITA No. 8466/Del/2019 (supra).

Findings: -

5. We have heard the submissions made by rival sides and have examined the orders of the authorities below. We have also considered the written submissions filed by the Id. DR, documents and decisions referred by Id. Counsel for the assessee during the course submissions.

6. In ground no. 2 of appeal, the assessee has assailed validity of assessment order purportedly passed u/s.143(3) of the Act. A perusal of the assessment order dated 28.03.2013 reveals that though in cause title of the assessment order it has been mentioned that the assessment order has been passed u/s.143(3) of the Act, but in para 2 of the assessment order, the AO has mentioned that the notice u/s.147 of the Act was issued and served on the assessee on 29.03.2012. The said notice is at page no. 5 of the paper book. If the assessment order is passed u/s.143(3) of the Act as held by the CIT(A), there was no need for the AO to mention about issuance of notice u/s.148 of the Act in the assessment order. This clearly

establishes that during the pendency of scrutiny assessment proceedings u/s.143(3) of the Act, the AO has initiated reassessment proceedings u/s. 147/148 of the Act. Thereafter, the AO provided reasons for reopening the assessment to the assessee. The reasons for reopening the assessment for AY 2010-11 are reproduced herein below:-

Annexure-"A"

Mr. Lalit Kumar Modi
A.Y. 2010-11

Reasons for notice u/s 148 of the IT Act, 1961

On the basis of information possessed with the Income Tax Department it has been observed that:

1. From the survey report received from the Mumbai, Income Tax Department it has been observed that the assessee has entered in the transaction of many credit cards details as provided below in foreign currency during the year under consideration which needs to be scrutinized.

S. No.	Credit Card No.	Amounts (US \$)
i)	3745-880618-05000	372312.55
ii)	3745-880618-03047	1386.39
iii)	3745-880618-07014	163053.10
iv)	3745-880618-07022	74812.11
v)	3745-880618-01116	17423.80
vi)	3745-880618-01124	563.23
vii)	4128-0025-4113-1460	5626.69
viii)	3745-880618-05000	124000.00
	Total	759177.87
S. No.	Credit Card No.	Amount (UK Pound)
i)	3742-884145-96006	2639.22
ii)	3742-884145-94019	2303.28
iii)	3742-884145-92021	190.65
iv)	3742-884145-96048	2729.50
v)	3742-884145-94050	1026.28
	Total	8888.93

Based on the above facts, I have reason to believe that the income of the assessee chargeable to tax has escaped assessment because of the failure on part of the assessee to disclose its income fully and truly.

Dated: - 29.03.2012

(Gargi Sharma Goel)
Dy. Commissioner of Income Tax,
Circle 11(1), New Delhi.

AO

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7. A perusal of the assessment order would show that the AO has made addition inter alia on account of purchases made by the assessee using the credit cards and the credit card numbers mentioned in the assessment order and the amount mentioned against each credit card is the same as is recorded in the reasons for reopening. This clearly shows that the assessment order passed by the assessee has roots in the reasons recorded for reopening the assessment. The assessee filed objections against reopening of assessment on 22.03.2013. The AO without deciding objections of the assessee passed the assessment order dated 28.03.2013. The AO in remand proceedings before the CIT(A) has admitted the fact that the objections were not disposed of by the AO. The relevant extract of the remand report is reproduced herein below:-

“6. Aggrieved with the order passed by the AO, the assessee filed an appeal before the Ld. CIT(A)-28, New Delhi. The Ld. CIT(A)-28, New Delhi vide its letter dated 07.06.2022 has directed to submit the specific and detailed comments on the ground No. 1 & 2 as well as the merit under Rule 46A:-

Grounds of Appeal

a) 1 & 2- Reassessment proceedings under section 147/148 of the Act were initiated by the Assessing Officer vide notice dated 27.03.2012. Further, prior to notice under section 148, the appellant had already been received notice dated 27.07.2011 issued under section 143(2) of the Act which was duly complied with by the appellant.

The reason recorded was furnished to the appellant on 21.03.2013 and show cause notice u/s 144 was also issued on 25.02.2013. In response to the above notice, the appellant filed letter dated 05.03.2013 objecting to the issuance of the notice us 144 and also filed detailed objection against initiation of the re-assessment proceedings both on the legality of the assumption of the jurisdiction and on merit.

The Assessing Officer has framed the assessment without disposing off the legal objection filed by the assessee

Reply :-

In this case, a survey action was carried out in the case of Sh. Lalit Kumar Modi (PAN-AAPPM417SM) on 15.04.2010 by DDIT (Inv.), Unit-II(I), Mumbai. Subsequently, as per record, the case was transferred to Circle-11(1), Delhi on 06.04.2011(now Circle-10(1), Delhi). The assessment proceedings for A.Y. 2008-09 to 2011-12 was completed by the

then Assessing officer of Circle - 11(1). Delhi. Thereafter, the PAN of the assessee was transferred to this circle on 27.12.2014 and assessment records of AY 2010-11 was transferred to Intl. Circle 2(2)(1), Delhi on 06.08.2015.

On perusal of the record available with this office, there is no documents available with this office which could establish whether objection was disposed off or not by the then Assessing Officer.”

From reply of the AO in the remand report it is implied that the assessment order has been passed u/s. 147 r.w.s 143(3) of the Act. Nowhere in the remand report, the AO has denied that that assessment order was not passed u/s. 147 of the Act or has stated positively that the assessment order was passed u/s.143(3) of the Act. Thus, from the documents available on record it is clearly established that the assessment order dated 28.03.2013 was in reassessment proceeding u/s.147 of the Act.

8. It is no more res integra that reassessment proceeding u/s.147 of the Act cannot be initiated during pendency of regular scrutiny assessment proceedings u/s.143(3) of the Act. Parallel assessment proceedings are impermissible under the provisions of Act. The AO must conclude pending scrutiny assessment proceeding before initiating reassessment proceedings. The Hon’ble Jurisdictional High Court in the case of *KLM Royal Dutch Airlines vs. Asst. DIT (supra)* decided similar issue. The question before the Hon’ble Delhi High in the said case was:

“Whether on the commencement of assessment proceedings they must first be brought to their logical conclusion by framing assessment before embarking on the proceedings as envisaged in section 147/148 of the Income Tax Act: or more precisely stated, can resort to section 147 be made even whilst the normal assessment proceedings are pending conclusion”.

The Hon’ble High Court answered the above question as under:-

“To find the answer we must keep in perspective that every return of income filed under section 139 may not result in its active and in-depth perusal or consideration by the

Assessing Officer as it may receive an automatic onward passage under section 143(1). However, once an inquiry has been initiated by the Assessing Officer, it cannot but result in either the return being accepted as having been correctly computed by the concerned assessee, or for an assessment being conducted and concluded thereon by the Assessing Officer. The provisions of section 147 would have no role to play at this stage of the proceedings. Once a return of income attracts the attention and scrutiny of the Assessing Officer, it is his bounden duty to delve into every aspect thereof. The Assessing Officer is sufficiently empowered to ask for all information necessary for framing the assessment. The only fetter on the amplitude of his discretion is that the assessment must be framed within the time limit set-down by section 153 which, in substance, is two years from the end of the assessment year in which the income was first assessable or one year from the end of the financial year. A perusal of its second sub-section makes it clear that proceedings under section 147 are altogether different to those under section 143. This distinction appears to have escaped the attention of the revenue. Sub-section (2) stipulates that no order under section 147 shall be made after the expiry of one year from the end of the financial year in which notice under section 148 was served.

12. *Section 147 of the Income-tax Act deals with the powers of the Assessing Officer to 'assess' or reassess the income chargeable to tax which has escaped assessment. Section 148 contemplates making the 'assessment', reassessment or recomputation under section 147. Keeping the factual matrix before us in perspective, it becomes critical to define the word assess since the Assessing Officer is avowedly not reassessing or recomputing the income presented by the assessee for taxation in the form of its return. It is trite that the words assess, reassess or recompute are not synonymous of each other. It seems to us that an assessment must entail a conscious and concerted calculation carried out by the concerned officer with a view to determine the amount of tax payable by any person. The exercise commencing with section 139 and ending at section 145A cannot be interpreted as identical to or overlapping section 147/148/149. They are predicated on different circumstances and operate in disparate dimensions. _ _ _ _ ”*

The Hon'ble High Court after above discussions referred to various decisions and concluded as under:

“19. Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no 'fresh evidence or material' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under section 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original

assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law."

9. Thus, the Hon'ble Delhi High Court made it explicitly clear that during pendency of regular scrutiny assessment proceeding u/s. 143(3) of the Act, reassessment proceeding u/s. 147/148 of the Act cannot be initiated. Before initiating reassessment proceedings u/s.147/148 of the Act, the AO has to ensure that there are no pending assessment proceedings. In the instant case, the AO initiated parallel reassessment proceedings u/s.147/148 of the Act before completing of scrutiny assessment proceedings u/s. 143(3) of the Act and that to without deciding objections of the assessee.

10. From perusal of the written submissions filed on behalf of the Department, it emerges that the Department has conceded the fact that the assessment order has been passed u/s 147/148 of the Act. In fact, the stand of the Department is that the two separate proceedings, i.e., the regular scrutiny assessment proceedings u/s 143(3) and the reassessment proceedings u/s 147/148 of the Act, ultimately merge into a single proceeding. In support of this argument, reliance is placed on the decision rendered by Tribunal in the case of DCIT v. C. Gangadhara Murthy (supra). The legal position with regard to validity of two parallel assessment proceedings one u/s 143(3) and other u/s 147/148 of the Act is very clear. There cannot be two concurrent assessment proceedings. Reassessment proceedings u/s 147/148 of the Act cannot be initiated when regular assessment proceedings u/s 143(3) of the Act are still pending. In the case of *Trustees of H. E. H. the Nizam's Supplemental Family Trust v. CIT [2000] 242 ITR 381*, the Apex Court has observed that it is "**settled law that unless the return of income already filed is disposed of, notice for**

reassessment under section 148 of the Income-tax Act, 1961, cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.”

Thus, in light of the settled legal position as discussed above, we find no merit in the contentions of the Revenue.

11. To sum up, in the first place the action of the AO in initiating reassessment proceedings u/s.148/147 of the Act during pendency of scrutiny assessment u/s. 143(3) of the Act is without jurisdiction. Hence, such assessment order passed u/s.148/147 of the Act is null and void. Further, the assessment is also liable to be quashed on the ground that the assessment order has been passed without deciding objections of the assessee i.e. in violation of the law expounded by Hon'ble Apex Court in the case of *GKN Driveshafts (India) Ltd. (supra)*.

12. In the result, ground no. 2 of assessee's appeal is allowed.

13. Since, the assessee succeeds on jurisdictional issue, the other grounds raised by the assessee on merits of the addition have become academic, hence, not deliberate upon and are left open at this stage.

14. In the result, assessment order is quashed and appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 06th day of March, 2026.

Sd/-

(BRAJESH KUMAR SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 06/03/2026

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Asstt. Registrar) ITAT, DELHI