

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'D': NEW DELHI.**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.6152/Del/2024
(Assessment Year: 2012-13)**

Kisan International Trading FZE,
C/o Shri Tarandeep Singh, Advocate
C – 179, Mansarover Garden,
New Delhi – 110 015.

vs.

ACIT, Circle
Int. Tax 2(1)(2),
Delhi.

(PAN :AAECK0424D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, Advocate
Shri Sandeep Yadav, Advocate
REVENUE BY : Shri Vikram Singh Sharma, Sr. DR

Date of Hearing : 21.08.2025
Date of Order : 19.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income-tax (Appeals), Delhi – 43 [“Ld. CIT(A)”, for short] dated 06.12.2024 for the Assessment Year 2012-13 raising following grounds of appeal :-

“1. That on facts and in law the order dated 06th December 2024 passed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)") and order dated 23rd December 2019 passed by the Assessing Officer (hereinafter referred to as the "AO") are bad in law and void ab initio.

2. That on facts and in law the CIT(A) has erred in mechanically invoking provisions of proviso to section 251 (1)(a) inserted by Finance (No. 2) Act, 2024 w.e.f 01-10-2024.

3. That on facts and in law the CIT(A) has erred in upholding the validity of assumption of jurisdiction by the AO u/s 147 of the Act.

3.1 That on facts and in law the CIT(A) has erred in upholding jurisdiction to re-assesses u/s 147 not appreciating that:

- (i) Notice u/s 148 was not served upon the appellant
- (ii) Copy of reasons recorded us 148(2) of the Act have not been provided by the AO.
- (iii) As per provisions of section 115A(5) of the Income Tax Act appellant was not required to file a Return of Income in India and hence there is no escapement of income.
- (iv) AO has failed to dispose off objections raised by the appellant challenging his assumption of jurisdiction as per law.

4. That on facts and in law the CIT(A) has erred in not objectively considering the written submissions / pleadings uploaded by the appellant.

4.1 That on facts and in law (in para 5.1 of the impugned order) the CIT(A) has erroneously recorded pleadings made by the appellant, as if

- (a) main grievance of the assessee is regarding lack of opportunity of being heard the appellant could not plead the case before Assessing Officer properly."
- (b) appellant could not file explanations with supporting documents at the time of assessment proceedings."

2. At the time of hearing, ld. AR of the assessee brought to our notice brief facts of the case, assessee is a foreign company and is a tax resident of UAE. For the year under consideration, it received interest income of USD 7,48,401.66 (i.e. Rs 4,24,75,001/-) from a domestic company i.e. M/s Indian Farmers Fertilizer Cooperative Limited (IFFCO). As per provisions of Article 11 of India-UAE DTAA the said interest income was taxable in India @ 12.5%. As such TDS under section 195 of the Income-tax Act 1961 (for short 'the Act') was deducted by IFFCO on remittances made to assessee. For the year under consideration, total TDS deducted was Rs.53,09,375/-. Since necessary TDS was deducted as per provisions of section 115A(5), assessee was not required to submit a return of income in India. However, AO initiated proceedings u/s 147 by issuance of notice u/s 148 dated 28.03.2019. Notice u/s 148 was issued as per information available with the AO on Non Filer Monitoring System Module. Thereafter, vide assessment order dated 23.12.2019, the AO held that assessee has received income to the tune of Rs.8,49,50,002/- from IFFCO and since the assessee had not filed return of income in India for the year under consideration. he held that the entire amount of Rs.8,49,50,002/- was income escaping assessment which was chargeable to tax in India. Ld. AR further submitted that it will be relevant to note here that the amount of Rs.8,49,50,002/- is exactly double of the actual interest income of

Rs.4,24,75,001/- earned by the assessee for the year under consideration. He submitted that before the lower authorities, it was repeatedly submitted by the assessee that the AO has erroneously picked up a wrong figure of alleged income escaping assessment. In this regard, he submitted that copy of Form 26-AS has been filed on record at pages 19 to 22 of the paper book. He further submitted that interest income earned by the assessee from IFFCO during the year under consideration is Rs.4,24,75001/- and on this TDS of Rs.53,09,375/- has been deducted by the payer. However the AO assessed the income at Rs.8,49,5002/-.

3. Aggrieved against the above order, assessee preferred an appeal before the Id. CIT(A) and filed detailed submissions and evidences. After considering the detailed submissions of the assessee, Id. CIT(A) disposed off the appeal by observing as under:

“5.1 I have carefully considered the facts and circumstances of the case and the submissions of the appellant.

At the outset, the appellant has questioned the validity of proceedings u/s 148. On perusal of the assessment order, it is, however, noted by the undersigned that the procedure followed meets all the requirements laid down in the Act.

The main grievance of the assessee is regarding lack of opportunity of being heard. The appellant could not plead the case before the Assessing Officer properly. It is noted that the appellant could not file explanations with supporting documents at the time of assessment proceedings which resulted in passing of assessment order u/s 147 r.w.s. 144 of the Act. The AO accordingly assessed total income of the appellant, at Rs. 8,49,50,002/- in the impugned assessment order dated 23.12.2019.

The appellant has now submitted certain documents during the appeal proceedings.

5.2 It is noted that necessary questions of fact and law required to be determined, have not been determined during the assessment proceedings. After the examination of submissions made by the assessee, it is noted that it is not possible to make a just order on the appeal without the assistance of further evidence.

5.3 Therefore, the impugned order of assessment dated 23.12.2019 is set aside in terms of the proviso to clause (a) of sub-section (1) of section 251 of the Act, and the matter is referred back to the Assessing Officer for making a fresh assessment, in accordance with law.”

4. Aggrieved with the above order, assessee is in appeal before us
5. At the time of hearing, ld. AR submitted that the ld. CIT(A) has erred in upholding the action of AO in assuming jurisdiction to reassess invoking provisions of section 147. He submitted that notice u/s 148 has not been served upon the assessee. It was further submitted that as per provisions of section 115A(5), the assessee was not required to file a return of income in India and hence there is no income escaping assessment. He further drew our attention to pages 8 to 10 of the paper book wherein above objections were raised by the assessee before AO during assessment vide letter dated 19.11.2019. He submitted that during assessment, it was dully clarified by the assessee that interest income earned by it from IFFCO was Rs.4,24,75,001/- and on this TDS of Rs.53,09,375/- has been deducted by the payer. Further he submitted that the AO has also not granted credit for TDS of Rs.53,09,375/- deducted by IFFCO which is dully reflected on the

department's portal. He also relied upon written submissions filed by the assessee before CIT(A) and copy of which is placed at pages 35 to 46 of the paper book. Further ld. AR for the assessee relied on the following decisions :-

- (i) Hon'ble Jurisdictional High Court in case of Nestle SA - 417 ITR 213(Del);
- (ii) M/s Tsys Card Tech Services Limited reported in 2020-TII-01-HC-Del-Intl

Accordingly, he pleaded to allow the grounds and delete the addition.

6. On the other hand, ld. DR of the Revenue relied on the findings of the lower authorities.
7. Considered the rival submissions and material placed on record. We find that for the year under consideration, assessee received interest income of USD 7,48,401.66 (i.e., Rs.4,24,75,001/-) from IFFCO. As per provisions of Article 11 of India-UAE DTAA, interest income was taxable in India @ 12.5%. As such, TDS under section 195 of the Act was deducted by IFFCO on remittances made to assessee and total TDS deducted was Rs.53,09,375/-. We observe that the AO however has subjected to tax interest income of Rs.8,49,50,002/- i.e., exactly twice the amount of actual income derived and shown in Form 26AS. We further observe that no material has been brought on record by the AO to show that actual income

earned is Rs.8,49,50,002/- and not Rs 4,24,75,001/-. We observe that assessee is a foreign company and a tax resident of UAE and the only source of income derived by it from India was interest income received by it from IFFCO on which withholding tax @ 12.5% has been deducted. In this regard, we reproduce sub-section (5) of section 115A as under:

“Section 115A(5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—

(a) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (a) [or clause (b)] of sub-section (1); and

(b) the tax deductible at source under the provisions of Part B of Chapter XVII has been deducted from such income and the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).”

8. We observe that since both the above conditions have been satisfied, the assessee was not required to file a return of income for AY 2012-13. We further observe that the only reason given by the AO for his assumption of jurisdiction u/s 147 is that the assessee has not filed return of income for the year under consideration. We observe that this argument has no merit considering provisions of section 115A. We find that on similar facts, Hon'ble Jurisdictional High Court in case of Nestle SA (supra) has held as under:

“17. The above submissions have been considered. At the outset, it requires to be noticed that in the counter-affidavit filed by the Respondent there was no denial of the fact that the Petitioner is a company established under the laws of Switzerland and that it is a tax resident of Switzerland. It is undisputed that the Petitioner is entitled to protection under India's DTAA with Switzerland. The averments in para 6 of the petition where the Petitioner, enclosing its financials for the years ending 31st December, 2010 and 31st December, 2011 showing its consolidated revenue of CHF 109 Billion and 83 Billion respectively have not been disputed by the Respondent. The averments in para 7 of the petition that during the AY in question its receipts from its Indian subsidiary was to the tune of Rs.158 crores comprising 'only of dividend and interest on which tax is deductible at source and has been deducted in accordance with the provisions of the Act' has also not been disputed by the Respondent. It is also not disputed that the Petitioner is specifically exempted from filing of return under Section 115A (5) of the Act. To be precise, in response to the averments in paras 6 and 7, it is stated in the counter-affidavit that the contents of the above two paragraphs are 'a matter of fact and hence need no reply.'

18. Merely because the notice issued to the Petitioner was a system generated notice since the NMS detected the Petitioner as a non-filer does not automatically mean that the Petitioner has to be issued a notice under Section 147 of the Act. Even assuming that at the time notice was issued the Respondent was perhaps not fully aware of all the relevant facts, once the Petitioner submitted its objections drawing his attention to the specific legal position, it was obligatory for the Respondent to have applied his mind to those points. The order passed by the Respondent rejecting the objections on 23rd October, 2018 shows that there is no reference whatsoever to the specific objections of the Petitioner. Even a cursory examination of those objections would have dissuaded the Respondent from persisting with the proceedings consequent upon the impugned notice dated 26th March, 2018.

....

20. The above provisions have to be read together with the CBDT Instruction No.14 of 2013 which sets down the SOP for cases under the NMS. Para 5 of the said instruction reads as under:

'If no return is required to be filed in the case (non-resident etc.), the Assessing Officer should mark "No return is required" and mention reason for the same in NMS which needs to be confirmed by Range head.'

....

22. The above deeming fiction is a rebuttable one. It is not that every notice issued under Section 147 of the Act has to be carried to its logical end of an assessment. It is to avoid such a consequence which could end up being a futile exercise that the Supreme Court has devised a procedure in GKN Driveshafts (India) Ltd. (supra). The procedure outlined by the Supreme Court reads thus:

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years."

23. The above procedure has to be mandatorily followed by the Respondent. It is the above procedure that required the Petitioner to file a return in order to be provided with the reason for issuing notice. Therefore, the filing of the return by the Petitioner could not have been construed as an admission by it of a legal obligation to file a return. In the Petitioner's case, the admitted facts make it abundantly clear that there was no obligation on the Petitioner to file a return of income for the AY in question.

24. The principal objection of the Petitioner that its investment in the shares of its subsidiary cannot be treated as 'income' is well founded. The decision of the Bombay High Court in Vodafone India Services (P.) Ltd. (supra) holding such investment in shares to be a 'capital account transaction' not giving rise to income was

accepted by the CBDT. Para 2 of Instruction No.2 of 2015 dated 29th January, 2015 reads thus:

"2. It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs and CIT (Appeals)."

25. Therefore, the fundamental premise of the Respondent that the above investment by the Petitioner in the shares of its subsidiary amounted to 'income' which had escaped assessment was flawed. The question of such a transaction forming a live link for reasons to believe that income had escaped assessment is entirely without basis and is rejected as such.

26. For the aforementioned reasons, this Court sets aside the impugned notice dated 26th March, 2018 and the impugned order dated 23rd October, 2018. The writ petition is allowed in the above terms, but in the circumstances, there is no order as to costs. The application is disposed of."

9. We further observe that Hon'ble Jurisdictional High Court in case of M/s Tsys Card Tech Services Limited (supra) has also dealt with the similar issue wherein it is held as under:

"4. The case of the petitioner is that the petitioner is a company incorporated under the laws of Cyprus. It is engaged in the business of provision of information technology enabled services to the financial payments industry. The petitioner advanced a loan to its Indian group company, namely TSYS Card Tech Services India Private Limited (TSYS India) under an External Commercial Borrowing (ECB) agreement, of US\$ 2 million. Under the agreement, the petitioner was entitled to receive interest @ LIBOR plus 3% per annum. The petitioner claims that for the relevant previous year, i.e. Assessment Year 2012-13, it earned interest

income of Rs.37,66,311/- from TSYS India under the aforesaid ECB loan.

5. The further submission of the petitioner is that the TSYS India deducted tax at source on interest payment @ 10%. Such interest income of the petitioner was liable to be taxed in India as per the provisions of the Indo-Cyprus DTAA under Article 11 (2) thereof. The petitioner states that under Section 115A(5), the petitioner was not obliged to file any income-tax return on the said interest income, since the tax on such interest income already stands deducted and deposited.

6. The respondent issued the notice dated 30.03.2019 under Section 148 of the Income Tax Act in relation to the Assessment Year 2012-13 to the petitioner, stating that the issuing officer has reason to believe that income chargeable to tax for the said Assessment Year has escaped assessment within the meaning of Section 147 of the Act.

7. The case of the petitioner is that the petitioner was not provided with the reasons for the said re-opening. In any event, the petitioner filed its objections on 03.07.2019, inter alia, raising the plea that the petitioner was not obliged to file income-tax return under Section 115A(5), since the income derived by it in India was the interest income on the ECB loan advanced by it to its Indian outfit, on which tax already stands deducted and deposited.

8. On 01.10.2019, the petitioner sent another response reiterating its submissions. The petitioner also claimed that as per Form 26AS, the petitioner had received interest income of Rs.37,66,311.

9. The objections of the petitioner were disposed of by the respondents by passing the impugned order dated 15.11.2019. From the reading of the said order, for the first time, the purported reasons for re-opening emerged. Pertinently, as per the order, the ITD database of the petitioner assessee revealed that the petitioner had received a sum of Rs.75,32,622/- during the Financial Year 2011-12 relevant to the Assessment Year 2012-13. The impugned order, however, does not at all advert to the petitioner's submission premised upon Section 115A (5) of the Act.

10. Learned counsel for the respondent had produced before this Court a print-out of the Form AS 26 details, as per which the total receipts of the petitioner during the Financial Year 2011-12 are to

the tune of Rs.53,32,622/-. Learned counsel for the petitioner points out that in the said tabulation, there is duplication of six entries, which are mentioned in the Form 26 AS generated by the respondents and filed with the petition at page 51.

11. Firstly, the Assessing Officer – while passing the order, should have applied his mind to determine as to what has caused the discrepancy in the two Form 26 AS, i.e. the one relied upon by the petitioner, and the other relied upon by him. He has not adverted to the said discrepancy. Pertinently, both these forms have been generated by the system of the respondent Department itself. Secondly, there is not a whisper in the impugned order about the petitioner's submission that it was not obliged to file the income tax return in the light of Section 115A(5) of the Act.

12. Therefore, it appears to us that the impugned order is a completely evasive exercise and the Assessing Officer has ducked the issues raised by the petitioner. The right to file objections to a proposed re-opening of assessment under Section 147 of the Income Tax Act is a meaningful right, and not a mere empty formality. While dealing with the objections, the Assessing Officer should apply his mind. The whole purpose of this exercise is to examine whether – in the light of the objections raised, the notice under Section 148 of the Act should be dropped, or pursued, so as to prevent the assessee from facing unnecessary and avoidable harassment and expenditure in the process of re-assessment and also to save a wasteful exercise being undertaken by the Assessing Officer.

13. In the present case, the Assessing Officer has completely failed to apply his mind to the submissions of the petitioner and also to examine as to how the two different Form 26 AS have been generated by the system.

14. We, accordingly, set aside the impugned order dated 15.11.2019 since it suffers from complete non-application of mind. The Assessing Officer shall proceed to pass a fresh order after dealing with the submissions raised by the petitioner in its objections.

15. The petition stands disposed of in the aforesaid terms.”

10. We further observe that co-ordinate bench of Tribunal in the case of Argos Holdings Pte Ltd in ITA No. 3632/Del/2025 vide order dated 06.11.2025 had considered similar issue and held as under:

“21 As per the provisions, the AO gets the jurisdiction to initiate the proceedings u/s section 147 of the Act only upon recording the proper reason for initiating the proceedings. In this case, the AO had issued the notice based on list of non-filers and formed an opinion that the income escapement. Particularly, in our view, when he is aware that the assessee is a foreign entity, he should have initiated the investigation before forming an opinion. It is fact on record that the TRCs, SEBI-FPI status withholding tax certificate, board resolutions, Singapore tax records, and other statutory filings and documentary evidence submitted and accepted by the Income Tax Department and other Revenue Authorities, it establish that both Argos and its parent company are Singapore residents, and its place of effective management is also in Singapore. Section 90(2) of the Act mandates that a DTAA “shall prevail” over domestic law unless POEM or Section 6 of the Act override treaty concessions. In the given case, no such findings were recorded by the AO before initiating the reassessment proceedings, which is relevant to get the jurisdiction to initiate the reassessment proceedings. Further, we observed that the Hon’ble Supreme Court and Hon’ble Delhi High Court in the case of Calcutta Discount Co. Ltd (supra) and in the case of Sabh Infrastructure Ltd (supra) have placed jurisdictional safeguards to ensure the extraordinary power of reopening is exercised when the AO has tangible materials in his possession and recorded proper satisfaction which is clear, specific before initiation of proceedings and even before the issue of notice. Further, as held in the case of Lakhmani Mewal Das (supra), the AO must hold a Bonafide reason to believe that it is based on a live causal nexus between the tangible material in possession and alleged escapement of income. In the present case, the AO is aware of the fact that the assessee is non-resident company and the funds were transferred thru the legal channel and also came to know about the source of source was from the non-resident parent company, without there being proper reasons and material, he has no jurisdiction to initiate the proceedings.

22. After considering the material facts and factual matrix on record, the initiation of proceedings without the proper reasons on record and also the statutory provisions give exemption to the assessee in case the income of the assessee is covered by the provisions of section 194LD and taxes were already deducted, the provisions of section 139 is not applicable. Therefore, the initiation of proceedings u/s 147 is void ab initio...”

11. Respectfully following the aforesaid decisions, we therefore find merit in the objections raised by the assessee and accordingly hold that assumption of jurisdiction to assess u/s 147 is be bad in law and hence assessment order is quashed. Accordingly we allow the grounds raised by the assessee.
12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this day of 19th November, 2025.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 19.11.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI