

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' : NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA Nos.281/Del/2011, 2028/Del/2012 & 2651/Del/2012  
Assessment Years : 2001-02, 2000-01 & 2003-04**

**Deputy Commissioner of  
Income Tax,  
Circle-11(1),  
New Delhi.**

(Appellant)

**Vs. M/s Engineering Projects India  
Limited,  
Core-3, Scope Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi.  
PAN : AAACE0061C.  
(Respondent)**

**Cross Objection Nos.45/Del/2011, 239/Del/2012 & 279/Del/2012  
Assessment Years : 2001-02, 2000-01 & 2003-04**

**M/s Engineering Projects  
India Limited,  
Core-3, Scope Complex,  
7, Institutional Area,  
Lodhi Road,  
New Delhi.  
PAN : AAACE0061C.  
(Appellant)**

**Vs. Deputy Commissioner of  
Income Tax,  
Circle-11(1),  
New Delhi.  
  
(Respondent)**

Revenue by : Shri Anil Kumar Sharma, Senior DR.  
Assessee by : Shri Tarandeep Singh, CA.

Date of hearing : **28.07.2016**  
Date of pronouncement : **11.08.2016**

**ORDER**

**PER G.D. AGRAWAL, VP :-**

The appeals by the Department and the cross-objections by the assessee for the assessment years 2001-02, 2000-01 & 2003-04 are

directed against separate orders of learned CIT(A)-XIII, New Delhi dated 03.11.2010, 02.02.2012 and 12.03.2012.

**Assessee's Cross-objection No.45/Del/2011 (AY 2001-02) :-**

2. In this cross-objection, the assessee has raised the following grounds :-

*"1. That on facts and in law the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)") erred in upholding the assumption of jurisdiction under section 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the Assessing Officer (hereinafter referred to as the "AO").*

*2. That without prejudice the CIT(A) erred in not appreciating that the prerequisites for assumption of valid jurisdiction in term of proviso to section 147 are not met rendering the reassessment orders passed thereto as bad in law.*

*3. That on facts and in law the CIT(A) erred in not appreciating that assumption of jurisdiction u/s 147 based on a mere change of opinion is bad in law and void ab initio rendering the assessment order passed pursuant thereto also as bad in law."*

3. At the time of hearing before us, it is submitted by the learned counsel that for the year under consideration, assessment has been reopened beyond the period of four years when original assessment was completed u/s 143(3). He referred to the copy of reasons recorded which is placed in the assessee's paper book and pointed out that as per reasons recorded, prior period expenses are not allowable and similarly, the amount debited towards gratuity and leave encashment in profit & loss account is partly allowable. In the reasons recorded, there is no mention that there was any failure on the part of the assessee to disclose any material facts. Admittedly, all the material relating to prior period expenses, gratuity, leave encashment etc. is duly disclosed in the assessee's profit & loss account which were

filed along with the return of income. Thus, when there is no failure on the part of the assessee, the assessment cannot be reopened beyond the period of four years when original assessment was completed u/s 143(3). In support of this contention, he relied upon the following decisions of Hon'ble Jurisdictional High Court :-

(i) Haryana Acrylic Manufacturing Co. Vs. CIT and Another – [2009] 308 ITR 38 (Delhi).

(ii) Swarovski India P. Ltd. Vs. DCIT – [2014] 368 ITR 601 (Delhi).

4. Learned DR, on the other hand, relied upon the orders of authorities below.

5. We have carefully considered the submissions of both the sides and perused the material placed before us. Proviso of Section 147 reads as under :-

*“ Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:”*

6. From the above, it is evident that where an assessment is completed u/s 143(3), after the expiry of four years from the end of the relevant assessment year, the assessment cannot be reopened unless the income chargeable to tax has escaped assessment by the reason

of failure on the part of the assessee – (i) to make a return u/s 139(1) and (ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year.

7. The assessment year under consideration is 2001-02. Original assessment was completed u/s 143(3) vide order dated 22<sup>nd</sup> January, 2004. The notice u/s 148 was issued on 15<sup>th</sup> June, 2007. Thus, admittedly, the notice u/s 148 was issued beyond the period of four years from the end of the relevant assessment year. The reasons recorded for reopening were supplied to the assessee vide letter dated 10<sup>th</sup> September, 2008 of the Assessing Officer. The same reads as under:-

*“Sub :- Reasons for notice u/s 148 of the IT Act, 1961 – reg.-*

*Please refer to this office letter dated 22-06-2007. The reasons for notice u/s 148 are as under:-*

*1. Prior period expenses of Rs.1,92,47,833/- are not allowable because you are following mercantile system of account.*

*2. Further, the company has debited an amount of Rs.1,99,83,977/- and Rs.73,44,382/- towards gratuity and leave encashment payments in its P & L a/c for the staff who opted for Voluntary Retirement Scheme instead of restricting it to Rs.1,25,29,000/- being expenditure as per auditor’s report.”*

8. Thus, in the reasons recorded for reopening of assessment, there is no mention that there was any failure on the part of the assessee to disclose fully and truly any material fact by reason of which there was alleged escapement of income. In the assessment order also, the Assessing Officer recorded almost similar finding which reads as under:-

*“2. From the verification of case records, it has been observed that the assessee had claimed prior period expenses of Rs.1,92,47,833/- which are not allowable as the assessee is following mercantile system of account. Further, it has been observed that the assessee has debited an amount of Rs.1,99,83,977/- and Rs.73,44,382/- towards gratuity and leave encashment payments in its P&L account for the staff who opted for Voluntary Retirement Scheme instead of restricting it to Rs.1,25,29,000/- being expenditure as per auditor’s report. The assessee was, therefore, asked to explain as why these should not disallowed.”*

9. From the above, it is evident that the Assessing Officer himself has mentioned that from verification of the case record, it has been observed that the assessee has claimed prior period expenses and has debited certain amount towards gratuity and leave encashment in its profit & loss account. Thus, disclosure on the part of the assessee of all material facts has been admitted. In the above circumstances, in our opinion, the proviso to Section 147 debars the Assessing Officer from issue of notice u/s 148 beyond the period of four years. Since in this case, admittedly, the notice was issued beyond the period of four years, in our opinion, the same is barred by limitation. Accordingly, the same is quashed. Since the notice u/s 148 has been quashed, consequently, the assessment order passed in pursuance to such notice is also quashed. The cross-objection filed by the assessee is allowed.

**ITA No.281/Del/2011 – Revenue’s appeal for AY 2001-02 :-**

10. So far as Revenue’s appeal in ITA No.281/Del/2011 is concerned, in our opinion, once the assessment order has been quashed, the department’s appeal would not survive for adjudication. The same is, therefore, dismissed.

**Assessee's Cross-objection No.239/Del/2012 (AY 2000-01) :-**

11. In this cross-objection, the assessee has raised the following grounds :-

*"1. That on facts and in law the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)") erred in upholding the assumption of jurisdiction under section 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the Assessing Officer (hereinafter referred to as the "AO").*

*2. That on facts and in law the CIT(A) erred in not appreciating that the AO by not passing a speaking order disposing off the objections raised by the assessee vide submissions dated 03<sup>rd</sup> July 2007 his assumption of jurisdiction u/s 147 was void ab initio and bad in law."*

12. At the time of hearing before us, the learned counsel admitted that for the year under consideration, the original assessment was completed u/s 143(1) though the reopening was beyond the period of four years. He stated that the Assessing Officer has reopened the assessment because, in his opinion, prior period expenses of ₹67,38,391/- are not allowable in mercantile system of accounting. He stated that the issue of allowability of prior period expenses is settled way back in 1985 and the CIT-II, Delhi, in his order u/s 264 dated 17.01.1985, held that the prior period expenses are allowable. Such order was followed in another order u/s 264 dated 24<sup>th</sup> December, 1996 for assessment year 1992-93. That in the computation of income, by way of note No.2, the assessee has referred the order u/s 264 dated 17.01.1985 and has mentioned that in view of the above order, the prior period expenditure is considered as allowable. That the assessee is executing turnkey projects at different sites. That many a times, there is delay in the receipt of bills and vouchers for expenses. Therefore, the same are booked under the head 'prior period expenses'. Similarly, there is prior period income also which is

also disclosed in the year under consideration. He referred to the note submitted along with the computation of income and pointed out that for the year under consideration, the prior period expenditure is ₹67,38,391/- while prior period income disclosed by the assessee was ₹1,06,09,004/-. He stated that the reopening of assessment is made by the Assessing Officer because, in his opinion, prior period expenses are not allowable. However, there is no basis for such an opinion by the Assessing Officer. Therefore, the reopening of assessment is bad in law. In support of this contention, he relied upon the decision of Hon'ble Jurisdictional High Court in the case of SMCC Construction India Ltd. Vs. ACIT – [2014] 220 Taxman 354 (Delhi) and CIT Vs. Batra Bhatta Company – [2008] 321 ITR 526 (Delhi).

13. Learned DR, on the other hand, relied upon the orders of authorities below.

14. We have considered the submissions of both the sides and perused the material placed before us. We find that learned CIT(A) at page 3 of his order has reproduced the reasons recorded for reopening of assessment, which read as under:-

*“You have claimed prior period expenses of Rs.6738391/- in the profit and loss account while you are following mercantile system of accounting. Thus the income of Rs.6738391/- has escaped assessment.”*

15. Thus, the Assessing Officer has formed an opinion that prior period expenditure is not an allowable expenditure in the mercantile system of accounting. We find that the above opinion of the Assessing Officer is contrary to the opinion given by his senior officers of the Revenue in assessee's own case in earlier assessment year. The CIT, in the order u/s 264 dated 17.01.1985, has held that prior period

expenditure is allowable. Following the above order, another CIT for assessment year 1992-93 vide order dated 24.12.1996, held prior period expenditure to be allowable. The Assessing Officer has not given any reason or basis for his opinion that prior period expenditure is not allowable. We find this issue to be covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in the case of SMCC Construction India Ltd. (supra). At paragraph 14 of the judgment, their Lordships held as under:-

*“14. The reason to believe recorded by the Assessing Officer “that the assessee has debited a sum of Rs.1,20,765/- in the P & L account on account of prior period expenses after netting income of Rs.30,34,463/- and expenditure of Rs.31,55,228/-. The expenditure of Rs.31,55,228/- has not been crystallized during the year 2001-02 relevant to the assessment year 2002-03, such prior period expenses should have been disallowed” is not based on any material that had come to the knowledge of the Assessing Officer. The Assessing Officer has placed reliance on the notes to the accounts that were available at the time of the scrutiny assessment. But the notes also states that the prior period expenses had crystallized/settled in the year. The reasons to believe recorded do not show as to on what basis the Assessing Officer has formed a reasonable belief that the said expenditure had not crystallized during the year relevant to the assessment year. It is apparent the Assessing Officer suspects that the income has escaped assessment. But mere suspicion is not enough. The reasons to believe must record reasons, the reading of which should demonstrate, that such a reasonable belief could be formed on some basis/foundation and was in fact formed by the Assessing Officer that income has escaped assessment. No such reasonable belief can be formed from the reasons to believe recorded.”*

16. The facts of the assessee's case are identical. Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable. Respectfully following the same, we hold that reopening of

assessment in the case of the assessee for assessment year 2000-01 was not valid. Accordingly, the notice issued u/s 148 is quashed. The cross-objection filed by the assessee is allowed.

**ITA No.2028/Del/2012 – Revenue’s appeal for AY 2000-01 :-**

17. So far as Revenue’s appeal in ITA No.2028/Del/2012 is concerned, in our opinion, once the assessment order has been quashed, the department’s appeal would not survive for adjudication. The same is, therefore, dismissed.

**Assessee’s Cross-objection No.279Del/2012 (AY 2003-04) :-**

18. In this cross-objection, the assessee has raised the following grounds :-

*“1. That on facts and in law the Commissioner of Income Tax (Appeals) (hereinafter referred to as the “CIT(A)”) erred in upholding the assumption of jurisdiction under section 147 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) by the Assessing Officer (hereinafter referred to as the “AO”).*

*2. That on facts and in law the CIT(A) erred in not appreciating that the assumption of jurisdiction u/s 147 was premised upon a mere change of opinion and is thus bad in law and void ab initio rendering the assessment order passed pursuant thereto also as bad in law.”*

19. We have heard the arguments of both the sides and perused the material placed before us. The copy of reasons recorded is at page 8 of the assessee’s paper book, which read as under:-

*“From the verification of case records, it has been observed that prior period expenses of Rs.1,43,55,769/- has not been disallowed although the assessee is following mercantile system of accounting. The amount of Rs.1,43,55,769/- has remained to be disallowed.”*

20. From the above, it is evident that the reasons recorded for reopening of assessment are identical to the reasons recorded for assessment year 2000-01. This issue has been discussed at length by us while disposing of assessee's appeal for assessment year 2000-01. In addition, it was pointed out by the learned counsel that for the year under consideration, original assessment was completed u/s 143(3) and this issue was examined by the Assessing Officer by raising a specific query. Since the reasons recorded for assessment year 2003-04 are identical to the reasons recorded for assessment year 2000-01, for the detailed discussion in the above part of this order, we quash the reopening of assessment for assessment year 2003-04 also. The cross objection filed by the assessee is allowed.

**ITA No.2651/Del/2012 – Revenue's appeal for AY 2003-04 :-**

21. So far as Revenue's appeal in ITA No.2651/Del/2012 is concerned, in our opinion, once the assessment order has been quashed, the department's appeal would not survive for adjudication. The same is, therefore, dismissed.

22. In the result, all the appeals of the Revenue are dismissed and the cross-objections of the assessee are allowed.

Decision pronounced in the open Court on 11.08.2016.

Sd/-

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Sd/-

**(G.D. AGRAWAL)  
VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Revenue : **Deputy Commissioner of Income Tax,  
Circle-11(1), New Delhi.**
2. Assessee : **M/s Engineering Projects India Limited,  
Core-3, Scope Complex, 7, Institutional Area,  
Lodhi Road, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar