

IN THE INCOME TAX APPELLATE TRIBUNAL  
NEW DELHI BENCH "F": NEW DELHI

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.3598/Del/2009
Assessment year : 2001-02

The Assistant Commissioner of Income Tax, Circle 15(1), New Delhi.	Vs.	M/s. Ranbaxy Laboratories Ltd. 12 <sup>th</sup> Floor, Devika Towers, 6, Nehru Place, New Delhi – 110 019. <b>PAN: AAACR 0127N</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri O.P. Meena, CIT(DR)
Respondent by	:	Shri Ajay Vohra, Sr. Advocate

Date of hearing	:	11.01.2017
Date of Pronouncement	:	12.01.2017

**ORDER**

*Per Sunil Kumar Yadav, Judicial Member*

This is an appeal against the order of CIT(Appeals) on a solitary ground that the CIT(A) has erred in quashing the proceedings u/s. 147 in this case by holding that the notice issued u/s. 148 was not legally valid in terms of section 147 of the Act.

2. During the course of hearing, the Id. Counsel for the assessee has invited our attention that the reopening of assessment was challenged on various grounds before the CIT(Appeals). The CIT(A) has quashed the

assessment after holding the reopening to be invalid. One of the reasons for holding the reopening to be invalid is that reopening was done on different grounds, but the addition was made altogether on different grounds.

3. The Id. Counsel for the assessee further contended that in the assessee's own case, the Hon'ble jurisdictional High Court has held that if the items of income said to have escaped assessment on which reassessment proposed are not added, but other deductions are reduced, the reopening is not valid. In order to substantiate the assessee's case, the Id. Counsel for the assessee has invited our attention to the reasons recoded with the submission that reopening was done on allowance of deduction of Rs.44,40,97,573, allowance of club expenses, deduction u/s. 80-O, 80 IB and allowance of provision for doubtful debts; but the additions were made on account of recomputation of deduction u/s. 80HHC of the Act. Therefore, since no additions were made on all those points on which reopening was done and additions were made on different issues, the reopening is not valid in the light of the judgment of the Hon'ble jurisdictional High Court in the assessee own case i.e., *Ranbaxy Laboratories Ltd. v. CIT, 336 ITR 136 (Del)*.

4. The Id. DR did not dispute these facts, however, he placed reliance upon the order of CIT(Appeals).

5. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that undisputedly the AO has not made any addition on all those issues on which assessment was reopened. The final additions were on different issues.

6. This aspect was examined by the Hon'ble jurisdictional High Court in the assessee's own case i.e., *Ranbaxy Laboratories Ltd. v. CIT (supra)* in which it has been categorically observed that when items of income said to have escaped assessment on which reassessment proposed were not added, but other deductions are reduced, reopening is not permissible. The relevant observations of the Hon'ble jurisdictional High Court in this case is extracted hereunder:-

“Held, that section 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 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 were required to be fulfilled to assess or reassess the escaped income chargeable to tax. Under 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. For every new issue coming before 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 a fresh notice under Section 148. The Assessing Officer was satisfied with the justifications given by the assessee

regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under Section 80 HH and 80-I as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under Section 80HH and 80-I and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under Section 80 HH and 80-I which was not permissible. The Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive.”

7. We have also carefully examined the order of the CIT(Appeals) and we find that he has quashed the reopening on other issues. Since the reopening is not valid in the light of the aforesaid judgment of Hon'ble jurisdictional High Court, we find no infirmity in the order of CIT(Appeals) and accordingly we confirm the same.

8. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on this 12<sup>th</sup> day of January, 2017.

Sd/-  
(O.P. KANT )  
Accountant Member

Sd/-  
(SUNIL KUMAR YADAV)  
Judicial Member

New Delhi,  
Dated, the 12<sup>th</sup> January, 2017.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Assistant Registrar,  
ITAT, New Delhi.