

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI**  
श्री जी.एस. पन्नू, लेखा सदस्य एवं  
श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।  
**BEFORE SHRI G S PANNU, ACCOUNTANT MEMBER  
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. : 293/Mum/2014**

(Assessment year: 2004-05)

Panther Investrade Ltd, Radha Bhavan, 1 <sup>st</sup> Floor, 121, Nagindas Master Road, Mumbai -400 023. स्थयी लेखा सं.:PAN : AAACP 3259 R	<b>Vs</b>	Asst. Commissioner of Income Tax -C.C. 40, Aayakar Bhavan, M K Road, Mumbai 400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Rajiv Khandelwal
Respondent by	:	Dr. P Daniel

सुनवाई की तारीख /Date of Hearing : 17-06-2015

घोषणा की तारीख /Date of Pronouncement : 29-07-2015

**आदेश**  
**ORDER**  
I

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against impugned order dated 19.11.2013 passed by CIT(A) -36, Mumbai for the quantum of assessment passed u/s 144 r.w.s. 147 for the assessment year 2004-05. In the grounds of appeal, the assessee has challenged the *ex-parte* order passed by CIT(A); the validity of reopening under section 148 and also the issues on merits.

2. From the perusal of the assessment order, it is seen that the original assessment was completed u/s 143(3) on 06.07.2006 at an income of Rs. 11,38,160/- as against the returned loss of Rs. 14,50,67,220/-. Thereafter, the assessee's case was reopened by issuance of notice u/s 148 dated 28.02.2011 after recording the "reasons" which has been incorporated on the page 2 of the assessment order. It has been further observed by the AO in the assessment order that despite several notices, the assessee did not attend the assessment proceedings and accordingly, the

assessment was completed u/s 144 r.w.s. 148 at an income of Rs. 18,75,68,910/-, *ex-parte*.

3. In the first appeal also, despite several notices, the assessee could not attend the proceedings and accordingly, the Ld. CIT(A) too passed an *ex-parte* order confirming the entire action of the Assessing Officer.

4. Before us the Ld. Counsel for the assessee, Shri Rajiv Khandelwal submitted that not only the reopening of assessment u/s 147 is bad in law but also the additions made by the Assessing Officer cannot be sustained on merits. He submitted that, in fact, the "reasons" on which the Assessing Officer has reopened the case already stood reconciled at the assessment stage and there is no cogent material to reopen the case u/s 147. He further drew our attention to various documents placed in the paperbook to demonstrate that all the amounts stood reconciled and there is no reason either for reopening or for making the addition. On the other hand, Ld. DR submitted that neither before the Assessing Officer nor before the CIT(A) the assessee could make out its case and therefore, the Assessing Officer and CIT(A) have rightly made/confirmed the additions.

5. After considering the rival submission and on perusal of the material on record, we find that the assessee neither before the Assessing Officer nor before the CIT(A) has made out its case and therefore, the orders have been passed *ex parte*, which has now been challenged before us on various counts. The assessee has filed voluminous paper book and argued on merits that additions made cannot be sustained as the grounds on which the assessment has been reopened already stood reconciled at the original assessment stage. However, we are unable appreciate the contention of the Ld. Counsel at this stage as all these facts needs examination and should have been brought before the Assessing Officer or at least at the stage of the first appellate proceedings, which has not been done so. Therefore, in the interest of justice,

we are of the opinion that the entire matter should be restored back to the file of the Assessing Officer not only to decide the issue of validity of reopening u/s 147 but also on merits afresh and assessee would be at liberty to raise all such contentions before the Assessing Officer in support of its contentions. Accordingly, we set aside the matter to the file of the Assessing Officer to decide and adjudicate the legal issue as well as on the merits afresh and in accordance with the provisions of the law, after giving due and effective opportunity of hearing to the assessee. Needless to say that the assessee shall cooperate with the Assessing Officer in representing its case this time.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> July, 2015.

**Sd/-**

(जी.एस. पन्नू)

लेखा सदस्य

(G S PANNU)

**ACCOUNTANT MEMBER**

**Sd/-**

(अमित शुक्ला)

न्याईक सदस्य

(AMIT SHUKLA)

**JUDICIAL MEMBER**

**Mumbai, Date: 29<sup>th</sup> July, 2015**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -36, Mumbai
- 4) The CIT-Central-IV, Mumbai.
- 5) विभागीय प्रतिनिधि "सी", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "C" Bench, Mumbai.
- 6) गार्ड फाईल  
Copy to Guard File.

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आदेशानुसार/By Order

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, मुंबई  
Dy./Asstt. Registrar  
I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS