



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"F" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.5231/Mum./2013  
(Assessment Year : 1997-98)

M/s. Firma  
B-603, Shalimar Apartment  
Cumballa Hill, Mumbai 400 036  
PAN - AAFF1678B

..... Appellant

v/s

Income Tax Officer  
Ward-16(1)(1)  
2<sup>nd</sup> Floor, Matru Mandir  
Tardeo Road, Mumbai 400 007

..... Respondent

Assessee by : Shri Satya Pal Kumar  
Revenue by : Shri Hrishikesh A. Purohit

Date of Hearing - 14.01.2016

Date of Order - 27.01.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

This is an appeal by the assessee against the order dated 29<sup>th</sup> April 2013, passed by the learned Commissioner (Appeals)-5, Mumbai, for the assessment year 1997-98.

2. In grounds no.1 to 4, assessee has challenged the validity of assessment proceedings under section 147 of the Income Tax Act, 1961 (for short "*the Act*") on various issues.

3. Briefly stated the facts are, assessee a partnership firm filed its return of income for the year under consideration on 31<sup>st</sup> October 1997, declaring total income of ₹ nil, after claiming deduction under section 80IA of the Act. Return of income filed by the assessee was processed under section 143(1)(a) of the Act on 25<sup>th</sup> January 1999, without making any adjustment. Subsequently, on the allegation that assessee has wrongly made excess claim of deduction under section 80IA, on an amount of ₹ 32,76,550, representing interest and discounting charges which were included in the gross total income, the Assessing Officer re-opened the assessment by issuing notice under section 148 of the Act on 28<sup>th</sup> August 2001. The Assessing Officer, ultimately completed the assessment under section 143(3) r/w 147 by disallowing claim of deduction 80IA of the Act on interest and discounting charges of ₹ 32,76,550, and brought the same to tax under the head "*Income From Other Sources*". Being aggrieved of the assessment order so passed, the assessee preferred appeal before the learned Commissioner (Appeals) challenging the assessment order on the validity of the assessment proceedings as well as on merit of the disallowance.

4. The learned Commissioner (Appeals) disposed off the appeal by dismissing the grounds raised. Against the order passed by the learned Commissioner (Appeals), assessee preferred appeal before

the Tribunal and the Tribunal, while disposing off assessee's appeal in ITA no.3880/Mum./2003, vide order dated 3<sup>rd</sup> August 2006, finding that the learned Commissioner (Appeals) has not decided the grounds raised by the assessee on the validity of the re-assessment proceedings as well as issuance of notice under section 143(3) of the Act beyond the prescribed time limit restored the matter back to the file of the learned Commissioner (Appeals) with a direction to decide the legal issue raised by the assessee. In pursuance to the directions of the Tribunal, the learned Commissioner (Appeals) revived the appeal proceedings again and ultimately has passed the impugned order dismissing the appeal of the assessee by holding as under:-

*"3.5 Remand report was called for from the A.O. However, no reply has been received till date.*

*(i) The perusal of the order u/s 143(3) r/w section 147 dated 08.03.2002, clearly points out that return of income was processed u/s 143(1a) on 25.01.1999 without making any adjustments. Subsequently, it was noticed that the appellant had wrongly claimed deduction u/s 80IA on interest and discounting charges amounting to ₹ 32,76,550. Accordingly, notice u/s 148 was issued on 28.02.2001, duly served on 03.03.2001 and the appellant also filed return of income in response to notice u/s 148. As such, it is apparent from the assessment order u/s 143(3) r/w section 147 dated 08.03.2001 and the appellant also filed return of income in response to notice under section 148. As such it is apparent from the assessment order u/s 143(3) r/w section 147 dated 08.03.2002 that the reasons were duly recorded.*

*(ii) As regards not issuing notice u/s 143(2) dated 05.11.2001 served on 07.11.2001, it is apparent that the said notice u/s 143(2) was issued subsequent to the issue of*

*notice u/s 148 dated 28.02.2001. As such, the said notice under section 143(2) has been issued within 12 months from the date of issue of notice u/s 148. As such the notice u/s 143(2) is valid.*

*3.6 Accordingly, the proceedings u/s 148 is upheld and notice u/s 143(2) is valid.”*

5. Learned Counsel for the assessee submitted before us, though, the assessee has raised the pertinent issue relating to exercise of power under section 147 of the Act, in the absence of valid recording of reasons, the learned Commissioner (Appeals), without examining the factual aspect whether reasons were recorded before issuance of notice under section 148 of the Act has dismissed the ground raised by the assessee. The learned counsel contesting the finding of the learned Commissioner (Appeals) in respect of issuance of notice under section 143(2) submitted that the finding of the learned Commissioner (Appeals) is palpably wrong as the assessee never filed any return of income in pursuance of notice under section 148 of the Act, hence, notice issued under section 143(2) is barred by limitation in terms of proviso to section 143(2).

6. The learned Departmental Representative, however, relied upon the order of the learned Commissioner (Appeals).

7. We have considered the submissions of the parties and perused the material available on record. Undisputedly, in the earlier

round of litigation, assessee had raised the issue of validity of re-assessment proceedings before the first appellate authority on the ground of non-recording of reasons before issuance of notice under section 148 and notice issued under section 143(2) being beyond the period of limitation. The Tribunal, while considering assessee's grievance in the appeal preferred against the order of the learned Commissioner (Appeals) as referred to above held as under:—

*"We have heard both the sides on the grounds of appeal raised inter-alia, the assessee has challenged the validity of the assessment order on the ground that before issue of notice u/s 148, no reasons were recorded by the Assessing Officer and also that the notice u/s 143(2) has been issued after expiry of the prescribed time limit. Specific grounds in this regard were also taken before learned CIT(A). We hold that these issues have not been dealt with and decided by the learned CIT(A) though they go to root of the matter. We, therefore, restore this appeal back to the file of learned CIT(A) with a direction that the legal issues raised by the assessee challenging the validity of the assessment order may be adjudicated after allowing opportunity to both these sides."*

8. It is explicit from the order of the Tribunal that the learned Commissioner (Appeals) was specifically directed to examine the issue whether reasons were recorded before issuance of notice under section 148 of the Act and, secondly, whether notice issued under section 143(2) was beyond the prescribed time period. As far as first issue regarding recording of reasons before issuance of notice under section 148 is concerned, it is seen from the order of

the learned Commissioner (Appeals) that, though, he had called for the remand report from the Assessing Officer, no reply was received till the date of order. It is also not forthcoming from the order of the learned Commissioner (Appeals) whether he has examined the assessment record to ascertain that reasons were recorded for re-opening of assessment before issuance of notice under section 148. He has merely referred to the assessment order to observe that reasons were duly recorded. However, on a perusal of the assessment order, we do not find any recording of reasons reproduced therein by the Assessing Officer as he has merely stated that assessment was re-opened on account of excess claim under section 80IA. In our view, that is not a sufficient ground to hold that reasons were recorded prior to issuance of notice under section 148. It is well settled principle of law that for re-opening of assessment under section 147 of the Act, the Assessing Officer must record reason to believe that income has escaped assessment or has been under assessed and only thereafter, can issue notice under section 148 of the Act. As it appears, the learned Commissioner (Appeals) has not verified the aforesaid fact by examining the assessment records. On a pertinent question from the bench, the learned Departmental Representative submitted that assessment records are not traceable / available. Therefore, we are also not in a position to ascertain / verify whether reasons were recorded for re-opening

assessment before issuance of notice under section 148 of the Act. However, it is noteworthy to mention that the Tribunal, while restoring the matter back to the file of the learned Commissioner (Appeals), has specifically directed him to examine the issue relating to recording of reasons before issuance of notice under section 148. As the learned Commissioner (Appeals) has not complied to the aforesaid direction of the Tribunal, we are inclined to restore the matter back to his file to verify this aspect and record a conclusive finding after verifying the assessment records, whether reasons were recorded for re-opening of assessment prior to issuance of notice under section 148 of the Act. We make it clear that on verification of assessment records, if it is found that reasons were not recorded prior to issuance of notice under section 148, then the entire re-assessment proceedings has to be held as invalid and as a consequence thereof assessment order passed, has to be quashed. While examining the aforesaid issue, the learned Commissioner (Appeals) is also directed to re-examine the issue relating to issuance of notice under section 143(2), beyond prescribed time limit in view of assessee's claim that it has not filed any return of income in response to notice under section 148 of the Act. With the aforesaid observations, we set aside the impugned order of the learned Commissioner (Appeals) and restore the matter back to his

file for considering afresh in terms of our direction herein above and decide the issue in accordance with law.

9. Since we have restored the issue of validity of assessment proceedings under section 147, for denovo adjudication, therefore, we inclined to restore the remaining issues to the file of the learned Commissioner (Appeals) for deciding the same on merits if warranted after providing due and effective opportunity of being heard to the assessee.

10. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 27.01.2016

**Sd/-**  
**RAMIT KOCHAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27.01.2016**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

True Copy  
By Order

Pradeep J. Chowdhury  
Sr. Private Secretary