

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA.No.4924/Del./2014
(Assessment Year 2005-2006)

Asstt. Commissioner of
Income Tax,
Circle-26(1), New Delhi.

(Appellant)

vs. M/s. Deesons Traders,
J-3, New Mahabir Nagar,
Main Najafgarh Road,
New Delhi – 110 018.
PAN AAAFD2439G
(Respondent)

Assessee By : Shri Arun Kumar Yadav, Sr.DR
Revenue By : Shri Ved Jain, CA &
Shri Ashish Goyal, CA

Date of Hearing: 24.08.2017
Date of Order : 18.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Assistant Commissioner of Income-tax, Circle 26(1),
New Delhi (hereinafter referred to as 'the Revenue'), by filing the
present appeal sought to set aside the impugned order dated
30.6.2014 passed by the Commissioner of Income-tax (Appeals),

XXIV, New Delhi for the asstt. year 2005-06 on the grounds interalia that :-

1. *"Holding that the case is reopened on the basis of change of opinion. When it was opened on basis of material came by subsequently from the record.*
 2. *Deleting the addition on excessive allowance under the head Repair and Maintenance amounting to Rs. 55,12,474/- which escaped assessment .*
 3. *The appellant craves the right to add, alter or amend any ground of appeal"*
2. Briefly stated the facts necessary for adjudication of the controversy at hand are : originally assessment was completed on 27.9.2007 at the declared income of Rs. 57,84,820/-. Thereafter A.O. after noticing the expenditure of Rs. 1,00,62,632/- debited under the head 'Repair and Maintenance' being capital in nature observed that the same should have been disallowed. A.O. ultimately proceeded to conclude that an income of Rs. 57,84,820/- has escaped assessment and reopened the assessment u/s 147 of the Act. Assessee raised comprehensive objection to the show cause notice issued u/s 148 of the Act. A.O. proceeded to hold that amended provision u/s 147/148 are wide enough and can be exercised even when the assessee had declared fully and truly all material facts and after relying upon

decision cited as *Rakesh Aggarwal vs. ACIT (1996) 87 Taxmann 306/225 ITR, 496 (Delhi)* treated an amount of Rs. 73,49,965/- out of total expenditure of Rs. 1,00,62,632/- claimed by the assessee on account of 'Repair and Maintenance' , as capital expenditure being enduring in nature and thereby assessed the total income at Rs. 1,12,97,290/- .

3. Assessee carried the matter by way of filing appeal before the Ld. CIT(A) who has deleted the disallowance of Rs. 55,12,474/- by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Ld. CIT(A).

4. Ld. DR for the revenue challenging the impugned order contended that this is not a case of change of opinion and A.O. has rightly reopened the assessment and relied upon cases cited as under :-

1. *Raymond Woolen Mills Ltd. vs. ITO and others (236 ITR 34)*

2. ACIT vs. Rajesh Jhaveri Stock Brokers (P.) Ltd. (2007) 161 Taxman 316 (Supreme Court)/(2007) ITR 500 (Supreme Court)/(2007) 210 CTR 30 (Supreme Court)
3. Adani Exports vs. DCIT (1999) 240 ITR 224 (Guj)
4. Yuvraj v. Union of India (315 ITR 84) (Supreme Court)
5. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

Ground No. 1 and 2

6. To proceed further it is necessary to reproduce the reasons recorded by the A.O. for reopening of the assessment available at page 35 of the paper book, for ready perusal as under :-

“Reason for belief that income has escaped tax :-

The assessee filed return of income Tax for A.Y. 2005-06 on 25.10.2005 declaring income of Rs. 57,84,820/- which proceed u/s 143(1). Subsequently, the case was picked up for scrutiny and notice u/s 142(2) of the I.T. Act was issued on 27.10.2006. The assessment u/s 143(3) of the I.T. Act was made on 27.09.2007 at the income of Rs. 57,84,820/-. The assessee is engaged in the business of shuttering. The assessee supplies shuttering on hire to contractor’s builders etc.

In this case it is noted that the expenditure of Rs. 1,00,62,632/- debited under the head repair and maintenance as of capital nature in the 3CD report which should have been disallowed has been allowed. This excessive allowance of Rs. 1,00,62,632/- involves potential tax effect of Rs. 35.90 Lacs (Approx)

Hence, I therefore, have the reasons to belief that income of Rs. 1,00,62,632/- has escaped assessment and the assessment completed u/s 143(3) is required to be re-opened u/s 147 of the I.T. Act to be re-assessed."

7. Undisputedly originally assessment was completed u/s 143(3) at the declared income of Rs. 57,84,820/-. It is also not in dispute that completed assessment dated 27.9.2007 u/s 143(3) has been reopened by the A.O. after a period of four years. It is also not in dispute that the assessee has disclosed fully and truly all material facts necessary for assessment alongwith complete details of repair and maintenance expenses. It is also not in dispute that tax audit report of the assessment now relied upon by A.O. for reopening was already available with the A.O. during original assessment proceedings u/s 143(3).

8. In the backdrop of the aforesaid disputed facts and circumstances of this case and the assessment addressed by the Ld. representatives of the party to the appeal, the first legal question arises that

“as to whether A.O. was empowered to reopen the assessment after a period of four years from the end of the relevant assessment years asstt. year 2005-06.”

9. When we note that the assessment was completed in this case u/s 143(3) on 27.9.2007 and there was no failure on the part of the assessee to disclose fully and truly all relevant facts necessary for assessment, the A.O. was empowered to reopen the assessment within a period of four years from the end of the relevant assessment year, but in the instant case notice u/s 148 of the Act for reopening of assessment was issued on 29.3.2012, copy of which is available at page 32 of the paper book. So it is amply clear that the assessment reopened by the A.O. u/s 147/148 after a period of four years from the end of relevant assessment year, particularly when there was no failure on the part of the assessee to disclose fully and truly all material facts for assessment is not sustainable in the eyes of law.

10. Even otherwise perusal of the reasons recorded for reopening itself shows that assessment has been reopened just because of the fact that repair and maintenance expenses have been wrongly

disallowed. When we peruse proviso to section 147 of the Act it has amply made the proposition at hand, clear that no action shall be taken u/s 147 after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to make return u/s 139 or there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

11. In the instant case there is no failure whatsoever on the part of the assessee, who has rather brought on record tax audit report, complete details pertaining to the repair and maintenance expenses qua the expenditure of Rs.1,00,62,632/- now disputed by the revenue. Even perusal of reasons recorded by the A.O. to reopen the assessment are also silent if there was any failure on the part of the assessee to disclose fully and truly all material facts. This proposition of law has been settled by the Jurisdictional High Court in the case of **Wel Intertrade Pvt. Ltd. vs. ITO (2009) 308 ITR 22** and in the case cited as **Haryana Acrylic Manufacturing Company vs. CIT 308 ITR 38.**

12. Ratio of both the aforesaid judgments is that A.O. is not empowered to issue notice u/s 148 of the Act after a period of four years from the end of relevant assessment year particularly when there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Proviso to section 147 itself is categorical enough to bar the A.O. from initiating reopening.

13. In the instant case at the time of original assessment proceedings, the A.O. has made detailed scrutiny of the tax audit report filed by the assessee by relying upon the bills and vouchers brought on record by the assessee to carry out repair and maintenance and thereafter the A.O. had completed the assessment u/s 143(3). Even otherwise in all assessment years 2007-08, 2009-10, 2010-11, 2011-12 identical expenses claimed by the assessee have been allowed by the revenue while passing order u/s 143(3) as is apparent from the return of income for the aforesaid assessment years available at page 161 to 169 of the paper book.

14. Furthermore Hon'ble Delhi High Court in the case cited as **Oracle System Corporation v. DDIT in W.P. No. 1873/2013 dated 8.10.2015** has also examined the identical issue and has held as under :-

"Reopening of assessment – Held that :- There is no whisper of the petitioner having failed to disclose fully and truly all material facts necessary for his assessment. Therefore, the necessary ingredient for inviting the provisions of Section 147 is missing. As such, the initiation of the re-assessment proceedings pertaining to assessment year 2004-05 does not have the backing of law. Consequently, the impugned notice under Section 148 and all proceedings pursuant thereto including the order disposing of the objections are set aside – Decided in favour of assessee."

15. So the contentions raised by Ld. Sr. DR for the revenue are not tenable nor the case law relied upon by him is applicable to the facts and circumstances of the case in the face of proviso to section 147 of the Act which clearly bars the jurisdiction of the A.O. to reopen the assessment after a period of four years when there is no failure on the part of assessee to disclose fully and truly all material facts necessary for assessee.

15. In view of what has been discussed above and in view of the judgment rendered by Hon'ble Delhi High Court in the case cited as

Wel Intertrade Pvt. Ltd. vs. ITO (2009) 308 ITR 22 and in the case cited as **Haryana Acrylic Manufacturing Company vs. CIT 308 ITR 38, Oracle System Corporation v. DDIT in W.P. No. 1873/2013 dated 8.10.2015**, we are of the considered view that A.O. has exceeded his jurisdiction to reopen the assessment which is not sustainable in the eyes of law. So without entering into the merits of this case we are of the considered view that the Ld. CIT(A) has validly and legally quashed the reopening by deleting the addition made by the A.O. Hence present appeal filed by the revenue is hereby dismissed.

Order pronounced in the open Court.

sd/-

sd/-

(B.P. JAIN)
ACCOUNTANT MEMBER

(KULDIP SINGH)
JUDICIAL MEMBER

Delhi, Dated 18th September, 2017

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Copy to

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2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
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