

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6892/Del./2014
Assessment Year: 2006-07**

Heena Industries Pvt. Ltd., Plot No. 45, Sector 27A, Faridabad. PAN- AABCH7692B (Appellant)	vs.	A.C.I.T., Circle 1, Faridabad. (Respondent)
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Appellant by	Sh. Rakesh Jain & Sh. Gurjeet Singh, Adv.
Respondent by	Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing	13.09.2017
Date of Pronouncement	09.10.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(A), Faridabad dated 16.10.2014 for the assessment year 2006-07 on the following grounds :

- "1. Because the action for Initiation, Continuation and completion of reassessment proceedings u/s 147 is being challenged on facts and law, and being a Change of Opinion which is not permissible even further there being misinterpretation of the case laws.*
- 2. Because the action for making proportionate addition of Rs. 1,82,268/- @ 12% by invoking the provisions of section 36(1)(iii) is under challenge on facts & law. Even the Quantum and rate application is being challenged.*

3. *Because the action for disallowance of Rs. 3,54,737 towards advertisement Expenses invoking the provisions of Section 40(a)(ia), 194C is being challenged on facts & law."*

2. The brief facts of the case are that the assessee company is engaged in manufacturing and sale of Heena Powder, hair dyes and other beauty products. He filed return of income on 28.09.2006 declaring income of Rs.1,23,74,570/-. The assessment was completed u/s. 143(3) on 26.12.2008 determining total income at Rs.1,24,78,120/-. Subsequently, case was reopened by issuing notice u/s. 148 dated 08.03.2011 by recording the reasons placed at page 2 of the paper book which is as under :

"Reasons for Initiating proceedings u/s 147 of the Income Tax Act, 1961.

Return of Income for the A.Y, 2006-07 was filed on 28.11.2006 declaring an Income of Rs.1,23,74,570/-. Assessment u/s 143(3) was completed in this case on 26.12.2008 at income of Rs.1,24,78,120/-.

1. *Subsequently, it came to notice that the assessee has invested Rs.33,00,000/- in advance booking of a flat. This flat was not put to use during the year. As per proviso to section 36(1)(iii) of the Act, interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business for the period-beginning from the date on which capital was borrowed for acquisition of asset till the date on which such asset is put to use, should not be allowable as deduction and interest paid on such amount should be capitalized. The assessee has paid interest @ 12% of Rs.31,38,607/- on borrowed capital during the year under consideration. Therefore, interest @ 12% on Rs.33,00,000/- that comes at Rs.3,96,000/- is required to be disallowed. Thus, the assessee has made wrong claim of interest amounting to Rs.3,96,000/- in its profit and loss account.*

In view of the above facts, I have reasons to believe that due to failure/omission on the part of the assessee to disclose fully and truly material facts, an income of Rs.3,96,000/- of the assessee for the AY 2006-07 has escaped assessment within the meaning of section 147 of the Income Tax Act on this account.

2. *Later on, it has also come to notice that the assessee has purchased mixture machine on 09.07.2005 for Rs.64,480/- and this expenditure has been claimed as Revenue expenditure in its profit and loss account. Such expenses being of capital*

nature are not allowable expenditure and these expenses are required to be capitalized and depreciation @ 15% which computes to Rs.9,672/- is allowable. Thus, the assessee has made wrong claim of expenditure amounting to Rs.54,808/- in its profit and loss account.

In view of the above facts, I have reasons to believe that due to failure/omission on the part of the assessee to disclose fully and truly material facts, an Income of Rs.54,808/- of the assessee for the AY 2006-07 has escaped assessment within the meaning of section 147 of the Income Tax Act on this account.

3. *Subsequently, it has also come to notice that the assessee has claimed exhibition expenses of Rs.3,54,737/- which are of the nature of advertisement expenses on which no TDS was deducted by the assessee. Since the expenses are of the nature of advertisement expenses which are duly covered u/s 194C of the Income Tax Act, 1961. Therefore, the expenses claimed on this account are not allowable expenses u/s 40(a)(ia) of the Act.*

In view of the above facts, I have reasons to believe that due to failure/omission on the part of the assessee to disclose fully and truly material facts, an income of Rs.3,54,737/- of the assessee for the AY 2006-07 has escaped assessment within the meaning of section 147 of the Income Tax Act on this account.

In view of facts stated above, I have reason to believe that income amounting to Rs.8,05,545/- has escaped assessment for the A.Y. 2006-07.

Issue notice u/s 148 for the A.Y. 2006-07.”

On the above reasons recorded, the Assessing Officer has alleged the assessee on three issues (i) not capitalization of interest of Rs.3,96,000/- debited to the profit and loss account, (ii) non-capitalization of Rs.64,480/- for purchase of Mixer Machine which has been debited to profit and loss account as repair and renovation expenses and (iii) the assessee has claimed exhibition expenses of Rs.3,54,737/- which are in the nature of advertisement expenses on which no TDS was deducted by the assessee. Based on these reasons, the Assessing Officer reopened the assessment u/s. 147 of the IT Act.

3. In response to this notice, the assessee filed return of income on 25.03.2011. The assessee filed reply which was considered by the AO, and rejecting the contentions of the assessee, made following additions vide re-assessment order :

i).	Addition on a/c of non-capitalization of Interest	3,96,000/-
ii).	Addition a/c of non-capitalization of expenses incurred on mixer machine.	54,808/-
iii).	Disallowance u/s. 40(a)(ia)	3,54,737/-

The matter was carried before the Id. CIT(A) on the validity of reopening proceedings as well as on merits of the additions. The Id. CIT(A) after considering the assessment order and the submissions of the assessee justified the reopening proceedings u/s. 147/148. The Id. CIT(A) accepted the alternative plea of the assessee in respect of interest paid of Rs.3,96,000/-. He also deleted the addition made on account of expenditure on repair and maintenance of a Mixer Machine and in respect of addition u/s. 40(a)(ia) regarding exhibition expenses of Rs.3,54,737/-, he rejected the appeal of the assessee. The assessee has challenged the impugned order in this appeal before the Tribunal.

4. The Id. AR reiterated the submissions made before the Id. CIT(A) and vehemently objected the reopening of assessment u/s. 147/148. He submitted that all the facts were duly disclosed in the original assessment proceedings,

which were examined by the Assessing Officer. Therefore, the reopening made by the Assessing Officer is totally unjustified. The assessee has relied on the decision of ITAT in Vijay Poer Generators Ltd. vs. ACIT, 48 ITR (Trib) 736 (Delhi) and Menka Radhu Vs. ITO, (2016) 47 CCH 379 (Del. Trib). It was further submitted that the books of accounts, bills and vouchers were produced before the Assessing Officer. In respect of capitalization of interest, he submitted that the assessee had sufficient surplus funds which were utilized in the construction activities. No loan had been taken for the construction of property. The Assessing Officer could not establish any nexus that the construction in the flat was made out of any borrowed funds. In respect of exhibition expenses debited of Rs.3,54,737/-, he reiterated his submissions made before the Id. CIT(A), which is as under :

"A sum of Rs.3,54,737.95 has been debited to Exhibition expenses having being incurred by M/s. Mullar & Phipps India Ltd. on our behalf (Pg.21). The said sum so paid is in fact publicity expense/selling expense, where the company's products are displayed at various stages and platforms/exhibitions. The expenses are initially borne by M/s. Mullar & Phipps and later on a claim is lodged with the Assessee along with other various expenses. These expenses being in the nature of Publicity Exhibition expenses are not covered under the provisions of sec 194C of the Income Tax Act, 1961. As no Contractual Obligation is entered into, therefore, no TDS had been deducted thereon. Hence the proposed addition is against the provision of law. In view of above submissions, it is prayed to delete the addition."

5. On the other hand, the Id. DR relied on the order of Id. CIT(A). He submitted that the Id. CIT(A) has rightly justified the reopening u/s. 147/148. The assessee had not made full and true disclosure of all material facts in the

return of income. He has wrongly debited into the profit and loss account the interest which was capital in nature. The assessee had incurred exhibition expenses which were in the nature of advertisement expenses and he had paid Rs.3,54,737/- to M/s. Mullar & Phipps India Ltd., on which TDS provisions u/s. 194C are applicable. Therefore, the AO has rightly disallowed the expenses u/s. 40(a)(ia) of the Act for non-deduction of tax at source. The case laws cited by the assessee are distinguishable on facts of the present case.

6. After hearing both the sides and perusing the materials available on record, we observe from the assessment order that the AO has not been able to substantiate any nexus between the funds utilized in the construction of flat and the interest debited to the profit and loss account for treating it as capital in nature. It is not the case of the Assessing Officer that the amount utilized in the construction represented interest bearing borrowed funds of the assessee. Per contra, there is no material on record to disbelieve the contention of the assessee that he had sufficient surplus funds which was utilized in the construction. Unless a nexus between the interest debited and the funds utilized is proved, the stand taken by the department regarding capitalization of interest, in our opinion, cannot be accepted. Therefore, the addition made by the authorities below in this head by way of impugned reassessment proceedings, deserves to be deleted.

7. In respect of exhibition expenses paid to M/s. Mullar & Phipps India Ltd., there is no rebuttal of the contention of the assessee made before us that this point was raised by the Assessing Officer in the original assessment proceedings. The assessee had filed its reply, which stood accepted by the Assessing Officer with due application of mind. In these circumstances, the addition made by the authorities below on this account by reopening the assessment u/s. 147/148, in our considered opinion, is not tenable and stands deleted as also held in several decisions. No other point is raised in this appeal.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.10.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 09.10.2017

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*