

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.3976/Mum/2017
(Assessment Year : 2006-07)

Shri Alpesh K. Ajmera 29, Aryan Mahal C Road, Churchgate Mumbai – 400 020	Vs.	ITO Ward – 6(1)(2) Mumbai
PAN/GIR No.AABPA7897C		
Appellant)	..	Respondent)

Assessee by	Shri Keyuri Desai
Revenue by	Ms. N. Hemalatha
Date of Hearing	05/10/2017
Date of Pronouncement	26/10/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-12, Mumbai dated 21/03/2017 for A.Y.2006-07 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. The following grounds have been taken by the assessee:-

1. REASSESSMENT

1.1 The Ld. Commissioner of Income - tax (Appeals) - 12, Mumbai ["Ld. CIT (A)", erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"].

1.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;

(ii) *The necessary preconditions for initiating and completion thereof were not satisfied.*

1.3 *It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.*

WITHOUT PREJUDICE TO THE ABOVE

2.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 11,27,191/- to the income of the Appellant on the ground of unexplained interest expenses.*

2.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

2.3 *Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is not in accordance with the law, is arbitrary, and excessive.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowances of Rs. 1,77,510/-, arising out of following expenses:

(i)	<i>Telephone Expenses ..</i>	<i>Rs. 1,01,4837-</i>
(ii)	<i>Sundry Expenses</i>	<i>Rs. 76,027/-</i>

3.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

3.3 *Without prejudice to the above, assuming - but not admitting - that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is not in accordance with the law, is arbitrary, and excessive.*

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4. *The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.*

3. Rival contentions have been heard and carefully perused the record. The facts are in brief are that the assessee filed the return of income declaring income of `9,42,300/- on 31.10.2006. The case was selected for scrutiny and assessment u/s. 143(3) was completed on 17.11.2008 on a total income of `11,29,800/-. The assessment was

reopened vide notice u/s. 148 issued on 12.3.2012 and served on the assessee on 13.03.2012 for the reason that the following facts emerged on verification of the records :-

"The assessee has prepared personal profit and loss account and has credited to the same the profit from the Proprietorship Concerns viz. M/s. Ghanshyam Developers and M/s. Shreenath Developers at Rs. 706,507/- and Rs. 783,359/- respectively, aggregating to Rs. 14,89,866/-

The Assessee has also credited the compensation income of Rs. 11,05,000/- to the said Profit & Loss Account.

Against the said credits, the assessee has claimed interest expenses of Rs.11,27,191/-, telephone expenses Rs.124,689/-, sundry expenses Rs.152,053/- and depreciation Rs. 104,105/- (Depreciation has been claimed at Rs. 291,605/-. However, an amount of Rs. 187,500/- was disallowed while completing the assessment under section 143(3) and was a subject matter of appeal) and various other expenses.

From the above details it is noticed that the assessee has claimed expenses against the compensation income which are not allowable under the Income Tax Act, 1961. Further, the assessee has not disclosed fully and truly all material facts necessary for his assessment, to prove that the expenses so claimed were allowable against the compensation income.

In view of the above facts, I have reason to believe that the income has escaped assessment to the extent of Rs. 15,08,038/- being expenditure claimed but not allowable against the compensation income."

4. After reopening the assessment the Assessing Officer made an addition of interest, telephone expenses, etc. It was argued by the learned A.R. that the assessment was reopened after four years and there was no failure on the part of the assessee to furnish any details alongwith return of income. Accordingly it was prayed that under the proviso to section 147 reopening made after four years was not valid.

5. On the other hand the learned D.R. supported the orders of the lower authorities.

6. I have considered the rival contentions and carefully gone through the orders of the authorities below. I found from the record that original assessment proceedings was completed u/s.143(3). During the course of assessment proceedings u/s. 143(3), the assessee had produced details, documents and explanation about income and expenses debited in the consolidated P & L Account and as such there is no question of any failure on the part of the assessee which has caused the alleged escapement of income. I found that the action of the AO while framing the assessment was in accordance with law as the AO after examining the details of income and expenditure debited in the consolidated profit and loss account allowed assessee's claim of expenses after making certain disallowances. Even in the reason the AO has not brought any material in support of allegation that some income has escaped assessment. As per the second proviso to section 147 an assessment completed under section 143(3) cannot be reopened after the expiry of four years from the end of the relevant assessment year unless there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment. I found that nothing was pointed out by the Assessing Officer so as to indicate that the assessee failed to furnish any detail required for the assessment. The Hon'ble Bombay High Court in the case of Ipca Laboratories Ltd. vs. DCIT 251 ITR 416 observed as under: -

“The reasons also did not spell out failure on the part of the assessee to disclose fully and truly all material facts. In the circumstances, the deeming provision in Explanation 2 to section 147 had no application to the facts of the instant case. Thus, the impugned notice was set aside.”

Similar view has been taken by the Hon'ble Bombay High Court in the cases of Grindwell Norton Ltd. vs. CIT 267 ITR 673 and Hindustan Lever Ltd. vs. CIT 268 ITR 339.

7. Applying the proposition of law laid down by the jurisdictional High Court, I do not find any merit for reopening of assessment after

completion of four years from the end of the relevant assessment year when there was no failure on the part of the assessee to disclose fully the truly all necessary facts for completion of assessment.

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

Order pronounced in the open court on this 26/10/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 26/10/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai