

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Pawan Singh, Judicial Member**

ITA No.5826/Mum/2015
(Assessment Year: 2007-08)

Shri Vasudev B. Sarda No. 2, Om Chaitnya Tower Happy Home Complex Shanti Park, Mira Road (E) Mumbai 401107	Vs.	Income Tax Officer-25(2)4 Pratyakash Kar Bhavan Bandra Kurla Complex Bandra (E), Mumbai 400051
--	-----	---

PAN – AAKPS0958B

Appellant

Respondent

Appellant by: None
Respondent by: Shri V. Justin

Date of Hearing: 01.11.2017
Date of Pronouncement: 01.11.2017

ORDER

Per Pawan Singh, JM

This appeal has been filed by the assessee against the order of the CIT(A)-44, Mumbai dated 13.03.2015 for A.Y. 2007-08.

2. The assessee has raised the following grounds of appeal: -

- “1. *On the facts & in the circumstances of the case and in law the Learned Assessing Officer erred in initiating proceedings u/s 147 and in issuing notice u/s 148 of the Income Tax Act, 1961.*
2. *On the facts in the circumstances of the case and in law the Learned Assessing Officer erred in initiating proceedings u/s 147 and in issuing notice u/s148 of the Income Tax Act, 1961. The assessment order is bad-in-law in as much as:*
 - a) *There is no nexus of the reasons for reopening the assessment with the facts of the case.*
 - b) *No new material had come on record nor any new information had been received by the Assessing Office and it was only a case of fresh application of mind by the Assessing Officer to the same set of facts which tantamount to a change of opinion and*

- c) *Change of opinion does not provide jurisdiction to Assessing Officer to initiate proceedings u/s. 147 of the Income tax Act, 1961.*
3. a) *On the facts and in the circumstances of the case and in law the learned assessing officer erred in treating the expenditure incurred in respect of purchase of sand, rubble, bricks and metals amounting to Rs.41,86,482/- as amount paid towards sub-contracts liable to TDS u/s. 194C of the Income Tax Act, 1961, and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act,1961 and the rules made there under.*
- b) *On the facts and in the circumstances of the case and in law the learned assessing officer erred in observing that the appellant is not having any fixed assets in the nature of trucks/lorries in its Prop. concern M/s. Laxmi Transport Company, which is wrong and contrary to the facts and circumstances of the case.*
- c) *The learned Assessing Officer erred in passing the assessment order u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 without giving adequate opportunity to submit further details to substantiate its claim on the inapplicability of provisions of TDS on purchases, which is wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the rules made there under.*
4. *On the facts and in the circumstances of the case and in law the learned assessing officer failed to appreciate that the amount of audit fees do not exceed Rs.20,000/- and therefore the provisions of TDS u/s. 194J of the Income tax act,1961 are not applicable, which is wrong and contrary to the to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the rules made thereunder.*
5. *The learned Commissioner of Income tax Appeals -44 passed the order without giving opportunity of being heard to Assessee and ought to have inquired about reasons of non attendance by the Assessee to meet the cause of natural justice and should have passed the order on the merits of the case.”*
3. The brief facts of the case are that the assessee is Proprietor of M/s. Laxmi Trading Corporation and M/s. Laxmi Transport Company. M/s. Laxmi Trading Corporation is doing business of building material and M/s. Laxmi Transport Company is in the business of transportation. Assessee filed its return of income for the impugned assessment year on 30.10.2007 declaring total income of Rs.5,95,770/-. The assessment was completed on

20.12.2009 under Section 143(3) determining the total income of the assessee at Rs 6,56,800/-. Subsequently the assessment was reopened under section 147 of the Act. The assessment was reopened as the AO noted that the assessee has shown contractual expenses of transport at Rs 89,96,387/-. The assessee made TDS of Rs 1,83,777/-. The assessee does not own fixed assets like truck or lorries. Thus it was found that the assessee has not incurred expenses like petrol and diesel. The assessee was liable to make payment on account of contract for supply of building material to other parties on payment of Rs 89,96,387/-. On the basis of the above observation the assessment was reopened. Notice under Section 148 dated 28.03.2012 was served upon the assessee. The assessee filed its reply dated 04.10.2012. In the reply assessee contended that the return originally filed may be treated as return in response to notice under Section 148. The AO passed the assessment order under Section 143(3) r.w.s 147 on 15.03.2013. The AO while passing the assessment order made an addition under Section 40(a)(ia) of Rs 41,86,482/- and Rs22,472/- for violation of section 194C and section 194J respectively. On appeal before CIT(A) the reopening of assessment as well as addition under Section 40(a)(ia) were conformed. Further, aggrieved by the order of the CIT(A) assessee is in appeal before us.

4. None appeared on behalf of the assessee despite repeated call and providing sufficient time to the assessee. Notice sent to the assessee through RPAD was returned back with remarks of postal authorities "Unclaimed". Therefore we have no option but to hear the learned D.R. for Revenue and to pass the order on the basis of the material available on record.

5. The learned D.R. for Revenue argued that the assessee has not substantiated its contention before the Authorities below nor filed any document before the Tribunal to substantiate its contention that he was not liable for making TDS on the payments made on contractual basis.

6. We have considered the submissions the learned D.R. for Revenue and perused the material on record. Assessment under Section 143(3) was

completed on 10.12.2009 and the assessment was reopened on 18.03.2012. The assessment was reopened on the basis that the assessee has made contractual payment of Rs 89,96,387/- without making TDS. The assessment was reopened after four years from the end of relevant assessment year. The assessment was reopened by the AO when it came to his notice that the assessee has shown shown transport receipt of Rs.89,96,387/- The assessee has not shown any fixed assets like trucks and lorries. Hence there was no occasion for the assessee for debiting such expenses. Thus the AO was of the view that income has escaped assessment due the failure on the part of the assessee in disclosing fully and truly all material facts necessary for completion of assessment. The AO served notice upon the assessee under Section 148. No return was filed by the assessee. The assessee requested to treat his original return of income as filed in response to notice under Section 148. During the assessment proceedings the assessee failed to substantiate that he was no liable to deduct TDS on contractual payments. Thus the AO made addition for violation of section 194C(2) and Section 194J. Again, before he CIT(A) assessee failed to substantiate his contention, hence the addition was confirmed. Before us neither the assessee come forward nor filed any documentary evidence to prove his contention about non deduction of TDS on contractual payments. Thus we do not find any illegality or infirmity in reopening the assessment as well in making addition on account of violation of sections 194C(2) and 194J.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 1st November, 2017.

Sd/-
B.R. Baskaran)
Accountant Member

Sd/-
(Pawan Singh)
Judicial Member

Mumbai, Dated: 1st November, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -44, Mumbai*
4. *The CIT - 32, Mumbai*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.