

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A .No. 4025/DEL/2017 (A.Y 2011-12)

Mansha Builders and contractors Pvt. Ltd. RRA Tax India, D-28, South Extension, Part-1 (New Delhi) Faridabad (APPELLANT)	Vs	DCIT Circle-1 Faridabad (RESPONDENT)
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Appellant by	Sh. Ashwani Taneja, Adv
Respondent by	Sh. Shiv Raj Singh, Sr. DR

Date of Hearing	20.11.2017
Date of Pronouncement	28.12.2017

ORDER

PER SUCHITRA KAMBLE, JM

This appeal has been filed by the assessee against the order dated 25/05/2017 passed by CIT(A)-Faridabad for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

- 1) *That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order as the assessment order was passed without complying with the mandatory conditions of section 147 to 151 of the Income Tax Act, 1961 and without recording valid reasons as per law and without obtaining valid approval as per law and in any case reopening of the assessment and framing of the*

reassessment order was contrary to law.

- 2) *That in any view of the matter and in any case, action of Ld. CIT(A) in confirming the action of Ld. AO in reopening of the impugned assessment u/s 143(3)/147 is bad in law and against the facts and circumstances of the case.*
- 3) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making an addition of Rs.9,26,861/- on account of assessee being entitled to 15% of the depreciation on commercial vehicles, instead of 30% as per Income Tax Act, 1961, without considering the material placed on record and by recording incorrect facts and findings.*
- 4) *That in any case and in any view of the matter, action of Ld. CLf(A) in confirming the addition of Rs.9,26,861/- is bad in law and against the facts and circumstances of case.*
- 5) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order without giving adequate opportunity of being heard.*

3. The assessee is in the business of road construction. The original return for Assessment Year 2011-12 was filed by the assessee on 30/9/2011 declaring income of Rs.60,44,820/-. The assessment u/s 143(3) was completed on 25/3/2014 at an income of Rs.63,80,220/-. Thereafter the case of the assessee was selected in reassessment proceeding which was completed u/s 147/143(3) on 27/10/2016 and assessed at a total income of Rs.73,07,081/-.

4. The assessee filed the appeal against the said assessment order before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that according to the reasons recorded by the Assessing Officer, assessee's company claimed depreciation as commercial vehicles @ 30%, whereas these vehicles were being put to use for its own business and therefore, the deprecation allowable should be 15%. Accordingly, Assessing Officer formed the reason to believe that excessive depreciation of 15% was allowed. As per the copy of reasons recorded, the assessee Company claimed depreciation of Rs. 18,53,722/- on commercial vehicle @30% of written down value but is entitled to claim depreciation @ 15% for the reason that the company is not using the said commercial vehicle for running on hire. The Ld. AR submitted that the assessee is in the business of road construction. The commercial vehicles owned and used by it to be deployed for construction contracts include dampers, road rollers, hiva trucks, all used for road construction. These assets were registered as transport vehicles under the motor vehicle act. Functionally, *the* assets were used for transportation of earth and construction one place to another and also to level and shape the land where road construction activity is undertaken. Thus, as the assets were used for heavy construction activity and transportation of material from one place to another, these commercial vehicles are road transport *vehicles rightly* entitled to depreciation at rate of 30%. The Ld. AR further submits that the original assessment was made in this case under section 143(3) and there was no fresh material coming into possession of the A.O. which is evident from the plain reading of the reason recorded, which does not refer anything new coming into possession of the A.O. after the assessment order was passed. The Ld. AR relied upon the case laws of Pr. CIT Vs. Tupperware India(P) Ltd. in ITA

415/2015, date of order 10/8/2015 (Delhi High Court) and CIT vs. GOETZE (INDIA) LTD. [(2010) 321 ITR 431(Del)] dated 20.01.2010. The relevant portion of Goetze (India) Pvt. Ltd. is reproduced herein below:

"11. "However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid Section 147 would give *arbitrary* powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessments, review would take place. Once must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer."

6. The Ld. DR relied upon the orders of the Assessing Officer and CIT(A).

7. We have heard both the parties and perused the material available on record. For re-opening the reasons recorded are as follows:-

“Reasons for initiating proceedings u/s 147 of the Income Tax Act, 1961

Regular assessment in this case was completed u/s 143(3) of the Income tax Act, 1961 on 25.03.2014 at an income of Rs.63,80,220/- by making certain additions.

2. *Subsequently, it has come into notice that the assessee company has claimed depreciation of Rs. 18,53,722/- on commercial vehicles @ 30% on Written Down Value of Rs. 84,60,468/- during the year under consideration. Since the vehicles were being put to use for its own business of the assessee company and not running them on hire. It is pertinent to mention here that*

under the provision of section 32 of the Income tax Act, the depreciation on the asset when it is used for its own business and not running them on hire by the assessee, is allowable @ 15% of the WDV instead of 30% from the year 2006-07 and onward. Thus the assessee has made wrong claim of deduction amounting to Rs. 18,53,722/- on account of depreciation.

3.. 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. 18,53,7222/- and any other income which subsequently comes to notice has escaped assessment for the assessment year 2011-12. Accordingly, notice u/s 148 is being issued for the assessment year 2011-12.

Issue notice u/s 148 for the Assessment Year 2011-12.

(BHOPAL SINGH, IRS)

*Deputy Commissioner of Income Tax,
Circle-1, Faridabad*

The CIT(A) has mentioned the objection of the assessee against reopening u/s 147 but has not considered the Hon'ble Supreme Court's decision in case of GKN Driveshafts (India) Ltd. Vs. ITO & Ors. and while considering also merely saying that at the last date of the assessment order, the assessee filed objection. This cannot be the method of simplicitor dismissal of objection filed by the Revenue authorities. The CIT(A) failed to take cognizance that no reason was assigned by the Assessing Officer or any fresh material was taken into account by the Assessing Officer for reopening the assessment u/s 147. Therefore, the order of the CIT(A) is set aside.

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

Order pronounced in the Open Court on 28th December, 2017.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 28/12/2017

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	20/11/2017	PS
2.	Draft placed before author	21/11/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	28.12.2017	PS/PS

6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	28.12.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		