



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.116/Rpr/2014: Assessment Year : 2010-2011
ITA No.199/Rpr/2014: Assessment Year : 2008-2009
ITA No.1200/Rpr/2014: Assessment Year : 2019-2010

DCIT -1, 32/32, Bunglows, Bhilai	Vs.	M/s. Ravi Shree Narayan Transport, ACC Main Gate, Jamul Square, Bhilai
PAN/GIR No.AAHFR 7461 F		
(Appellant)	..	(Respondent)

Assessee by : Shri S.S.Rao, AR
Revenue by : Shri Sanjay Kumar, DR

Date of Hearing : 12/01/ 2018
Date of Pronouncement : 15/01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

ITA No.116/Rpr/2014 is directed against the order of the CIT(A), Raipur for the assessment year 2010-2011.

2. ITA No.199/Rpr/2014 and ITA No.200/Rpr/2014 are directed against the separate orders both dated 19.6.2014 for the assessment year 2008-08 and 2009-2010.

3. In ITA No.116/Rpr/2014 for the assessment year 2010-2011, the revenue has raised the following grounds:



- “1. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in admitting additional evidence under Rule 46A as there was no reasonable cause for the assessee not to have produced the evidence before the AO.
2. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting disallowance under section 40(a)(ia) of the I.T.Act of Rs.61,25,026/- out of interest and finance charges as per provisions of”
3. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.32,00,000/- made by the AO on account of unexplained cash credit in partners capital account u/s.68 of the I.T Act as the assessee failed to explain the source thereof.
4. Whether in law and on facts and circumstances of the case, the CIT(A) was justified in considering the submission of the assessee that the assessee paid aggregate amount of Rs.12,01,719/- against TDS deducted from payment made on account of interest and finance charges without verifying the facts available on record.
5. Whether in law and on facts and circumstances of the case, the CIT(A) was justified in restricting the disallowance of Rs.5,00,000/- to Rs.2,50,000/- out of transportation expenses considering the additions made in the case of the assessee in previous years”.
4. At the time of hearing, Id D.R. of the assessee contended that the CIT(A) has admitted additional evidence in the form of copies of Form No.27A, copies of challans and extract of TDS return in violation of Rule 46A. Ld D.R. submitted that these documents were not filed before the Assessing Officer and, therefore, the Assessing officer was not afforded an opportunity to examine the details filed by the assessee. Therefore, he prayed for reversing the order of the CIT(A).



5. Ld A.R. of the assessee submitted that all the details filed before the CIT(A) were available and verifiable from the department's web site. Therefore, it cannot be said that the assessee has filed the documents for the first time before the CIT(A).

6. After hearing the rival submissions and perusing the orders of lower authorities, we find that the CIT(A) has admitted the additional evidences without affording an opportunity to the Assessing Officer. The same should have either been admitted under Rue 46A of the I.T. Rules, 1962 and by having a remand report from the Assessing Officer. The same has not been done by the Ld. CIT(A). Therefore, the order of the Ld. CIT(A), at the outset, is against the principles of natural justice and deserves to be reversed. But in the interest of justice, the matter is set aside to the file of the Assessing Officer who will examine the claim of the assessee and redo the assessment after hearing the assessee. The assessee is directed to produce all the relevant documents, which were filed before the CIT(A) before the Assessing officer. If after examination of the documents, the Assessing Officer is convinced about the genuineness of the documents, then he is directed to allow the claim of the assessee. Hence, appeal of the revenue allowed for statistical purposes.



ITA No.199 & 200/Rpr/2014: A.Y. 2008-09 & 2009-2010

7. In both the appeals, the revenue is aggrieved by the cancellation of reassessment order when the AO has received information and thus formed valid reason to belief for reopening the assessment.

8. The relevant facts are that in this case original assessments were completed u/s.143(3) of the Act. Subsequently, the Assessing Officer has initiated reassessment proceedings u/s.147 of the Act after receipt of verification report from ACIT (TDS), Raipur stating that the assessee has made certain payments without deduction of tax, therefore, corresponding expenses were not allowable u/s.40(a)(ia) of the Act. The assessee objected and the objections were rejected by the Assessing Officer. The assessee filed writ petition before the Hon'ble High Court and during pendency of the writ petition, the reassessment proceedings were completed u/s.147 of the Act.

9. Against the proceeding u/s.147 of the Act initiated by the AO, the assessee carried the matter before the CIT(A) stating that the reassessment proceedings initiated by the AO solely after change of opinion and merely because the AO did not express his mind the material placed by the assessee at the time of original assessment, by itself, would not give a ground to reopen the assessment on the belief that income has escaped



assessment. The CIT(A) considering the submissions of assessee, has quashed the reassessment proceedings observing that the assessee has filed all the materials before the AO and the same has been considered by the AO during the assessment proceedings. However, there is no finding by the AO either in the original assessment proceedings or in the re-assessment proceedings, that the assessee has not furnished the details for consideration, rather the AO in reassessment proceedings has endorsed the fact that the assessee has furnished the details and considered the same. The CIT(A) following the decision of Hon'ble Supreme Court in the CIT vs. Kelvinator (India), 228 CTR 488 and CIT vs. Usha International Ltd., 253 CTR (Del) 113 quashed the reassessment order were initiated on the basis of change of opinion.

10. Hence, the department is in appeal before us.

11. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the original assessments in the case of the assessee were completed, determining the assessed income at Rs.25,65,160/-. Later on, the Assessing Officer issued notice u/s.148 of the Act 28.1.2013 to make reassessment proceedings. Reasons were also recorded and furnished to the assessee. The reassessment proceedings were initiated on the ground



that during the original assessment proceedings, the expenses claimed under the head "labour charges, transportation charges and interest u/s.201 and 201(1A) were not considered. The assessee submitted that during original assessment proceedings the assessee has furnished full and true particulars of its income and the reassessment proceedings were initiated possibly for correcting the mistakes of the Assessing officer. In response to objection to reassessment order by the assessee, the Assessing Officer has observed " although you have furnished the details, the Assessing Officer while passing the assessment order found to have missed to consider the matter because there is nothing mentioned in the assessment order". As regards to TDS, it is observed that TDS verification was made on 23.12.2009 i.e. much before the completion of regular assessment and the Assessing Officer in original assessment examined as is evident from para 3 of the assessment order for assessment year 2008-09 that "some of the expenses were covered with TDS and remaining payments were made to individual transporters. The audit report which was relied by the Assessing Officer during the reassessment proceedings was also available before him. Hence, it cannot be said that the Assessing Officer has not considered the issue. Once the Assessing Officer has made lump sum disallowance, it can safely



concluded that all the material facts were before the Assessing officer at the time of original assessment proceedings.

12. Thus, if in the course of original assessment proceedings, the Assessing Officer has considered and examined a particular aspect, the said aspect cannot be made a ground to reopen and initiate reassessment proceedings. The assessing authority cannot have a fresh look and reopen an assessment on the ground of change of opinion. The facts noted above, clearly show that in the original assessment proceedings, the Assessing Officer had considered and examined regarding disallowance u/s.40(a)(ia) and TDS on financial charges. The Assessing Officer made some lumpsum disallowance under the above heads.

13. On the question of change of opinion, the law is well settled by the decision of Hon'ble Delhi High Court in the case of CIT vs. Kelvinator of India Ltd, 256 ITR 1(Del) , wherein, it has been held that held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong. The decision is approved by Hon'ble Supreme Court in the case reported as



CIT vs. Kelvinator of India Ltd (320 ITR 561). in the case before us, the Assessing Officer has initiated reassessment proceedings on the same facts which were available before him at the time of making assessment u/s.143(3) of the Act and no new tangible material has come on the basis of which it could be said that he has reason to believe that income chargeable to tax has escaped assessment on account of failure on the part of the assessee to disclose truly and fully material of facts for the assessment. In view of above, we are of the opinion that the reassessment proceedings are initiated due to change of opinion and, therefore, we concur with the findings of the CIT(A) quashing the reassessment proceedings. Accordingly, we dismiss the ground of appeal of the revenue for both the assessment years under consideration.

12. In the result, both the appeals of the revenue are dismissed.

Order pronounced on 15 /01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 15 /01/2018
B.K.Parida, SPS



Copy of the Order forwarded to :

1.	The Appellant : DCIT -1, 32/32, Bungalows, Bhilai
2.	The Respondent. M/s. Ravi Shree Narayan Transport, ACC Main Gate, Jamul Square, Bhilai
3.	The CIT(A)- Bhilai
4.	Pr.CIT- Bhilai
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur