

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH AGRA**

**BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

ITA No. 299 /AGR/2016
Assessment Year: 2011-12

Shri Rishi Kumar Gupta, Batra Jain & Co. Chartered Accountants 26/209, Sanjay Place, Agra PAN: ABXPG 2622 C	Vs.	DCIT, Circle-1, Agra
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APPELLANT	RESPONDENT
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Assessee by:	Shri Rakesh Kumar Jain, CA
Revenue by:	Shri Waseem Arshad, Sr. D.R

Date of hearing:	19/12/2017
Date of Pronouncement:	16/01/2018

ORDER

PER, DR. MITHA LAL MEENA, AM:

The appeal, by assessee is directed against the order of the Commissioner of Income Tax, (Appeals)-1, Agra, [herein after referred to as "the CIT(A)"], dated 30.06.2016 for Assessment Year 2011-12, on the following grounds:

- “1. *Because the Id. CIT(A) has erred in law & facts in confirming the validity of assuming jurisdiction u/s 147 without properly appreciating the facts & circumstances of the case.*
2. *That the Id. CIT(A) has erred in law & facts in confirming an addition of Rs.1150353/- by declining u/s 54F without properly appreciating the facts & circumstances of the case.*
3. *Because the Id. CIT(A) has erred in law & facts in making an addition of Rs.86,432/- on account of alleged FDR interest without properly appreciating the facts & circumstances of the case.”*

2. The Id. Counsel for the assessee modified Ground No.1, vide application dated 12.12.2017, which is reproduced hereunder:

“Because the Id. AO & CIT(A) have erred in law in assuming jurisdiction u/s 147 without properly appreciating the facts of the case more so when:

a) The time for initiating assessment u/s 143(3) by issuance of notice u/s 143(2) had not elapsed.

b) The reason for assuming escapement of income no longer existed.

c) The AO conducted roving & fishing enquiries contrary to law.”

3. Apropos modified Ground 1b, the assessee has challenged the re-assessment order on legal ground that the reason for assuming escapement of income no longer existed, in law in for assuming jurisdiction u/s 147.

4. The reasons recorded by the Assessing Officer (AO) for initiating reopening proceedings for the completed assessment of the assessee

for assuming jurisdiction u/s 148 of the Act, APB-(APB-13), reads as under:

“the assessee has not shown its interest of income of Rs.11,24,308/- granted on refund by the Department on 30.12.2010 for the AY 2000-2001.

Since the assessee has knowingly not furnished the true and correct details of his income for the AY 2011-12, hence, I have reason to believe that income to the tune of Rs.11,24,308/- chargeable to tax has escaped assessment on the part of the assessee.”

5. As notice u/s 148, the only reasons recorded was that the assessee did not show interest income of Rs.11,24,308/- granted on income tax refund by the Department, out of the total undisclosed income computed by the AO.

6. The assessee has raised the issue before the Id. CIT(A) by way of written submission, which is reproduced at page no.4 Para 5.3 of the impugned order as under:

“That the assessee received an interest on Income Tax refund to the tune of Rs.11,24,308 in the year in question. This refund was due to him because the department had encashed the FDR's seized in the course of search. These FDR's pertained to be undersigned & also his family members. Apart from these FDR's which were seized in course of search operations, cash to the tune of Rs.15,00,000 was also created by the department which belonged to M/s Gupta Academics Pvt. Ltd. The entire seizure was made in the punchnama of the undersigned and therefore only the undersigned was emitted to the refund. In spite of the fact that refund has not been

received in totality yet on the basis of the assets impounded of different persons, the proportionate interest was paid to the actual owners of impounded assets. Accordingly, the interest of Rs.11,24,308/- was dealt with in the following manner-

Rishi Kumar Gupta undersigned	3,73,578/- (copy of computation enclosed)
Anil Kumar Gupta	3,90,730/- (————do————!)
Gupta Academics Pvt- Ltd.	3,60,000/-(copy of p&l a/c enclosed)
TOTAL.	<u>11.24.308/-</u>

To substantiate the aforesaid contents, the copy of return of income together with computation of undersigned and also Shri Anil Kumar Gupta is hereby enclosed. The copy of p&l a/c of M/s Gupta Academics Pvt. Ltd. is also enclosed for your reference.

The said fact was stated before the Ld. A.O. None of these facts are controverted and the Ld. A.O. seemed convinced with the reply. The assessee had also in his reply dated 30/07/2012 asked the Ld. A.O., if any further evidences were needed in the matter. Since the A.O. was convinced with the reply of the appellant. No further information, clarifications were sort. However, to the shock of the appellant, the Ld. A.O. made an addition of Rs.7,50,730 for the reasons stated in Para 3.1 of his assessment order. The Ld. A. O. has relied on the provisions of Section 4 of the Income Tax Act, 1961. From the assessment order, it is not clear as to how such an addition can be made under the ambit of Section 4 and how the citations given by the Ld A.O. is applicable on the assessee. It is prayed that the Ld. A.O. be called to explain his view point so that an appropriate reply may be furnished.

7. The Id. CIT(A) accepted this fact that no addition can be made on the reasons recorded on the issue of interest income amounting to Rs.11,24,308/- paid by the Department by observing in Para 5.4 of the impugned order, as follows: -

“5.4 I have gone through the assessment order, submission of the assessee and legal position in this regard. A search had taken place on the appellant's group in which certain

FDRs were seized and these FDRs were encashed. Later this interest amounting to Rs.11,24,308/- was paid to the appellant by the department. The appellant had shown interest amounting to Rs.3,73,578/- in his computation of income, a fact that is not disputed, Balance interest amounting to Rs.7,50,730/- was added by the Assessing Officer in the hands of the appellant as the appellant had not shown the rest of the interest income received in his computation of income. The appellant through various documents in form of Assessment Orders, computations, Profit and loss Accounts has substantiated that the amount of Rs.7,50,730/- which the appellant hasnot shown in his computation of income actually belonged to Mr. Anil Kumar Gupta amounting to Rs.3,90,730/-(copy of the computation furnished) and Gupta Academipvt. Ltd. of Rs.3,60,000/-(copy of P&L Account filed. It was explained by the appellant that Mr. Anil Kumar Gupta and Gupta Academic Pvt. Ltd were also independent assesses covered under search,but as panchnama was made in the name of assessee, therefore the whole interest was paid to the appellant. Though the appellant received the said income from the department but as the total income did not belong to the appellant, therefore, the appellant had given the proportioned portion to the respective person/entity and the same has been offered to tax by the respective person/entity. Therefore, there arises no question of taxing the same amount again in the hands of the appellant as it will amount to double taxation of the same income which is against the natural principles of justice and taxation law.”

8. The Id. Counsel submitted that the Id. CIT(A) after going through the facts of the case, deleted the addition of Rs.11,24,308/-, meaning thereby that the basis on which the jurisdiction u/s 148 assumed by the AO, as such, no more existed. The assessee's counsel contended that if two reasonable constructions of a taxing provision are possible, the construction which favors the assessee must be adopted. This is an

accepted rule of construction recognized by the courts is several to its decision. For this purpose, he relied on the following decisions:

1. CIT Vs. Jet Airways (I) Ltd. 331 ITR 236 (Bom.)
2. Ranbaxy Lab Ltd. vs. CIT 336 ITR 136 (Del.)

9. The Id. DR relied upon the order of the Assessing Officer and contending that once the validity of the notice is survived the assessment is open to make addition on any account for which no reasons have been recorded. The Explanation-3 to Section 147 is inserted to provide that AO may assess or reassess income in respect of any issue which comes to notice subsequently in course of proceeding u/s 147, though the reasons for such issue have not been included in the reasons recorded in the notice u/s 148(2). In support, he relied upon the following decisions:

- i) CIT Vs. MehakFinvest (P) Ltd. in ITA Nos. 505 & 454 (P&H).
- ii) Majinder Singh Kang Vs. CIT in ITA No. 421 of 2010 (P&H).
- iii) Sri N Govindaraju vs. ITO in ITA No. 504/2013 (Kar.)

10. We find that there are divergent decisions of different Courts on this issue with the newly introduced Explanation-3 to Section 147 of the Act, with retrospective effect from 01.04.1989, where some courts held that the AO has to restrict the reassessment proceedings only to the

issue in respect of which reasons have been recorded for reopening the assessment, and that it is not open to him to touch upon any other issue for which no reasons have been recorded as contended by the Id. Counsel for the assessee and other courts held in opposite way.

11. In the case of CIT Vs. Jet Airways (I) Ltd. (Supra), their Lordship have made an in-depth interpretation of the language use in the main provisions of Section 147(1) of the Act and newly inserted Explanation-3 to this Section with retrospective effect from 01.04.1989 with a view to make the same in the land with the legislative intend. It is further held that, if after issuing a notice u/s 148, the AO accepts contention of the assessee and holds that income, for which he had initially formed a reason to believe that it has escaped escapement, has, as a matter of fact, not escaped assessment, it is not open to him to indirectly assess some other income.

12. Similar view is taken by the Hon'ble Delhi High Court in the case of Ranbaxy Lab Ltd. (Supra), holding that there must be some nexus between "reason to believe" recorded and the assessment framed. In this case also, the AO had not made any addition on the basis of reasons recorded and try to reduce other valid claim of the assessee allowed during the assessment u/s 143(3) of the Act.

13. Neither of the judgments as above, referred by the Id. Sr DR have been rendered by the jurisdictional High Court so far assessee is concerned. In such a situation, it is well settled law that where two non-jurisdictional High Court's decisions are opposed to each other, the one in favour of the assessee is required to be followed by the Tribunal. The reference, if any, required, may be made to the decision of CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC).

14. In view of the above, the grievance of the assessee as per modified Ground No.1 is accepted. Accordingly, the assessment order is cancelled. No further issuesurvives for adjudication as such.

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

Order pronounced, in the open Court on 16/01/2018.

Sd/-
(A. D. JAIN)
JUDICIAL MEMBER

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated:16/01/2018

Aks/DOC

Copy forwarded to:

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

ASSISTANT REGISTRAR