

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S.S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.601/Kol/2015

CO No.27/Kol/2015

(A/o ITA No.601/Kol/2015)

(निर्धारणवर्ष / Assessment Year: 2006-07)

D.C.I.T, Cir-2, Asansol	Vs.	Shri Atindra Nath Choubey
Parmar Building, 54, G.T. Road (West), asansol- 713304.		Prop. of M/s A.N Choubey & Co., Asansol- 713303.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ACPPC 6542 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Saurabh Kumar, Addl. CIT(DR)

Respondent by : Shri K.K. Khemka, Advocate & P.C. Nayak, A/R

सुनवाईकीतारीख/ **Date of Hearing** : **18/10/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **17/01/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue & CO filed by assessee pertaining to Assessment Year 2006-07, is directed against an order passed by the CIT(A), Asansol in Appeal No.110/CIT(A)/Asl/Cir-2/Asl./13-14, dated 09.03.2015, which in turn arises out of an order passed by the Assessing Officer u/s 147/143(3) of the I.T. Act, 1961 (hereinafter referred to as the 'Act'), dated 22.03.2013.

2. The Revenue has raised the following grounds of appeal:

"1. That, the Id. CIT(A), Asansol has erred in law and on facts in cancelling the reassessment proceedings without appreciating the reason recorded by the A.O.

2. That, the Id. CIT(A), Asansol has erred in law and on facts in cancelling the reassessment proceedings without appreciating the fact that income liable to tax has escaped assessment in the original assessment proceedings due to erroneous decision of the A.O.

3. That, the Id. CIT(A), Asansol has erred in law and on facts allowing the appeal in favour of the assessee without appreciating the fact that the assessee failed to

obtain 15-I prior to payment of Transportations charges without affecting TDS entailing disallowance u/s 40(a)(ia).”

3. The brief facts qua the issue are that assessee filed its return of income on 31.10.2006, disclosing total income at Rs.25,78,260/-. The assessee's case was selected for scrutiny u/s 143(2) of the Act and original assessment u/s 143(3) was completed on 29.09.2008. Later, the assessee's case was reopened u/s 147/148 of the Act because of the audit objections. The reasons recorded in audit objection was that the assessee had debited in profit and loss account Rs.2,67,09,247/- as truck hire, running and maintenance charges and showed Rs.29,91,877/- as sundry creditor and did not deduct TDS while making payment to all the sub-contractors. The assessee neither obtained Form No.15I from the truck owners nor any declaration in Form 15J was furnished by the assessee. Based on the above reasons, the reassessment proceedings was initiated against the assessee and the AO disallowed under the head of truck hire, running and maintenance charges at Rs.52,53,649/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) who has deleted the addition made by the AO. The Id. CIT(A) observed that while recording reasons there must be tangible material/information in possession of AO and he has to record why this tangible material/information makes him believe that income has escaped assessment. The CIT(A) further observed that the AO after 4 years from the end of assessment year had changed his opinion, and when the opinion was changed there were no new material before him, except an audit objection. Therefore, the Id. CIT(A) held that since the AO has changed his opinion and there were no new material before him except an audit objection, therefore, reopening u/s 147/148 was bad in law. The Id. CIT(A) relied on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator India Ltd. [2010] 320 ITR 561(SC) wherein it was held that AO must have tangible material to come to conclusion that there is escapement of income and that reasons must have a live link with the formation of belief. The Id. CIT(A) further observed that in assessee's case under consideration

it can be seen that on same facts one decision of AO u/s 143(3) was attempted to be overturned by issuing notice u/s 148 and that too after 4 years from end of assessment year. After 4 years, the first proviso to section 147 r.w. Explanation 1 is an additional hurdle to cross. Here all material facts were present before AO at the time of completion of assessment u/s 143(3) but the decision taken was erroneous. Without fresh material and that too after 4 years from end of assessment year, recourse to section 147 is not the correct approach. Therefore, Id. CIT(A) held that in the assessee's case under consideration, the AO had merely changed his opinion and changed of opinion does not give fresh material or tangible material. Therefore, Id. CIT(A) held that the entire material and facts were there at the time of original assessee u/s 143(3) and on the same material the reopening was done by the AO is nothing but change of opinion, therefore, reopening u/s 147/148 is bad in law and this way Id. CIT(A) cancelled the reassessment made by the assessing officer.

5. Not being satisfied with the order of the Id. CIT(A) the Revenue is in appeal before us. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. On the other hand, the Id. Counsel for the assessee has defended the order passed by the Id. CIT(A) and relied on the submissions made before the Id. CIT(A).

6. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that in the assessee's case under consideration, there was no new material before the AO to reopen the assessment u/s 147/148 of the Act. During the original assessment proceedings u/s 143(3), the issue was decided by the assessing officer and on the said issue the assessing officer reopened the assessment, which is tantamount to change of opinion. In the assessee's case under consideration, we note that there was a default on the part of the assessee for not obtaining Form No.15-I, but regular assessment u/s 143(3) was completed without effecting disallowance despite having

material in record. Form NO.15-I was not obtained prior to payment of transportation charges. The AO, while making original assessment u/s 143(3) took the affidavit from the assessee and based on the affidavit he completed the assessment, whereas provisions of law was to obtain Form No.15-I, which was not followed. We are of the view that while recording reasons there must be tangible material/information in possession of assessing officer, and he has to record reasons, why this tangible material/information makes him believe that income has escaped assessment. In the case, a conscious decision not to effect the disallowance of Rs.49,97,704/- was taken by assessing officer at the stage of assessment u/s 143(3). The CIT(A) further observed that the AO after 4 years from the end of assessment year has changed his opinion, and when the opinion was changed, there were no new material before him except an audit objection. Moreover, the material/subject matter available in the audit objection was already examined by the assessing officer during the regular assessment under section 143(3) of the Act, by taking an affidavit from the assessee to satisfy the requirement of obtaining Form No. 15-I. Therefore, the Id. CIT(A) rightly held that since the AO has changed his opinion and there were no new material before him except an audit objection, therefore, reopening u/s 147/148 was erroneous. Based on the factual position discussed above, we are of the view that there is no any infirmity in the order passed by the Id. CIT(A). Hence, we confirm the order passed by the Id. CIT(A). Since, we uphold the order of CIT(A) and the CO filed by the assessee is in support of CIT(A)'s order, hence, CO becomes infructuous and does not require any adjudication.

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

Order is pronounced in the open court on 17/01/2018.

Sd/-

(S.S. VISWANETHRA RAVI)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 17/01/2018

[RS SPS]

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- D.C.I.T, Cir-2, Asansol
2. प्रत्यर्थी/ The Respondent- Shri Atindra Nath Choubey
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.