IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5263/Del./2014
(ASSESSMENT YEAR : 2009-10)

DCIT (E), Circle 2 (1), New Delhi.	vs.	Wildlife Trust of India, B-5/22, Safdarjung Enclave, New Delhi.

(PAN : AAATW0105E)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri George Koshi, CA
REVENUE BY : Shri Amit Jain, Senior DR

Date of Hearing : 19.04.2018
Date of Order : 23.04.2018

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Deputy Commissioner of Income-tax (E), Circle 2 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 15.07.2016 passed by Ld. CIT (Appeals)-40, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

> ***"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in ignoring the fact that as per section 149(1)(b) the notice u/s 148 can be issued after expiry of four years from the end of relevant assessment year on approval of competent***

authority if the escaped assessment is Rs.01 lakh and more.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in ignoring the fact that as per provisions section 11 & 12, 85% of the income should be applied during the year and the assessee has not applied income of Rs.63,36,002/- during the year, claimed to be set off."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Originally assessment was completed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') at the income of NIL vide order dated 11.10.2011. Thereafter, AO noticed that the assessee has claimed deficit of earlier years i.e. excess application of income of AY 2008-09 as application of income for charitable purpose under consideration which his not allowable u/s 11(1)(a) of the Act and proceeded to propose that the income of Rs.68,36,002/- has escaped assessment u/s 147 of the Act and thereby reopened the assessment after recording the reasons provided to the assessee on 20.01.2015. Dismissing the contentions raised by the assessee, AO made addition of Rs.68,36,002/-.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has deleted the addition of by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessment in this case has been reopened after a period of four years from the relevant assessment year. It is also not in dispute that the AO has not taken any approval from the competent authority before reopening the case. To proceed further, we would like to reproduce the reasons recorded by the AO for the purpose of reopening of the assessment for ready perusal as under:-

> ***"Subsequently it was noticed that the assessee had claimed deficit of earlier year i.e. excess application of income of AY 2008-09 as application of income for charitable purposes for the year under consideration. The said claim of the assessee is not allowable in view of section 11(1)(a) of the Income-tax Act, 1961. Hence, income to the tune of Rs.68,36,002/- had escaped assessment within the meaning of section 147 of the Income-tax Act, 1961."***

6. Bare perusal of the reasons recorded for the purpose of reopening shows that all the facts have been noticed by the AO from the return and computation filed by the assessee for the relevant assessment year wherein it is categorically mentioned that the claim for carry forward and set off of excess application of the previous year and that that the claim of the set off of the excess

application of the previous years were being made in accordance with the decision of Hon'ble Gujarat High Court and Hon'ble Rajasthan High Court. When all the facts have been brought on record by the assessee during the assessment proceedings completed u/s 143 (3) of the Act reopening the assessment after a period of four years amounts to change of opinion which is not permissible under law.

7. Ld. CIT (A) has decided the issue in correct perspective by relying upon the decisions rendered by the Hon'ble Delhi High Court in case of ***Haryana Acrylic Manufacturing Co. vs. CIT – (2009) 308 ITR 38 (Delhi)***, ***Rural Electrification Corporation Ltd. vs. CIT – (2013) 355 ITR 356, Microsoft Corporation (I) Pvt. Ltd. vs. DCIT – WP (C) 284/2013 order dated 23.05.2013 and M/s. Swarovski India Pvt. Ltd. vs. DCIT – WP (C) 1909/2013 order dated 08.08.2014***.

8. In view of what has been discussed above, when AO has not specifically brought on record by recording the reasons that which of the material facts necessary for assessment have not been fully and truly disclosed by the assessee during the course of its original assessment proceedings rather the facts recorded in the reasons were already on record during the assessment proceedings u/s 143 (3), the reopening of assessment u/s 147 is not permissible under a

period of four years. So, finding no illegality or perversity in the impugned order, we confirm the impugned order passed by the ld. CIT (A). Consequently, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 23rd day of April, 2018.

Sd/-	**sd/-**
(N.K. SAINI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 23rd day of April, 2018
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-40, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.