

**IN THE INCOME TAX APPELLATE TRIBUNAL "H"
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

**आयकरअपीलसं./ I.T.A. No. 5169/Mum/2016
(निर्धारणवर्ष / Assessment Year:2008-09)**

DCIT 2(1)(1), R. No. 561, 5 th Floor, AayakarBhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	Anvil Fintrade Pvt. Ltd. 201, 2 nd floor, Krishna kunj, Plot No. 30, Navyugh Co-Op. Hsg. Society Ltd, Opp- Sunflower Hospital, JVPD Scheme, Vile Parle (W) Mumbai-400056
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**Cross Objection No. 14/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2008-09)**

Anvil Fintrade Pvt. Ltd. 201, 2 nd floor, Krishna kunj, Plot No. 30, Navyugh Co-Op. Hsg. Society Ltd, Opp- Sunflower Hospital, JVPD Scheme, Vile Parle (W) Mumbai-400056	बनाम/ Vs.	DCIT 2(1)(1), R. No. 561, 5 th Floor, AayakarBhavan, M. K. Road, Mumbai-400020. .
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCA9882E		

अपीलार्थीकीओरसे/ Appellant by	:	Shri M. C. Omi Ningshen, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri D. K. Shivaram& Ms. Neelam C. Jadhav, AR

सुनवाईकीतारीख/ Date of Hearing	:	08/02/2018
घोषणाकीतारीख / Date of Pronouncement	:	10/04/2018

आदेश / ORDER

Per Shri Sandeep Gosain, Judicial Member:

The present appeal as well as cross objection filed by the revenue as well as assessee are against the order of Commissioner of Income Tax (Appeals) – 4, Mumbai dated 26.05.16 for AY 2008-09.

2. Since all the issues involved in the appeal as well as cross objection are common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

ITA No. 5169/Mum/2016 (AY 2008-09)

3. First of all we take up Revenue's appeal in ITA No. 5169/Mum/2016 for assessment year 2008-09 for decision. The grounds of appeal are mentioned herein below:-

1. "On the facts and in the circumstances of the case and in law, the 14. CIT(A) has erred in quashing the re-assessment proceedings u/s. 147 of the I.T. Act, 1961, without appreciating the facts that it is not barred by law to re-open a case where the AO has not applied his mind during assessment proceeding u/s. 143(3) of the I.T. Act, 1961."

2. "On the facts and in the circumstances of the case and in law, the 14. CIT(A) has erred in not adjudicating the issue on the merit because reassessment proceedings u/s. 147 of the I.T. Act, 1961 has been quashed by the Ld. CIT(A)."

3. For these and other grounds that may be urged at the time of hearing the decision of the CIT(A) may be set aside and that of the AO restored.

4. As per the facts of the present case, the assessee company is engaged in the business of trading and investment in shares and securities. The assessee filed its return of income for AY 2008-09 on 12.09.08 declaring total income at Rs.33,76,44,054/-. Subsequently, the case of assessee was selected for scrutiny and after serving statutory notices and seeking reply of assessee, the

AO passed assessment order u/s 143(3) on 31.03.10 thereby computing the total income at Rs. 33,85,20,110/-. Thereafter proceeding u/s 147 of the I.T. Act was initiated and after recording the reasons for reopening vide order sheet noting dated 30.03.13 and after seeking reply, the order of assessment u/s 143(3) r.w.s 147 of the I.T. Act was passed on 26.03.14.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties had partly allowed the appeal of the assessee and quashed the reopening of assessment order passed by AO by holding that there was no tangible material and the AO has sought to review the original assessment and impose his opinion over the decision of original AO.

Aggrieved by the order of Ld. CIT(A), both i.e. revenue as well as the assessee have filed their appeal as well as cross objections before us. However at present we are dealing with the appeal filed by the revenue on the grounds mentioned herein above.

Ground No. 1& 2

5. These ground raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in quashing the re-assessment proceedings u/s. 147 of the I.T. Act, 1961, without appreciating the facts that it is not barred by law to re-open a case where the AO has not applied his mind during assessment proceeding u/s. 143(3) of the I.T. Act, 1961, therefore we thought it fit to dispose of the same by this common order.

6. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above ground raised by the revenue in its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 3.1 to 3.5 of its order and the same is reproduced below:-

3.1 In appeal, on other hand, it is submitted that there is no escapement assessment and all the material facts were disclosed to the Assessing Officer during the

course of original assessments. It is argued in original assessment proceedings. the Assessing Officer vide notice dated 12.01.2010 alongwith annexure to notice u/s.42(1) of the Income-Tax Act, 1961 has specifically asked the question to the Assessee relating to the details of other incomes and details of expenses incurred in respect of earning of exempted income and whether disallowance of the same is made under section 14A. The Assessee during the assessment proceedings, vide letter dtd. 04/03/2010 & 18/03/2010 had given detail explanation to the specifically asked he question relating to the details of other incomes and details of expenses incurred in respect of earning of exempted income and whether disallowance of the same is made under section 14A of the Act. The Assessee vide letter dtd. 04/03/2010 had given explanation of interest received from fixed deposits with National Stock Exchange for their trading account of Future & Option (F & O), Interest received on Bank FD which was kept as margin money on behalf of the client, nature of business activity etc. also submits the statement of interest received and credited to the Anvil Fintrade Pvt. Ltd. with TOS. The Assessee along with letter also submitted the confirmation of the Anvil Shares & Stock Braking Pvt, Ltd. relating to FD given

as margin money for F & O segment for AY. 2007-2008.

It is further submitted that by letter dated 18 03.2010, the Assessee has submitted details of dividend income. Thus, on a specific query required information were given and further by letter dated 2503,2010. the Assessee had submitted a detailed reply on Sec,14A After considering the reply and details, the then Assessing Officer has completed the assessment ufs,143(3) of the Income-Tax Act 191 dated 31.03.2C10 by making disallowance of expenditure of Rs.876054/uls.14A of the Act. Thus, merely on the basis of change of opinion, Ld. Assessing Officer has reopened the completed assessment. Further, reopening of the assessment on the same issue based on same material is bad in law, hence, such escapement assessment is liable to be quashed, Further, disposal of objection in a very cryptic manner without assigning proper reason is to he quashed.

3.2 In support of his contention the A.R. of the Assessee placed his reliance onthe following case laws

a) HDFC vs. J.P. Janjid (2014) 225 Taxman 81 (Bom)(HC).

*U) CIT vs Jet Speed Audio (F.) Ltd. (2015) 372
hR 762 (Bom)(HC).*

*C) Reckitt Benckiser Healthcare India Ltd. vs.
ACIT (2014) 360 ITR 427 (G uj.) (HG)*

*d) Patel Alloy Steel (P) Ltd. vs. ACIT (2014) 225
Taxman 84(Guj.)(HC).*

*e) ACIT vs Rolta India Ltd (2011) 132 ITD 98
(Mumbai) (TM)(Trib.)*

3.3. I have considered the reasoning of the Assessing Officer for reopening of completed assessment and rival submission of the Appellant, carefully. I find that present Assessing Officer has wrongly reopened the completed assessment u/s.143() of the Act without having any new or tangible material. It is very important to take into consideration that at the time of original assessment the then Assessing Officer has asked the Appellant about incurrence of expenditure in respect of earning of exempt income vide notice u/s.142(1) dtd. 12.01.2010. In response to the notice, the Appellant had given full information, details and explanation by letters dated 04.03.2010 and 18.03.2010, it is also worthwhile to mention that by letter dated 04.03.2010, the Appellant had given explanation of interest received from fixed deposit with

National Stock Exchange(NSE) and interest income on FDR kept as margin money on behalf of client. Further by letter dated 8,03.2010, full details of dividend were given to the Assessing Officer. After considering the details and explanations of the Appellant, the then Assessing Officer has made disallowance of expenditure of Rs.1287000/- against expenditure shown by the Appellant ofRs. 4,10,946/-. Thus, it is very obvious that on this particular issue, a cautious decision has been taken by the Assessing Officer and matter has been finalized by deep scrutiny, and in consequence, assessment has been made u/s.143(3) of the income-Tax Act, 1961 Therefore, without having any new or tangible material in possession, the other Assessing Officer cannot change the assessment on the basis of his changed opinion u/s.147 of the Income-Tax Act, 1961 If there was any error in judgement of the original Assessing Officer, the power u/s.263 of the Act could have been exercised by the Ld. Commissioner having jurisdiction. But definitely, the Assessing Officer cannot review the assessment order under the shelter of reopening of assessment. The Hon'ble jurisdictional High Court in the case of HDFC vs. J.P. Janjid (2014) 225 Taxman 81 (Bom)(HC), has held that it is not opened for the Assessing Officer to relook at same material only because other Assessing Officer

was subsequently of view that conclusion arrived at earlier was erroneous. The relevant part of the judgement is as under :-

'8. We have considered the rival submissions. It is well settled position as held by this Court in Hindustan Lever Ltd. vs. R.B. Wadker (2004] 268 ITR 3321137 Taxman 479 that the reasons recorded by the Assessing Officer are for reopening of the Assessment are alone to be considered to determine whether or not the Assessing Officer had jurisdiction to issue notice under section 148 of the Act. The Court observed that the reasons recorded should be clear and unambiguous. The reasons must also disclose the Assessing Officers mind and should explain itself. Assessee should not be kept in dark about the reasons leading to the proposed reopening of the Assessment. In this particular case, as it apparent from the order passed on admission as well as from the bare reading of the reasons furnished to the Petitioner, that one is at a loss as to know what exactly is the reason for re-opening the assessment for Assessment Year 1999-2000.

9. However, with the assistance of Mr. Suresh Kumar, learned Counsel appearing for the

Revenue, we understood the reasons as indicating an excess grant of benefit under Section 36(1)(viii) of the Act to the Petitioner. TIUs according to Revenue was by mistake. Although various other submissions had been made by Mr. Dastoor, learned Senior Counsel, appearing of the Petitioner; we are of the view that the Petition can be disposed of on the short point that it is not open to the Assessing Officer to re-open the Assessment merely on a change of opinion. It is not disputed that the Assessing Officer had applied his mind to the material available before him for purposes of considering the claim Jbr deduction under Section 36(1)(viii)of the Act However, the Revenue submits that the result of the application of mind was an error mistake. Therefore, it has to be corrected. It is urged that the Revenue should not be precluded from re-opening a completed Assessment by issuing a notice under Section 148 of the Act to correct a mistake.

10. The Supreme Court in the matter of CITv. Kelvinator of India (2020) 320 JTR 561 has held that it is not open to the Revenue to re-open an Assessment on the basis of mere change of

opinion. The Supreme court has stated that there is a difference between the power to review and power to re-open. In this case, the Assessing Officer had applied his mind to the facts available and came to the particular conclusion i.e formed an opinion. According to the Assessing Officer, the conclusion reached by the earlier Assessing Officer was erroneous! mistaken. TIUs by itself accept the fact that the Assessing Officer had applied his mind to the facts and reached a conclusion which according to the Revenue now is erroneous. The Assessing Officer has no power to review under the shelter of reopening of Assessment under Sections 147(1)(b) of the act Looking at the same material again only because the conclusion arrived at earlier is erroneous would amount re-viewing the some material to come to possibly a different conclusion. Such an exercise is not permissible. In this case, the Assessing Officer has allowed the deduction under Section 36(i)(viii,) of the Act, It is not open to re-look at the some material only because it is subsequently of the view that the conclusion arrived at earlier, is erroneous.

11. In view of the above impugned notice dated 29th March 2004 issued under Section 148 of the Act is quashed and set aside."

Similarly, in the case of CIT vs. Jet Speed Audio (P.) Ltd. (2015) 372 ITR 762 (Bom)(HC) the Hon'ble jurisdictional High Court has dismissed the departmental appeal on the ground that reassessment order u/s.147 of the same ground of bad debts and without recording any tangible material was unjustified. Hence, the order passed by ITAT quashing the assessment order has been approved.

3.4. Respectfully, following the decision of the Honble jurisdictional ITAT and HighCourt, the escapement assessment passed by Assessing Officer is quashed as there is no new or tangible material and the Assessing Officer has sought to review the original assessment and impose his opinion over the decision of original Assessing Officer.

3.5. In the result, Ground No. 1 is allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find that Ld. CIT(A) had correctly appreciated the facts of the present case from the

records. We also noticed that there was no new tangible material with the AO for the purpose of reopening. Rather as per the facts of the case, the then AO during the time of original assessment had asked the assessee about incurrance of expenditure in respect of earning of exempt income vide notice u/s 142(1) dated 12.01.2010 and in response to the said notice, assessee had given full information, details and explanation by letters dated 04.03.2010 and 18.03.2010. Full details of dividend were given to the AO and only after considering the details and explanation, the then AO made disallowance of expenditure. Since, on a particular issue, a cautious decision has been taken by the AO and matter has been finalized by passing order u/s 143(3) of the Income Tax Act. Therefore, without any new or tangible material in possession, the other AO cannot change the assessment on the basis of his changed opinion by invoking the provisions of section 147 of the Income Tax Act. It is not open to the AO to relook at same material only because other AO was subsequently of the view that conclusion arrived at earlier was erroneous. The Ld. Commissioner of Income Tax (Appeals) by following the

decision of Hon'ble Jurisdictional ITAT and High Court had rightly concluded that the escaped assessment passed by AO is quashed as there is no new or tangible material and AO has sought to review the original assessment and impose his opinion over the decision of original AO.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these ground raised by the revenue stands **dismissed**.

Ground No. 3

This ground raised by the revenue is general in nature, thus requires no specific adjudication.

Cross Objection No. 14/Mum/2018 for AY 2008-09.

7. Now we take up assessee's cross objection No. 14/Mum/2018 for AY 2008-09. Since we have already upheld the

order of Ld. CIT(A), therefore in view of our above findings in appeal filed by the revenue in ITA No. 5169/Mum/16 on merits, the Cross Objections raised by the assessee becomes academic.

8. In the net result, the appeal as well as Cross Objection filed by the revenue as well as assessee stands **dismissed**.

Order pronounced in the open court on 10th April, 2018.

Sd/-
(R. C. Sharma)
लेखासदस्य / Accountant Member

Sd/-
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक/Dated : 10.04.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai