

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1005/Kol/2018
Assessment Year: 2007-08

Bimal Kumar Singh.....Appellant
C/o S.N. Ghosh & Associates, Advocates
Seben Brothers' Lodge
P.O. Buroshibtala
P.S. Chinsurah
Dist. Hooghly - 712 105
[PAN : ARXPS 5898 L]

Deputy Commissioner of Income Tax, Circle-44, Kolkata.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the assessee.

Shri Radhe Shyam, CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : November 11th, 2018

Date of pronouncing the order : January 16th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - 13, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 26/02/2018, for the Assessment Year 2007-08.

2. The assessee is an individual and filed its return of income on 25/10/2007, for the Assessment Year 2007-08, declaring income of Rs.23,50,580/-, notice for re-opening of the assessments u/s 147 of the Act, was issued to the assessee on 22/09/2011 u/s 148 of the Act. The assessee sought reasons for reopening which was given to the assessee. On 30/11/2012, objections were filed on the assumption of jurisdiction and issual of notice u/s 148 of the Act. This objections were not disposed off and the Assessing Officer proceeded to complete the assessment u/s 147 r.w.s. 143(3) on 24/01/2013. The assessee carried the matter in appeal disputing the reopening as well as the addition on merits on various grounds without success. Further aggrieved the assessee is before us.

3. After hearing rival contentions, I am of the opinion that the assessment has to be quashed for the reason of non-disposal of objections for the re-opening of assessment by the Assessing Officer. A similar view was taken by the Hon'ble High Gujarat High Court in the case *Arvind Mills Ltd. vs. Assistant Commissioner Of Wealth* 2004 270 ITR 469 Guj and in the case of *Bayer Material Science Pvt. Ltd. vs. DCIT; W.P. No. 2502 of 2015; judgment dt. 27/01/2016 (Bom. H.C.)*.

3.1. Consistent with the view taken therein, I quash the assessment as bad in law.

4. Even otherwise, I find that there is no whisper in the reasons recorded that the assessee has failed to truly and fully disclose all material facts required for the purpose of assessment though, the original assessment was done u/s 143(3) of the Act, and the re-opening is beyond the period of four years. For this proposition, we rely on the judgment of the Hon'ble Delhi High Court in the case of *Haryana Acrylic Manufacturing Co. v. Commissioner of Income-tax; [2009] 308 ITR 38 (Delhi)*, wherein it was held as follows:-

"Section 147, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts - Assessment year 1998-99 - Assessee had filed its return of income declaring nil income - During assessment proceedings, it submitted various details including bank statements, particulars of cheques received towards share application money and confirmation relating to share application money received during year from 'H' - Assessment was completed under section 143(3) at nil income - Thereafter, on 29-3-2004, Assessing Officer issued notice under section 148, giving reason that it had come to his notice that assessee had taken accommodation entries from 'H' during relevant year and, thus, he had reason to believe that assessee's income to that extent had escaped assessment - Whether when assessee, in course of original assessment proceedings, had supplied all relevant details; in assessment order, Assessing Officer also had specifically mentioned that details as required had been filed and verified; and moreover, in reasons supplied to assessee there was no allegation that it had failed to disclose fully and truly all material facts necessary for assessment and because of its failure there had been an escapement of income chargeable to tax, reopening of assessment after expiry of four years from end of relevant assessment year was without jurisdiction - Held, yes"

4.1. On this ground also, the re-opening cannot be sustained. Hence this appeal of the assessee is allowed.

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

Kolkata, the 16th day of January, 2019.

**Sd/-
[J. Sudhakar Reddy]
Accountant Member**

Dated : 16.01.2019
{SC SPS}

Copy of the order forwarded to:

1. Bimal Kumar Singh

***C/o S.N. Ghosh & Associates, Advocates
Seben Brothers' Lodge
P.O. Buroshibtala
P.S. Chinsurah
Dist. Hooghly - 712 105***

2. Deputy Commissioner of Income Tax, Circle-44, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches