

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No. 83/RPR/2016
निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Friends Construction Co.
Sabji Market, P.O. Akaltara,
Dist.- Janjgir- Champa (CG)
Pin-495552
PAN : AABFF5381J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 2(2),
Bilaspur (CG)

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S. Agrawal

Revenue by : Shri D.K. Jain

सुनवाई की तारीख / Date of Hearing : 16.01.2019

घोषणा की तारीख / Date of Pronouncement : 17.01.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals), Bilaspur dated 30.10.2015 for the assessment year 2007-08 as per following grounds of appeal:

“1. Under the facts and the law, the Ld. CIT(Appeals) erred in confirming the disallowance of Rs.6,74,870/- u/s.40(a)(ia) for non-deduction of tax u/s.194A rejecting the supporting and explanation filed.

Prayed that interest has been paid to financial institution of national repute, who are filing return of income and paying taxes, the disallowance of Rs.6,74,870/-

2. That the Ld. CIT(Appeals) further erred in confirming the allowance of depreciation at the rate 7.5% is against 15% claimed on centering material.”

2. That apart from the aforesaid ground on merit the assessee has also preferred additional ground which is as follows:

“3. That under the facts and the law, initiation of proceedings u/s.147 and the issue of Notice u/s.148 is not according to the provisions of section 147 of Income Tax Act, 1961 and therefore, the Assessment order dated 28.03.2013 be annulled.”

3. The brief facts in this case are that the original assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 19.11.2009 on total income of Rs.1,22,148/- as against returned income of Rs.47,352/-. The total addition on account of expenses was Rs.74,796/-. On verification of records it was noticed that the assessee had made transport payment of Rs.4,11,320/- to M/s. Delhi Baroda road Lines and interest payment of Rs.2,63,550/- to M/s. Tata Motors without deducting tax (TDS) violating the provisions of section 40(a)(ia) of the Act. Apart from the above the assessee had claimed depreciation @15% on centering material slab which was purchased on

12.03.2007 resulting in excess claim of depreciation of Rs.19,790/-. In the light of the above, the Assessing Officer has reason to believe that income to the extent of Rs.6,94,660/- had escaped assessment for the A.Y.2007-08. To bring the same in tax net, notice u/s.148 was issued after obtaining approval from JCIT, Bilaspur. Notice u/s.142(1) of the Act was also issued along with query. The re-assessment was done u/s.143(3) r.w.s.147 of the Act. It is with regard to re-assessment that the legal ground has been raised by the assessee.

4. The Ld. AR of the assessee vehemently argued that in order to complete re-assessment u/s.147/148 of the Act, there must be concrete or tangible evidence with the Assessing Officer so to form a reason to believe that there is some income that has been escaped assessment. There must be some new information gathered which was contrary to the facts and material available at the time of passing original assessment order. The Ld. AR of the assessee placed on record copy of the letter to the Assessing Officer. During assessment proceedings, they have filed books of accounts, material bills, vouchers of labour payment and office expenses are enclosed herewith for the verification of the Assessing Officer. This has been done in response to the details which was asked by the Assessing Officer through letter dated 19.01.2009 wherein the Income Tax Officer asked the assessee to explain the sources of capital introduced for

business with proof also furnished partnership deed, bank statement etc. The Ld. AR further submitted that assessment was completed u/s.143(3) of the Act and all the relevant details and documentary evidence were with the Assessing Officer. That reasons recorded for reopening the assessment does not from any point of view signifies that there is some specific evidence or new material on record with the Assessing Officer which was not there at the time of original assessment because of which he has reason to believe the income has escaped assessment. On the contrary, the Assessing Officer has not brought on record any fresh evidence or material. All the documentary evidences were already available with the Assessing Officer. In such circumstances, re-assessment proceedings are bad in law and liable to be quashed.

4.1 The Ld. AR of the assessee has placed reliance on the decision of the Hon'ble Supreme Court of India in the case of CIT Vs. Kelvinator on India Ltd. reported as 228 CTR 488 (SC) wherein it has been held that after 1st April, 1989 AO has power to reopen the assessment u/s.147 provided AO has reason to believe that income has escaped assessment and there is tangible material to come to the conclusion that there is escapement of income. Mere "change of opinion" cannot be per se be reason to re-open. In the case of Manjusha Estate (P) Ltd. Vs. CIT reported in 226 CTR 283, the Hon'ble Gujarat High Court has held that in the absence of any failure on

the part of the assessee or any fresh material on record, the reopening of assessment was based on change of opinion and therefore, same cannot be sustainable. Further, in the case of *Justi Rama Rao Vs. ITO*, reported as 130 TTJ 66 (hyd.), it was held that reasons must disclose prima facie the facts which would justify the issuance of notice. AO must apply his mind to the facts of the case before issuing notice, in the absence of which the reassessment will not be valid.

5. On the other hand, the Ld. DR has placed reliance on the orders of the Authorities below.

6. We have perused the case records, analyzed the facts and circumstances of the case. We have also considered the decisions relied upon by the Ld. AR. In the facts and circumstances of this case, we find that in the paper book filed by assessee before us, requisite documents/details have been asked by the Assessing Officer during assessment proceedings and the entire relevant documentary evidences viz. books of account, material bills and vouchers of labour payments etc. were submitted by the assessee before the Assessing Officer. This fact has been undisputed by the Department.

Further, on perusal of the reasons recorded by the Assessing Officer for reopening of assessment, there is no concrete or new material referred by the Assessing Officer which was not there in front of him during scrutiny assessment proceedings. Once the scrutiny assessment proceedings has been completed and thereafter, the Assessing Officer does not have any new evidence or material on record against assessee to substantiate that there is reason to believe that income has escaped assessment. In absence of such new evidence and material on record, issuance of notice u/s.148 of the Act and re-assessment u/s. 147 of the Act is not warranted within the taxing statutes.

The Hon'ble Apex Court in the case of CIT Vs. Kelvinator on India Ltd. (supra.) has categorically held that change of opinion cannot be per se be reason to re-open. In the case of the assessee, when all the documentary evidences have already there with the Assessing Officer at the time of original assessment proceedings and in absence of any new other material, it is nothing but mere change of opinion and mere change of opinion cannot be per se be reason to reopen.

7. In view of the above discussion, we set aside the order of the Ld. CIT(Appeals) and allow the legal ground of the assessee and therefore, direct to quash the reassessment order passed u/s.143(3) r.w.s.147 of the

Act. Since we have allowed the legal ground of the assessee, the grounds on merit becomes academic.

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

Order pronounced on 17th day of January, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 17th January, 2019.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (CG).
4. The CIT, Bilaspur, (CG)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	16.01.2019	Sr.PS/PS
2	Draft placed before author	17.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

