

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

**BEFORE SHRI D. KARUNAKARA RAO, AM  
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील सं. / ITA Nos.26 & 27/PUN/2018  
निर्धारण वर्ष / Assessment Years : 1999-2000 & 2000-01**

Sonrise Tea Processing  
Company Pvt. Ltd.,  
29/30, Shivaji Park,  
Kolhapur-416001.

PAN : AACCS8805J

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-2,  
Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 05.02.2019  
घोषणा की तारीख / Date of Pronouncement : 07.02.2019

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

There are two appeals under consideration are filed by the assessee against the respective orders of CIT(A)-1, Kolhapur dated 27.10.2017 and 30.10.2017 for the Assessment Years 1999-2000 and 2000-01 respectively. Since the facts and issues involved in both the appeals are common, therefore, these were heard together and are being disposed of by this composite order.

2. Since the common grounds raised by the assessee in both the appeals, therefore, the grounds raised in ITA No.26/PUN/2018 are extracted hereunder for the sake of brevity :-

*“1] The learned CIT(A) erred in holding that the reopening u/s 148 was justified in law and consequently, the reasst. order passed u/s 147 was valid in law.*

2] *The learned CIT(A) failed to appreciate that the reopening was not justified since no new tangible material was available with the A.O. for reopening the case and accordingly, the reasst. order passed u/s 147 by the A.O. was null and void.*

3] *The learned CIT(A) further erred in not appreciating that the reopening of asst. for disallowing the claim of deduction u/s 80IA was on a mere change of opinion which was not justified in law and therefore, the reasst. order passed by the A.O. ought to have been declared as null and void.*

4] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Referring to the legal issue relating to the validity of the notice u/s 148 of the Act, ld. Counsel for the assessee submitted that this is the second round of the proceedings before the Tribunal. In the first round, the Tribunal remanded this matter to the file of the CIT(A) vide order 31.10.2012. The contents of para 19 and 20 of the order of the Tribunal are relevant in this regard. In para 20 of the order of the Tribunal, the Tribunal gave a specific direction to the CIT(A) on the existence of “tangible material” and the finding of fact from him. Ld. AR read out the relevant paras in this regard. Further, referring to the order of the CIT(A), the ld. Counsel for the assessee submitted that this issue i.e. existence of tangible material was not adjudicated by the CIT(A) in his order and failed to pass a speaking order on these directions. Further, ld. AR submitted that the CIT(A) merely made an oblique reference only for this issue instead of passing a speaking order. Ld. AR further submitted that there is requirement of specific adjudication on this legal issue qua the existence of tangible material.

4. The ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A) on this issue.

5. We have heard both the sides on the specific issue relating to the existence of tangible material qua the direction of the Tribunal in the first

round of proceedings. For the sake of completeness, paras 19 to 20 from the order of the Tribunal are extracted hereunder :-

*“19. We have considered the rival submissions carefully. In the context of the assumption of jurisdiction by issuance of notice u/s 148 of the Act, the sum and substance of the arguments raised before us is that there was no fresh material or a rational belief that certain income had escaped assessment on account of allowance of deduction u/s 80-IA of the Act. At the time of hearing, reliance has been placed on the judgment of Hon’ble Bombay High Court in the case of Indivest PTE Ltd. (supra), to point out that in the absence of tangible material or a rational belief, assessment could not be reopened u/s 147/148 of the Act. It was put across to the learned counsel in the course of hearing that the aforesaid proposition could be examined only on perusal of the reasons recorded by the Assessing Officer pursuant to sec. 147 of the Act, a copy of which was not on record. However, the point sought to be made was that prior to issuance of notice u/s 148 of the Act dated 30-3-2006 for the instant assessment year, the assessment for A.Y. 2003-04 was completed by the Assessing Officer wherein the claim of the assessee for deduction u/s 80-IB was upheld. There was no material with the Assessing Officer to entertain a belief for the instant assessment year that any income had escaped assessment on account of wrong allowance of deduction u/s 80-IA of the Act. In this context, we find that the CIT(A) records that the assessment made u/s 143(3) for the A.Y. 2003-04 was taken up for revision u/s 263 by the CIT-II, Kolhapur, and therefore, it would constitute information for Assessing Officer to re-visit the claim made by the assessee u/s 80-IA for earlier years. It is for this reason that the CIT(A) has negated the proposition challenging the assumption of jurisdiction u/s 147. In our considered opinion, the objection taken by the assessee has not been dealt with by the CIT(A) in its proper perspective. Ostensibly, the revisionary proceedings for A.Y. 2003-04 u/s 263 has been initiated by the CIT-II Kolhapur on 15-11-2006 whereas the notice u/s 148 of the Act in the instant assessment year was issued on 30-3-2006. Therefore, the CIT(A) misdirected himself in observing that the revisionary proceedings u/s 263 of the Act by the Commissioner for the A.Y. 2003-04 would constitute ‘information’ for the Assessing Officer in the instant assessment year.*

*20. If the test of whether there existed any tangible material with the Assessing Officer on the date of recording of reasons u/s 147 of the Act, is to be examined, it would be in the fitness of things that due reference be made to the reasons so recorded and other contemporaneous record available with the Assessing Officer. Clearly such an approach is conspicuous by absence in the order of the CIT(A). Therefore, in the interest of justice, we deem it fit and proper to set aside the order of CIT(A) Kolhapur on this aspect and restore the matter back to his file to re-visit the objection of the assessee against assumption of jurisdiction by the Assessing Officer by issuance of notice u/s 148 dated 30-3-2006. Needless to say, the CIT(A) shall allow an opportunity of being heard to the assessee and then adjudicate on this aspect afresh in accordance with law.”*

6. From the above, it is evident the finding of fact on the existence of tangible material is core aspect of the direction of the Tribunal when the remand is ordered. However, the CIT(A) has not adjudicated this issue in the

fact required u/s 250(6) of the Act. Without going into the merits of other issue, we are of the opinion that this issue in both the appeals should be remanded to the file of the CIT(A) for one more time want of a speaking order or for giving effect to the finding of the Tribunal in para 20 above. With the said discussion, the CIT(A) is directed to grant a reasonable opportunity of being heard to the assessee in the remand proceedings. Accordingly, the grounds raised by the assessee in both the appeals are allowed for statistical purposes.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 07<sup>th</sup> February, 2019.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**  
**(D. KARUNAKARA RAO)**  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> February, 2019

*Sujeet*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Kolhapur;
4. The Pr. CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला"  
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.