

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1067/JP/2018  
निर्धारण वर्ष / Assessment Year : 2008-09

|  |             |                                   |
|--|-------------|-----------------------------------|
| Shri Manak Chand Modi<br>D-185, Mangal Marg, Bapu Nagar,<br>Jaipur-302015. | बनाम<br>Vs. | The DCIT,<br>Circle-7,<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADDPM 4856 G                       |             |                                   |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent           |

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 25/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Jaipur dated 03.08.2018 for the Assessment Year 2008-09 wherein the assessee has taken the following grounds of appeal:-

*"1.(a) In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of Id. AO, in reopening the case of the assessee, under Section 147 of the Income Tax Act, 1961. The Action of the Id. AO is illegal,*

*unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing such re-assessment proceedings.*

*(b) In the facts and circumstances of the case and in law, the Id. AO has erred in reopening the case of the assessee by issuing notice under section 148 of the Income Tax Act 1961, being not in accordance with the provisions of Section 151 of Income Tax Act 1961. The action of the Id. AO is illegally, unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing such re-assessment proceedings.*

*2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO, in disallowing the salary expense amounting to Rs. 2,55,750/- for salary paid to employees. The action of the Id. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by deleting such addition.”*

2. During the course of hearing the Id. AR did not press ground no. 1(b) and the related additional ground of appeal. Hence, the same are dismissed as not pressed.
3. In ground no. 1(a), the assessee has challenged the assumption of jurisdiction by the AO U/s 147 of the Act.
4. Briefly, the facts of the case are that the assessee has filed his return of income on 30.09.2008 declaring total income of Rs. 6,76,030/- which includes income from salary and interest. The assessment was completed U/s 143(3) of the Act vide order dated 29.10.2010 at a total income of Rs. 7,39,180/- wherein the AO disallowed 20% of the petrol and conveyance expenses treating the same as personal expenditure.

Subsequently, a show cause U/s 154 of the Act was issued to the assessee wherein it was stated that the assessee has shown interest income amounting to Rs. 13,90,289/- under the head "income from other sources" and has claimed expenses of Rs. 7,39,180/- out of which Rs. 2,55,750/- relates to salary expenses which is not allowable. Further, it was stated that excess credit of Rs. 4012/- was allowed at the time of passing of the order U/s 143(3) of the Act. Thereafter, the Assessing Officer passed the order U/s 154 of the Act wherein Rs. 2,55,750/- being the salary expenditure was disallowed and brought to tax in the hands of the assessee.

5. On appeal, the Id. CIT(A) allowed the claim of the assessee holding that the addition so made by the AO was beyond the scope of Section 154 of the Act.

6. Thereafter, a notice U/s 148 was issued to the assessee on 27.03.2015 after recording the reasons for income escaping assessment and seeking necessary permission from the competent authority. The reasons so recorded reads as under:-

*"On perusal of the assessment records, it is revealed that under the head "income from other sources", assessee has shown interest from parties Rs. 13,90,289/- and deducted as expenses of Rs. 7,40,000/- and shown net interest Rs. 6,50,289/- from parties. Out of expenses of Rs. 7,40,000/- Rs. 2,55,750/- related to salary paid. Salary expenses are not allowable from interest income (other sources income). The omission has resulted in under computation of income by Rs. 2,55,750/- with tax effect of*

*Rs. 1,03,525/- including interest u/s 234B. In view of the above facts, I have reasons to believe that income to the tune of Rs. 2,55,750/- has under assessed and hence escaped assessment and I am satisfied that it is a fit case for issuing notice u/s 148."*

7. In the above factual background, the Id. AR has challenged the assumption of jurisdiction by the AO U/s 147 of the Act. In this regard, the Id. AR has submitted that the case of the assessee falls under first proviso to section 147 of the IT Act, 1961 as the reopening is undertaken after expiry of 4 years from the end of relevant assessment year and the assessment u/s 143(3) stood completed in the present case. It was submitted that as per the proviso to section 147 the Act, the reopening would be valid only if there was failure on part of the assessee to disclose fully and truly all material facts necessary for assessment.

8. It was submitted that the AO, in the present proceedings, formed a reason to believe that the assessee has wrongly claimed deduction of salary expense against interest income. It was submitted that the fact that the assessee has claimed deduction of salary expense was on record and Id. AO applied his mind on the same as he specifically, during the proceedings u/s 143(3), enquired and asked for the details relating to expense claimed u/s 57(iii) *vide* note sheet entry dated 30.07.2010. The assessee then furnished the required details *vide* his letter dated 30.08.2010. Thereafter, in the assessment order passed u/s 143(3), addition of Rs. 6,510, being 20% of Petrol and Conveyance

Expenses, was made after examining expenses claimed u/s 57(iii) against interest income and no addition regarding the salary expense was made. Thus it is evident that Id. AO accepted the assessee's claim and formed his opinion. Had he not satisfied himself, he would have made additions while passing the order u/s 143(3) of the Act. In view of above, it was submitted that no specific, reliable and relevant information came to the possession of Id. AO subsequent to the completion of assessment u/s 143(3). Thus, the reasons were based on the documents which were already on record and, therefore, Id. AO exceeded his jurisdiction by reopening the case of assessee merely on change of opinion. In support, reliance was placed on the following decisions:-

- CIT vs. Kelvinator of India Ltd. 187 Taxman 312 (SC).
- CIT vs. Vaishali Avenue 48 taxmann.com 289 (Rajasthan).
- ACIT vs. Mangalm Cement Ltd. 78 taxmann.com 334.

9. It was further submitted that there was no failure on the part of the assessee. The details of salary expenses were requisitioned by the Id. AO and were duly furnished by the assessee. The Ld. AO has also not recorded in the reasons that there was any omission or failure on the part of the assessee to make a true and full disclosure. Reliance was placed on the judgment of Hon'ble Bombay High Court in the case of Rajbhushan Omprakash Dixit vs. DCIT (*Writ Petition No. 3546 of 2018*) wherein it was held as under:

*"...12. The stand taken by the Assessing Officer may save him from the allegation of change of opinion, however, in the present case when we are examining the validity of the notice*

*of reopening issued beyond the period of four years from the end of relevant assessment year, the question of lack of true and full disclosure by the Assessee would become relevant. In this context, once the Department i.e. the Assessing Officer had certain information, material, or document before him during the assessment proceeding, irrespective of the source of such information, material, or document, the Assessee cannot be blamed for non-disclosure thereof."*

*"...13. If the Assessing Officer did not, for some reason, advert to such material or did not utilize the same, he surely cannot allege that the Assessee failed to disclose truly and fully all material facts."*

10. It was further submitted that reopening beyond period of 4 years, after original assessment u/s 143(3) is valid only if, in the reasons recorded, it is specifically mentioned by the Assessing Officer that the assessee failed to disclose fully or truly all material facts. If the same is not specifically pointed, reopening proceedings are baseless and invalid. Reliance was placed on the decision of Hon'ble Gujarat High Court in case of Gujarat Lease Financing Ltd. vs. DCIT 36 taxmann.com 359.

11. It was further submitted that in such a case if an order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue, the Revenue was not without remedy. Where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be

resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion. Reliance was placed on the decision of Delhi High Court in the case of Usha International Ltd. [2012] 25 taxmann.com 200 (Delhi) (FB).

12. Per contra, the Id. DR is heard who submitted that from perusal of the assessment order, it may be noted that there is no discussion regarding the claim of salary expenses and therefore, the contention of the Id. AR that there was change of opinion cannot be accepted. It was further submitted that during the course of proceeding U/s 154 of the Act, the Assessing Officer came to know about the details of the salary expenditure which has been claimed of the assessee as deduction against the interest income and therefore, the Assessing Officer was seized of the information based on which he has reopened the case of the assessee. The Id. DR accordingly submitted that there is no infirmity in the action of the Assessing Officer in assumption of jurisdiction U/s 147 of the Act after seeking approval of the appropriate authority.

13. We have heard the rival contentions and pursued the material available on record. In this case, the assessment was originally completed u/s 143(3) and thereafter, the notice u/s 147 was issued on 27.03.2015 which is after the expiry of period of four years from the end of the relevant assessment year i.e, 2008-09. Therefore, for assumption of jurisdiction under section 147, the Assessing officer has to form a reasonable belief that the income has escaped assessment. In addition, the Assessing officer has to demonstrate that the income has escaped assessment due to failure on the part of the assessee to

disclose truly and full all material facts. In the instant case, as per Assessing officer, the assessee has wrongly claimed deduction for salary expenditure while computing its interest income under the head "Income from other sources". Section 57(iii) allows deduction of expenditure laid out or expended wholly and exclusively for the purposes of making or earning such income. Therefore, there is no patent illegality in the claim of the salary expense u/s 57(iii) of the Act against the interest income so long as the assessee demonstrates that such expenditure has been incurred for the purposes of earning the interest income. In this regard, it is noted that during the original assessment proceedings, the assessee through his A/R letter dated 30.08.2010, referring to the discussions during the last hearings before the AO, submitted computation of income as well as details of expenses amounting to Rs 7,40,000. The said expenses consist of interest expenses of Rs 4,51,696, salary expenses of Rs 2,55,750 and petrol and conveyance expenses of Rs 32,554. Considering the same, the Assessing officer has passed the assessment order u/s 143(3) wherein no addition has been made in respect of interest and salary expenses, however, the petrol expenses have been disallowed to the extent of 20%. We thus find that even though the assessment order doesn't contain any discussion regarding salary expenses so claimed by the assessee, the matter relating to claim of the salary expenses was enquired and examined by the Assessing officer during the course of original assessment proceedings and further, there is no failure on part of the assessee in terms of disclosure of the material facts as relevant for the completion of the assessment proceedings. Thereafter, basis the same material available during the original assessment proceedings,

the proceedings u/s 154 were initiated (later on dropped by the Id CIT(A) and now, the proceedings have been initiated u/s 147 of the Act. We thus find force in the arguments of the Id AR that it is a case of change of opinion by the Assessing officer where the matter relating to claim of salary expense was examined earlier by the Assessing officer during the course of the original proceedings and basis the same material and in absence of any fresh material in possession of the Assessing officer, the reassessment proceedings cannot be initiated u/s 147 of the Act. In light of the aforesaid discussions, we are of the view that assumption of jurisdiction u/s 147 by the Assessing officer is not in accordance with the well-settled principles of law as has been laid down by the Courts from time to time and hence, the impugned notice u/s 148 is quashed and set-aside along with consequent reassessment proceedings. In view of the same, ground no.1(a) of the assessee's appeal is allowed. Ground no. 2 thus became academic in nature and the same is not adjudicated upon.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/04/2019.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2019.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Shri Manak Chand Modi, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-7, Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1067/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar