

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4334/Del./2016
(ASSESSMENT YEAR : 2006-07)**

DCIT,
Circle 19 (1),
New Delhi.

vs. Oriental Bank of Commerce,
Plot No.5, Sector 32,
Institutional Area,
Gurgaon – 122 001.

(PAN : AAACO0191M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri KVS R Krishna, CA
Shri Aman Goel, CA

REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 03.06.2019

Date of Order : 10.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, DCIT, Circle 19 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 02.05.2016 passed by the Commissioner of Income-tax (Appeals)-7, New Delhi qua the assessment year 2006-07 on the grounds inter alia that :-

“On the facts and circumstances of the case, the ld. CIT(A) has erred in law and facts in quashing the reassessment order passed u/s 147/143(3) of the Income Tax Act, 1961 by the Assessing

Officer without appreciating the facts that the assessee company has not truly and fully disclosed all the facts before the Assessing Officer and it did not produced any material facts on record before the Assessing Officer at the time of assessment proceedings as well as reassessment proceedings.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Initially, assessment of the assessee was completed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) vide order dated 27.11.2007 at an income of Rs.714,07,00,170/-. Thereafter, AO, after recording the reasons for reopening, issued a notice u/s 148 of the Act to which assessee filed objections which have been disposed off.

3. AO after declining the contentions raised by the assessee that “assumption of jurisdiction to initiate the proceedings u/s 147/143 (3) in view of proviso to section 147, put in specific restriction on the AO to reopen the case in which assessment has been completed u/s 143 (3) of the Act when the assessee has fully and truly disclosed all material facts necessary for assessment”, AO proceeded to make addition of Rs.14,04,00,000/- debited in P&L account as provision on account of staff welfare fund.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition after allowing the appeal.

Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, reopening u/s 147 of the Act has been made by AO beyond a period of four years after framing assessment u/s 143 (3) of the Act. It is also not in dispute that all the items as to provisions of Rs.14,04,00,000/- on account of staff welfare and provision of Rs.2,83,51,006/- on account of expenses are items of the balance sheet.

7. Challenging the impugned order passed by the Id. CIT (A), Id. DR for the Revenue contended inter alia that it is not a case of change of opinion; that the AO was having prima facie material on the basis of which reopening has been made and relied upon the assessment order. Id. DR also relied upon the decisions rendered by Hon'ble Supreme Court as well as Hon'ble High Court cited as *R.K. Malhotra, ITO vs. Kasturbhai Lalbhai 109 ITR 537 (SC)*, *Raymond Woollen Mills Ltd. vs. ITO 236 ITR 34*, *CIT vs. P.V.S. Beedies Ltd. 237 ITR 13 (SC)*, *Yuvraj vs. UOI 315 ITR 84 (SC)*, *Honda Siel Power Products Ltd. vs. DCIT 340 ITR 64 (SC)*,

Honda Siel Power Products Ltd. vs. DCIT 340 ITR 53 (Delhi), New Delhi Television Ltd. vs. DCIT (2017) 84 taxmann.com 136 (Delhi), Sun Direct TV Pvt. Ltd. vs. ACIT (2018) 98 taxmann.com 201 (Madras), A Sridevi vs. ITO 2018-TIOL-2246-HC-MAD-IT, South Asia FM Ltd. vs. ACIT (2018) 98 taxmann.com 200 (Madras), Pranawa Leafin (P.) Ltd. vs. DCIT (2013) 33 taxmann.com 454 (Bombay), CIT vs. Kiranbhai Jamnadas Sheth (HUF) (2013) 39 taxmann.com 116 & Dishman Pharmaceuticals & Chemicals Ltd. 346 ITR 228 (Guj.).

8. However, on the other hand, to repel the arguments addressed by the ld. DR for the Revenue, ld. AR for the assessee contended inter alia that when the assessee has fully and truly disclosed all the material particulars necessary for assessment, reopening is not permissible; that the reasons recorded do not justify reopening u/s 147/148 in case of completed assessment u/s 143(3) as no tangible material has come to the light for initiating reassessment proceedings and relied upon the decisions cited as *Allied Strips Ltd. vs. ACIT 384 ITR 424 (Delhi), Donaldson India Filters Systems Pvt. Ltd. vs. DCIT 371 ITR 87 (Delhi), Lalit Bagai vs. DCIT (2014) 91 CCH 7 (Del.)(HC), CIT vs. Valvoline Cummins Ltd. (2014) 90 CCH 0233 (Del.)(HC), Global Signal*

Cables (India) Pvt. Ltd. vs. DCIT 368 ITR 609 (Del.) and CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SC).

9. Before proceeding further, we would like to extract the reasons recorded by AO for reopening of assessment u/s 147 of the Act for ready perusal as under :-

Reasons for the belief that income has escaped assessment.:

The assessment u/s 143(3) of the Act was completed at an income of Rs.7,14,07,00,170/- in November, 2008.

From the perusal of assessment records of AY 2006-07 it has been found that:

- i) The assessee had made a provision of Rs.14,04,00,000/- on account "Staff Welfare" in the balance sheet. As the provision made was not an ascertained liability, the same should have been disallowed and added back to the income of the assessee. Hence under assessment of Rs.14,04,00,000/-.*
- ii) The assessee had made a provision of Rs.2,38,51,006/- on account of "Expenses" in the balance sheet. As the provision made was not an ascertained liability, the same should have been disallowed and added back to the income of the assessee. Hence under assessment of Rs.2,83,51,006/-.*

On the basis of examination of the facts and circumstances for AY 2006-07, as above, I have reason to believe that the income has escaped assessment on account of failure on the part of the assessee, to disclose truly and fully all material facts necessary for assessment within the meaning of proviso to section 147 of the IT Act, 1961.

Since four years have expired from the end of the relevant assessment year and the assessment was made u/s 143(3) of the IT Act, as per provisions of section 151(1) of the IT Act, necessary approval of the Commissioner of Income Tax, Delhi-V, New Delhi is solicited for issue of notice u/s 148 of the IT Act, for AY. 2006-07."

10. Bare perusal of the reasons recorded extracted above goes to prove that AO sought to reopen the assessment only from the perusal of assessment record for AY 2006-07 that (i) *The assessee had made a provision of Rs.14,04,00,000/- on account "Staff Welfare" in the balance sheet. As the provision made was not an ascertained liability, the same should have been disallowed and added back to the income of the assessee. Hence under assessment of Rs.14,04,00,000/-;* and (ii) *the assessee had made a provision of Rs.2,38,51,006/- on account of "Expenses" in the balance sheet. As the provision made was not an ascertained liability, the same should have been disallowed and added back to the income of the assessee Hence under assessment of Rs.2,83,51,006/-.*

11. When undisputedly assessee has brought on record all the facts as to making provisions of Rs.14,04,00,000/- on account of staff welfare and has made provision of Rs.2,83,51,006/- on account of expenses being items of the balance sheet, there is not an iota of material on record that the assessee has not fully and truly disclosed all material particulars necessary for assessment. Opening words of reasons recorded that, *"from the perusal of assessment record of AY 2006-07"*, goes to prove that the AO has sought to review the assessment already framed u/s 143 (3) of the Act, that too after four years of the assessment, which is not

permissible under law, because AO has only power to reassess the assessee and not to review the assessment already framed u/s 143 (3) of the Act.

12. Hon'ble Apex Court in *CIT vs. Kelvinator of India Ltd.* (supra) has explained the provisions relating to reassessment after amendment of the Act in 1989 and after perusing the CBDT Circular No.549 dated 31.10.1989 by returning following findings:-

“6. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe"

but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote here in below the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147. --A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

13. So, when notice u/s 148 has been issued after a period of four years after framing assessment u/s 143 (3) of the Act particularly when there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, notice for initiating the reassessment proceedings is not valid as has been held by Hon'ble Delhi High Court in case cited as *Allied Strips Ltd. vs. ACIT* (supra) by returning following findings :-

"Held, allowing the petition, that the matter was one of change of opinion. The questionnaire specifically raised the issue with regard to share capital. It required the assessee to give a list, source, genuineness, identity of the share-holders along with confirmation copies-of the ledger account of the party including

confirmation of the mode, date; address and acknowledgment of return, etc. from the party along with source and relevant bank entries. The information was provided by the assessee. After receipt of the information, the Assessing Officer did not think it fit to make an addition and, under these circumstances, no addition itself amounted to forming an opinion. Another reason why the notice under section 148 of the Income-tax Act, 1961 and the proceedings consequent thereto had to be set aside was that the Pre-condition of there being a failure on part of the assessee to fully and truly disclose all the material particulars necessary for assessment had not been made.”

14. Hon’ble Delhi High Court in case of *Donaldson India Filters Systems Pvt. Ltd. vs. DCIT* (supra) while deciding the identical facts held that when there is no default on the part of the assessee to fully and truly disclosed facts necessary for framing assessment, reopening on ground of expenditure claimed or deduction amounts to “mere change of opinion” and in such circumstances, reassessment is impermissible and as such, reassessment and consequential proceedings are not valid by returning following findings :-

“Held, allowing the appeal, that the reopening of the assessment failed to pass muster on both the tests. The satisfaction note did not disclose the foundation of "reasons to believe" as it vaguely referred to the perusal of "the records" without specifying, the fresh "tangible material" that had come to light giving rise to a need for such action. Since the assessment had earlier been concluded under section 143(3), the restrictions on the exercise of the power of reassessment as contained in the first proviso to section 147 would inhibit further action in the absence of material showing default by the assessee to fully or truly disclose. Hence, the view taken by the Commissioner (Appeals) that it was a case of impermissible change of opinion was correct. The order whereby the proceedings had been reopened for assessment under section 147/148 thus, suffered from the jurisdictional error. Consequently, the proceedings taken pursuant thereto could not be sustained.”

15. In *Donaldson India Filters Systems Pvt. Ltd. vs. DCIT* (supra), the Hon'ble Delhi High Court has distinguished *Honda Siel Power Products Ltd. vs. DCIT* (supra) case relied upon by the ld. DR for the Revenue.

16. Identical issue has been decided by Hon'ble Delhi High Court in case cited as *Lalit Bagai vs. DCIT* (supra) by returning following findings :-

“Reopening of assessment-Full and true disclosure of facts-Issue of notice beyond four years-Validity-Original assessment was completed u/s 143(3)-AO issued notice u/s 148 seeking to reopen assessment after four years from the end of relevant assessment year-Reasons for reopening were that assessee had not shown receipts in Profit and Loss Account which had appeared in the 16A Forms and secondly assessee had not deducted any tax on a payment, therefore, provisions of section 40(a)(ia) would get attracted-AO rejected assessee's objections-Held, with regard to problem of reconciliation between receipts In Profit and Loss Account and income as evident from 16A Forms, same was in contemplation of AO at time of original assessment-Full reply was given by assessee's CA reconciling differences pointed out by AO-In assessment order, AO did not make additions after being fully satisfied by reply submitted on behalf of assessee-All these facts were fully and truly disclosed before AO at time of original assessment-With regard to non deduction of tax, payments were made to assessee's own employees-Hence, payments were not covered u/s 40(a)(ia)--Therefore, there was no basis for seeking reopening of assessment-Impugned notice set aside-Writ petition allowed.”

17. Moreover, reasons recorded does not disclose if any tangible material has come to the notice of AO for initiating the reassessment proceedings rather he has sought to review the facts already perused and decided in favour of the assessee having been duly and truly shown in the balance sheet. So, without tangible material, the AO cannot be allowed to reopen the assessment which otherwise amounts to change of opinion.

18. In view of our discussion in the preceding paras, we are of the considered view that arguments addressed by the Id. DR and case laws relied upon is not applicable to the facts and circumstances of the case which have been decided in favour of the assessee on the facts that there was omission and failure on the part of the assessee to disclose fully and truly material facts necessary for assessment, whereas there is no such failure on the part of the assessee to disclose fully and truly material facts necessary for assessment, this fact is clear from the reasons recorded itself.

19. So, in view of what has been discussed above, we are of the considered view that when notice u/s 147 read with section 148 of the Act for reopening of the assessment was issued beyond a period of four years from the end of relevant assessment year u/s 143 (3) of the Act and undisputedly, there was no failure on the part of the assessee to disclose all material facts fully and truly necessary for

assessment and except for reviewing the assessment record of the year under assessment, no tangible material has come to the light of the AO, the initiation of assessment proceedings are invalid being not permissible. All these facts have been duly examined by Id. CIT (A) in the impugned order, hence we find no illegality or perversity in the impugned order. Consequently, appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 10th day of June, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 10th day of June, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
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