

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2279/Bang/2018
Assessment year : 2010-11

Health and Glow Pvt. Ltd., (Formerly known as Foodworld Supermarkets Pvt. Ltd.,) No.32/5, 2 <sup>nd</sup> Floor Ganapa Towers NGR Layout, Roopena Agrahara, Bommanahalli, Bengaluru-560 068.  PAN – AAACP 4045 K	Vs.	The Dy. Commissioner of Income-tax, Circle-1(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.R Sudheendra, Advocate
Respondent by	:	Shri R.N Siddappaji, Addl. CIT

Date of hearing	:	24.07.2019
Date of Pronouncement	:	26.07.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 15/6/2018 passed by 1d CIT(A)-III, Bengaluru and it relates to the asst. year 2010-11 .

2. Though the assessee has raised many grounds, the 1d AR advanced his arguments on validity of reopening of the assessment.

3. The facts relating to the case are stated in brief :-

The assessee is running a super market chain. The original assessment for the year under consideration was completed u/s 143(3) of the Act on 30/3/2013. Subsequently the AO reopened the asst. by issuing notice u/s 148 of the Act on 31/3/2017, i.e., after expiry of four years from the end of the assessment year. Accordingly the present asst. was completed us/ 143(3) r.w.s 147 of the Act. The reopening was done to make disallowance u/s 40(a)(i) of the Act. The appeal filed by the assessee bfor the ld CIT()A was dismissed and hence the assessee has filed this appeal before us.

4. The ld AR submitted that the AO has reopened the assessment after the expiry of four years from the end of the asst. year and further the original asst. has been completed u/s 143(3) of the Act. Accordingly he submitted that as per first proviso to sec. 147, it is mandatory for the AO to show that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. He submitted that the Courts have held that the AO should bring out the same in the reasons recorded for reopening. Inviting our attention to the reasons recorded for reopening which is placed at page 219 of the paper book, the ld AR submitted that the AO has recorded the reasons without mentioning that there is failure on the part of the assessee as mentioned above. Non recording of the above said factual aspect in the reasons for reopening would vitiate the reassessment proceedings. In support of this proposition, the ld AR placed the reliance on the decision rendered by Hon'ble juridical High Court of

Karnataka in the case of CIT Vs. Chaitanya Properties Pvt. Ltd., (2016) 67 taxmann.com 201.

5. On the contrary, the ld DR submitted that the AO has reopened the asst. after recording proper reasons and hence reopening has been done in a valid manner.

6. We heard the parties and perused the record. The AO has reopened the asst. by recording the following reasons :-

*“The assessee company filed a return of income on 24.09.20 10 admitting a income of Rs. (-) 21,08,17,440. The case was selected for scrutiny and order U/s 143(3) was passed on 30.03.2013 and income was assessed at Rs.(-)20,81,13,140. On verification of assessment records it is observed that the assessee company had made a payment of Rs.35,7 1,350 to M/s Dairy Farm Company Limited a Hong Kong based company without deducting the tax at source as required U/s 195 of the Income Tax Act 1961 as the remittances made are in the nature of Pee for Technical Services which are liable for deduction of tax and as assessee company has not deducted the taxes on such payment the same was liable to be disallowed U/s 40(a)(i) of the Income Tax Act, failure to do the same in the assessment order has resulted in underassessment of income. In view of the above I have reason to believe that income chargeable to tax has escaped assessment as mentioned in Sec 147 of the Income Tax Act 1961.”*

7. There is no dispute with regard to the fact that original asst. was completed u/s 143(3) of the Act and further the reopening has been done after expiry of 4 years from the end of the asst. year

under consideration. In this situation the proviso to sec. 147 of the Act imposes a condition that no action shall be taken u/s 147 of the Act unless any income chargeable to tax has escaped asst. by reason on the failure on the part of the assessee ..... to disclose fully and truly all material facts necessary for the assessment. The Hon'ble Jurisdictional High Court in the case of Chaitanya Property Pvt. Ltd. (supra), has expressed the view that the AO should spell out in the reasons recorded by him that escarpment of income was due to the assessee in not disclosing fully and truly all material facts necessary for completion of the assessment. In case of failure to spell out so, the initiation of reassessment proceedings shall be invalid. For the sake of convenience we extract below relevant observations made by the Hon'ble jurisdictional high court in the case of Chaitanya Properties Pvt. Ltd. (Supra).

*“23. We are also of the view that initiation of reassessment proceedings will have to be held as invalid for the reason that reasons recorded by the AO do not spell out that escapement of income was due to the assessee not fully and truly disclosing all material facts necessary for completion of assessment for the relevant assessment year. In this regard, we are also of the view that allegations in para 19 of the reasons recorded do not spell out the belief that there was a failure on the part of the assessee to fully and truly disclose all material facts. In fact, the assessee had disclosed all facts in the original assessment proceedings u/s. 143(3) of the Act.”*

8. Accordingly by following the decision rendered by jurisdictional high court (referred Supra) we hold that initiation of reassessment proceedings is invalid as the AO has not spell out

that the escapement of income was due to failure of the assessee in not disclosing all material facts fully and truly. Accordingly we quash the impugned orders passed by tax authorities.

9. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the Open Court on **26th July, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 26<sup>th</sup> July, 2019.

/vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.