



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI BENCH, RANCHI**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.89/Ran/2018
Assessment Year: 2010-2011

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| Jitendra Kumar Pandey, Main Road, Phusro Bazar, Bermo, Dist: Bokaro | Vs. | DCIT, Circle-2, Aayakar Bhavan, Hazaribag |
| PAN/GIR No.ADZPP 0385 K | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri D.C.Agarwal, Adv
Revenue by : Shri P.K.Mondal, Addl. CIT(DR)

Date of Hearing : 27/08/2019
Date of Pronouncement : 27/08/2019

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)- Hazaribag dated 6.2.2018 for the assessment year 2010-2011.

2. The assessee has raised various grounds of appeal. However, at the time of hearing, Id A.R. of the assessee filed additional ground of appeal, which reads as under:

‘1. For that the AO was not justified in reopening the assessment based on the records which were already considered by the preceding AO at the time of completion of original assessment u/s.143(3)of the Income tax Act, 1961.

No new material was available with the AO to arrive at his own believe and it is evident from the copy ‘reason to believe’ submitted in



the paper book. As such, in light of the various judicial pronouncements of Hon'ble Tribunal and Hon'ble High Courts, we beg to submit that the proceeding initiated u/s.148 was itself void and assessment being made thereby is fit to be cancelled.'

3. The facts in brief qua the validity of reopening u/s.147 is that, assessee has filed its original return of income u/s.139(1) on 30.9.2010, declaring income of Rs.7,33,836/-. After completion of the assessment in the aforesaid manner, the Assessing Officer after obtaining approval of the JCIT, Range-2, Hazaribag has sought to reopen u/s.147 by issuance of notice dated 23.3.2014 u/s.148 on the following "reasons recorded":-

' On perusal of records, it revealed that the assessee has shown total sundry creditor in consolidated balance sheet amounting to rs.36,95,846/- whereas the total sundry creditors of his three business is only Rs.12,04,322/-. Therefore, there is difference of Rs.24,91,524/- which was escaped assessment for the assessment year 2010-2011 within the terms of section 147 of the I.T.Act, 1961.'

4. In reply, the assessee submitted that the total sundry creditor of three business namely Shavera Chitra Mandir, Mahabir Filling Station and Vikram Soft coke Industries was to the tune of Rs.12,04,322/- and balance of Rs.24,91,524/- as personal liabilities which he had taken from other persons during the year under consideration. The assessee has filed consolidated balance sheet as on 31.3.2010 in support of the claim that the amount as shown sundry creditor(personal) is actually Rs.24,91,524/-. The explanation of the assessee was not found favour with the AO and, therefore, he passed order under section 147 r.w.s. 143(3) of the Act, inter alia, adding Rs.24,91,524/- as sundry creditors.



5. During the first appellate proceedings, a remand report was called for from the Assessing officer and the Assessing Officer submitted the remand report to the CIT(A), wherein, it was stated that the assessee failed to furnish the explanation with regard to sundry creditors of Rs.24,91,524/-. The said report of the Assessing officer was furnished to the assessee by the CIT(A) for comments and rejoinder. In reply, the assessee submitted that no proper opportunity was granted by the AO during the remand proceedings. Hence, the CIT(A) after considering the remand report and facts of the case upheld the reassessment order. Hence, the assessee is in appeal before us.

6. At the time of hearing, Id A.R. of the assessee submitted that the assessee has personal liabilities of Rs.24,91,524/- apart from the liabilities of the business namely; Shavera Chitra Mandir, Mahabir filling Station and Vikram Soft coke Industries, which has been shown in the personal balance sheet. He submitted that if the consolidated balance sheet will be taken into consideration, then there will be no difference of sundry creditors. He submitted that all the relevant material facts were furnished at the time of original assessment framed u/s.143(3) of the Act. It was further submitted that no new material had come to the knowledge of the Assessing Officer after framing of assessment u/s.143(3) of the Act for assessment year 2010-2011, which may afford 'reason to believe' that income of the appellant had escaped assessment. It is clearly evident from the reasons recorded that no new tangible information/material came to the knowledge of the assessing



officer subsequent to the conclusion of the original assessment. The reasons recorded by the assessing officer do not even indicate or allege that any fresh information came to the knowledge of the assessing officer warranting exercise of jurisdiction under section 147/148 of the Act. He submitted that this is a case of change of opinion, hence, in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd., (2010) 320 ITR 561 (SC), the reassessment proceedings is bad in law and same should be quashed.

7. Replying to above, Id D.R. supported the order of the CIT(A) in confirming the reassessment proceedings framed u/s.147 of the Act. He submitted that since the assessee failed to substantiate the difference in sundry creditors before the Assessing Officer, hence, the AO reopened the assessment u/s.147 of the Act by issuing notice u/s.148 of the Act. He submitted that during the remand proceedings also, the assessee failed to substantiate its claim. Therefore, he urged not to tinker with the reassessment order.

8. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material referred to before us. In the present case, the Assessing Officer reopened the assessment u/s.147/143(3) of the Act by recording the following reasons:

‘ On perusal of records, it revealed that the assessee has shown total sundry creditor in consolidated balance sheet amounting to Rs.36,95,846/- whereas the total sundry creditors of his three



business is only Rs.12,04,322/-. Therefore, there is difference of Rs.24,91,524/- which was escaped assessment for the assessment year 2010-2011 within the terms of section 147 of the I.T.Act, 1961.

9. On perusal of assessment order u/s.143(3) of the Act, we find that the assessee produced books of account such as cash book, ledger, etc in respect of all the concerns i.e. Shavera Chitra Mandir, Mahabir filling Station and Vikram Soft coke Industries, from where the assessee derives income. During the reassessment proceedings, the assessee submitted that the total sundry creditors in respect of above three concerns was Rs.12,04,322/- and balance of Rs.24,91,524/- was personal liabilities which he had taken from other concerns and in support of this, the assessee had filed consolidated balance sheet as on 31.3.2010. From the above facts, we observe that when all these facts are there on record at the time of original assessment, then where is the question of either failure on the part of the assessee to disclose fully and truly all material facts or any wrong in not considering the sundry creditors shown in the consolidated statement furnished by the assessee at the time of reassessment proceedings. The duty cast upon the assessee is only to disclose truly and fully all material fact necessary for computation of its income and what legal inference which has to be drawn on such material fact is upon the Assessing Officer. If Assessing Officer on perusal of the entire material fact disclosed at the time of original assessment, then there cannot be any failure ascribed to the assessee so as to warrant acquiring of jurisdiction for reopening the assessment. In view of above, we are of the view that mere change of opinion, the Assessing



Officer has reopened the assessment u/s.147 of the Act. We also find that on the question of change of opinion, the law is well settled by the decision of Hon'ble Delhi High Court in the case of CIT vs. Kelvinator of India Ltd., (2002) 256 ITR 1, which has been upheld by Hon'ble Supreme Court reported in (2010) 320 ITR 561 (SC) It has been held as under:

"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 reassess. But re-assessment has to be based on fulfillment of certain precondition 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."

10. Thus, if in the course of original assessment proceedings, the Assessing Officer has considered and examined the facts on record and in the consolidated balance sheet, the assessee has furnished the sundry creditors (personal) of Rs.24,91,524/-, which cannot be a ground for reopening of assessment u/s.147 of the Act. The Assessing Officer cannot



have a fresh look and reopen an assessment on the ground of change of opinion. The facts noticed above, clearly show that in the original assessment proceedings, the Assessing officer has considered and examined and no discrepancies were pointed out in the books of account and other relevant documents produced before him.

12. In the present case, it is noticeable that the assessee had disclosed fully and truly all material facts relevant for the assessment. The reasons recorded above do not disclose or state that there was failure or omission to disclose fully and truly all material facts. There is no indication and it is not alleged that there was some material or information available on record when reasons to reopen were recorded, to show that the assessee had concealed or had not disclosed fully and truly all material facts. The material facts were on record and had been disclosed by the assessee. In view of above, we are of the opinion that the Assessing Officer is not justified in reopening the assessment u/s.147 and same deserves to be quashed. Consequently, we set aside the order of the CIT(A) and allow the ground of appeal of the assessee.

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

Order pronounced on 27/08/2019.

Sd/-

**(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER**

sd/-

**(Chandra Mohan Garg)
JUDICIALMEMBER**

**Ranchi; Dated 27 /08/2019
B.K.Parida, SPS**



Copy of the Order forwarded to :

1. **The Appellant : Jitendra Kumar Pandey, Main Road, Phusro Bazar, Bermo, Dist: Bokaro**
2. The Respondent. DCIT, Circle-2, Aayakar Bhavan, Hazaribag
3. The CIT(A)-Hazaribag
4. Pr.CIT- Hazaribag
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

Sr. Pvt. Secretary,
ITAT, Cuttack camp
at Ranchi