

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.5886/Del/2015
Assessment Year: 2007-08**

M/s JDC Traders Pvt. Ltd.,
4232/1, Bhargava Street,
Ansari Road, Daryaganj,
New Delhi.

PAN: AAACJ6075P

(Appellant)

Vs. Dy. Commissioner of Income-
tax, Circle- 4(1),
New Delhi.

(Respondent)

Revenue by : Shri Sanjog Kapoor, Sr. DR

Assessee by: Shri Sanat Kapoor, Advocate

Date of Hearing 30.09.2019

Date of pronouncement 11.10.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 24.8.2015 in Appeal No. Del/CIT(A)-0240/2013-14 passed by the learned Commissioner of Income-tax (Appeals)-5, New Delhi {"CIT(A)}, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of trading, export and printing. For the Asstt. year 2007-08, they have filed their return of income on 30.10.2007 declaring a total income of Rs.65,33,380/- and the same was processed

u/s 143(1) of the Income-tax Act, 1961 ("the Act"). Subsequently, by notice dated 8.8.2011 u/s 148 of the Act, learned AO sought to reopen the proceedings by recording reasons on two aspects, namely, in respect of the escapement of income under the head "travelling expenses" on account of purchase of foreign exchange to the tune of Rs.4,78,030/- and claim of the assessee to the tune of Rs.6,58,736/- which was disallowed in the preceding year u/s 40A(ia) of the Act. Learned AO by order dated 14.11.2012 u/s 147/143(3) of the Act made addition of Rs.4,78,030/- under the head "travelling expenses" on account of purchase of foreign exchange by disallowing the same.

3. Subsequently, on a perusal of assessment records, Id. AO recorded that the assessee had shown closing stock in the profit and loss account to the tune of Rs.2,97,47,872/- whereas Annexure 1(a) Note 7(A) to Schedule 20 of the Financial Accounts reveal the same as Rs.3,32,01,843/- leaving a difference of Rs.34,53,971/-. Learned AO, therefore, issued notice u/s 154/155 of the Act. It was submitted by the assessee that initially the figure of Rs.3,32,084/- was worked out while preparing the accounts but at the time of finalization of accounts after reconciling the stock, the correct figure of Rs.2,97,47,872/- was reached but inadvertently, the original working sheet remained attached with the statement of accounts by mistake. Assessee further submitted that they have maintained proper stock records and after reconciliation, the mistake was detected and corrected and since it is a verifiable record, the genuineness of the mistake could as well be verified by the authorities. Learned AO, however, by order dated 3.1.2014 made an addition of Rs.34,53,971/- being the difference of closing stock.

4. Aggrieved by this further addition of Rs.34,53,971/- u/s 154 of the Act, assessee preferred the appeal before the Id. CIT(A) and submitted that the scope of Section 154 does not permit anything more than the rectification of the mistake that is apparent from the record and that in so far as the proceedings u/s 147 are concerned, there was no mistake in the assessment order.

5. Learned CIT(A), however, did not agree with the assessee and observed that in view of Explanation 3 to Section 147 of the Act which empowers the learned AO to assess or re-assess the income which had escaped assessment and which goes to the notice of the learned AO subsequently in the course of proceedings u/s 147 , there is nothing wrong in the learned AO rectifying the mistake that had crept in the order u/s 147/143(3) of the Act. Learned CIT(A) further observed that there is a discrepancy in the figures given in the balance sheet and the assessee cannot be permitted to argue anything to the contrary. Learned CIT(A), therefore, dismissed the appeal insofar as this issue is concerned, but directed the learned AO to recompute the taxable income for the next assessment year i.e. AY 2008-09 to give the benefit of opening stock to the assessee.

6. Assessee is, therefore, before us in this appeal stating that there was no mistake apparent on the face of the record and the conclusions reached by the learned AO in the order u/s 147/143(3) do not admit of any rectification. Learned AR submitted that Explanation 3 to Section 147 is not available to the learned AO after passing the order u/s 147 and in the absence of any mistake apparent on the face of record, learned AO has no jurisdiction to make any addition ostensibly

u/s 154 of the Act. It is the further submission of the learned AR that the alleged discrepancy in respect of the closing stock was the result of inadvertent annexure of the initial work sheet which was rectified later on after reconciliation of the stock. Assessee maintains their books of accounts regularly and it is always open for the authorities to verify the stock registers to identify the bonafide mistake that had crept in the initial working of the closing stock at Rs.3,32,01,843/- which was subsequently corrected after reconciliation of the stock to Rs.2,97,47,872/-. He submitted that this closing stock issue was available before the learned AO all through the proceedings and any view taken by the learned AO subsequent to the passing of the order u/s 147 is nothing but change of opinion which is impermissible under law.

7. Per contra, it is the submission of the learned DR that by virtue of Explanation 3 to Section 147, learned AO need not conform to the reasons recorded by him to propose the reopening but any escapement of income that has come to his notice subsequently, is also amenable to his jurisdiction and, therefore, anything that was left out by the learned AO inadvertently at the time of the passing of the order u/s 147 could as well be rectified u/s 154 of the Act. Insofar as merits are concerned, learned DR submits that there was no proper explanation from the assessee to submit that the figure of Rs.2,97,47,872/- is correct one and the figure of Rs.3,32,01,843/- was a mistaken one.

8. We have gone through the record in the light of the submissions made on either side. Order u/s 154/147/143 of the Act clearly shows that learned AO proposed the reopening of the proceedings in respect of the escapement of income under two heads,

namely, on account of the expenses incurred under the head “travelling expenses” and “purchase of foreign exchange” and in respect of the claim of the assessee. Under section 147 of the Act, the learned AO is empowered to assess or re-assess the income in respect of any issue which has escaped assessment and which came to his notice subsequently in the course of proceedings u/s 147 of the Act notwithstanding that the reasons for such issue has not been included in the reasons recorded under sub section (2) of Section 147. Learned AO did not advert to this aspect at all in the proceedings u/s 147 of the Act. Now the question that arises is whether the AO could take the aid of Explanation 3 to Section 147 to make some other addition on the aspect in respect of which there is no whisper in the entire proceedings u/s 147, after the conclusion of such proceedings u/s 147 of the Act.

9. A careful reading of Section 147 clearly shows that it empowers the learned AO to assess or re-assess the income in respect of any issue which had escaped the assessment irrespective of the fact that whether such aspect was adverted to in respect of the reasons recorded u/s 147 of the Act. Had the learned AO assessed to re-assessed the issue relating to the closing stock in the proceedings u/s 147, the assessee could not have agitated anything against the same stating that it is beyond the jurisdiction of the learned AO to deal with such an issue. As we have stated earlier in the entire proceedings u/s 147, there was no whisper as to the closing stock. In such an event, we find it difficult to accept the argument of the learned DR that even after conclusion of the proceedings u/s 147 of the Act, the Id. AO can take the aid of Explanation 3 to Section 147 of the Act to make any addition. The difficulty here is

that it is not under Explanation 3 to Section 147, Id. AO dealt with the issue of closing stock, but the Id. AO dealt with this issue u/s 154 of the Act. In any case, it is not the case of the Ld. AO that Section 154 is being invoked with respect to the original assessment, finalized under section 143(3) of the Act. If we accept the argument of the learned DR that u/s 154 of the Act, Id. AO is empowered to deal with the escapement of income in respect of which the reasons were not recorded even after the assessment reopened under section 147 of the Act is completed, it would empower the Id. AO to go on making one addition after the other by taking shelter of Explanation 3 to Section 147 endlessly. Such a course is not permissible. Power that is available to the Id. AO under Explanation 3 to Section 147 of the Act, in our considered opinion, is not available to him u/s 154 of the Act, which obviously came to be exercised by the Id. AO after the conclusion of the proceedings u/s 147 of the Act.

10. In view of our finding in the preceding paragraphs, which shall result in quashing of the impugned order passed under section 154 of the Act, we deem it not necessary to delve deeper in to the merits of the case, and suffice it to say that the rectification proceedings assumed by the learned AO resulting in the second addition of Rs.34,53,971/- are beyond the jurisdiction of the learned AO and cannot be sustained. With this view of the matter, we accept the contentions of the assessee and direct the learned AO to delete the addition.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th October, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

sd/-
(K. NARASIMHA CAHRY)
JUDICIAL MEMBER

Dated: 11th October, 2019

VJ

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1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	3.10.2019
Date on which the typed draft is placed before the dictating member	4.10.2019
Date on which the typed draft is placed before the other member	4.10.2019
Date on which the approved draft comes to the Sr. PS/ PS	11.10.2019
Date on which the fair order is placed before the dictating member for pronouncement	11.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	11.10.2019
Date on which the final order is uploaded on the website of ITAT	15.10.2019
date on which the file goes to the Bench Clerk	15.10.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

