

FIT FOR PUBLICATION

Sd/-
(JM)

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(AM)

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.-5758/Del/2013
Assessment Year: 2006-07**

Shri Parmod Kumar Sahai 738/3, Jagriti Vihar Meerut	Vs.	Income Tax Officer Ward 2(1) Meerut
Appellant		Respondent

Assessee by : Sh. M.P.Rastogi, Adv.
Revenue by : Sh. Surender Pal, Sr.DR
Date of Pronouncement : 20.12.2019

ORDER

PER ANADEE NATH MISSHRA, J.M.:

This appeal is preferred by the department against order dated 23.08.2013 passed by the Ld. CIT (Appeals)-Meerut for assessment year 2006-07.

2. Following grounds of appeal have been raised in this appeal :

“1. That the assumption of jurisdiction u/s 147/148 as made by the A.O. and sustained by the C.I.T.(Appeal) is invalid, based on suspicion arbitrary, not sustainable under the law.

2. That without prejudice to the ground no. 1 above the C.I.T.(Appeal) had erred on facts and under the law, in the absence of cogent material, to allow the expenses on adhoc basis @ 20% of the receipt in substitution of estimate made by the AO and consequently the income enhanced to Rs. 15,57,710/- from assessed by AO Rs. 3,23,022/- is arbitrary, unjust and at any rate very excessive.

3. That disallowance of Rs. 1,55,680/- out of the various expenses had made by the AO is arbitrary, unjust and at any rate very excessive.”

3. The assessee filed return of income on 10.08.2006 showing income of Rs. 1,67,342/-. The case was not selected for scrutiny by the Assessing Officer which is evident from the fact that no notice u/s 143(2) of Income Tax Act was issued by the Assessing Officer, the time limit whereof was available up to 30th September, 2007. However, notice u/s 148 of Income Tax Act read with Section 147 of IT Act was issued on 7th December, 2007. Assessment order u/s 143(3)/148 of Income Tax Act was passed on 12.12.2008 wherein an addition of Rs. 1,55,680/- was made to the returned income and the total income was assessed at Rs. 3,23,022/-. The aforesaid addition of Rs. 1,55,680/- was made by the Assessing Officer taking adverse view of absence of supporting vouchers for expenditure claimed as per profit and loss account. The assessment order has been passed in Hindi, but English translation of the assessment order is available on record. The relevant portion of the translated version of the assessment order is reproduced as under :-

“ During the year, assessee was in receipt of profession/ technical fees amounting to Rs.19,47,136/-. The assessee declared income of Rs.1,55,770/- by computing income u/s 44AD @8% and in form no. 16A, under the head nature of payment ‘contract section 194C’ was hand written. A letter was written to the director of the company for verification of form No.16A on 14/03/2007. The letter

was served through speed post No. 19/2444 on 15/03/07. In response to that, the company has filed written reply on 20/03/07 and stated that an amount of Rs.19,47,306/- was paid to the assessee on A/c of profession/ technical Fees out of which Rs.1,09,128/- has been deposited into Central Govt. Account on account of TDS. Further on 28/03/07, a letter was received from company wherein it was written that aforesaid payment was paid to the contractor assessee, out of which Rs.1,09,128/- was deducted as TDS and paid into the Central Govt. Account. It is surprising that the company has issued two letters in respect of verification of TDS and the nature of payment are different in both the letters. In one letter it has been written that payment was made on account of profession/ technical fees and in other letter, payment of contract. Therefore, for such clarification, letter was served through speed post no. 2595 on 12-04-2007. In response to that a letter dated 13-04-2007 issued from company was received on 23-04-2007, wherein it was written that letter dated 20-03-2007 was issued by the company and on 28-07-2007, company did not issue any letter and thus this letter does not pertain to company.

On 24/04/07, notice 271B was issued to the assessee for 02/05/2007, which was served on 24-04-2007 through speed post no. 206. In the response to the notice, the assessee attended himself on 03-05-2007 and adjourned for 14-05-2007 but on the date fixed 14-0-2207, no body attended nor filed any adjournment application. On 06-08-2007, notice u/s 271B was issued for 17-08-2007. In response to the notice, on 17-08-2007 explanation of the assessee was received and after that on penalty u/s 271B of the I.T Act was imposed at Rs.9,735/- by passing the order on 13/09/2007.

During the year, assessee was in receipt of profession/ technical fee of Rs. 19,47,136/-. Assessee has filed his return of income by computing income u/s 44AD, where as the income of the assessee falls u/s 194J. A notice u/s 148 of the Act 1961 was issued on 07/12/2007, by forming of belief that income of Rs.19,47,136/- has escaped assessment. Notice was served on 10/12/2007 through speed post No.2656. In response to the notice the assessee attended on 17/12/07

and written request was made for issuing the reasons recorded before issuing the notice u/s 148. On 26/12/07, letter was issued to the assessee and directed to file return of income then reasons for issuing notice u/s 148 will be issued. The letter was served on 28/12/07 through speed post No. 2733.

On 29/08/2008, notice u/s 142(1) was issued for 17/09/2008, notice was served on 04/09/2008 through speed post No. 671. In response to the notice, the A.R. of the assessee Mr. H.K.Paliwal attended on 17/09/08 and written request was made by him for issuing the reasons recorded before issuing the notice u/s 148 so that assessee may file his return of income in response to notice u/s 148.

On 04/11/08, notice u/s 142(1) was issued for 11/11/08, wherein it was written that assessee did not file return of income in response to notice u/s 148 and directed him to file the return of income. The notice was served on 04/11/08 through speed post. In response to notice, the A.R. of assessee Shri. H.K Paliwal attended on 11/11/08 and the reasons for issuing of notice u/s 148 was given to him. The case was adjourned for 17/11/08. On fixed date 17/11/08 the counsel of the assessee Shri. M.M Chawra attended and on request the case was adjourned for 24/11/2008, but on fixed date, no body attended nor filed any adjournment application. On 24/11/08 notice u/s 142(1) was issued for 28/11/08. Notice was served upon assessee on 25-11-2008. In response to the notice, assessee counsel attended on 28/11/08 and return of income in response to notice u/s 148 was filed vide receipt No.9332. The income Tax Return has been placed on file.

On 28/11/08, notices u/s 143(2) and 142(1) were issued for 05/12/08, where in informations as per serial No.1 to 7 were required. The notice was served on 28/11/08 through speed post. In response to notice, counsel of assessee attended on 05/12/08 and filed reply partly for remaining details, the case was adjourned for

12/12/08. On fixed date 12/12/08, assessee counsel attended the proceedings and filed the required informations alongwith explanation. The case was adjourned for 16/12/08. On 16/12/08, on request of the assessee counsel, the case was adjourned for 19/12/08. On fixed date of hearing 19/12/08, assessee's counsel attended and case adjourned for 22-12-2008 for justify the expenditure as claimed in profit & loss account. On fixed date 22-12-2008, assessee counsel attended and filed written submission in respect of vouchers relating to expenditure that he has reflected the actual expenditure and the same have only been shown in his Profit & Loss A/c. It is clear from the Bank A/c of the assessee that the total receipts are entered/ credited in the bank A/c and further withdrawals from the bank A/c are in fact for the purpose of meet out the expenditure as claimed in Profit & Loss A/c. Case was discussed. During the course of discussion, the counsel of the assessee agreed for disallowance of expenditure and make an addition to the income of the assessee for not producing the vouchers as per details below; 1. Office Expenditure Rs.66,000, 2.Office Rent Rs. 60,000, 3.Printing And Stationary Rs.22,500. 4.Repair and Maintenance Rs.12,000, 5.Misc. Expenses Rs.17,365. The total sum of Rs.17,787/- i.e. 10% of total aforesaid expenditure of Rs.1,77,865/- may be disallowed and add to the total income of the assessee. Also, assessee agreed to disallow 25% of 1.Vehicle Exp. Rs.72,000, 2.Travelling and conveyance Rs.2,10,000, 3.Telephone Exp. Rs.48,000 total expenditure Rs.3,30,000/- for this personal use. Assessee request was not accepted.

During the year, the assessee was in receipt of profession fees of Rs.19,47,136/- in response to notice u/s 148, the assessee filed his return of income by computing income @8% u/s 44AD at Rs.1,55,771/- and during the course of scrutiny proceedings the assessee has filed the statement of income on the basis of Profit & Loss Account and shown the receipts of Rs.19,47,136/- from drilling &

Work and declared Net Profit of Rs.1,55,771/- after deducting Expenses of Rs.17,91,365/- under different heads. Vide order sheet entry dated 19/12/08, the assessee was asked to justify the claim of expenditure as per Profit & Loss Account, but the assessee did not produce respective vouchers and filed a written submission that assessee has claimed the actual expenditure, as claimed in Profit & Loss Account and also withdrawn the money from his Bank A/c in respect of meet out the expenditures as claimed in Profit & Loss Account. In absence of production of vouchers of expenses, it is clear that the assessee did not possess any vouchers. The assessee was in receipt of profession/ technical fees amounting to Rs.19,47,136/- and incurring the expenditure is natural. The verification of expenditure as claimed in Profit & Loss A/c is necessary but the assessee did not produce the vouchers. In absence of vouchers. it is important to verify the claimed expenditure. In absence of verification of claimed expenditure, an addition of Rs.73,180/- has been made by disallowing 15% of total expenditure of Rs.4,87,865/- aggregating of (1) Office Expenditure Rs.66,000 (2) Office Rent-Rs.60,000 (3) Printing and stationary Rs.22,500 (4) Repair and maintainance-Rs.12,000 (5) Misc. Expenses Rs.17,365 (6) Salary to Staff Rs.2,92,000 (7) Medical Expenses Rs.18,000. Further a sum of Rs.82,500 has been added to the total Income of the assessee by disallowing 25% of total expenditure amounting to Rs.3,30,000/-, aggregating of (1) Vehicle Exp. Rs.72,000 (2) Travelling & conveyance Rs.2,10,000 (3) Telephone Expenses Rs.48,000. Thus, total sum of Rs.1,55,680 (Rs.73180+ Rs.82500) is added to the total income of the assessee."

5. Aggrieved, the assessee filed appeal before the Ld. Commissioner of Incomen Tax (Appeals), Meerut. Vide the impugned appellate order dated 23.08.2013, the Ld. CIT(A) enhanced the total income of the assessee and directed the Assessing Officer to take the total income at the enhanced figure of Rs. 15,57,710/-. The relevant portion of the

aforesaid impugned appellate order dated 23.08.2013 of the Ld. CIT(A) is reproduced as under :-

2.2 The facts of the case are that a return of income declaring total income at Rs. 1,67,342 was filed on 10.08.2006 and processed on 03.01.2007. The assessee had declared professional/technical fee of Rs. 19,47,136 and declared income U/s 44AD at 8% of this amount. The AO proceeded to make verification of the Form 16A and in response received two letters from the payer of the aforesaid fee. In one letter, the nature of payment was stated to be professional/technical fee whereas in the other it was stated to be contractual payment. On further enquiries, it was confirmed by the party concerned that the letter in which the payment was shown as contractual had not been issued by company. The AO noted that the provisions of Section 44AD were not applicable to the assessee. Section 194J was the provision applicable to the assessee. Therefore, on 07.12.2007, a notice U/s 148 to be issued to the assessee for having concealed income of Rs. 19,47,136. Subsequently, notices U/s 142(1)/143(2) were issued. It appears that a return of income was filed during the re-assessment proceedings. Notices U/s 143(2)/142(1) were issued. The assessee was asked to justify the expenses claimed in P&L account. In the assessment order, it is stated that in view of the inability of the assessee to produce voucher, the assessee offered 10% of the expenses booked under the head office expenses, office rent, printing and stationary, repair and maintenance and miscellaneous expenses. The assessee also offered to tax 25% of the vehicle expenses, travelling, conveyance and telephone expenses. The AO proceeded to make a disallowance of Rs. 1,55,680 being 15% of expenses booked under certain head and 25% of the expenses book under certain other heads.

2.3 In the case under consideration, it has been mentioned that a notice U/s 148 had been issued to the assessee on 07.12.2007. This notice had been issued after making verification that the assessee was in receipt of professional/technical fee and not contractual payment. It is noted that the assessee had declared his income at 8% of his receipts U/s 44AD and in the Form No. 16A, the nature of payment shown by the payer

appears to have been altered to show that the payment was of the nature covered U/s 194C of the Act. Clearly, on enquiries made by the AO, it was evident that income had wrongly been shown in the return of income and the declaration of income U/s 44AD was incorrect. Accordingly, the issue of notice U/d 148 cannot be faulted. The AO had

sufficient ground to come to the conclusion that income assessable to tax had escaped assessee.

2.4 Ground No.1 is dismissed.

3.1 Ground Nos. 2,3,4,5&6 contest the disallowances made in the assessment order as discussed above. It is noted that the AO, in the assessment order, has recorded that the assessee filed ITR No. 9332 but has not specified the contents of such return. It is also noted that during the re-assessment proceedings, the assessee could not produce any voucher nor did he produce the books of account. It is also noted that the AO has not even discussed the nature of work carried out by the assessee in respect of which he has received professional/technical fee. Moreover, the disallowances made by the AO are purely on estimate and no basis for the same has been specified. In the submissions dated 17.06.2013 made during the appeal proceedings, it has been stated that the assessee was engaged in providing contractual services under an agreement with M/s ONGC and maintained day to day register, bills and vouchers. The net profit was declared @ 8%. With regard to the disallowance of expenses, it was stated that the assessee had produced vouchers "partly and also justified the claim of aforesaid expenses by way of Bank Withdrawals". It has been stated that the assessee was not able to produce complete voucher before the AO.

3.2 In order to verify the assessment records, a requisition for the same was made to the ITO Ward- 2(1), Meerut vide letter dated 26.06.2013. In response, a letter dated 27.06.2013 was received stating that the assessment records are not readily available. Another letter dated 01.07.2013 was addressed to the AO requesting him to make available the assessment records to this office by 14.07.2013 and, if not provided by that

date, it will be assumed that the AO has not been able to produce the records for verification. However there has not been any response to this letter. Resultantly, no verification could be carried out by this office about the tampering of the original TDS

certificates, as alleged in the assessment order nor the availability of any information regarding the nature of receipt of the assessee.

3.3 A letter dated 16.08.2013 was addressed to the assessee, which is reproduced below:

“Sub.: Appeal No. 337/08-09 for A.Y. 2006-07 –regarding-

Please refer to the above.

2. It is noted that in the assessment order, it has been stated that the AO on verification found that the receipt of the assessee was in the nature of professional/technical fee and not contractual receipt. It is also noted that during the assessment proceedings, no vouchers for any expense claimed to have been incurred for earning the fee, were produced.

3. In the submissions made during the appeal proceedings, it has once again been wrongly stated that the assessee was in receipt of “Contractual & Job Work” receipt. It is also stated that the assessee was a sub-contractor. Both these observations are contrary to the finding in the assessment order, which, in any case, has not been challenged in the submission. Moreover, from the assessment order, it appears that no vouchers were at all produced during the assessment proceedings whereas in the submissions made it has been stated that “the assessee was not able to produce complete vouchers before A.O.”. From the above, it is apparent that the facts of the case have been misrepresented in the appeal proceedings. Moreover, no detail has been given about the nature of professional/technical receipt of the assessee in the year under consideration nor a copy of the TDS certificate has been furnished.

4. In view of the above, you are requested to show cause why the assessee should be given deduction in respect of any expenditure claimed to have been

made in the absence of proof regarding the same. You are also requested to state why, in the absence of proof of any expenditure, the income of the assessee assessed in the assessment order may not be enhanced to the extent to which evidence of expenditure is lacking.

5. Your reply to the above points may be submitted to this office positively on or before 22nd August, 2013 failing which, it will be assumed that you have nothing to state in this regard.”

3.4 In response, a letter dated 22.08.2013 has been filed wherein it has been admitted that the assessee was in receipt of professional/technical fee and not contractual payment. It has also been admitted that no voucher for express were available. Surprisingly, it is now claimed that even the TDS certificate is not available with the assessee. Apart from the above, a specious argument has been made that a TDS certificate cannot be made the basis for invoking the provisions U/s 148 as TDS provisions are machinery/procedural provisions.

3.5 The facts of the case have been considered. Theoretically, a person may be in receipt of professional/technical fee but may not have incurred any expense in earning such fee. The fee may have been received in consideration of some special skill/competency, for which no expense may have been incurred. In the case under consideration, it appears that the assessee is not forthcoming about the exact nature of the services rendered for which he is in receipt of technical/professional fee. According to Section 44AA, every person carrying on business or profession, if the gross receipt exceeds Rs. 10 lakh, is required to keep and maintain such books of account and other documents as may enable the AO to compute his total income in accordance with the provisions of the Act. In the case under consideration, the assessee has apparently not maintained any books of account, admittedly not maintained the vouchers, is not forthcoming regarding the nature of services performed and has, if appears, resorted to tampering with the TDS certificate, an allegation not refuted during appeal proceedings.

Under the circumstances, the entire receipt of the assessee of Rs. 19,47,136 is considered the total income of the assessee and deduction of expense is allowed on adhoc basis at 20% of such receipts.

6. Aggrieved again, the assessee filed the present appeal before Income Tax Appellate Tribunal ('ITAT', for short) against the aforesaid impugned appellate order dated 28.03.2013 of the Ld. CIT(A). During the appellate proceedings in ITAT, a synopsis was filed from the assessee's side, which is reproduced below for ready reference :-

1. Return was filed on 10th August 2006.
2. Income was declared in the original return at Rs.1,55,771/- on receipt of Rs.19,47,136/- based on profit & loss (Not u/s 44AD of the Income-tax Act, 1961 (the Act) as alleged by AO, though incidentally it also worked out @ 8% as prescribed u/s 44AD).
3. Notice u/s 143(2) in terms of Section 143(2)(ii) of the Act could have been issued by AO up to 30th September 2007 to ensure that the assessee has not understated the income.
4. Verification of TDS was completed by AO up to 23rd April 2007 when the last letter from company was received by AO.
5. But in spite of such, no notice u/s 143(2) of the Act was issued by AO, the time limit whereof was available up to 30th September 2007.
6. Notice u/s 148 was issued on 7th December 2007.

7. No "reason to believe" has been supplied by AO. (NA available with assessor)
8. However, from assessment order, it is inferred that the notice u/s 148 of the Act has been issued due to following reason (English version):
- "Assessee has received profession/technical fee Rs.19,47,136/- during the year. Assessee has filed his return computing his income u/s 44AD whereas his income comes u/s 194J. Accordingly, notice dated 7th December 2007 u/s 148 is issued to assessee for concealing income of Rs.19,47,136/-."
9. It is a settled law that validity of assumption of jurisdiction u/s 147 of the Act has to be examined on the basis of reason recorded.

268 ITR 332-338 (Bom)
Hindustan Lever Ltd. vs. R.B. Wadkar (No. 1)

189 ITR 786-792 (Pat)
CIT vs. Agarwala Brothers

251 ITR 270 (Guj)
Sheth Bros vs. JCIT

10. The reason as alleged and inferred from assessment order is very vague and not in fact reason to believe as contemplated u/s 147/148 of the Act.
11. In the case of ITO vs. ^{Lakshmi} ~~Lakshmi~~ Mewal Dass in 103 ITR 437, the Supreme Court held:
- (a) The reason to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the AO; the reason must be held in good faith and cannot merely be a pretence.
 - (b) The reason to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of AO and the formation of belief regarding escapement of income.

12. For the formation of “reason to believe”, some tangible material must have come to notice of AO after the completion of assessment even if assessment is completed u/s 143(1) of the Act.

354 ITR 536 (Del)
CIT vs. Orient Craft Ltd.

366 ITR 115 (Del)
Mohan Gupta (HUF) vs. CIT

362 ITR 693 (Del)
CIT vs. Atul Kumar Swami

218 CTR 264 (Raj)
CIT vs. Smt. Jyoti Devi

13. If the material is already available on record, then on the same material no reason to believe can be made and no reassessment proceeding can be commenced; otherwise it will amount to review of the proceeding.

354 ITR 536 (Del)
CIT vs. Orient Craft Ltd.

14. No notice can be issued for making roving enquiries:

255 ITR 220 (P&H)
Vipan Khanna vs. CIT

15. In the instant case, the AO has completed the verification proceeding of TDS before 30th September 2007 being the date when the time to issue notice u/s 143(2) of the Act expires.

16. The information based on which notice u/s 148 of the Act was issued was very much there before the expiry of time to issue notice u/s 143(2) of the Act.

17. There is no escapement of the receipt of Rs.19,47,136/- as alleged by AO. On the contrary, such receipt was the foundation of filing of return filed on 10th August 2006 as admitted by AO himself.
18. The TDS provision of Section 194J of the Act is not the charging provision but is a machinery provision for collection of tax.

239 ITR 587 (SC)
Transmission Corp of AP Ltd. vs. CIT
19. The receipts liable for deduction u/s 194J of the Act are the professional/business receipts and the income computation has to be made u/s 28/29 of the Act.
20. The assessee has filed the return after deducting the expenses from receipts as professional/business income as was filed in earlier year and subsequent years.
21. In earlier year and in subsequent years, no action has been taken u/s 148 of the Act. The assessment for Assessment Year 2008-09 was made u/s 143(3) of the Act after the action has been taken u/s 147/148 of the Act for the year under appeal. The assessment of 2008-09 was made on 10th December 2010, whereas the action u/s 147/148 of the Act for the year under appeal was taken on 7th December 2007.
22. In reassessment, the AO himself has computed the income after allowing expenses. In other words, no reassessment has been made on gross receipts.
23. The CIT (Appeals) himself has not taxed the receipt on gross basis.
24. The CIT (Appeals) has not given any basis for allowing the expenses @ 20%. In other words, the CIT (Appeals) taxed the income @ 80% of the receipts, which is arbitrary.

76 ITR 690 (SC)

State of Orissa vs. Maharaja Shri B.P.
Singh Deo

25. No doubt the CIT (Appeals) has the power of enhancement, but such power of enhancement is not supposed to be exercised by CIT (Appeals) for substituting the estimate made by AO.

50 TTJ 295-301 (Del) (Para 15)

BS Agricultural Industries (India) vs. ITO

26. The assessment of 2008-09 is completed by AO u/s 143(3) of the Act on 10th December 2010 and made the assessment @ 16% of the receipts.

7. At the time of hearing before us, the Ld. Counsel for the assessee placed reliance on the aforesaid synopsis. He further submitted that the reasons recorded by the Assessing Officer, if any, for his belief that income has escaped assessment has not been supplied by the Assessing Officer to the assessee. He further drew our attention to paragraph 3.2 of the impugned appellate order dated

28.03.2013 of the Ld. CIT(A) to highlight that the assessment records were not produced by the Assessing Officer even before the Ld. CIT(A) despite the requisition made by the Ld. CIT(A) vide letters dated 26.06.2013 and 01.07.2013. The Ld. Counsel for the assessee submitted that on this basis alone the assessment order dated 22.12.2008 deserves to be annulled, because the Assessing Officer has not established that there were sufficient reasons to assume jurisdiction u/s 147 read with Section 148 of Income Tax Act. The Ld. Counsel further submitted that the assessee had disclosed the entire amount of business receipts totaling Rs. 19,47,136/- in the return of income and had offered income @ 8% of the receipts u/s 44AD of Income Tax Act. When the entire business receipts have already been disclosed, the Ld. Counsel for the assessee contended, it cannot be said that any income had escaped assessment because the assessee had already offered income @ 8% of the receipts applicable for Section 44AD of Income Tax Act.

8. The Ld. Departmental Representative supported the orders of the Assessing Officer and the Ld. CIT(A). However, in all fairness, the Ld. Departmental Representative admitted that reasons recorded by the Assessing Officer, if any, for coming to the belief that income had escaped assessment, are not available. The Ld. DR also admitted, that apart from the assessment order dated 12.12.2008, which was passed after the assumption of jurisdiction u/s 147 read with section 148 of I.T.Act; there was nothing else which can be produced to support the belief that income had escaped assessment. To a specific query from the Bench as to whether any proceedings were pending before the Assessing Officer at the time when inquiries were conducted by the Assessing Officer prior to issue of notice u/s 148 of Income Tax Act on 07.12.2007 ; Ld. DR further admitted that no proceedings were pending before the Assessing Officer prior to issue of notice dated 07.12.2007 u/s 148 of Income Tax Act.

9. We have heard both the sides patiently and perused the materials on record carefully. It is not in dispute that

reasons recorded by the Assessing Officer for coming to the belief that income had escaped the assessment, was neither supplied by the Assessing Officer to the assessee ; nor the assessment records were produced before the Ld. CIT(A). The reasons so recorded, if any, have neither been provided to the Ld. CIT(A), nor is there any offer from Revenue's side to produce the same before the Income Tax Appellate Tribunal. In fact, as mentioned in foregoing paragraph 8 of this order, the reasons recorded by the Assessing Officer, if any, for coming to the belief that income had escaped assessment, are not available. The Ld. Departmental Representative had also admitted at the time of hearing before us, that apart from the assessment order dated 12.12.2008 there was nothing else which can be produced to support the belief arrived at that income had escaped assessment. **The validity of assumption of jurisdiction by the Assessing Officer u/s 147 read with Section 148 of Income Tax Act is to be examined on the basis of the reasons recorded by the Assessing Officer for coming to**

the belief that income had escaped assessment. Such reasons have to be recorded before assumption of Jurisdiction u/s 147 of I.T.Act (i.e. before issue of notice u/s 148 of I.T.Act). Any developments which take place after assumption of jurisdiction u/s 147 of I.T.Act (i.e. 148 of I.T.Act) has no relevance for deciding whether the AO had reason to believe, before assumption of jurisdiction u/s 147 of I.T.Act (i.e. before issue of notice u/s 148 of I.T.Act) that income had escaped assessment. When such reasons are not made available by Revenue either to the assessee or to the appellate authorities [Ld. CIT(A) as well as ITAT]; we have to conclude that the onus has not been discharged by Revenue to justify assumption of jurisdiction u/s 147 of I.T.Act through issue of notice under section 148 of Income Tax Act. When the assumption of jurisdiction u/s 147 read with section 148 of I.T.Act lacks validity, the resultant assessment order lacks legitimacy.

On this ground alone, the aforesaid assessment order dated 12.12.2008 deserves to be annulled. However, we further note that the Assessing Officer has not furnished reasons for issue of notice u/s 148 of I.T.Act to the assessee in spite of order of Hon'ble Supreme Court in the case GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 whereby the Assessing Officer is bound to provide reasons recorded by him for issue of notice u/s 148 of I.T.Act to the assessee once the assessee has filed return in response to the notice issued u/s 148 of Income Tax Act.

9.1 Moreover, we have perused second paragraph of the assessment order, which refers to the inquiry made by the Assessing Officer before issue of notice u/s 148 of Income Tax Act on 07.12.2007. **The Assessing Officer, in the absence of any proceedings pending before him, has no authority to conduct any inquiry, except when prior permission has been taken by the Assessing Officer for conducting the inquiry u/s 133 of I.T. Act from the competent authority specified in second proviso to Section 133 of I.T.Act.** There is nothing on record to show that the Assessing Officer had obtained prior approval

of the competent authority specified in second proviso to Section 133 of I.T.Act. to undertake such inquiry. As noted in foregoing paragraph no. 8 of this order, the ld. DR had admitted that no proceedings were pending before the AO prior to issue of notice u/s 148 of I.T.Act. Thus, we find that the Assessing Officer has conducted inquiries without authority of law before issue of notice u/s 148 of I.T.Act. Thus, the assumption of jurisdiction by the AO u/s 147 of I.T.Act read with section 148 of I.T.Act is based on inquiries conducted without the authority of law.

We are of the firm view that assumption of jurisdiction u/s 147 r.w.s. 148 of I.T.Act on the basis of inquiries conducted without the authority of law lacks legitimacy. Assumption of jurisdiction must be held to be unauthorized, when the inquiries made for assuming the jurisdiction were unauthorized in law; and the assessment order passed in pursuance of unauthorized assumption of jurisdiction u/s 147 r.w.s. 148 of I.T. Act, also lacks legitimacy. On this ground also, the

assessment order dated 22.12.2008 deserves to be annulled. With the annulment of assessment order, grounds 2 and 3 of appeal are merely academic, hence not decided.

10. In view of the discussion in foregoing paragraphs (9) and (9.1) of this order; we set aside the impugned order dated 23.08.2013 of Ld. CIT(A); and annul the aforesaid assessment order dated 22.12.2008. For statistical purposes, the appeal is allowed.

Order pronounced in the open court on 20/12/2019

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20.12.2019
BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.12.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	