

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.6106/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2008-09)

Soul Jewels 306-Prasad Chambers, 3 rd Floor, Opera House, Mumbai-400004.	बनाम/ Vs.	DCIT-Central Circle 1(1) Old CGO Building, Pratistha Bhawan, M.K. Road, Mumbai-400020.
स्थायीलेखासं. /जीआइआरसं. /PAN/GIR No. :AAVFS1684H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anant N. Pai
Revenue by:	Shri V. Vinod Kumar (Sr. AR)

सुनवाईकीतारीख / Date of Hearing: 04/12/2019
घोषणाकीतारीख /Date of Pronouncement: 09/01/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 10.08.2018 passed by the Commissioner of Income Tax (Appeals) -47, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2008-09.

2. The assessee has raised the following grounds: -

"1. *On facts and circumstances of the ease arid in law, the learned Commissioner (Appeals) erred in confirming the action of the learned Assessing Officer in initiating reassessment proceedings u/s 147 without having credible reasons to believe that income of the Appellant had escaped assessment.*

The re-assessment proceedings u/s 147 have been initiated without satisfying the jurisdictional conditions and therefore, deserve to be quashed in appeal.

2. *On facts and circumstances of the case and in law, the learned Commissioner (Appeals) failed to note that and where an assessment has been completed earlier u/s 143 (3), the said assessment can be re-opened u/s 147 - only if any income chargeable to tax has escaped assessment by reason of failure on part of the assessee to disclose fully and truly all*

material facts necessary for his assessment for that assessment year and not otherwise.

In the instant case of the Appellant, there is no such failure on its part and therefore, the re-opening of the assessment is bad in law.

3. *On facts and circumstances of the case and in law, the learned Commissioner (Appeals) failed to note that an assessment cannot be re-opened u/s 147 on basis of change of opinion by the learned Assessing Officer on the same set of facts as prevailed during the original assessment.*

The re-assessment proceedings thus sustained are clearly illegal and deserve to be quashed in appeal.

4. *On facts and circumstance of the case, the learned Commissioner (Appeals) erred in also sustaining the disallowance of Rs.2,11,000 made by the learned Assessing Officer @25% of professional expenditure of Rs.8,43,700/- towards capital expenditure without any cogent basis for making such disallowance.*

5. *Both the lower authorities erred in passing their respective orders without granting your appellant adequate opportunity of being heard.*

The order passed by them are in contravention of the principles of natural justice and hence, bad in law.

6. *The appellant reserves the right to add to, alter or delete any of the above grounds with permission of Hon'ble Tribunal."*

3. The brief facts of the case are that the assessment of the assessee was completed on 27.12.2011 assessing total income to the tune of Rs.1,89,76,127/- u/s 143(3) r.w.s. 153A of the Act. The case of the assessee was reopened u/s 148 of the Act. Notice dated 13.02.2015 u/s 148 of the Act was issued and served upon the assessee on 14.02.2015. In view of the said notice, the assessee filed return of income which he had filed earlier. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The case of the assessee was reopened on the following grounds: -

"The assessee firm is engaged in the business of export of studded jewellery. The assessee has debited an amount of Rs.8,42,700/- towards the legal and professional fees paid to MIs. Rashmin Sanghvi & Associates. The details such as bill, ledger account for this expenses (filed on record shows the said amount was paid towards professional charges for several conferences with parties and associates between 24.12.2007 to 05.03.2008 on the subject of tax issues and investments in several companies. The details placed on record further indicates that the assessee made advance payment to several companies towards purchase of their shares to the tune of Rs.92.53 crores during the year and out of this amount shares worth Rs.30.47 crores were allotted to assessee in subsequent years. Therefore, the amount claimed by assessee as professional fees is clearly towards its investment activities and not

expended wholly and exclusively for the purpose of business conducted during the year. Accordingly, an amount of Rs.8,43,700/- is an inadmissible expenditure within the meaning of provisions of section 37(1) of the Act. this amount was however not disallowed in computing the income of the assessee in the concluded scrutiny assessment.

Omission to do so has resulted in under assessment of taxable income to the extent of Rs.8,43,700/- and resultant short levy of tax of Rs.2,86,774/-

Therefore, I have reasons to believe that income chargeable to Tax for A.Y.2008-09 being Rs.8,43,700/- has escaped from assessment. Since the income has escaped from assessment therefore the case is required to be reopened u/s. 147 of the I.T. Act. 1961. Accordingly, notice u/s. 148 of the I.T. Act. 1961, is issued under the seal and signature of the undersigned."

4. The AO arrived at this conclusion that the legal and professional fees in sum of Rs.8,43,700/- paid to M/s. Rashmin Sanghvi & Associates was taxable, hence, the AO assessed the 25% of the said amount as capital in nature i.e. 2,11,000/- and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.1,91,87,130/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE No. 1 to 3

5. We have heard arguments advanced by the Ld. Representative of the parties and perused the record. Under these issues the assessee has challenged the reopening of the assessment u/s 147/148 of the Act. The Ld. Representative of the assessee has argued that the assessee nowhere concealed any information in his return of income, therefore, the assessment is not liable to be reopened after the four years specifically in the circumstances when the case of the assessee was reopened on 13.02.2015 for the A.Y. 2008-09. It is also argued that while finalizing the assessment, the AO issued the letter dated 26.04.2011 and inquired about the legal and professional fees and the assessee also replied by virtue of letter dated 12.12.2011, thereafter, the objection was disposed of after due application of mind, therefore, the case of the assessee is not liable to be reopened on this specific ground in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. The first significant thing which came into notice that the present assessment is

belonging to the A.Y. 2008-09 and the case of the assessee was reopened u/s 147/148 of the Act by issuance of notice dated 13.02.2015 which is after four years and there is nothing on record to which it can be presumed that the assessee failed to disclose any information in its return of income which may cause loss to the revenue. No doubt, in the instant case, the reason for reopening is in connection with the payment of legal and professional fees which has duly been disclosed by the assessee in the return of income. Nothing new tangible material came into investigation before the AO which entitled him to reopen the case on account of failure to disclose any material by assessee. In brief, the assessee was not responsible for non-disclosure of anything for reopening of the assessment u/s 147/148 of the Act, hence, the reopening nowhere seems justifiable. Moreover, we also noticed that while completing the assessment, the AO issued the notice dated 26.04.2011 in which the AO asked the details of legal and professional fees. The particulars have been given at Serial No.27 of the letter lies at page no. 6 of the paper book. Thereafter the assessee also filed the reply dated 12.12.2011 in which the details have been submitted. The issue has already examined by AO and a possible view has been taken, therefore, the reopening nowhere seems justifiable. In this regard, we also placed reliance upon the relied upon the decision of the **Hon'ble of Bombay High Court in the case of Hindustan Lever Ltd. Vs. R.B. wadkar (2004) 137 Taxman. 479 (Bom)**, therefore, in view of the said circumstances, we are of the view that the reopening u/s 147/148 of the Act is bad in law. Hence, we set aside the finding of the CIT(A) on the said legal issue and allowed the appeal of the assessee. Since, the appeal of the assessee has been allowed on the basis of legal ground, therefore, there is no need to decide the case on merits being academic in nature.

6. In the result, the appeal filed by the **assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 09/01/2020

Sd/-

(RAJESH KUMAR)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 09/01/2020

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

(Assistant Registrar)**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**