

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

ITA No.1767/Mum/2018  
(Assessment Year:2008-09)

Asst. CIT 12 (2)(2) Room No. 145, 1 <sup>st</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Serco BPO Pvt. Ltd. Serco House, Mind Space, Malad (W), Mumbai-400 090
PAN/GIR No. AABCV 2572 L		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri Ajay Kumar
<b>Respondent by</b>	:	Shri S. K. Tyagi
<b>Date of Hearing</b>	:	19.12.2019
<b>Date of Pronouncement</b>	:	06.02.2019

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against order of learned CIT(A) dated 29.12.2017 and pertains to assessment year 2008-09. The grounds of appeal read as under:

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that there was no failure on part of the assessee in claiming wrongful claim of set off of business loss of ineligible business unit from profits of eligible business units before claiming deduction u/s 10A of the Income Tax Act, 1961 and that the reassessment is bad in law as the time limit of four years have elapsed when the issue had never been discussed by the Assessing Officer in the original assessment order."
2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the loss of ineligible business unit need not be first off against the income from eligible unit before allowing the deduction u/s 10 A of the Income Tax Act,1961 even after the circular No.7 of 2013 issued by the Central Board of Direct Taxes on the issue."
3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the loss incurred from the ineligible business unit need to be allowed to be carried forward when there was a change in the shareholding pattern during the P.Y. which entails lapse f brought forward business loss of Rs.2,84,33,803/- which was also mentioned in the tax audit report filed."

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the brought forward unabsorbed depreciation of ineligible business unit need not be first off against the income from eligible unit before allowing the deduction u/s 10A OF THE Income Tax Act, 1961 even after the circular No.7 of 2013 issued by the Central Board of Direct Taxes on the issue."

2. We have heard both the Counsel and perused the records. The learned departmental Representative supported the order of the assessing officer on the issues on merits on which the ld. CIT(A) has granted relief to the assessee. The learned counsel of the assessee at the outset submitted that in this case the ld. CIT(A) has also held that the reopening was not valid and he has quashed the assessment. Hence, the learned counsel submitted that since the assessment has been held to be without jurisdiction as the reopening has been held to be bad, it was incumbent upon the revenue to challenge the same. Hence, he submitted that since the Revenue has not challenged the decision of the ld. CIT(A) in which the ld. CIT(A) has held that the reopening is not valid, the other grounds raised on merits are only of academic interest.

3. Upon careful consideration, we note that the issue of jurisdiction and its validity upon assessee's appeal has been dealt with by the ld. CIT(A) as under:

5.4 Decision on Grounds number 2 & 3:

5.4.1 I have considered the contention of the appellant. In this case, an assessment order was passed under section 143(3) of the Income Tax Act, 1961 on 08.11.2012. the assessment was reopened on 27.03.2014, i.e., after lapse of more than 4 years from the end of the relevant Assessment Year. There is absolutely nothing on record to show that some new material had come to the possession of the A.O. based on which the A.O. was able to form his reason to believe that income chargeable to tax had escaped assessment. Therefore, it is a case of change of opinion of the A.O.

5.4.2 I find from the reasons recorded by the A.O. that he had relied upon the very same material based on which the assessment order was passed. Therefore, clearly, the alleged escapement income cannot be attributed to failure on the

part of the appellant to furnish any details. Therefore, I agree with the appellant's contention that the reopening was done in violation of the prohibition stipulated in the first proviso to sec. 147 of the Act since in this case the assessment was reopened after lapse of more than 4 years from the end of the relevant Assessment Year. If at all there was any income which the A.O. had failed to bring to tax, appropriate remedial action would have been taken in this case u/s. 263 of the Act. Therefore, the ground of appeal no. 2 & 3 allowed.

4. From the above it is amply evident that the Id. CIT(A) has held that reopening is not justified. In this view of the matter when the Id. CIT(A) has held that reopening is not justified it is amply evident that if revenue was aggrieved, it should have raised a ground in this regard. A reading of the grounds of appeal mentioned above shows that no ground challenging the Id. CIT(A)'s order on the issue of lack of jurisdiction has been raised before the ITAT. In this view of the matter, in our considered opinion, the adjudication on the merits of the issue is only of academic interest. Hence, holding that Id. CIT(A) has held the assessment to be without jurisdiction and the revenue has not challenged the same, in our considered opinion, the adjudication on merits is infructuous. Accordingly, this appeal by the revenue stands dismissed being infructuous.

5. In the result, this appeal filed by the Revenue stands dismissed.

*Order pronounced in the open court on 06.02.2020*

Sd/-

Sd/-

(Ram Lal Negi)  
Judicial Member

(Shamim Yahya)  
Accountant Member

Mumbai; Dated : 06.02.2020  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai