IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.6566/Del./2015
Assessment Year 2007-2008

The Income Tax Officer (E) Ward-1(3), E-2 Block, Room No.2419, 24th Floor, Pratyaksh Kar Bhawan, Civic Centre, Jawahar Lal Nehru Marg, New Delhi PIN – 110 002.	vs.,	Dabur Research Foundation, 8/3, Asaf Ali Road, Delhi – 110 002. PAN AAATD2653G
(Appellant)		(Respondent)

For Revenue :	Ms. Pramita M. Biswas, CIT-DR
For Assessee :	Shri M.P. Rastogi, Advocate

Date of Hearing :	10.02.2020
Date of Pronouncement :	11.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-40, New Delhi, Dated 15.09.2015, for the A.Y. 2007-2008, challenging the Order of the Ld. CIT(A) in allowing the appeal of assessee despite

the fact that assessee had failed to comply with pre-condition mentioned in Rule 5D of the Income Tax Rules, 1962 for Registration under section 35(1)(ii) of the I.T. Act, 1961.

2. We have heard the Learned Representative of both the parties and perused the findings of the authorities below.

3. Briefly the facts of the case are that the original assessment was completed under section 143(3) of the I.T. Act, 1961, Dated 29.12.2009 at the 'NIL' returned income. The return declaring NIL income was filed on 31.10.2007. Subsequently, A.O. recorded reasons for reopening of the assessment under section 147 of the I.T. Act, 1961 and issued notice under section 148 Dated 27.03.2014. The assessee submitted that the original return filed on 31.10.2007 may be treated as return filed in response to notice under section 148 of the I.T. Act, 1961.

3.1. The assessee-company is approved by the CBDT for the purpose of deduction under section 35(1)(ii) of the I.T. Act, 1961 vide Notification No.59/2008 Dated 30.04.2008. The Rule 5D prescribes the conditions subject to which approval is to be granted to a Scientific Research Association under section 35(1)(ii) of the I.T. Act, 1961 and one of the conditions is that the Scientific Research Association shall maintain a separate statement duly certified by an Auditor and shall accompany the Report of Audit referred to in Rules to be furnished to the Commissioner/Director of Income Tax by the due date of furnishing the return of income under subsection (1) of Section 39 of the I.T. Act. On perusal of the assessment records for the assessment year under appeal, it was noticed by the A.O. that certified copy of a separate statement of donations received and amount applied for scientific research had not been furnished by the assessee along with the return of income and thus, the condition of the approval is violated. Further, the assessee has shown surplus, i.e. excess of income over expenditure of Rs.16.87

crores which should be considered as taxable income. The assessee submitted before A.O. that all the details as desired for reopening of the assessment have been furnished, therefore, there is no default in terms of substantial compliance of Law as the list of donees and application of fund for scientific research were filed before completion of the assessment before A.O. It is only a technical –cum- procedural default only in terms of providing details of donations at a later date in the course of the assessment proceedings. The A.O, however, did not accept the contention of assessee and completed the assessment at Rs.16.87 crores.

3.2. The assessee challenged the reopening of the assessment as well as addition on merits before the Ld. CIT(A).

4. The assessee contended that assessee is duly approved under section 35(1)(ii) of the I.T. Act vide Notification No.59/2008 Dated 30.04.2008. In scrutiny assessment, specific questionnaires were raised on

17.03.2009 and assessee submitted complete information before A.O. including list of donors with full address, PAN and receipt confirmation from whom contributions totaling to Rs.41.76 crores was received including corpus contribution of Rs.3.50 crores received from Dabur India Ltd., The original assessment was completed under section 143(3) at NIL assessment. The A.O. reopened the assessment because certified copy of the statement of donations and separate list have not been furnished by the assessee along with the return of income. The assessee submitted that complete details were filed before A.O. at original assessment stage which have been considered by the A.O. It was submitted that it is a case of change of opinion only and no new material have been brought on record by the A.O. for reopening of the assessment. All the records were before A.O. at the time of passing of the original assessment along with list of complete details, with due compliance of the Rules. The assessee relied upon several decisions in support of the contention that reopening of the assessment is bad in law. It was also

submitted that since complete details were provided during the course of original assessment proceedings, therefore, addition is also wholly unjustified. The Ld. CIT(A) considering the above facts allowed the appeal of assessee. The operative portion of the Order of the Ld. CIT(A) in paras 4.19 to 5 are reproduced as under :

> *"4.19. I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee. The main grievance or contentions of the Appellant is twofold. Firstly, the ITO(E) was wrongly invoked the jurisdiction u/s 148 to reopen the already completed assessment u/s 143(3) and secondly that technical non compliance cannot run down substantial entitlement under the law.*
>
> *4.20. From the facts, it emerges that the Appellant is a scientific research association entitled to income exemption u/s 10(21) of the IT Act and also registered u/s 35(1)(ii) with the CBDT via notification*

No.59/2008 and also registered with the Ministry of Science and Technology. The Appellant had not filed an audited statement of donations received along with the tax return for the AY 2007-08. The original assessment for AY 2007-08 was completed after taking into account that details of donations available on record with the AO at the time of completion of assessment. There absolutely no dispute on this point. However, the AO reopened the case u/s 148 for the AY 2007-08 after four years from the end of relevant assessment but expiry of six years from the end of relevant assessment year citing that one of pre condition of Rule 5D of the Income-tax Rules, 1962 was not complied by the Appellant. The non-compliance as already mentioned above was 'non submission of audited statement of donations received for the AY 2007-08 along with the tax return.

4.21. After considering all the facts and circumstances of the case, I am of the view that there is no doubt that the copy of audited statement of

donations received for the AY 2007-08 was available at the time of completion of original assessment. Honorable Supreme Court in case of CIT V Nagpur Hotel Owners' Association 2001 247 ITR 201 SC has held that if the details required to complete the assessment were available at the time of original assessment then there is no requirement to invoke the reassessment proceedings. The case of the Appellant is squarely covered by this decision of the Honorable Supreme Court and accordingly the addition of Rs.16,87,53,200/- made by the AO during the reassessment u/s 147/143(3) is deleted.

5. In the result, the appeal of the assessee is allowed."

5. The Ld. D.R. relied upon the Order of the A.O. and submitted that since compliance of the Law was not made and list of donors etc., were not filed with the return of income, therefore, addition was wrongly deleted by the Ld. CIT(A). The Ld. D.R. submitted that though the Revenue

filed revised grounds of appeal, but, no ground have been taken by the Revenue again challenging the quashing of the reopening of the assessment.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that since sufficient compliance was made at original assessment stage, therefore, it amounts to change of opinion and initiation of re-assessment proceedings is bad in Law. He has submitted that assessee for abundant precaution filed application under Rule 27 of I.T. Rules challenging the validity of the re-assessment proceedings. He has submitted that issue on merits is covered by Judgment of Hon'ble Supreme Court in the case of CIT vs., Nagpur Hotel Owners' Association [2001] 247 ITR 201 (SC) relied upon by the Ld. CIT(A).

7. We have considered the rival submissions and do not find any justification to interfere with the Order of the Ld. CIT(A). It is a fact that original assessment was completed under section 143(3)of the I.T. Act, 1961. The

assessee furnished complete details before A.O. at original assessment stage which includes list of donors etc., for completion of the assessment under section 35(1)(ii) of the I.T. Act. No new material was brought on record at the time of reopening of the assessment. The A.O. merely on the basis of the material already on record recorded reasons for reopening of the assessment. There is no failure on the part of the assessee to produce complete details at the original assessment stage. The crux of the findings of the Ld. CIT(A) clearly show that Ld. CIT(A) was satisfied with the explanation of assessee that it is not a fit case of reopening of the assessment, though no specific operative finding have been given in this regard. Ultimately, the Ld. CIT(A) allowed the appeal of assessee. Since assessee has raised point of reopening of the assessment and find merit before the Ld. CIT(A), therefore, it would show that the grounds of appeal raised by the assessee for reopening of the assessment has also been allowed. The Revenue has taken adjournment on 08.07.2019 seeking time to file revised ground of appeal. Though the revised grounds are filed, but, again no ground

have been taken to challenge the quashing of the re-assessment proceedings in the matter. The assessee for abundant precaution has filed application under Rule 27 of the I.T. Rules. The crux of the findings of the Ld. CIT(A) clearly show that it is a case of mere change of opinion and that re-assessment have been made after four years from the end of the relevant assessment year, after passing of the original assessment order under section 143(3) of the I.T. Act, 1961. There is no failure on the part of assessee to disclose all the facts truly and correctly which are required for passing of the assessment order. Therefore, reopening of the assessment was wholly unjustified and have been rightly quashed by the Ld. CIT(A) though no specific operative order have been passed in the matter, but, when the Ld. CIT(A) has allowed the appeal of assessee on both the grounds, it would indicate that re-assessment have been quashed by the Ld. CIT(A). therefore, application of assessee under Rule 27 of the I.T. Rules, 1962, is allowed. Therefore, appeal of Revenue would not be maintainable because no ground have been raised by the Revenue

challenging the reopening of the assessment, despite giving sufficient opportunity to the Revenue. Further there is no merit in the appeal of the Revenue because complete details required for completion of the assessment were filed at the time of original assessment. Therefore, the issue is covered by Judgment of Hon'ble Supreme Court in the case of CIT vs., Nagpur Hotel Owners' Association (supra). There is, thus, no merit in the appeal of the Revenue and the same is accordingly dismissed.

8. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 11th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.