

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.3106/Mum/2018(A.Y.2008-09)

Dr. Vaishali Dhargalkar,
C/o. V.S.Gokhale,
Flat No.404, Gurukrupa Building,
Plot No.19/324, Kastur Park,
Shimpoli Road, Borivali (W)
Mumbai 400 092
PAN:AEJPD 5685F

..... Appellant

Vs.

Income Tax Officer , Ward 11(3)(4)
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... Respondent

Appellant by : Shri Mandor Vaidya
Respondent by : Shri Amit Pratap Singh

Date of hearing : 12/02/2020
Date of pronouncement : 24/02/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – 7, Mumbai (in short 'the CIT(A)') dated 02/03/2018 for assessment year 2008-09.

2. The brief facts as emanating from records are : The assessee is a Gynaecologist and a partner in Dinanath Maternity and Surgical Nursing Home. The assessee filed her return of income for the impugned assessment year on 13/03/2008 declaring total income of Rs.7,08,920/-. The assessment under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') was completed vide order dated 30/11/2010 determining total income of the assessee at Rs.7,49,333/-. Thereafter, notice under section 148 of the Act was issued to the assessee on 08/10/2012. In reassessment proceedings, the Assessing Officer made addition of Rs.3,90,000/- on account of undisclosed income.

3. Shri Mandor Vaidya appearing on behalf of the assessee submitted that the reassessment proceedings initiated against the assessee are merely on change of opinion. The assessee had received Rs.3,90,000/- as unsecured loan from her father-in-law Shri Dinanath V Dargalkar. During scrutiny assessment proceedings, the assessee had explained the source of Rs.3,90,000/-, which was accepted by the Assessing Officer. In support of his contention the Id.Authorized Representative of the assessee referred to remand report dated 09/01/2018 at pages 21 and 22 of the Paper Book. The Id.Authorized Representative of the assessee submitted that father-in-law of the assessee is an agriculturist and he had filed confirmation regarding unsecured loan given to the assessee at time of original assessment proceedings. The Id.Authorized Representative of the assessee further contended that in remand proceedings the Assessing Officer had issued notice under section 133(6) of the Act to Shri Dinanath V. Dargalkar on 11/08/2017 to furnish certain documents. Thereafter, a letter dated 29/12/2017 was issued Shri Dinanath V. Dargalkar. Due to delay in response from Shri Dinanath V. Dargalkar the requisite documents could not reach the Assessing Officer at the time of finalisation of

remand report. The Id.Authorized Representative of the assessee pointed that Shri Dinanath V. Dargalkar is residing in Mufasil area and is an ailing aged person. The communication from the Assessing Officer were received by him after considerable delay. However, the documents as required by the Assessing Officer i.e.7/12 Extract of the land owned by him, copy of PAN, etc. were furnished by him. The Id.Authorized Representative of the assessee submitted that Shri Dinanath V. Dargalkar had already filed confirmation regarding advancing of unsecured loan to the assessee at the time of original assessment proceedings. However, he again confirmed vide letter dated 28/01/2018 regarding advancing of unsecured loan of Rs.3,90,000/- to the assessee. The Id.Authorized Representative of the assessee submitted that reopening of the assessment is bad in law as no new tangible material had come in possession of the Assessing Officer. The Id.Authorized Representative of the assessee asserted that it is a case of change of opinion on re-appreciation of material already on record.

4. Shri Amit Pratap Singh, representing the Department vehemently defended reopening of assessment and the addition made in proceedings under section 147 r.w.s. 148 of the Act. The Id.Departmental Representative submitted that the assessee had not furnished any documentary evidence to substantiate source of Rs.3,90,000/-. No PAN details/bank details, etc. of Shri Dinanath V Dargalkar were furnished by the assessee . The Id.Departmental Representative prayed for confirming the findings of CIT(A) and dismissing the appeal of assessee.

5. Both sides heard, orders of authorities below examined. The assessee in appeal has challenged validity of reopening as well as the addition made under section 68 of the Act on merits.

6. The assessee has assailed reopening under section 147 of the Act on the ground that it is a case of 'change of opinion'. The assessee had purportedly taken unsecured loan of Rs.3,90,000/- from her father-in-law Shri Dinanath V Dargalkar during the period relevant to assessment year under appeal. From the perusal of remand report at page 21 of the Paper Book, it appears Assessing Officer had made enquiries during scrutiny assessment proceedings regarding loan termination. Shri Dinanath V Dargalkar at that time had filed confirmation. Thereafter, no addition was made by the Assessing Officer in scrutiny assessment proceedings. The Assessing Officer issued notice under section 148 and reopened the assessment on re-appreciation of the documents already on record. The primary reason for reopening was unconfirmed source of unsecured loan Rs.3,90,000/- . From the documents available on record it is apparent that no fresh tangible material has come in possession of the Assessing Officer to show that the income has escaped assessment. The Assessing Officer only on the basis of material, which was available before him during scrutiny assessment proceedings invoked the provisions of section 148 of the Act. It is a clearly a case of 'change of opinion'. The Hon'ble Supreme Court of India in the case of CIT vs. Kelvinator of India Ltd.,320 ITR 561(SC) has held that Assessing Officer has power to reopen an assessment provided there is "tangible material" to come to the conclusion that there was escapement of income from assessment. The Assessing Officer does not have unfettered powers to reopen the assessment. Reopening based on re-appreciation of documents already on record amounts to 'change of opinion'. Review or reopening on change of opinion is not permissible under the provisions of the Act.

6. In view of our above observation, we hold that reopening of assessment in the case of assessee is the outcome of "change of opinion" and the same is bad in law and unsustainable. The assessment order passed under section 143(3) r.w.s. 147 of the Act is quashed and thus, the subsequent proceedings arising there from are vitiated. The assessee succeeds on ground No.1 of the concise grounds.

7. Since, we have allowed appeal of the assessee on the legal issue, we are not deliberating upon the merits of the addition.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Monday, the 24th day of February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 24/02/2020
Vm, Sr. PS(O/S)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai