

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6614/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Prosales Financial Services Pvt. Ltd. 158, Dani Corporate Park, 1 st Floor, CST Road, Kalina, Santacruz (E), Mumbai.	बनाम/ Vs.	ITO 10(1)(3) Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECP2576K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rashmikant C. Modi & Ms. Ketki Rajeshirke
Revenue by:	Shri Somnath M. Wajale (DR)

सुनवाई की तारीख / Date of Hearing: 08/01/2020
घोषणा की तारीख /Date of Pronouncement: 22/01/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 24.08.2018 passed by the Commissioner of Income Tax (Appeals) - 22, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds: -

- “1. On the facts and in the circumstances of the case, the Appellant submit that the Hon'ble Commissioner of Income Tax (Appeals) erred in holding that the notice issued u/s 148 of the income



Tax Act, 1961 by the Learned Assessing Officer for the aforesaid year as valid.

The Appellant submits that notice u/s 148 of the Income Tax Act, 1961 issued by the Learned Assessing Officer for re-opening of the assessment proceedings is bad in law and therefore it is further submitted that the assessment order passed by the Learned Assessing Officer u/s 143(3) r.w.s. 147 for the aforesaid year is bad in law and be quashed.

2. On the facts and in the circumstances of the case, the Appellant submits that the Hon'ble Commissioner of Income Tax (Appeals) erred in upholding the disallowance of expenses of Rs. 1,76,46,171/- claimed by the Appellant in the Return of Income filed and allowing 10% depreciation on said expenses made by the Learned Assessing Officer in the assessment order passed u/s 143(3) r.w.s. 147.

The Appellant submits that the expenditure of Rs. 1,76,46,171/- incurred by the Appellant and claimed as revenue expenses while computing the profit and gains from business in the return of income filed, be allowed.

3. The Appellant crave to add, alter or amend or delete any of the grounds taken in the Appeal.”

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total income to the tune of Rs.22,71,866/-. The return was processed u/s 143(1) of the I. T. Act, 1961. The assessment of the assessee was completed u/s 143(3) of the Act accepting total income as returned by the assessee. Thereafter, it was found that the assessee had claimed an amount of Rs.1,46,78,755/- as expenses incurred on improvements of leasehold premises and treated the same as revenue expenditure. The assessee capitalized the expenses and amortized the same in 5 years by relying upon the Supreme Court decision in the case of **CIT Vs. Madras Auto Services (P.) Ltd. 233 ITR 468**. Feeling aggrieved, the



assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

4. Under this issue the assessee has challenged the reopening of the assessment proceeding u/s 148 of the Act. In the instant case, the assessment of the assessee was completed u/s 143(3) of the Act on 23.12.2011. In the said assessment, the assessee claimed the expenses incurred on Repairs of premises taken on leave and license as revenue expenses which were considered as revenue expenditure by AO. The copy of order dated 23.12.2011 is on the file in which the AO has treated the improvements of leasehold premises as revenue expenditure. The AO during the proceeding u/s 143(3) of the Act inquired about this fact by virtue of letter dated 18.08.2010 lies at page no. 45 of the paper book. The assessee replied vide letter dated 12.12.2011 lies at page no.72 of the paper book. The contents of letter dated 12.12.2011 are hereby reproduced as under.:-

*“December 12, 2011
The Income Tax Officer-10(1)(3)
Aayakar Bhavan,
M.K. Road,
Mumbai-400020
Re: Prosales Financial Services Private Limited
PAN:AAECP2576K
Sub: Submission for A.Y.2009-10*

Dear Sir,

With reference to the above and under the instructions of our above named client, we have to submit as follows:

1. *As you are already aware, the assessee is operating its business through a leave & license premises, the Supreme Court in CIT v. Madras Auto Services Pvt. Ltd. - 223 ITR 468, where the apex court held that*



Construction of a new building demolishing the existing building taken under lease agreement was a revenue expenditure as the asset created did not belong to the assessee, since in the lease agreement, it was provided that the new construction right from the commencement of work would be the property. Even before rendering of this decision various other High Courts had on identical footings allowed expenditure in respect of rented building for its renovation / alteration the grounds that the building did not belong to the assessee. The decisions rendered are as follows:

- a. Goyal Oil Mills - 78 ITR 414.*
- b. Allied Metal Products - 137 ITR 689.*
- c. Giridhari Dass & Sons - 105 ITR 339.*
- d. Modi Spinning & Weaving Mills Co. Ltd. Vs CIT -200 ITR 544.*
- e. Rampur Distilleries & Chemical Cos. - 140 ITR 725.*
- f. Installment Supply Pvt. Ltd. - 149 ITR 52 (Del.).*

The installation of cubicles, expenditure incurred for partitioning wall paneling, wall racks fittings, etc. in various lease hold premises is revenue in nature on the grounds that the assessee has carried out some improvements for better enjoyment of the lease hold property. In this context, reliance is placed on CIT Vs. Andavar Calendering Mills - 210 ITR 815 (Mad.), Haridas Bhagat & Co. - 240 ITR 169 (Mad.), Kisenchand Chellaram India Pvt. Ltd. - 130 ITR 385 (Mad.). The Bombay High Court in the case of CIT Vs. Hede Consultancy Pvt. Ltd. - (2002) 258 ITR 380 has held that expenditure incurred on converting godown premises taken by assessee on hire into office premises was revenue expenditure, since the assets created by spending the amount did not belong to the assessee but the assessee got business advantage by using modern business premises and hence allowable as a revenue expenditure u/s.37(1) of the Income Tax Act. Similar views are rendered by the Punjab & Haryana High Court in the case of Alkem Laboratories Pvt. Ltd. 28 DTR 11 (Patna). The Delhi High Court in Roger Enterprises 169 Taxman 41 has held that expenditure incurred for renovation of leased premises would be revenue in nature and 32(1A) would not be attracted.

3. The Mumbai Tribunal in 26 SOT 455 in the case of Geeta Mehta has held that expenditure incurred on a leased property for making rooms fit for conducting classes and also incurring expenditure by way of purchase of tiles, grills, electrical fittings, plywood, granite and relating



fittings was a fully allowable expenditure u/s.37(1) of the Income Tax Act.

4. *In light of the above submission, since no enduring benefit accrues to the assessee, the expenditure incurred on repairs & maintenance etc. in leasehold premises is fully allowable as a revenue expenditure.*

Thanking you,

*Yours faithfully,
For GPS & Associates
Chartered Accountants.*

5. In brief, the AO considered the issue and after considering the reply dated 12.12.2011, passed the assessment order dated 23.12.2011 in which the expenses in sum of Rs.1,46,78,755/- was treated as revenue expenses. When the reasonable opinion has been taken by AO after due application of mind then no further reopening can be done in view of the decision of the Hon'ble Supreme Court in the case of **Kelvinator of India Ltd.-320 ITR 561. 1**. We further note that the issue has already been settled down by the Hon'ble Bombay High Court in the case of **State Bank of India Vs. ACIT, Circle-2(2)(1) Mumbai and Ors.** The change of opinion nowhere empower the commissioner to invoke the provisions u/s 263 of the Act and the Hon'ble Bombay High Court observed as under.:-

"It further goes on to hold that before interference with a proposed reopening of the assessment, the Court should verify whether the assessment order made earlier has expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. Infact, in this case we find that the assessment orders passed in regular assessment proceedings do refer to examining the computation of income filed alongwith the Return of Income. Moreover, the Assessment order in regular assessment proceedings in terms disallowed some of the claims made for deduction under Section 143(3) of the Act. Therefore, in the present facts, we are prima-facie of the view that, the Assessing Officer has by necessary implication allowed the claim. Moreover, the



basic document for completing the assessment under Section 143(3) of the Act is the computation of income. Therefore, to the extent the claims made for deduction in the computation of come, were disallowed by the Assessing Officer, discussion on the same is found in the assessment order. It is an accepted position that the assessment orders would necessarily deal only with the claims being disallowed and not with the claims being allowed. This is for the reason as observed by the Gujarat High Court in CIT Vs. Nirma Chemicals Ltd 309 ITR 67, that if the Assessing Officer was to deal with all the claims which were to be allowed in the assessment order, the result would be an epitome. This is so, as it would cast an impossible burden upon the Assessing Officer considering his workload and the period of limitation. There was also no reason in the present facts for the Assessing Officer to ask any queries in respect of this claim of the petitioner, as the basic document viz. computation of income at note 21 (Assessment Year 2013-14) and note 22 (Assessment Year 2014-15) thereof explained the basis of the claim being made to the satisfaction of the Assessing Officer. Thus, it must necessarily be inferred that the Assessing Officer has applied his mind at the time of passing an assessment order to this particular claim made in the basic document viz. computation of the income by not disallowing it in proceedings under Section 143(3) of the Act as he was satisfied with the basis of the claim as indicated in that very document. Therefore, where he accepts the claim made, the occasion to ask questions on it will not arise nor does it have to be indicated in the order passed in the regular assessment proceedings.”

6. Moreover, re-assessment cannot be made on the basis of an information from the audit report. At the time of assessment no new tangible material is in the possession of the AO. In this regard, we also find support of decision of Hon’ble Delhi High Court in the case of **CIT Vs. Modipon Ltd. reported in 2011 TIOL 355 (High Court)**, therefore, in the said circumstances, we are of the view that re-opening the assessment u/s 147/148 of the Act is not liable to be sustainable in the eyes of law. Accordingly, we set the re-opening u/s 147/148 of the Act. Accordingly the issue is decided in favour of Assessee against the revenue.

ISSUE NO.2



ITA. NO.6614/M/2018
A.Y. 2009-10

6. Since the legal issue above has been decided in favour of the assessee, therefore, in the said circumstances, deciding issue no.2 would be academic in nature, hence, is not required to be adjudication.

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

Order pronounced in the open court on 22/01/2020.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 22/01/2020
Vijay Pal Singh/ Sr. PS

Sd

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai