



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.460/CTK/2017
Assessment Year : 2010-2011

Paradeep Parivahan Pvt Ltd., 204, OBC Building, Bank Street, Paradeep.	Vs.	ACIT< Circle -1(1), Cuttack
PAN/GIR No.AACCP 0890 J		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri J.K.Lenka, DR

Date of Hearing : 10 /06/ 2020
Date of Pronouncement : 10 /06/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order of the CIT(A), Cuttack dated 3.8.2017 for the assessment year 2010-2011.

2. Ground No.1 is general in nature and hence, requires no separation adjudication by us.

2. In Ground No.2, the grievance of the assessee is that the notice issued u/s.148 for initiation of proceedings u/s.147 is bad in law and illegal.

3. We have heard the rival submissions and perused the record of the case. The brief facts of the case are that the assessee is a private limited company derives income from transport contract, sub-contract works and msic.contract works. The assessment was completed u/s.143(3) of the Act determining the total

income at Rs.2,09,81,460/-. Against the assessment order, the assessee preferred appeal before the Id CIT(A) and during pendency of appeal the AO issued notice u/s.148 of the Act for initiating reassessment proceedings u/s.147 of the Act by recording the following reasons:

“The expenses “donation” is not an allowable expenses u/s.37 of the Income tax Act, 1961, it should be disallowed and added to the total income of the assessee company.”

4. During the course of reassessment proceedings, the assessee argued that the expenses towards donation and subscription have been incurred for the purpose of business only. The claim of donation was made during the original assessment proceedings and after considering the same, the AO had allowed the claim. However, the AO in the reassessment proceedings opined that all the expenses have been incurred through cash except a few payments and the assessee could not produce the bills and vouchers or receipts of the such donation and subscription and also the certificate of such donation and subscription for verification. Hence, the AO completed the reassessment u/s.147/143(3) of the Act and added Rs.6,83,300/- and assessed the total income at Rs.2,16,64,760/-

5. On appeal, before the Id CIT(A), the assessee also challenges the reopening of assessment u/s.147 of the Act but did not find favour. Hence, the assessee preferred appeal before the Tribunal.

6. The learned Counsel for assessee submitted that assessee is challenging re-opening of the concluded assessment by Revenue by invoking provisions of [Section 147](#) of the 1961 Act. The learned counsel for the assessee submitted that return of income was originally filed on 5.10.2010 for impugned ay and

assessment was originally framed by AO u/s.143(3) of the Act on 21.3.2013. It was submitted that re-opening of concluded assessment was done by AO u/s 147 of the 1961 Act by issuing notices u/s 148 on 1.4.2014 which is within 4 years from the end of the assessment year and re-assessment was finally framed by AO , vide assessment order dated 7.8.2014 passed u/s.143(3) r.w.s.147 of the 1961 Act. Ld counsel for the assessee submitted m that no tangible material came in possession of the AO to invoke provisions of Sec.147 of the 1961 Act. Ld counsel submitted that the AO was only proceeded to initiate reassessment proceedings on the basis of assessment records and audited profit and loss account, which was before the AO during the original assessment proceedings. Therefore, without any new tangible materials, the AO has no valid jurisdiction to initiate reassessment proceedings u/s.147 of the Act by issuing notice u/s.148 of the Act. He relied on the decision of Hon'ble Supreme Court in the case of Kelvinator India Ltd. (2010) 310 ITR 561 (SC).

7. Replying to above, Id DR submitted that the Assessing Officer has reopened the assessment u/s.147 of the Act by issuing notice u/s.148 of the Act on the ground that the amount of donation and subscription has been considered by the AO during the original assessment, therefore, the AO was right in reopening the assessment. Ld D.R. further submitted that the assessee company has debited an amount of Rs.39,43,263/- towards business promotion expenses under the head "selling & administrative expenses", which includes an amount of Rs.6,83,300/- towards donation, which is not allowable u/s.37 of the Act.

8. We have heard the rival submissions, perused the materials available on record of the Tribunal. We find the reasons for reopening the assessment u/s.147 of the Act on the following reasons:

"The expenses "donation" is not an allowable expenses u/s.37 of the Income tax Act, 1961, it should be disallowed and added to the total income of the assessee company."

9. A reading of the above recorded reasons shows that there was no new material which has come to the knowledge of the Assessing Officer to show after passing of the order u/s.143(3) of the Act on 21.3.2013 that income chargeable to tax has escaped assessment so as to trigger the reopening of assessment made u/s.147 of the Act. We find that the very basis of initiating the reassessment u/s.147 of the Act fi.e. donation amount of Rs.6,83,300/- was in the knowledge of the Assessing officer during the original assessment proceedings.

10. The Hon'ble Supreme Court in the case of Kelvinator of India Ltd. (supra) has held that the concept of "change of opinion" must be treated *as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen an assessment, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. In this context, the observations of Hon'ble apex Court at page 564 are very relevant, which are reproduced as follows:*

"Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review

and power to reassess. The Assessing Officer has no power to review; he has the power to re-assess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. "

11. Thus, we find that in the instant case, there was no tangible material with the Assessing Officer before reopening of assessment to show that income chargeable to tax has escaped assessment. Further, it is observed that the sole reason regarding donation and subscription of Rs.6,83,300/- was examined by the Assessing Officer at the time of original assessment proceedings and, therefore, on the same set of facts, the reopening of assessment is clearly a change of opinion and in view of the decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd (supra), reassessment is not permissible in law. Hence, we hold that the reopening of assessment in the instant case by issuance of notice u/s.148 of the Act is bad in law and consequently, reassessment order dated 7.8.2014 passed u/s.143(3)/147 is also bad in law and hence we cancel the same and allow this ground of appeal. Consequently, Ground No.3 has become academic, hence, not adjudication upon.

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

Order pronounced on 10 /06/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER
Cuttack; Dated 10 /06/2020

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Paradeep Parivahan Pvt Ltd., 204,
OBC Building, Bank Street, Paradeep.
2. The Respondent. ACIT< Circle -1(1), Cuttack
3. The CIT(A)-, Cuttack
4. Pr.CIT- , Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack