

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
(Through Video Conferencing)
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6079/Del/2016
(Assessment Year: 2006-07)

DCIT(LTU), Circle-1, NBCC Plaza Pusp Vihar, New Delhi (Appellant)	Vs.	M/s. Gail (India) Ltd, 16, Bhikaji Cama Place, RK Puram, New Delhi (Respondent)
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Revenue by :	Ms. Sunita Singh, CIT DR
Assessee by:	Shri Rohit Jain, Adv Ms. Depashree Rao, Adv Mr. Vibhu Aggarwal, CA
Date of Hearing	13/07/2020
Date of pronouncement	21/07/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal filed by the Id DCIT (LTU), Circle-1, New Delhi [The Id AO] against the order of the Id CIT(A)- 22, New Delhi [The Id CIT (A)] dated 09.09.2016 for the Assessment Year 2006-07, wherein, the order passed by the Addll. Learned Commissioner of Income-tax (Id AO), Range-12, New Delhi u/s 143(3) read with section 147 of the Act dated 30.01.2014 was annulled holding reopening of assessment is invalid as there was no 'non disclosure of material facts' by the appellant.
2. The Id AO has raised the following grounds of appeal:-
 - “1. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in holding that assessee has already made full and true disclosure during assessment proceedings and hence the reassessment proceedings are void ab initio.*
 2. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in making a finding that the issue of CSR expenses (Corporate Social Responsibility) of Rs.7,04,01,602/- was examined during the initial assessment proceedings. As the issue was not examined by the AO in the initial assessment proceedings, the findings of CIT(A) regarding change of opinion is wrong and factually incorrect.*
 3. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in referring to the ITAT order against sec. 263 order for subsequent assessment year 2007-08 that two opinion are possible whereas in the present AY 2006-07 no opinion was formed by the AO.*

4. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in not mentioning the relevance of 83 case laws mentioned in his appellate order.*
 5. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in not considering the Prior period expenses of Rs.21,10,799/-.*
 6. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in not considering the disallowance u/s 14A of Rs.9,23,00,000/-.”*
3. The facts of the case shows that the assessee filed its return of income on 29.11.2006 declaring total income of Rs. 28061649480/-. The return was revised on 03.03.2008. The assessment u/s 143(3) of the Act was made at Rs. 29538754390/- as per order dated 30.12.2008. Subsequently, pursuant to the order of the Id CIT(A), appeal effect order was passed on 31.08.2012 recomputing taxable income of the assessee at Rs. 29484371681/-.
 4. Subsequently the Id AO issued notice u/s 148 of the Act on 25.03.2013. In response to that, the assessee submitted a letter dated 30.04.2013 stating that the last return filed by it on 15.02.2008 may be treated as return filed in response to the above notice. The assessee on 06.12.2013 requested copy of the reasons recorded which was provided on 06.12.2013. On 18.12.2013 the assessee filed its objections stating that the notice is issued after the expiry of four years from the end of the relevant assessment years without pointing out that escapement of income is by the reasons of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. The contention of the assessee was that there was full and true disclosure by assessee in return filed as well as during the original assessment proceedings. The Id AO disposed off the objections vide para No. 4 of the assessment order itself. After that, the Id AO passed an assessment order on 30.01.2014 making several disallowances. The income of the assessee was determined at Rs. 29538754390/-. Particulars of the details of disallowance are not required to be disclosed here for the reason that the Id CIT (A) has allowed the appeal of the assessee annulling the order of the assessment quashing the reassessment and that is the only issue before us. Ld CIT (A) has not decided the issues on merits of the additions in that assessment. Aggrieved by the order of the Id AO the assessee preferred an appeal before the Id CIT (A).
 5. The first ground of appeal raised by the assessee before Id CIT (A) is that the order of the Id DCIT u/s 143(3) read with section 147 of the Act is time barred and hence liable to be quashed on account of limitation. The Id CIT(A) decided the same as per para No. 4 as under:-

“4. In this case, the original assessment order u/s 143(3) was passed on 30.12.2008. Subsequently, a notice u/s 148 was issued on 25.03.2013,

therefore, the proviso to section 147 is applicable in the present appeal. In this background, the appellant has challenged the reopening of the assessment in ground no. 1 of the appeal.

4.1 The reasons recorded for reopening of the assessment communicated to the appellant vide letter dated 06.12.2013 of the AO are reproduced herein under:-

“25.03.2013 In this case assessment u/s 143(3) was done on 30.12.2008 assessing the total income at Rs. 295,387,54,390/- it is further seen that:

1. The assessee had debited prior expenditure/income of Rs. 76,35,90,980/- (expenditure debited to P & L 72,17.19,893/- + income debited to P & L : 4.18,71,083/- out of which only Rs. 75,17.57,115/- (net) was added back to the income of the assessee at the time of scrutiny. Since the total amount of prior period expenditure was Rs. 76,36,90,980/-, the balance amount of Rs. 1,18,33,565/- should also have been added back to the income of the assessee.
2. The assessee had debited Rs. 7,04,01,602/- for “Corporate Social Responsibility (CSR)” under the head of “other expenses” which got allowed without being examined.
3. Employees’ contribution of Rs. 2.33,47,340/- were deposited after due date in provident and pension fund.
4. Software licences of Rs. 12,37,38,595/- was treated as intangible assets but allowed depreciation @ 60% instead of 25% , they being intangible assets resulting in excess allowance of depreciation of Rs. 3,96,82,225/-.
5. There is a calculation mistake in computing disallowance u/s 14A as per Rule 8D leading to under assessment of income by Rs. 15,95,25,319/- on this count.

I have, therefore, reason to believe that by reason of failure on the part of the assessee to disclose fully and truly all material facts for the said year necessary for the assessment of the said year, the income to the extent of more than Rs. 30,47,90,051/- has escaped assessment.

As in view of reasons cited above, the CIT also, having been satisfied that it is a fit case for the issue of notice u/s 148 has conveyed his approval/sanctioned for issue of notice vide F.No. CIT/LTU/2012-13/1692 dated 25.03.2013, the proceedings u/s 147 are hereby initiated to assess the income chargeable to tax which has escaped assessment by issuing Notice u/s 148 of the Act.

4.2 The appellant filed objections against the said reopening vide letter dated 18.12.2013 which have been disposed off by the AO in the assessment order itself. The said objections have been disposed off vide para 4 and 4.1 of the assessment order under appeal. For reference, the said paragraphs are reproduced herein under:-

“4. The objections of the assessee are not found tenable in view of the Explanation. 1 given in section 147 which read as under:

Production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the assessing officer will not necessarily amount to disclosures within the meaning of the forgoing proviso.

4.1 Further it has been held by various appellate authorities that when an income liable to tax has escaped assessment in the original assessment proceedings due to oversight and inadvertence or a mistake committed by the ITO, he has jurisdiction to reopen the assessment-Reassessment is permissible even if the information is obtained after proper investigations from the material on records or from any enquiry or research into facts or law- information need not to be from external source. This has been held in CIT & Anr Vs Rinku Chakraborty (Kar) 56 DTR 227 & Kalyanji Mauji & Co. Vs CIT(SC) 102 ITR 287. Besides in the decisions ACIT Vs Kanga & Co. 2010—TIOL-464-ITAT-MUM with respect to reopening u/s 148 it is held that “Tangible material “ need not be from outside the returned income . In this case in the details under the head “ Other expenses” filed during the assessment proceedings an amount of Rs. 7.04,01,602/- was mentioned against the account head ‘CSR expenses’. The exact nature of this expenditure could not be deciphered from the mere words ‘CSR expenses’. This was not explained by the assessee in detail to allow an opinion to be formed w.r.t. its admissibility as deductible expenditure as wholly and exclusively for business purpose or otherwise. Nor there has been any other detail filed by the assessee to know the exact nature of expenditure claimed. This has also not been discussed in the assessment order. The arguments against other grounds of reopening submitted by the assessee also are devoid of merit. The objections of the assessee in view of the above are dismissed. ”

4.3 From a perusal of the above, it is apparent that the AO has not dealt with the specific objections raised by the appellant vide letter dated 18.12.2013, raising an issue that there has been no failure on the part of the appellant to disclose fully and truly all material facts necessary for its assessment. As per the appellant all the issues were examined and all the corresponding facts were disclosed before the AO at the time of original assessment proceedings and, therefore the notice u/s 148 is void-ab-initio. The appellant further submitted that on the two issues out of five issues on which the assessment has been reopened i.e. the issue of CSR expenses and the issue of depreciation on Software Licenses and order u/s 263 was passed by the CIT in A.Y. 07-08 (immediately succeeding year) on 24.02.2012, wherein the CIT dropped the issue of depreciation on software licenses. For reference para 11 of the said order is reproduced herein under:-

“11. I am agreeable to the above contentions of the Ld AR of the assessee company. Firstly, the contemplated action for revision of quantum of depreciation allowed in respect of A.Y. 2006-07 in a proceeding initiated u/s 263 of IT Act for A.Y. 2007-08 is not permissible strictly in accordance with law. Even on merits. I am unable to reject the contention of the AR of the assessee company that the depreciation @ 60% is admissible on computer software because such rate has been provided in Appendix 1 and as per point No. 5 depreciation @ 60% is admissible on ‘computers including computer software’. Accordingly, the proceeding initiated u/s 263 of IT Act on this issue is hereby dropped and no further action is called for.”

4.4 On the issue of CSR expenses, the issue was set aside to the file of the AO. However, the Hon’ble ITAT vide its order dated 29.07.2016 quashed the order u/s 263. Therefore, invoking jurisdiction u/s 148 in respect of depreciation on software licenses cannot be justified as not only this issue was examined and all the necessary facts were disclosed before the AO at the time of original assessment proceedings, but the CIT also dropped the proceedings u/s 236 on the same issue in subsequent year before the issue of

notice u/s 148 for the year under appeal. Therefore, reopening on the said reason does not survive. On the issue of CSR expenses also there was no suppression of any material fact by the appellant at the time of original assessment proceedings. The order of Hon'ble ITAT quashing the order of CIT u/s 263 establishes that this was an issue on which two views were possible and, therefore, the CIT did not have jurisdiction u/s 263 on this issue. That brings the reopening on this issue within the definition of change of opinion. Moreover, there has been no non-disclosure of material facts. Therefore, the reopening does not survive on the said issue as well.

4.5 As regards the calculation mistake under rule 8D, the said issue falls under the domain of section 154 and not 148. There was no failure on the part of the appellant to disclose any material fact in respect of the said issue as well. Therefore, the reopening cannot be justified on the said issue as well. That leaves us with the second last issue of prior period expenses. The appellant had debited prior period expenses of Rs. 76,35,90,980/- and credited an amount of Rs. 1,18,33,865/-. The credit was on account of reversal of excess expenditure in earlier years and some was net debit of Rs. 75,17,57,115/- (76,35,90,980 - 1,18,33,865/-) . The AO added Rs. 75,17,57,115/- in the original assessment order. The reopening was done to add further amount of Rs. 1,18,33,865/-. In the appellate order dated 17.12.2010 of the CIT(A) in respect of original assessment order dated 30.12.2008, the corresponding addition was confirmed. Here again there was no non-disclosure of any material fact by the appellant. The appellant had set off prior period income/reversal of excess expenditure against the prior period expenditure and these facts were disclosed before the AO at the time of original assessment proceedings. The AO made a disallowance of only net debit and the same addition was confirmed by the CIT(A). As per page 265 of the paper book filed by the appellant, there was an audit objection on this issue which led to in an action u/s 148 of the I.T. Act. The page 265 of the paper book is reproduced herein under for reference:-

Name of Assessee	M/s GAIL
Address	16, Bhikaji Cama Place, RK Puram, New Delhi
PAN/GIR No.	AAACG1209J
Status	Company
Circle	Circle 12(1)
Under section	143(3)
Assessment Year	2006-07
Assessment Officer charge	DCIT Circle 12(1)
Return Income	Rs. 2794,23,19,834/-
Assessed Income	Rs. 2953,87,54,390/-
CIT's charge	CIT. IV
Date of order	30.12.2008
Main activity of assessee company	-
Tax effect	5297627
Whether internal audit was conducted or not	No

'Incorrect allowance of prior period expenses'

The Income Tax Act, 1961, provides that income under the head "Profits and gains of business and profession " is computed in accordance with the method of accounting regularly employed by the assessee. Where the assessee follows mercantile system of accounting, the annual

profits are worked out on due or accrual basis i.e. after providing for all expenses for which a legal liability has arisen and taking credit for all receipts that have become due regardless of their actual receipt or payment. Only such expenses are allowable as deduction from a previous year's income as are relevant to that year.

The income tax assessment of M/s GAIL for the assessment year 2006-07 was completed after scrutiny in December 2008 determining an income of Rs. 2953,87,54,390. Audit scrutiny revealed that the as per 3CD report (Clause no. 22(b), Exhibit 13), the assessee had debited prior period expenditure/income of Rs. 76.35.90.980 (expenditure debited to P& L: 72,17,19,893 + income debited to P & L 4,18,71,083/-). out of which only Rs. 75.17,57.115 (net) was added back to the income of the assessee at the time of scrutiny. Since the total amount of prior period expenditure was Rs. 76,36,90,980, the balance amount of Rs. 1,18,33,565 should also have been added back to the income of the assessee. The mistake resulted in underassessment of income of Rs. 1,18,33,565 consequent short levy of tax of Rs. 5297627 including interest.

Under assessment of income	11833565
Tax @30%	3550070
Surcharge @ 10%	355007
Total	3905076
Add Edu cess @ 2%	78102
Total	3983178
Interest u/s 234B for 33 months	1314449
Total tax effect	5297627

The audit observation was communicated to the Department vide audit memo no. 75 dated 01.09.2009. Reply awaited.”

4.6 From a perusal of the above, the appellant's contention gets further strengthened that there was no failure on its part to disclose fully and truly all the material facts as the audit raised is on the basis of facts available on record. In view of the same, the invocation of section 148 in respect of this issue also cannot be justified.

4.7 The last issue pertain to late payment of employee's contribution to Provident/Pension Fund. The facts related to this addition were also disclosed before the AO at the time of original assessment proceedings. The said issue, even otherwise, is covered in favour of appellant by the decision of the jurisdictional High Court in the case of M/s AIMIL Ltd, reported in 321 ITR 508 on merits. Without prejudice to the same, there was no non-disclosure of any material facts on this issue as well at the time of original assessment proceedings. Even otherwise, reopening cannot be done on an issue which is covered in favour of the appellant on merits by an order of the jurisdictional High Court. Therefore reopening does not survive on the said issue as well.

4.8 The appellant also relied on a large number of case laws on the issue of reopening some of which are mentioned herein under:-

1. Former France, 264 ITR 567(SC)
2. Kelvinator of India Ltd. 256 ITR 1 (Del)
3. Kaira District Cooperative Milk Producers Union Ltd, 220 ITR 194 (Gujrat)

4. *Jindal Photofilms Ltd. 234 ITR 170 (Delhi)*
5. *Berger Paints India Ltd. 245 ITR 645(Cal) and Mercury Travels Ltd, 258 ITR 533(Cal)*
6. *Eicher Ltd. 294 ITR 310 (Del)*
7. *Voltas Limited. 349 ITR 656 (Bom)*
8. *Manjusha Estate (P) Ltd, 314 ITR 236(Guj)*
9. *Jal Hotels Co. Ltd, 184 Taxman 1 (Del)*
10. *Feather Foam Ent.(P) Ltd, 296 ITR 342(Del)*
11. *Goetze Ltd. 321 ITR 431 (Del)*
12. *Satnam Overseas 228 CTR 121 (Del)*
13. *IL& FS Investment Managers Ltd. 298 ITR 32 (Bom)*
14. *ICICI Prudential Life Insurance, 325 ITR 471 (Bom)*
15. *Siemens Information. 295 ITR 333 (Bom)*
16. *Chakiat Agencies (P) Ltd. 314 ITR 200(Mad)*
17. *Bhavesh Developers, 229 CTR 160(Bom)*
18. *Berger Paints India Ltd., Vs. JCIT: 245 ITR 645 (Cal)*
19. *Mercury Travels Ltd.. Vs. DCIT: 258 ITR 533 (Cal.)*
20. *Berger Paints India Ltd., Vs. ACIT: 322 ITR 369 (Cal)*
21. *Aventis Pharma Limited, 323 ITR 570(Bom)*
23. *Usha International Limited, 348 ITR 485 (Del)*
24. *KLM Royal Dutch Airlines, 292 ITR 49 (Del)*
25. *Vipin Khanna, 255 ITR 220 (P&H)*
26. *NYK Line (India) Ltd. 68 DTR 90(Bom)*
27. *Bhor Industries Ltd, 267 ITR 161 (Bom)*
28. *Hindustan Lever Ltd, 268 ITR 332 (Bom)*
29. *Bhogwati Sahakari Sakhar Karkhana Ltd, 269 ITR 186(Bom)*
30. *Ajanta Pharma Ltd. 267 ITR 200 (Bom)*
31. *Grindwell Norton , 267 ITR 673 (Bom)*
32. *Feather Foam Ent.(P) Ltd. 296 ITR 342(Del)*
33. *Abdul Rahman Sail. 306 ITR 142 (Chennai)*
34. *Asteroids Trading and Investment P. Ltd, 308 ITR 190 (Bom)*
35. *Jyoti Devi. 218 CTR 80 (Bom)*
36. *Cartini India Ltd. 224 CTR 82 (Bom)*
37. *Mittal Casting Ltd, 124 Taxman 11 (Del)*
38. *Atma Ram Properties Pvt. Ltd. 343 ITR 141 (DEL)*
39. *Satnam Overseas. 228 CTR 121 (Del)*
40. *Ashok Mittal, 224 Taxman 55 (Del)*
41. *Orient Craft Ltd. 354 ITR 536 (Del)*
42. *Sheo Nath Singh. 82 ITR 148 (SC)*

43. *Ganga Saran & Sons (P) Ltd, 130 ITR 1. 11 (SC)*
44. *Birla VXL, 217 ITR 1 (Gujrat)*
45. *Multiscreen Media (P) Ltd. 324 ITR 54 (Bombay)*
46. *Garden Finance Limited, 268 ITR 48(Guj)*
47. *Kamlesh Sharma, 287 ITR 337 (Del)*
48. *Allana Cold Storage Ltd.. Vs. ITO 287 ITR 1 (Bom)*
49. *Asian Paints Limited, 296 ITR 90 (Bom)*
50. *Keshav Shares and Stocks Ltd, 326 ITR 553(Del)*
51. *Vishwanath Engineers, 354 ITR211(Guj)*
52. *Aroni Commercials Ltd, 362 ITR 403 (Bom)*
53. *Torrent Power SEC Ltd, 45 Taxman.com 443(Guj)*
54. *Lakhmani Mewal Das. 103 ITR 437.448(SC)*
55. *Arjun Singh, 246 ITR 363, 405(MP)*
56. *Seth Brothers. 251 ITR 270 (Guj)*
57. *Bombay Pharma Products, 237 ITR 614 (MP)*
58. *Lokendra Singh Rathore, 155 ITR 629 (MP)*
59. *United Electrical Co. (P) Limited, 258 ITR 317 (Del)*
60. *Foramer France 364 ITR 566 (SC)*
61. *Purolator India Ltd. 343 ITR 155 (Del)*
62. *Motor & General Fiance, 184 Taxman 465 (Del)*
63. *Titanor Components Ltd. 343 ITR 183 (Bom)*
64. *D.T. & T.D.C. Ltd, 3\232 CTR 260 (Del)*
65. *Haryana Acrylic Manufacturing Company, 308 ITR 38 (Del)*
66. *German Remedies Ltd. 287 ITR 494 (Bom)*
67. *Grindwell Norton , 267 ITR 673 (Bom)*
68. *Pe/co Lectronics & Electricals Ltd, 210 ITR 991 (Cal)*
69. *Kaira District Cooperative Milk Producers Union Ltd. 216 ITR 317 (Guj)*
70. *Garden Silk Mills Ltd, 222 ITR 27 (Guj)*
71. *Veer Overseas Ltd, ITA No. 510 of 2009 (P & H)*
72. *Fenner India Ltd, 241 ITR 672 (Mad)*
73. *Dulli Chand Singhania, 269 ITR 182 (P&H)*
74. *Babu Lai Jug Raj & Co.. 289 ITR 115 (Raj)*
75. *Shri Tirath Ram Ahuja (HUF). 306 ITR 173(Del)*
76. *Haryana Acrylic Manufacturing Company, 308 ITR 38 (Del)*
77. *India Farmers Fertilizer Cooperative Ltd, 171 Taxman 379 (Del)*
78. *Wei Intertrade (P) Ltd, 308 ITR 22 (Del)*
79. *J P Bajpai HUF, 269 ITR 40*

80. *JSRS Udyog Ltd, 313 ITR 321 (Del)*
81. *DT&TDS, 232 CTR 260 (Del)*
82. *Jashan Textile Mills (P) Limited. 284 ITR 542 (Bom)*
83. *Durga Prashad Goyal. 98 ITD 227 (Asr.) (SB)-*

4.8 *In view of the Plethora of case laws relied upon by the appellant and the findings of the undersigned that there was no non-disclosure of any material facts by the appellant, Ground no. 1 of the appeal is allowed. Since, ground no. 1 of the appeal has been allowed, the assessment made is annulled and consequently the remaining grounds on merits do not require adjudication.*

6. Thus, the revenue is aggrieved with the order of the Id CIT (A).
7. The Id CIT DR advertent to the first ground of appeal submitted that the Id CIT (A) has held that there was no non-disclosure of any material facts by the appellant. She submitted that the ground No. 1 before the Id CIT (A) was with respect to the limitation of the assessment order. She submitted that the Id CIT (A) could not have decided the issue, which was not raised before him in the ground of appeal. In nutshell her argument was that the assessee raised the ground of appeal that the order passed by the Id AO is barred by limitation but the Id CIT(A) has held that reopening is invalid as there was full and true disclosure by the assessee. She therefore, submitted that the order of the Id CIT (A) suffers from this infirmity.
8. The Id AR submitted that by challenging the limitation before the Id CIT (A) the assessee submitted that there is a complete full and true disclosure by the assessee therefore, time limit of this order as provided in the proviso to section 147 do not apply but reopening could have been done only within four years. He submitted that this was the ground of appeal before the Id CIT (A). The Id CIT (A) held that there is no non-disclosure of facts in the original return and therefore, the extended time limit of this order do not apply to the facts of the case. He submitted that the Id CIT (A) has decided the ground before him only. He also supported the order of the Id CIT (A).
9. We have carefully considered the rival contentions. The reasons recorded by the Id AO for reopening of the assessment dated 25.03.2013 are reproduced by the Id CIT (A) in para No. 4.1 of his order. The first proviso to s 147 provides that no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year in cases where the original assessment was under s 143(3), unless the escapement is by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. The Department, in cases under the proviso, must prove that the assessee failed to disclose fully and truly all material facts required for assessment of its income. Disclosure only pertains to facts required to be disclosed either in the return or in

questions posed during the assessment proceedings. When there is no failure on the part of the assessee to disclose fully and truly all the material facts for assessment, it cannot come under the category of escapement of income. The Assessing Officer has a duty to record reasons for reopening under s 148 prior to issuance of notice. Mere recording of 'reason to believe' without mentioning that there was failure to disclose fully and truly all material facts, is not sufficient to reopen an assessment beyond four years. The reasons must record the material fact suppressed by the assessee, and the manner in which such material was suppressed. In the reasons recorded here, there is an allegation that reason to believe is by reason of failure on the part of the assessee to disclose truly and fully all-material facts necessary for this order. In para No. 4.3, the ld CIT (A) has discussed that why on the issue of CSR expenses and depreciation of software licenses there is no failure on art of assessee to disclose primary facts. In para No. 4.4 the ld CIT (A) has held that these issues were examined in the original assessment proceedings. The issue of disallowance u/s 14A and the issue of prior period expenses was also part of the appellate proceedings before the ld CIT (A) where the corresponding addition was confirmed. He further held that the issue of prior period expenses was also because of an audit objection. With respect to employees' contribution to the provident fund , ld CIT(A) held that the issue is covered in favour of the assessee by the decision of the jurisdictional High Court in 321 ITR 508. He therefore, held that when the issue is covered in favour of the assessee on merits by the order of the jurisdictional High Court reopening on that issue does not survive. He thereafter referred plethora of the judicial precedents and held that there was no 'non disclosure' on the part of the assessee. Even otherwise on our examination of the facts and the assessment order, we find that with respect to the CSR expenditure the ld AO himself refers to the details of 'other expenses' filed during the assessment proceedings. For prior period expenditure also the ld AO refers to the details filed and disallowance made during the regular assessment proceedings. With respect to the employee's contribution fund the ld AO refers to the information already available with the return of income. The disallowance u/s 14A was merely to correct the incorrect computation in the original assessment proceedings. With respect to the deprecation on computer software, the ld AO has changed his opinion with respect to the rate of depreciation. He merely applies 25% rate of depreciation instead of 60% as applied in original assessment proceedings. In view of this, from all the above facts it is apparent that the ld AO has not pointed out that what facts were not disclosed by the assessee. The ld AO also not brought on record any specific information, which the assessee has failed to disclose in the original return. In view of this, we

do not find any infirmity in the order of the 1d CIT (A) in stating that reopening is barred by limitation and the period of six years for reopening is not available to the assessee. The 1d CIT (A) is also correct in deciding that in absence of any failure on part of the assessee, extended limitation period of six years cannot be available to the 1d AO; therefore, the reassessment order is passed beyond limitation. Thus, we do not find any infirmity, as argued by 1d CIT DR, in the order of 1d CIT (A). In absence of any failure on the part of the assessee, accordingly, we dismiss the appeal filed by the 1d AO on the limited issue that order passed by the 1d AO is barred by limitation. Ground No. 1 is dismissed.

10. As we have upheld the action of 1d CIT [A] annulling the order of the 1d AO, other grounds raised in this appeal are not dealt with and hence, those are dismissed.

11. Accordingly, appeal of the 1d AO is dismissed.

Order pronounced in the open court on 21/07/2020.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 21/07/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	21/07/2020
Date on which the typed draft is placed before the dictating member	21/07/2020
Date on which the typed draft is placed before the other member	21/07/2020
Date on which the approved draft comes to the Sr. PS/ PS	21/07/2020
Date on which the fair order is placed before the dictating member for pronouncement	21/07/2020
Date on which the fair order comes back to the Sr. PS/ PS	21/07/2020
Date on which the final order is uploaded on the website of ITAT	21/07/2020
date on which the file goes to the Bench Clerk	21/07/2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	