

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No.4848/Del/2018
(Assessment Year: 2015-16)

Addl. CIT, Special Range : 4, New Delhi.	Vs.	M/s. Garg Acrylics Limited, A-50/1, Wazirpur Industrial Area, Delhi - 110 052. PAN: AAACG3332N
(Appellant)		(Respondent)

Assessee by :	Shri Ashwani Kumar, C. A.;
Department by :	Ms. Anima Barnwal, Sr. D. R.;
Date of Hearing	14/09/2021
Date of pronouncement	14/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Addl. CIT, Special Range 4, New Delhi, against the order passed by the Id. Commissioner of Income Tax (Appeals)-35, New Delhi, dated 12.04.2018 for assessment year 2009-10 raising following grounds of appeal:-

"1. On the facts and circumstances of the case the Ld CIT(A) erred in law in holding that the original reason recorded for issue of notice u/s 148 for escapement of income was amended.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in holding the re-assessment proceeding u/s 147/143(3) of the Income Tax Act, 1961 as void by holding that the original reason recorded was amended while being reproduced in 'order disposing objections filed by the assessee against the notice issued u/s 148 of the Act' and the 're-assessment order u/s 147/143(3) of the Act' despite the fact that the Principal Commissioner of Income Tax-4, Delhi has given approval for issue of notice u/s 148 of Income Tax Act, 1961 for escapement of income of Rs.9,54,73,521/- on 31.03.2016 as is evident from the order sheet of assessment records.

3. *Reliance is placed on the decision in the case of Ranbaxy Laboratories Ltd. Vs. CIT(2011), 60 DTR 77(Delhi High Court) wherein Hon'ble Delhi High Court has held that "Assessing officer has the jurisdiction to re-assess other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive.*

4. *Reliance is also placed on the decision in the case of CIT vs. Jet Airways (i) Ltd. (2011) 331 ITR 236(Bombay) wherein it has been held that once assessment is open - any other income can be considered.*

5. *Reliance is further placed on the decision in the case of CIT v. Bestword 331 ITR 63 Ker FB.*

6. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing. "*

2. The brief facts of the case shows that assessee filed its return of income on 25.09.2009 declaring loss of Rs. 6,79,96,479/-. Assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) was completed on 24th December, 2011 at a loss of Rs. 4,00,62,273/-. Learned AO issued notice u/s 147 to the assessee on 31.03.2016 and consequent assessment order was passed on 27.12.2016 determining total loss of the assessee at Rs. 371,17938/-. The only addition made in this assessment is disallowance on account of bogus purchases of Rs. 308,78,541-.
3. The assessee preferred an appeal before the Id. CIT (Appeals), who allowed the appeal of the assessee quashing the reopening of the assessment as per para 4.2.7.10 of her order at page Nos. 21 & 22 of the order. On the merits of the case, she did not adjudicate as the re-opening of the assessment was quashed. The Assessing Officer is aggrieved with the above order.
4. At the commencement of hearing, we found that Id. Assessing Officer has preferred an appeal for **assessment year 2015-16** as mentioned in column No. 3 of Form No. 36 whereas the orders attached there-with are pertaining to **assessment year 2009-10**. We have also perused the order dated 5.07.2018 wherein the authorization was granted by the Pr. Commissioner of Income Tax, Delhi-4, New Delhi, for filing appeal for **assessment year 2009-10** whereas the Id. Assessing Officer has specifically mentioned that appeal is filed for **assessment year 2015-16**. Further at serial No. 11 of Form No. 36 also while mentioning the addresses of the respondent, the

Assessing Officer has specifically stated the address for this assessment year i.e. assessment year 2015-16. In view of the above facts, the appeal filed by the Assessing Officer is for wrong assessment year. In view of this infirmity, the appeal of the ld. Assessing Officer deserves to be dismissed.

5. However, we are also conscious of the fact that Assessing Officer has filed appeal on 6th July, 2018. However, till 2021 there is no attempt made by the ld. Assessing Officer for rectifying the above mistake. In the covering letter dated 6.07.2018 the ld. Assessing Officer did not care even to look at for which assessment year he is filing an appeal and orders for which assessment year are enclosed with that appeal memo. Therefore, we find no reason to hold that this appeal is maintainable at all.
6. However, in the interest of justice, if the ld. Assessing Officer desires to file appeal for assessment year 2009-10, we give liberty to him to file such appeal with a proper request for condonation of delay.
7. In the result, the appeal filed by the ld. Assessing Officer is dismissed, as not maintainable.

Order pronounced in the open court on : 14/09/2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 14/09/2021

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	14.09.2021
Date on which the typed draft is placed before the dictating member	14.09.2021
Date on which the typed draft is placed before the other member	14.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	14.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	14.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.09.2021
Date on which the final order is uploaded on the website of ITAT	14.09.2021
date on which the file goes to the Bench Clerk	14.09.2021
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	