

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2919/Del/2016
Assessment Year: 2006-07

Kumar Engineering Works,
B-38, GT Karnal Road,
Delhi.

Vs ACIT,
Circle-20(1),
New Delhi.

PAN: AADFK6388K

(Appellant)

(Respondent)

Assessee by

:

Shri Vishal Kalra, Advocate

Revenue by

:

Shri Kumar Padmapani Bora, Sr. DR

Date of Hearing

:

17.11.2021

Date of Pronouncement

:

.02.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 29th March, 2016 of the CIT(A)-32, New Delhi, relating to AY 2006-07.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing and sale of utensils. It filed its return of income on 17th August, 2007 declaring an income of Rs.51,65,251/-. The AO completed the assessment u/s 143(3) on 23rd July, 2008, determining the total income of the

assessee at Rs.52,22,785/-. Subsequently, the AO reopened the assessment by recording the following reasons:-

REASONS FOR THE BELIEF THAT THE INCOME HAS ESCAPED ASSESSMENT IN THE CASE OF M/s Kumar Enqq. Works FOR THE ASSESSMENT YEAR 2006-07

As per the information received from Addl. CIT, Central Range-4, New Delhi vide his letter of even no. 918 dated 18/03/2013, Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain and Sh. Vaibhav Jain were involved in providing accommodation entries to various parties through their 37 paper entities in the form of bogus purchases.

These accommodation entry providers have admitted that they were involved in providing accommodation entries, under oath in during the proceedings u/s 132(4), of IT Act and also in the statement recorded u/s 131 of IT Act.

Once of the beneficiaries, who is stated to have received such accommodation entry of Rs. 32,16,435/- namely M/s Kumar Engg. Works, B-38, G.T. Karnal Road, Delhi falls in the territorial jurisdiction of this ward. I am satisfied that income to the tune of Rs.32,16,435/- has escaped assessment within the meaning of section 147 of IT Act. Hence, this is a fit case for issue of notice u/s 148.

Issued notice u/s 148 of IT Act in this cases for A.Y. 2006-07.

Dated : 28-03-2013

Sd/-
(Santhosh Kumar)
Income Tax Officer,
Ward-20(4), New Delhi

3. Thereafter, the AO issued notice u/s 148 of the IT Act to the assessee, vide notice dated 28th March, 2013. In compliance to the statutory notices issued by the AO, the assessee appeared before the AO and filed the requisite details. Rejecting the various explanations given by the assessee, the AO made addition of Rs.26,77,663/- to the total income of the assessee by observing as under:-

01. The case was considered on merit. Purchase register and purchase bills of the assessee was checked. It was noticed that M/s Shree Balajee Trading Co. and M/s Sarashwati Trading Co. which were the paper entitles involved in providing purchase entries were found in the purchase register and purchase of Rs.26,77,663/- were reflected against these names. The AR of the assessee was confronted why not amount of Rs.26,77,663/- should be added to the total income of the assessee. The same is added back to the total income of the assessee.0

4. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings as well as the addition on merit.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

01. That the CIT(A) erred on facts and circumstances of the case and in law in upholding the assessment completed under section 147 / 143(3) of Income-tax Act, 1961 (the Act) at an income Rs. 79,00,450/- as against income of Rs. 52,22,785/- assessed under section 143(3) of the Act.

2. That the CIT(A) erred on facts and circumstances of the case and in law in upholding the assumption of jurisdiction under section 147 of the Act and further erred in upholding the reassessment order which is beyond jurisdiction, bad in law and void-ab-initio.

3. That the CIT(A) erred on facts and circumstances of the case and in law in upholding the illegal action of the Assessing Officer to initiate the reassessment proceedings based merely on conjectures and surmises and further erred in not quashing the same.

4. That the CIT(A) erred on facts and circumstances of the case and in law in upholding the action of the Assessing Officer to initiate the reassessment proceedings which was based on change of opinion and there being no allegation that the Appellant has not disclosed truly and fully all material facts for completion of the original assessment.

5. That the CIT(A) erred on facts and circumstances of the case and in law in not appreciating that in the absence of any cogent material the Assessing Officer it could not be made that the transaction between the Appellant and M/s Shree Balajee Trading Co. and M/s Sarashwati Trading Co. was a sham transaction and further erred in making an addition of Rs. 26,77,763/- to the income of the Appellant.

6. That the Assessing Officer erred on facts and in law in charging interest under section 234B of the Act.

The Appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.ö

6. Ground No.1 by the assessee being general in nature is dismissed.

7. The Id. Counsel for the assessee submitted that ground of appeal Nos.2-4 are regarding the validity of the reassessment proceedings. He submitted that the original assessment in the instant case was completed u/s 143(3) of the Act on 23rd July, 2008. Referring to page 17 of the paper book, he drew the attention of the Bench to the reasons recorded and submitted that the notice u/s 148 has been issued on 28th March, 2013 which is beyond a period of four years. He submitted that there is no allegation by the AO in the reasons recorded of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Referring to page 102 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to the details filed before the AO during the course of original assessment proceedings vide letter dated 3rd July, 2008. Referring to page 105 of the paper book, he submitted that the assessee has purchased goods from M/s Sarashwati Trading Company for Rs.11,10,237/-.

Referring to page 106 of the paper book, he submitted that the assessee has purchased goods worth Rs.15,67,426/- from Shree Balaji Trading Company. Thus, the total purchases from the above two parties come to Rs.26,77,663/- whereas the AO has recorded reasons regarding the accommodation entry of Rs.32,16,435/- and this indicates that there is no application of mind by the AO. Referring to various decisions, he submitted that when the original assessment has been completed u/s 143(3) and there is no allegation by the AO of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, the AO cannot reopen the assessment beyond a period of four years from the end of the relevant assessment year. Even on merit, he submitted that the assessee is a star trading house and the sales are accepted and there is no sales outside the books of account. All payments were made by account payee cheques. The AO during the course of original assessment proceedings has scrutinized all the details including all purchases exceeding Rs.1 lakh, therefore, the addition made by the AO and sustained by the CIT(A) is not justified. He accordingly submitted that the order of the CIT(A) be set aside and the grounds raised by the assessee be allowed.

8. Referring to the decision of the Full Bench of the Honøble Delhi High Court in the case of CIT vs. Usha International Ltd., reported in 348 ITR 485, he submitted that reassessment proceedings were held to be invalid in case an issue or query is raised and answered by the assessee in original proceedings and,

thereafter the AO does not make any addition in the assessment order. In such situation, it should be accepted that the issue was examined, but, the AO did not find any ground or reasons to make the addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the AO had formed an opinion in the original assessment, though he had not recorded his reasons. He submitted that the above decision of the Full Bench of the Hon^{ble} Delhi High Court is squarely applicable to the facts of the present case.

9. The Id. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A).

10. We have heard the rival arguments made by both the sides, perused orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, completed the original assessment u/s 143(3) on 23rd July, 2008 determining the total income of the assessee at Rs.52,22,785/- as against the returned income of Rs.51,65,251/-. We find, the AO, on the basis of the information received from the Addl.CIT, Central Range, New Delhi, that the assessee is a beneficiary of accommodation entries amounting to Rs.32,16,435/- from concerns run by Navneet Jain, Vaibhav Jain, Rakesh Gupta and Vishes Gupta, reopened the assessment, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Id. Counsel that there is complete non-application of mind by the AO to the facts since he has recorded the

reasons for accommodation entry of Rs.32,16,435/- whereas the assessee has purchased goods to the tune of Rs.26,77,663/- from the two concerns, namely, Sarashwati Trading Company and Shreee Balajee Trading Company, which, according to the Revenue are the accommodation entry providing entities. It is also his submission that since original assessment was completed u/s 143 (3) and there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, such issue of notice beyond a period of four years from the end of the relevant assessment year is not in accordance with the provisions of section 147 of the Act.

11. We find some force in the above arguments of the ld. Counsel for the assessee. It is an admitted fact that the original assessment was completed u/s 143(3) of the Act on 23.07.2008 and the assessment year involved is AY 2006-07. The AO, during the course of assessment proceedings, had raised various queries and the assessee, vide letter dated 3rd July, 2008 has given the details of monthwise purchase and sales and the details of purchases of more than one lakh as per query No.4 and 5 raised by the AO in the original assessment proceedings. Further, in the reasons recorded, there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Under these circumstances, the notice issued by the AO beyond a period of four years from the end of the relevant assessment year in a case where

the original assessment was completed u/s 143(3) will not be in accordance with law. Therefore, such reassessment proceedings has to be treated as invalid.

12. We find the Full Bench of the Honøble Delhi High Court in the case of Usha International Ltd. (supra), while deciding the issue of change of opinion for reopening of the assessment has observed as under:-

øHeld, by the Full Bench (i) that reassessment proceedings can be validly initiated in case return of income is processed under section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion. Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the cases will be hit by the principle of "change of opinion". Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons. The expression "change of opinion" postulates formation of opinion and then a change thereof. In the context of assessment proceedings, it means formation of belief by an Assessing Officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection. A distinction must be drawn between erroneous application/interpretation/ understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time of the assessment order, the principle of "change of opinion" will not apply. The reason is that "opinion" is formed on facts. "Opinion formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of "change of opinion". Factual information or material which was incorrect or was not available with the Assessing Officer at the time

of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression "material facts" means those facts which if taken into account would have an adverse effect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have a remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a precondition which confers jurisdiction to reopen the assessment. Correct material facts can be ascertained from the assessment records also and it is not necessary that the same come from a third person or source, i.e., from source other than the assessment records. However, in such cases, the onus will be on the Revenue to show that the assessee had stated incorrect and wrong material facts resulting in the Assessing Officer proceeding on the basis of facts, which are incorrect and wrong. The reasons recorded and the documents on record are of paramount importance and will have to be examined to determine whether the stand of the Revenue is correct. If a subject-matter, entry or claim/deduction is not examined by an Assessing Officer, it cannot be presumed that he must have examined the claim/deduction or the entry, and, therefore, it is a case of "change of opinion". When at the first instance, in the original assessment proceedings, no opinion is formed, the principle of "change of opinion" cannot and does not apply. There is a difference between change of opinion and failure or omission of the Assessing Officer to form an opinion on a subject matter, entry, claim, deduction. When the Assessing Officer fails to examine a subject-matter, entry, claim or deduction, he forms no opinion. It is a case of no opinion. Whether or not the Assessing Officer had applied his mind and examined the subject-matter, claim, etc., depends upon factual matrix of each case. The Assessing Officer can examine a claim or subject-matter even without raising a written query. There can be cases where an aspect or question is too apparent or obvious to hold that the Assessing Officer did not examine a particular subject-matter, claim, etc. The stand and stance of the assessee and the Assessing Officer in such cases are relevant.

13. Since, in the instant case, the original assessment was completed u/s 143(3) of the IT Act, the issue of purchases was examined by the AO during the course of assessment proceedings, therefore, in absence of any allegation by the AO in the

reasons that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, the reassessment proceedings, in our opinion, are not in accordance with the law. We, therefore, quash the reassessment proceedings. The grounds of appeal No.2 to 4 raised by the assessee are accordingly allowed.

14. Since we have quashed the reassessment proceedings, the grounds of appeal No.5 challenging the addition of Rs.26,77,763/- on merit become academic in nature and, therefore, are not being adjudicated. Ground of appeal No.6 being consequential in nature is dismissed.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on February, 2022.

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: February, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	04.02.2022
2.	Draft placed before the author	07.02.2022
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	