

**INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'F' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
and Pavan Kumar Gadale (Judicial Member)]**

ITA No. 7610/Mum/2019  
Assessment Year: 2011-12

**Ferani Hotels Pvt. Ltd.,** ..... **Appellant**  
*Construction House-B, 2<sup>nd</sup> Floor, 623, Linking Road,  
Khar (W), Mumbai [PAN: AAACF0693B]*

**Vs.**

**The Deputy Commissioner of Income Tax,** ..... **Respondent**  
**Central Circle -4(1) Mumbai.**

**Appearances:**

**Sanjay Sawant** *for the appellant*  
**S N Kabra** *for the respondent*

Date of concluding the hearing : October 20, 2021  
Date of pronouncement the order : January 11, 2022

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee has challenged the correctness of the order dated 15<sup>th</sup> October 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143 (3) r.w.s. 147 of the Income Tax Act, 1961 for the assessment year 2011-12.

2. Grievance raised by the assessee are as follows:

***1. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in finding that no infirmity in the action of Assessing Officer in reopening of assessment and passing order u/s 143(3) r.w.s. 147 of the Income-tax Act, is held to be valid and as per law. The CIT(A) ignored facts that the original Assessment Order passed u/s 143(3) of the Act after thoroughly examining conditions for applicability of***

*sections 80-IA (4) and 80-1B(10) and allowed deductions u/s 80-IA(4) and 80-1B(10) after making some adjustment.*

*2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in finding that no infirmity in the action of Assessing Officer making addition of Rs. 17,49,360/- in treating impugned purchases as bogus purchases, though similar addition of Rs.99,000/- were also treated as bogus purchases and added to Total Income, while passing the original Assessment Order u/s 143(3) of the Act. The CIT(A) also erred in not allowing the Deduction u/s 80IA & 80IB of the Act to the extent of the said addition of Rs. 17,49,360/- , as done while allowing deduction u/s 80IA & 80IB increased Rs. 99.000/- when the original Assessment Order passed u/s 143(3) of the Act by the A.O.*

*3(a). On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of A.O. of addition which earlier allowed, by oversight as contemplated by the then A.O., in original assessment order passed u/s 143(3) of the Act, though the deductions u/s 80 IA & 80 IB were allowed after thoroughly examining conditions for applicability of sections 80-IA (4) and 80-1B(10) of the Act and without having any tangible material indicating escapement of income.*

*3(b). On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in finding that no infirmity in the action of Assessing Officer where A.O. had second thoughts on the same material which is, in fact, mere change of opinion which cannot form the basis for reopen or reassessment. The CIT (A) erred that A.O. has no power to review and reassessment has to be based on fulfillment of certain pre-conditions stipulated in section 147 of the Act.*

*3(c). On the facts and in the circumstances of the case and in law, the learned CIT (A) erred not accepting Interest Income as 'Business Income' which was consistently followed by appellant and accepted by the department year after year.*

*3(d). On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in finding that no infirmity in the action of Assessing Officer of taxing the said interest income of Rs. 3,68,27,610/- and thereby restricting the appellant's claim to that extent. Assessing Officer erred in treating interest income of Rs. 3, 68,27,610/- as 'Income from Other Source' and the same was reduced, while allowing deductions u/s 80-IA and 80-IB on the pretext that the same was allowed in original Assessment Order passed u/s 143(3) by oversight, though the deductions u/s 80-IA and 80-IB were allowed after conditions for applicability of those sections were thoroughly examined and the same has accepted by Department in all preceding years including year under consideration. The CIT (A) ignored these facts and various decisions including the jurisdictional High Court decisions as well as the fact that the said the original Assessment Order passed u/s 143(3) got merged with the order of CIT (A).*

3. It is a case of reopened assessment. The original scrutiny assessment under section 143(3) was completed on 1.1.2014 determining total income at Rs. 3,28,52,196. On 6<sup>th</sup> June 2014, however, the assessment was reopened by issuance of notice under section 148. When the assessee requisitioned the reasons for reopening the assessment, the Assessing Officer, vide letter dated 5<sup>th</sup> February 2016, has this to say:-

***2. You have submitted vide letter dated 16.12.2015 stating thereby to treat the return filed on 30.09.2011 as return filed in response to notice under sec.148 of the Act. You have also requested to provide the reasons recorded prior to issue of the above referred notice. The same is reproduced hereunder:***

***“.....***

***On a review of records it is observed that the assessee had made purchase from the following party:***

<b><i>Sr. No</i></b>	<b><i>Name of Supplier</i></b>	<b><i>TIN of Supplier</i></b>	<b><i>Amount of Purchases</i></b>
<b><i>1.</i></b>	<b><i>Millenium Minerals</i></b>	<b><i>27950578273V</i></b>	<b><i>17,49,360/-</i></b>

***The above supplier had admitted before the Sales Tax Department of the State of Maharashtra that they have been involved in the supply of bogus bills without actual delivery of goods. The statement of the above party has already been recorded by the Sales Tax Authorities, wherein it was admitted that they are engaged in supplying bogus bills.***

***It is observed that the assessee is one of the beneficiary and hence, inflated its purchases in its books, through such bogus bills. The inflation of purchases has therefore led to the escapement of income to the above extent.***

***Therefore, there is a reasonable to believe that the income chargeable to tax to the extent of Rs. 17,49,360/- has escaped assessment within the meaning of sec. 147 of the I.T.Act."***

***3. You may however, note that recording of reasons, issue of notices, etc. are of administrative matter and the same is not required to be disclosed to the assessee [S. Narayanappa (63 ITR 219)(SC)]. However, it is to be noted that the real intent behind providing the reasons recorded to the assessee is to facilitate in contesting the matter during the course of reassessment proceedings and not to use it in raising objections in order to stop the due process of law.***

***4. Without prejudice to the above, you are hereby required to furnish the following details and documentary evidences to justify the transaction you had entered into with the party:***

- i. **Copy of quotation received from the party.**
- ii. **Copy of purchase order placed giving therein the details of the material, quantity, rate value, place of delivery, taxes, transportation, etc.**
- iii. **Copy of bills received alongwith receipted challan, lorry receipt, test certificate for quality, weigh-bridge slip for quantity and place of delivery.**
- iv. **Produce purchase - consumption - stock register for verification.**

**5. The above information is sought under sec. 142(1) of the Act and the same is required to be furnished on or before 18.02.2015 at 03.30 p.m., duly indexed and page numbered. You may note that the assessment is getting time barred on 31.03.2016. In/case of failure to comply, the assessment will be finalized under sec. 144(1)(b) of the Act, without giving further opportunity of hearing.**

4. The Assessing Officer thus proceeded to frame the reassessment order and making disallowance of Rs. 17,49,360/- by observing as follows:-

**5.1 Further, the Hon. 'ble Apex Court in the case S. Narayanappa ( 63 ITR 219 ) has held that recording of reason is an administrative matter and the reasons are not required to be disclosed to the assessee. The A.O, based on some material has a reason to believe that income has escaped; such belief cannot be called in question or validity of initiation of proceedings u/s. 147 cannot be challenged [Shivalik Co.op. Hsg. Society (2006) 101 ITD 391(Del) SMC]. Reliance is also placed on the decision reported at 263 ITR 34(SC), 299 ITR 316 (Del) & 218 CTR 380 (Cal). However, in a recent judgment in the case of GKN Driveshaft (I) Ltd. ( 259 ITR 19 ) the Hon'ble Apex Court laid down certain procedure to follow on receipt of notice under sec. 148 of the Act to seek the reasons recorded and to challenge the proceedings.**

**5.2. The detail filed by the assessee is examined. In statement given to Sales Tax Department by M/s. Millenium Minerals, from where assessee claimed to made purchases, has accepted that they are engaged in supplying bogus purchase bills and assessee is found one of the beneficiary. In view of the above, purchase shown by assessee of Rs. 17,49,360/- with M/s. Millenium Minerals is treated as bogus purchase. On verification of details filed by the assessee, assessee has failed to establish nexus regarding purchase order made and delivery of goods to the assessee. In view of this, purchases made of Rs.17,49,360 is treated as bogus purchase. Penalty is separately initiating u/s.271(1)(c) for furnishing inaccurate particulars of income and concealing taxable income.**

**[Disallowance of Rs. 17,49,360/- on account of bogus purchase]**

5. Aggrieved, assessee carried the matter before the CIT(A) on several issues including on validity of the impugned reassessment proceedings. Learned CIT(A) upheld, *inter alia*, validity of reassessment proceedings. While doing so, learned CIT(A) observed as follows:-

**5. Ground No 1 of the appeal is against the action of the AO in reopening of the assessment u/s 147 of the Act. As noted earlier, the assessment u/s. 143(3) of the Act was completed by the AO on 01.01.2014 by determining the total income at Rs 3,28,52,196/- wherein the assessee's entire claim of deduction u/s. 80IA & 80IB of Rs. 1,65,98,33,576/- was allowed. Subsequently, the AO received information from the office of GIT (Inv) Mumbai vide letter dated 09.03.2015 that the assessee has made bogus purchases of Rs 17,49,360/- from M/s Millenium Minerals, who had admitted before the Sales Tax Department, Maharashtra of having provided bogus bills without actual delivery of the goods. The AO, therefore, reopened the assessment u/s 147 of the Act and issued a notice u/s 148 dated 06.06.2014.**

**5.1 I have considered the facts of the case, contentions of the appellant, as also the order of the AO. It is observed that a notice u/s 148 of the Act was issued in this case on the basis of specific information received by the AO from Sales Tax Department through the DGIT (Inv), Mumbai that the assessee was one of the beneficiaries of accommodation entries in the nature of bogus sales/ purchases from M/s Millenium Minerals for alleged bogus purchases of Rs 17,49,360/-. On the basis of this information and after due consideration of other relevant facts, the assessment for the relevant year was re-opened by the AO.**

**5.2 In my considered view, the information received by the AO through Departmental channels was credible and actionable, and was sufficient to invoke the provisions of Sec: 147 of the Act. I would like to mention that at the time of issue of notice u/s 148, the AO is only required to form a broad opinion about income escaping tax in the hands of the assessee and he is not required to exactly quantify the amount of concealment. The sufficiency of reason cannot be challenged at the time of reopening of assessment as held by the Hon'ble Supreme Court in the cases of Raymond Woollen Mills (236 IT 34) and Rajesh Jhaveri Stock Brokers (161 Taxman 316). The AO has recorded the reasons before issue of notice us 148 and has also shared the same with the assessee at his request.**

.....

6. The assessee is not satisfied and is in further before us.

7. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.



*By order*

*Assistant Registrar/Sr.PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*