

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
A N D  
SHRI AMIT SHUKLA, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA. No. 7099/Del/2018  
(Assessment Year : 2006-07)

Vaatika Construction Pvt. Ltd., 102, Kailash Bhawan, 35 – Community Centre, Wazirpur Industrial Area, Delhi – 110 052. <b>PAN: AAACV1311J</b>	Vs.	DCIT,  Circle : 17 (1),  New Delhi.
(Appellant)		(Respondent)

Assessee by :	Ms. Rano Jain, Advocate;
Department by:	Ms. Sangeeta Yadav, Sr.D.R.
Date of Hearing :	03/03/2022
Date of pronouncement :	03/03/2022

**ORDER**

**PER AMIT SHUKLA, JM :**

1. The aforesaid appeal has been filed by the assessee against the impugned order dated 30.07.2018 passed by the Id. Commissioner of Income Tax (Appeals)-16, New Delhi [hereinafter referred to as CIT (Appeals)] for the quantum of assessment passed under Section 143(3)/147 of the Income Tax Act, 1961 (the Act) for assessment year 2006-07.
2. The grounds raised by the assessee are as under:-

“1. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-16, New Delhi (*Crr (A)* for short) erred in holding that the learned *DOT*, Circle-17(1), New Delhi (*AO*) had correctly assumed jurisdiction u/s 148 read Section 147 of the Income Tax Act, 1961 (hereinafter called the Act for the sake of brevity).

2. That on the facts and in the circumstances of the case, CIT (A) erred in holding that the Assessment Order was not barred by limitation mandated by the proviso to Section 147 of the Act.

3. That without prejudice to the grounds of appeal no. 1 & 2 above, CIT(A) erred in holding that the impugned assessment order was valid even though the AO had failed to pass an order on the appellant's submissions dated 09.04.2013 objecting to the issuance of notice dated 26.03.2013 u/s 148 of the Act.

4. That without prejudice to the grounds of appeal no. 1, 2 & 3 above, CIT (A) that on the facts and in the circumstances of the case, CIT (A) erred in upholding the action of the AO in making an addition of Rs. 13,07,560/- to the income computed at Rs. 38,23,565/- in the original assessment order dated 18.12.2008 framed u/s 143(3) of the Act. “

3. The facts in brief are that the assessee had filed original return of income on 18.11.2006. The said return was selected for scrutiny under Section 143(3) of the Act and accordingly assessment order was passed under Section 143(3) of the Act vide order dated 18.12.2008. Now after expiry of more than 4 years from the end of the assessment order, the ld. Assessing Officer had sought to re-open the assessment by issuance of notice under Section 148 of the Act dated 26.03.2013, on the following 'reasons' recorded:-

**“ It is found that gross contract receipts of the assessee worked out to Rs.10,38,85,610/- from TDS certificates against Rs.10,25,78,041/- as shown in the accounts of the assessee. Thus, the income of the assessee was understated by Rs.13,07,560/-. This resulted in under assessment of income of Rs.13,07,560/-.**

**In view of the above facts, I have, therefore, reason to believe that by reason of omission or failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and by claiming wrong deductions, income chargeable to tax has escaped assessment. “**

4. Thereafter, the Id. Assessing Officer held that there was a difference of total amount of Rs.13,07,560/-, the compact receipt shown in the profit and loss account and Form 26AS and held that there was a bill which was raised in the next year, therefore, he added the difference of Rs.13,07,560/- as income of the assessee.

5. The Id. CIT (Appeals) has confirmed the said addition and also the validity of re-opening under Section 148 of the Act, relying upon the decision of Consolidated Photo Finvest Limited 281 ITR 394 (Del). On merits the finding and observations are as under:-

**“6. Ground No. 2 this ground is taken by the appellant as without prejudice the grounds of appeal no. 1.1 to 1.4 above. By these grounds the appellant is contesting the addition of Rs.13,07,560/-. The AO has added the difference between the gross amount of income as shown in 26AS and as per the books of account. The Ld. AR reiterated the same fact in the appeal also. The details submitted in the appellate proceeding was sent to AO for remand report. In response to the same AO submitted the report vide letter dated 12.04.2018. I have gone through the finding of the AO and submission of the appellant. The Ld. AR in the submission and in the course of hearing emphasized on reconciliation statement submitted. To some extent, I agree with the Ld. AR that there are mistakes in the TDS certificates and the contract receipts are taken of lessor amount but TDS has**

**been deducted at higher amount and interest receipt from the Bank cannot be part of the contract receipt. However, finally everything boils down to the mobilisation advance taken by the appellant on which TDS has been deducted and claimed by the appellant during the year under consideration but income has not been shown in the P&L A/c. The fact of the case that the appellant has claimed TDS credit against the income which are not offered to tax in the year under dispute. Section 199 of the Act provide for credit of TDS if corresponding income is offered to tax. As per the Ld. AR the difference in the income arises on account of mobilisation advance received from the party agaisnt which TDS credit has been taken in the year under consideration. When TDS credit has been taken then the corresponding income should have been offered this year only. Therefore, I find AO's action is correct in adding Rs.13,07,560/- in this year only. In view of the fact stated the ground no, 2 is dismissed.”**

6. Before us, the Id. Counsel for the assessee submitted that, first of all, from a bare perusal of the reasons recorded, it is seen that nowhere the Assessing Officer has demonstrated what was the failure on part of the assessee to disclose fully and truly all material facts necessary for assessment, because no new tangible material had come on record after the completion of the assessment. She further submitted that, this precise issue was raised by the Assessing Officer during the course of the original assessment proceedings, which is evident from reply filed before the Assessing Officer, copy of which has been placed before us on the paper book wherein the assessee had filed TDS receipt and TDS certificate and from page No. 14 the assessee had filed the re-conciliation also, which was as under:-

“VATIKA CONSTRUCTION PVT. LTD.

Assessment Year 2006-07

Reconciliation of TDS with contract receipts :

	Contract receipt As per books/ P & L A/c.	Advance ag. Material recd.	Service Tax.	Amount on which TDS Deducted	TDS Deducted
	1	2	3	4 = 1 + 2 + 3.	5.
Surbhi CGHS Ltd.	32729640	0	753814	33483454	734451
Himachali ccghs Ltd.	47463401	- 949268	0	46514133	1043777
AWHO	22385000	2306475	0	24691475	554077
Interest received	102578041 276977	1357207 0	753814 0	104689062 276977	2332305 62042
	<b>102855018</b>	<b>1357207</b>	<b>753814</b>	<b>104966039</b>	<b>2394347</b>

7. Again in response to query raised by the Assessing Officer, the assessee had given re-conciliation of contract receipts with WCT return and challans to the Assessing Officer vide letter dated 17.11.2008, copy of which has been placed at paper book from page Nos. 15 to 18. Another fact brought to our notice is that the Assessing Officer had issued notice under Section 154 of the Act presumably on this point only on 21.01.2013, wherein he has again raised this issue as the gross contract receipts of the assessee as appearing in Form 26AS which was at Rs.10,38,85,610/- as against Rs.10,25,78,041/- shown in the accounts of the assessee. Thus, it was mentioned in the notice, there was an understatement of Rs.13,07,560/-. Again in response to the said show-cause notice assessee had filed a detailed reply before the Assessing Officer and also filed reconciliation statement vide letter dated 18.02.2013. Thereafter no action was taken by the Assessing Officer.

8. Id. Counsel further submitted that, now on the same point again, the assessment has been sought to be re-opened by issuance of a notice under Section 148 of the Act, which tantamount to **“change of opinion”**, which cannot be upheld as it is bad in law and accordingly entire proceedings initiated under Section 148 of the Act and consequently assessment order is liable to be quashed.

8. On the other hand, Id. AR strongly relied upon the order of the Id. CIT (Appeals) and submitted that there was escapement of income owing to the failure on the part of the assessee to show correct contractual receipts as reflected in the TDS certificate and as shown in the regular books of accounts and if assessee is claiming the credit of the TDS and the corresponding income should have been disclosed. Thus, not only the initiation u/s 148 is valid, but also the addition as confirmed by the Id. CIT (Appeals).

9. We have heard the rival submissions and perused the relevant evidence given in the impugned order as well as the material referred to before us. Here in this case already original assessment has been passed under Section 143(3) of the Act and such an assessment had attained finality. Now a notice under Section 148 of the Act had been issued on 26.03.2013 to reopen the assessment which is much after the period of four years after the expiry of the relevant assessment order on the same very issue, which was raised by the Assessing Officer during the course of assessment proceedings and also examined by him. There is neither any fresh tangible material coming on record nor any information that a sum of Rs.13,07,560/- has escaped assessment. As noted above, during the course of assessment proceedings, the assessee had filed the duly explained the difference in response to the query raised by the Assessing Officer on same point

and assessee had filed the reconciliation statement based and TDS certificate and also the contract receipt shown in the books of accounts. It was demonstrated that there was certain mistake in the TDS certificate due to wrong inclusion of reimbursement of service tax. There was TDS deduction taken on a gross amount including service tax which was included in the TDS certificate. All those reconciliations were filed before the Assessing Officer during the course of the original assessment proceedings which has been accepted by the Assessing Officer. Same thing was further explained post completion of assessment in response to notice under Section 154 of the Act as incorporated supra. Now again in the garb of escapement of income, a notice under Section 148 of the Act was issued mainly to review the same thing, which was already explained before the Assessing Officer and have also been accepted. Thus, clearly there was no failure on the part of the assessee to disclose fully and truly all material facts during the course of original assessment proceedings, albeit the re-opening is based on purely change of opinion, which is impermissible. Accordingly, the entire proceeding under Section 148 of the Act is hereby quashed being without jurisdiction. The addition made by the Assessing Officer stands deleted.

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

Order pronounced in the open court on : **03/03/2022.**

**Sd/-**  
**( ANIL CHATURVEDI )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

Dated : 03/03/2022.

\*MEHTA\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	03.03.2022
Date on which the typed draft is placed before the dictating member	03.03.2022
Date on which the typed draft is placed before the other member	03.03.2022
Date on which the approved draft comes to the Sr. PS/ PS	03.03.2022
Date on which the fair order is placed before the dictating member for pronouncement	03.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	03.03.2022
Date on which the final order is uploaded on the website of ITAT	03.03.2022
date on which the file goes to the Bench Clerk	03.03.2022
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	