

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 536/Mum/2020
(Assessment Year 2010-11)

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| ITO-9(3)(4) Room No.471, 4 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020 | Vs. | Gopal Krishna Papers Pvt.Ltd. 204, 'B'Wing Bajson's Industrial Estate 2 nd Floor, 40, Cardinal Gracious Road Chakala, Andheri(E) Mumbai-400 099 PAN : AAACG3597M |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri K. Shivram |
| Department by | Shri T.Sankar, Sr.AR |
| Date of Hearing | 06.01.2022 |
| Date of Pronouncement | 23 .03.2022 |

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-16, dated 31.10.2019 and pertains to assessment year 2010-11s.

2. Grounds of appeal read as under:-

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in quashing the order u/s. 143(3) rws 147 of the Act without appreciating the facts, that the said assessment was reopened based on fresh inputs/information?"

"Whether on the facts and in the circumstances of the case and in law the CIT(A) erred in quashing the assessment order u/s. 143(3) rws 147 where there were new facts coming to the notice of the Assessing Officer?".

3. Brief facts of the case are that in this case earlier assessment was done by processing u/s. 143(1). Subsequently, assessment was reopened. The reopening was on account of information from sales tax department for bogus purchases amounting to Rs. 4,89,51,357/-. The AO proceeded to hold that notice u/s.133(6) were issued to parties from whom assessee has claimed to have made purchases. Both the notices returned un-served. The assessee also filed objection to reopening. However, AO noted that objection to reopening has been filed very late in order to stall the assessment proceedings and that the same cannot be entertained at this point. Further, AO noted that copies of delivery challans, bills of transport of goods were not produced. Hence, AO added 12.5% as estimated profit on the bogus purchases and added the same.

4. Upon assessee's appeal, Id.CIT(A) quashed the reopening. He noted that in this case after proper enquiry proceedings u/s. 263 of the Act has been dropped on same issue. Hence, he referred to Hon'ble Madhya Pradesh High court in the case of CIT vs Indira Exports (P) Ltd. [2014] 226 Taxman 103 and held that in such circumstances reopening is not sustainable and hence, quashed the assessment order. Ld.CIT(A) did not adjudicate the issue on merits.

5. Ld.CIT(A) has held as under:-

"From the above order, it is very clear that the Ld. Pr. CIT-9, Mumbai had been already assessed the same issue during the proceedings u/s 263 of the Act on which basis the Ld. AO has opened the re-assessment proceedings u/s 147 of the Act. Further, the Pr. CIT-9, Mumbai has clearly written in their order that the AO during the regular scrutiny proceedings has considered all relevant facts and made enquiries by applying his mind. Therefore, issue with regard to the addition on the alleged 'Bogus Purchases' which has been dealt with by the Ld. Pr. CIT-9, Mumbai by issuing notice u/s 263 of the Act was dropped after considering AO's enquiry made

during the regular assessment proceedings and it was held that after considering enquiries and legal position there is no reason to made addition of any percentage of the alleged Bogus purchases in the hand of the Appellant. Further, as the issue has already been examined and held in favor of the appellant by the Id. Pr. CIT-9, Mumbai on the basis of enquiry and observation made during the scrutiny assessment, I do not find any merit in the initiation of proceedings u/s 147 of the Act by the Ld. AO. The reopening of assessment on the same reason as were recorded for initiation of proceedings u/s 263 is not permissible, particularly in the absence of any new material on the basis of reasonable belief that income has escaped assessment. In this regard, reliance can be placed on the judgment of Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Indira Exports (P.) Ltd. 24, wherein it has been held that: -

". Challenging the assessment order passed under Section 147 read with Section 143 (3) of the Act, which was affirmed by the Commissioner of Income Tax (Appeal) vide order dated 30.03.2007, the respondent / assessee filed the aforesaid appeals before the Tribunal. The grievance of the assessee was that the initiation of the proceedings under Section 147 of the Act and the consequent assessment order is bad in law.

According to the assessee, the entire issue was earlier dealt with by the CIT (A) in his order under proceedings under Section 263 of the Act, after calling report from the Assessing Officer (AO). The matter and the question involved having been examined by the higher authorities, it was not open for review by the lower authority. The respondent / assessee raised the question before the Tribunal that once an order under Section 263 of the Act was passed, whether, it was open for the AO to re-open the issue under Section 147 of the Act. The Tribunal dealt with the matter extensively and after considering the findings recorded by the CIT (A) in the proceedings under Section 263 of the Act, in which it was held that the claim of deduction under Section 80 HHC of the Act has been correctly made by the assessee, had observed that it was not permissible for the AO to initiate proceedings under Section 147 of the Act. The Tribunal, while deciding the matter in favour of the assessee, in paragraphs 11, 12 and 13 has observed, thus: — "22. In this order, the Id. CIT has observed that the issue with regard to deduction u/s 80HHC has been decided by the Tribunal in the case of CIT v. Aline Solvex Ltd. [2003] 259 ITR 719/129 Taxman 16 (SC) in favour of the assessee and against that decision, the Department has moved to the High Court. He further observed that Hon'ble High Court has dismissed Revenue's appeal and later on Department moved to the Hon'ble Supreme Court through SLP, which has also been dismissed by the Hon'ble Supreme Court. Thus, the issue with regard to claim of deduction u/s 80HHC stands finally settled. The Id. CIT further observed that decision given in the case of CIT v, Alpine Solvex Ltd. [2003] 259 ITR 719/129 Taxman 16 (SC) is the law and now there is no scope for remedial action whatsoever after the decision of Hon'ble Supreme Court. He further observed that taking any so called remedial action now may tantamount to contempt of the Hon'ble Apex Court. Thereafter, considering the report of the AO dated 07.02.2002, the Id. CIT dropped the proceedings initiated with respect to claim of deduction u/s 80HHC. The reasons

given for reopening relate to claim of deduction u/s 80HHC and in the reasons so recorded, the reliance was placed on the decision of Tribunal in the case of Alpine Solvex Ltd. ITA No 510 & 1026/nd/1997 order dated 26th February, 1999.

Thus, it is dear from the order of the Id. CIT u/s 263 that the assessee's claim of deduction u/s 80HHC was correct. The issue with regard to deduction u/s 80HHC having been examined by the Higher Authorities cannot be subject matter of review by the lower authorities. ITAT Bangalore 'A' Bench in the case of Asea Brown Boveri Limited v. Addl. CIT, 2010-TIOL-190-ITAT-BANG, replying on the decision of Madras High Court in the case of Ramchandra Hatcheries, 305 ITR 117 observed that the AO has no jurisdiction to reopen the assessment u/s 147, so as to circumvent the order of the CIT which has become final. As there was no new facts coming to the notice of the AO other than the facts known to the Department while initiating the proceedings u/s 263, the reopening of assessment was not justified on the same facts, which were already decided by the CIT in his order u/s 263.

In the instant case also, we found that the issue with regard to claim of deduction u/s 80 HHC which has been dealt with by the Id. CIT by issuing notice u/s 263 was dropped after considering AO's report dated 07.10.2002 and it was held that considering this report and the legal position there is no reason to disallow any portion of the deduction allowed u/s 80HHC of the Income Tax Act, 1961, for all the three years under consideration. As the issue has already been examined and held in favour of the assessee by that Id. CIT on the basis of report of the AO, we do not find any merit in the initiation of proceedings u/s 147 by the same AO. The reopening of assessment on the same reasons as were recorded for initiation of proceedings u/s 263 is not permissible, particularly in the absence of any new material on the basis of reasonable belief that income has escaped assessment."

Having regard to the aforesaid clear position of law, based upon the judgment of the Supreme Court, we are of the view that the Tribunal has committed no error in holding that there was no merit in the initiation of the proceedings under Section 147 of the Act. In these circumstances, no ground / substantial question of law is made out to interfere into the order passed by the Tribunal.

Accordingly, the aforesaid three appeals deserve to be and are hereby dismissed."

Respectfully, following the above mentioned judgment and keeping in view the facts and circumstances of the appellant's case as discussed above, it is held that there was no merit in the initiation of the proceedings u/s 147 of the Act. Hence, the appeal of the appellant on this ground is allowed and addition made by the Ld. A.O. is deleted."

6. Against the above order, revenue is in appeal before the ITAT.

7. I have heard both the parties and perused the records. Ld. Counsel of the assessee relied upon orders of the Id.CIT(A). He reiterated reliance upon the decision of Hon'ble Madhya Pradesh High Court in the case of Indira Exports (P.) Ltd.(supra) relied upon by the Id.CIT(A). Further, he referred to decision of Hon'ble Madras High Court in CIT vs Neyveli Lignite Corporation 117 taxmann.com 847.

8. Upon careful consideration, I note that Hon'ble Madya Pradesh High Court in the case of Indira Exports (P.) Ltd.(supra) has taken a view that when the issue has been examined u/s. 263 and the proceeding dropped, the same cannot be subject matter of reopening. Ld.CIT(A) has duly analyzed the facts of the case, I find that the same squarely fall under the ken of aforesaid judgment. No distinction on facts or contrary decision of jurisdictional High court was brought to my notice. Following the precedent, I do not find any infirmity in the order of Id.CIT(A) and I uphold the same.

9. In the result, appeal by the revenue stands dismissed.

Pronounced in the open court on 23 .03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 23 .03.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai