

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 3544/MUM/2019  
(ASSESSMENT YEAR: 2008-09)

Arren Consultants Pvt. Ltd.,  
2<sup>nd</sup> Floor, Ratnam Square,  
Plot No. 38/39, Sector 19A, Vashi,  
Navi Mumbai - 400703  
[PAN: AAECA9635N]

..... Appellant

**Vs**

DCIT (OSD)-10(3), Mumbai,  
Aayakar Bhavan, M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Satish Mody  
For the Respondent/ Department : Shri Mehul Jain

Date of conclusion of hearing : 02.03.2022  
Date of pronouncement of order : 28.04.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 20.03.2019, passed by the Ld. Commissioner of Income Tax (Appeals) – 24, Mumbai [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [CIT(A)-24/ITO-15(1)(4)/IT-98/2014-15] for the Assessment Year 2008-09, whereby the CIT (A) had dismissed the appeal filed by the Assessee against the Assessment Order, dated 14.03.2014, passed under section 143(3) read with section 147 of the Act.
2. Brief facts of the case are that the Appellant, is a company engaged in the business of consultancy services. The Appellant has filed return of income on 30.01.2010 declaring loss of INR 1,00,06,994/-.

Assessment was framed on the Appellant under Section 143(3) of the Act vide order, dated 30.11.2010, at the total loss of INR 90,69,955/-. Notice under Section 148 of the Act was issued to the Assessee and reassessment proceedings under Section 147 of the Act were initiated on 28.02.2013. The Appellant requested for reasons recorded for reopening the assessment which were provided to the Appellant. The Appellant, on 13.01.2014, filed objections to reopening of assessment which were disposed off by the Assessing Officer vide order, dated 20.01.2014. The Assessing Officer, thereafter, proceeded to frame the assessment under Section 147 read with section 143(3) of the Act, vide order dated 14.03.2014, at a loss of INR 77,63,143/- after making an addition of INR 13,06,812/- as income from house property.

3. In appeal before CIT(A), the Appellant assailed the Assessment Order on the ground of jurisdiction as well on merits of the addition. However, the CIT(A) dismissed the appeal and declined to grant any relief to the Appellant herein.

4. Being aggrieved, the Appellant has filed the present appeal against the order of CIT(A) therein, following grounds have been raised:

*"1. The Ld. CIT(Appeals) has erred in confirming the order of Ld. Assessing Officer initiating penalty proceedings u/s 147 of the I.T. Act, 1961.*

*2. The Ld. CIT(Appeals) has erred in confirming the order of Ld. Assessing Officer passed u/s 143(3) rws 147 of the I.T. Act.*

*3. The Ld. CIT(Appeals) has erred in confirming the addition of Rs. 13,06,812/- made by DCIT (OSD) 10(3) to income from house property based on annual letting value of 2% of the investment."*

5. The Ld. Authorised Representative of the Appellant appearing before us contended that the reassessment proceedings are liable to be set

aside on the issue of jurisdiction as well on merits. He submitted that the reassessment proceedings have been initiated on account of mere change of opinion and without having any tangible material. The Ld. Authorised Representative for the Appellant took us through the documents forming part of paper book including note on chargeability of deemed property income (at page 39 of the paper book), and letter, filed on 13.01.2014 with the Deputy Commissioner of Income Tax (OSD), Ward-10(3) in response to reasons recorded (at page 20 of the paper book). Relying upon the same, he submitted that during the original assessment proceedings the issue related to taxability of income from house property relating to immovable property situated at Walkeshwar, Mumbai was examined by the Assessing Officer. The reasons recorded do not refer to any tangible material. The reassessment proceedings have been initiated on account of change of opinion which is not permissible as per the judgment of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. : 320 ITR 561 (SC). On merits he submitted that the Assessing Officer has moved on incorrect premise that the Appellant owns four different flats/units. During the Assessment Year 2006-07, identical addition was made by the Assessing Officer, however, Commissioner of Income Tax (Appeals)-II, Kanpur has, vide order dated 23.05.2013, deleted the addition.

6. Per contra, the Ld. Departmental Representative relied upon the orders passed by the lower authorities. He submitted that the reassessment proceedings have been initiated on the basis of tangible material and not on account of mere change of opinion. In this regard, the Ld. Departmental Representative referred to the reasons recorded and submitted that the Assessing Officer had relied upon assessment order for the Assessment Year 2006-07. On merits, he submitted that multiple units were owned by the Appellant which did not constitute a single unit and in this regard he relied upon paragraph number 5.3.6 of the impugned order.

7. We have heard the rival contentions and perused the records. We would first deal with the Appellant's challenge to the validity of reassessment proceeding on account of lack of tangible material. On perusal of record it is clear that the Appellant did not make any new investment immovable property at Walkeshwar, Mumbai during the relevant previous year. In the Assessment Year 2006-07, the Assessing Officer had, vide order dated 26.12.2008, made an addition under the head house property in respect of units/flats at Walkeshwar, Mumbai. During the original assessment proceedings for the Assessment Year 2008-09, the Appellant had filed a note titled *"Note on chargeability of deemed property income during the Assessment Year 2008-09 based on additions made in the assessment order for the Assessment Year 2006-07"*. Thus, during the original assessment proceedings, the Assessing Officer was aware of the Assessment Order for Assessment Year 2006-07 and the issue relating to income from house property arising from the units/flats at Walkeshwar, Mumbai was examined by the Assessing Officer. However, no addition was made in this regard in the original assessment order, dated 30.11.2010. In our view, there was no tangible material with the Assessing Officer to initiate the reassessment proceedings as the reassessment proceedings were initiated 'on perusal of record'. The relevant abstract of reasons recorded read as under:

*"On perusal of records it is seen that the balance sheet shows investment in properties of Rs. 12,44,58,334/- for the A.Y. under consideration i.e. A.Y. 2008-09. During the assessment proceedings, it was submitted by the assessee that the investment in the B/S is an investment immovable property situated at Om Vikas Tower, Walkeshwar, Mumbai. The said property is an old property and has been appearing in the balance sheet of the company for many years. No new property has been bought during the current A.Y. The property is being used as an office for the assessee company." (Emphasis Supplied)*

8. The CIT(A), in paragraph 5.1.6 of the order, has made following observations:

*“The appellant is of the view that since this fact was available to the AO at the time of assessment proceedings, there are no new facts available on record and hence, the re-opening is not valid. I do not agree with this contention of the appellant as the AO, while conducting the assessment, need to necessarily look into the adjustments made in the earlier year. The principle of res judicata is to be followed. However, subsequent to the assessment, when he noticed that the income has escaped assessment and similar issue has also been raked up in AY 2006-07 he has initiated the assessment. There is no requirement to get the new material on record before re-opening the assessment. If the contention of the appellant is accepted then it would mean that no cases can be re-opened and inquiry cannot be made in the cases where there have been income escaping tax.” (Emphasis Supplied)*

The above observations of the CIT(A) are contrary to the judgment of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. : 320 ITR 561 (SC) wherein it has been held as under:

*“On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to reassess. The*

*Assessing Officer has no power to review; he has the power to re-assess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief." (Emphasis Supplied)*

9. In the facts of the present case, the original assessment was completed under Section 143(3) of the Act. The Appellant has been able to demonstrate that the issue relating to income from house property arising from flat/units at Walkeshwar, Mumbai was examined in the original assessment proceedings. Admittedly, the reassessment proceedings have been initiated on the basis of assessment order for the Assessment Year 2006-07 which was passed on 26.02.2008, much before original assessment under Section 143(3) was framed on the Appellant on 30.11.2010. The Assessing Officer had knowledge of the assessment order for the Assessment Year 2006-07 at the time of framing original assessment. A note titled "*Note on chargeability of deemed property income during the Assessment Year 2008-09 based on additions made in the assessment order for the Assessment Year 2006-07*" was filed during the course of original assessment proceedings. However, no additions were made in this regard. The Assessing Officer did not have any tangible material which had come to his knowledge after the completion of the original assessment which could form basis of belief that income chargeable to tax had escaped assessment.
10. In view of the above, we set aside the reassessment proceedings for the Assessment Year 2008-09 having been initiated in violation of

the provision of section 147 of the Act. We reverse the order of CIT(A) and set aside the assessment order dated 14.03.2014 passed under Section 143(3) read with section 147 of the Act. Ground No. 2 raised by the Appellant/Assessee is allowed. Ground No. 1 and 3 are disposed of as being infructuous.

Since we have set aside the reassessment proceedings we have not adjudicated upon the merits of the matter. However, we would like to observe that the CIT(A) has rightly noted that the appeal filed by the Revenue against the order passed by CIT(A) for the Assessment Year 2006-07 has been disposed off on account of low tax effect. Accordingly, the contention of the Authorised Representative of the Appellant that on merits the issue has attained finality cannot be accepted.

11. In result, the appeal filed by the Appellant/Assessee is partly allowed.

Order pronounced on 28.04.2022.

*Sd/-*  
(Prmod Kumar)  
Vice President

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.04.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

ITA. No. 3544/Mum/2019  
Assessment Year: 2008-09

आदेशानुसार/ BY ORDE

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai