

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 223/Asr/2019
Assessment Year: 2007-08**

Sh. Mangat Trehan , C/o Sachin K Malhotra Advocate, Malhotras office, Phagwara Road, Hoshiarpur. [PAN:- ACAPT2109H] (Appellant)	Vs.	Asstt. Commissioner of Income Tax, Hoshiarpur. (Respondent)
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Appellant by	Sh. Sachin Malhotra, Adv.
Respondent by	Sh.S. M. Surendranath, Sr. DR.

Date of Hearing	24.08.2022
Date of Pronouncement	15.09.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals)-1,Jalandhar, [in brevity the CIT(A)] bearing appeal no.65/16-17/CIT(A)-1/JAL, date of order 28.01.2019, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y.2007-

08. The impugned order was originated from the order of the Id. Assistant Commissioner of Income Tax ,Hoshiarpur (in brevity the AO), order passed u/s 144/148 of the Act, date of order 28.03.2014.

2. The assessee took the following grounds which are as follows:-

“1. That the assessment framed is illegal unjustified and uncalled for, notice issued u/s 148/147 of Income Tax Act is bad in law, especially when the matter of assessment is still alive owing to departmental appeal with Hon’able Punjab & Haryana High Court.

2. That the notice issued u/s 147/148 of Income Tax Act is bad in law especially when A.O. failed to record the proper reason and merely relying on the order of CIT (A) reopen the case. The order was not even in existence at that time, because the same was quashed by Hon’able ITAT Bench, and borrowed satisfaction can’t be ground for reopening. C.I.T (A) also failed to take the cognizance of the same & ignored the case laws brought to her knowledge.

3. That the C.I.T(A) failed to consider the Past History of the assessee and case laws brought to her knowledge via Telelink v/sCIT(P& H), specially when previous year were decided by the CIT(A,) as well as Hon’able Tribunal in which 8% profit rate has been applied instead of 12% applied by A.O. So the addition made to

the time of Rs. 1 131004/-totally against the provisions of law, so the addition made on this score may be deleted.

4. That the CIT (A) as well A.O. merely on surmises and conjectures made the addition of Rs. 1597347/-without providing any reason which is totally against the provision of law and the addition made on this score may be deleted.

5. That the CIT (A) failed to consider the submission and case laws brought to her knowledge that once the addition is made on the presumptive basis no other addition can be made, so the addition of Rs. 1597347/-may be deleted.

6. That A.O. as well as CIT (A) failed to give us the credit of Rs. 515000/- which the assessee get from the sale of car specially when the same been supplied has the receipt from the person who sold the car, the addition made on this score may be deleted.

7. That the assessee seeks the permissions to after, add amount any of the grounds of appeal. ”

2.1. The assessee filed an additional ground which is reproduced as under:

“1. That the notice issued u/s 147/148 of bad in law as it has been beyond 4 years after the completion of relevant assessment years.”

3. Briefly stated the fact is the assessee is a civil contractor and filed its return on dated 13.03.2008 and return was processed u/s 143(1) on dated 23.05.2008 for

the relevant assessment year. The reassessment notice was issued u/s 148 of the Act on dated 04.02.2009 reassessment was completed. The appeal was filed before the ld. CIT(A). The ld. CIT(A) was allowed relief partly.

4. The assessee filed an appeal before the ITAT, Amritsar Bench. The assessee's appeal was allowed on basis of the technical ground, bearing **ITA No. 08/Asr/2011 date of order 26.04.2012**. The revenue filed an appeal before the Hon'ble High Court of Punjab & Haryana. The matter is pending before the Apex Court. On basis of the confirmed addition of CIT(A), the ld. AO reopened the hearing second time u/s 148 for escapement of income amount of Rs.27,28,351/-. The addition was made on that basis. The assessee filed appeal before the ld. CIT(A), challenging both in technical ground and in quantum addition. The ld. CIT(A) upheld the order of the AO.

5. Aggrieved assessee filed an appeal before us.

6. The ld. Counsel for the assessee filed a paper book on dated 28.06.2019 which is kept in the record. The ld. Counsel vehemently argued and first pointed out the recorded reasons of the assessing officer which is extracted as below:

“Reasons for issue of notice u/s 148 of the I.T. Act, 1961

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The assessee Filed his return of income for the Asstt. Year 2007-08 on 13.03.2008 declaring an income of Rs. 14,23,000/-. It was observed by the then Assessing Officer that the assessee has filed his return of income at presumptive basis u/s 44AD by reflecting net profit from Contract work at Rs. 14,23,000/- i.e. 8% of Rs. 1,74,87,525/-meaning thereby that assessee himself admitted to be a no account case. After recording reasons, proceedings u/s 147 of the Income Tax Act, 1961 were initiated on 03.02.2009 and notice u/s 148 was issued to the assessee on 04.02.2009.

2. Subsequently assessment u/s 143(3) read with section 147 of the Income Tax Act, 1961 was completed on 24.12.2009 at total income of Rs.67,71,213/- as against the returned income of Rs. 14,23,000/-, thereby making total addition of Rs.53,48,213/- in assessee's case under different heads. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 were also initiated.

3. The assessee filed appeal against the assessment order and

(he Ld. CIT(A), Jalandhar vide order dated 28.10.2010 passed in appeal No. 447/09-10/CIT(A)/Jal, allowed

relief of Rs.26,19,862'- to the assessee and confirmed the addition of Rs. 27,28,351/- made by the AO. The department as well as the assessee filed appeal against the order of Ld.CIT(A) before the Hon'ble ITAT. The Hon'ble ITAT vide its order dated 26.04.2012 allowed the assessee's appeal in ITA No.25(Asr)/2011 and dismissed the appeal of the Department in ITA No. 08(Asr)/2011. The Hon'ble ITAT quashed the assessment made by the AO by holding that the notice issued u/s 148 is bad in law as it was issued on 04.02.2009 whereas there was sufficient time to issue notice u/s 143(2) of the I.T.Act, 1961 for the A.Y. 2007-08. The Hon'ble ITAT observed that the jurisdiction u/s 147 can be acquired only after the limitation to issue notice u/s 143(2) had expired. Thus, the Departmental appeal has been dismissed by the Hon'ble ITAT only on technical ground. However, the Department has filed an appeal u/s 260A before the Hon'ble P&H High Court, Chandigarh against the order of the ITAT, Amritsar.

4. The departmental appeal has been dismissed only on technical ground on the issue of notice u/s 148 of the Income Tax Act, 1961. Since the addition of Rs.27,28,351/- made by the AO was confirmed by the

Ld.CIT(A), I have, therefore, reasons to believe that income chargeable to tax amounting to Rs. 27,28,351/- has escaped assessment within the meaning of section 147 read with section 148 of the Income-tax Act, 1961 by reasons of the failure on the part of the assessee to disclose fully and truly all material facts necessary' for his assessment for the assessment year 2007-08.

Therefore, notice u/s 148 is issued to bring to tax the income of Rs.27,28,351/- and any other income, which subsequently comes to I he notice of the Assessing Officer, during the course of assessment proceeding.”

6.1 The Id. Counsel further argued that the same issue cannot be agitated twice which was already in alive and sub-judice before the higher authority. He relied on the judgment of **Hon’ble High Court of Punjab & Haryana in the case of “Duli Chand Singhania Vs. Asstt. CIT” [2004] 136 Taxman 725 (P & H).**

6.2. Considered the order of Coordinate Bench in the case of **“Apeejay Education Society vs. Assistant Commissioner of Income Tax, Circle-III, Jalandhar [2016] 73 taxmann.com54 (Amritsar-Trib.)/[2016] 47 ITR (T) 33 (Amritsar-Trib.) [25.02.2016]:**

“IT: Where Assessing Officer completed assessment in case of assessee under section 143(3), in absence of any failure on part of assessee to disclose all material facts necessary for assessment reassessment proceedings could not be initiated after expiry of four years from end of relevant assessment year merely on basis of allegation that assessee had obtained accommodation entries from another company regarding bogus purchase of software.”

6.3 The Id. Counsel further argued that the AO failed to record his satisfaction before issuing the notice u/s 147/148 of the Act. The notice has been issued on borrowed satisfaction which is bad in law. And there is no new material has come to knowledge of AO on basis of which the AO issued the notice u/s 147/148 of the Act. The AO did not mention anything related to the same in his reasons recorded. The Id. Counsel had respectfully relied of the orders of apex court which are as below: -

“a. “CIT vs. Kelvinator of India Ltd.” 320 ITR 561 (S.C.)

b. “M/s Mobis India Ltd. vs. Dy. CIT” WMP No.9819 of 2016 dated of order 24.01.2018, Madras High Court.”

7. The Id. DR relied on the order of revenue authorities and mentioned the relevant part of order of Id. CIT(A) in para no.10.2 which is reproduced as under: -

“10.2 During appeal proceedings, the ld. Counsel has argued that addition on account of contract receipts by applying net profit rate of 12% instead of rate 8% deserves to be dated based on the past history of the case.

During assessment year 2005-06 and 2006-07, the ld. CIT(A) vide order dated 01.03.2011 has detailed addition made in the case of assessee @ 12% of contract receipts against 8% declared by the assessee. However, in the case of the assessee, ld. CIT(A) has upheld addition @ 12% on contract receipts.”

8. The findings of the ld. CIT(A) had not been controverted the assessee's submission by bringing new facts. The ground of the assessee was adjudicated during passing of order.

9. We heard the rival submissions and relied on the documents available in the records and respectfully considered the judgments of the different apex courts. The assessee was assessed twice in same assessment year in same issue. In first phase, the appeal was completed on basis of the part relief. The ITAT allowed the assessee's appeal on basis of the technical ground. The same issue which the CIT(A) had disallowed in first phase was taken as subject matter of reopening as recorded reasons by the assessing authority. In second phase the notice u/s 148 was issued by the ld AO. The same issue cannot be agitated twice. There is no such

any fresh material, **Kelvinator of India** (supra). The assessing authority had reopened the issue which was already taken in the assessment order u/s 143(3) of the Act. The same issue cannot be taken second round on the ground that the Id. CIT(A) had disallowed. The ITAT had quashed the revenue appeal on technical ground and the issues were untouched by the ITAT. Therefore, the Assessing Officer was indeed in error in adopting such a hyper-pedantic approach and in holding that there was valid reopening U/s 148 on the issue which were already delt in first phase of assessment U/s 143(3) of the Act in same assessment year. Recorded reason is itself bad in law and the assessment order is liable to be quashed. The assessee, during appeal has taken the addition ground which was consequently in nature and need not be adjudicated further as the entire assessment order is erroneous. Accordingly, the ground of the assessee is allowed.

10. In the result, the appeal of the assessee bearing **ITA 223/Asr/2019** is allowed.

Order pronounced in the open court on 15.09.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order