आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.573/Ind/2019
&
C.O. No. 9/Ind/2020

Assessment Year: 2011-12

DCIT Khandwa	**बनाम/** Vs.	M/s Raj Rajeshwar Cotton Corporation, Warla Road, Sendhwa, District - Khandwa
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AAGFR 6243 N		

Assessee by	None
Revenue by	Shri Ashish Porwal, Sr. DR
Date of Hearing	12.10.2022
Date of Pronouncement	21.10.2022

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 26.02.2019 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore **["Ld. CIT(A)"]**, which in turn arises out of assessment-order dated 23.12.2016 passed by learned ACIT, Khandwa **["Ld. AO"]** u/s 147/143(3) of the Income-tax Act, 1961 **["the Act"]** for Assessment-Year **["AY"]** 2011-12, the revenue has filed this appeal. Further, the assessee has also filed cross-objection.

2. None appeared on behalf of hearing but the Ld. DR representing the revenue was ready to argue the case. On perusal of case-records, it was observed that the case can be adjudicated on the basis of material available on record and after hearing the Ld. DR. Accordingly, the case was proceeded with.

3. Briefly stated the facts are such that the assessee-firm is engaged in the business of trading and manufacturing of cotton, cotton seeds, cake, oil, etc. and ginning and pressing of cotton. In original assessment, the assesse filed return of income on 25.09.2011 declaring a total income of Rs. 76,50,400/-, which was subjected to scrutiny-proceedings and assessment u/s 143(3) was completed at a total income of Rs. 84,10,150/-. Subsequently, Ld. AO re-opened assessment through notice dated 15.06.2015 u/s 148 and passed order of re-assessment u/s 147 on 23.12.2016 after making an addition of Rs. 2,01,97,994/-. Aggrieved, the assessee filed appeal to Ld. CIT(A) and raised legal grounds as well grounds on merits. Ld. CIT(A), accepting the legal ground of assessee, quashed the proceeding of re-assessment itself but refrained from deciding merits of the case. Now both sides have come before us.

4. The grounds raised by parties are as under:

Revenue's Appeal:

"1. Whether on the facts and in the circumstances of the case the Ld. CIT(A) is justified in quashing the proceedings u/s 147 of the I.T. Act initiated in the case of the assessee.

2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) is justified in holding that the AO had not brought on record any new material on records ignoring the facts that the assessment was re-opened u/s 147 of the I.T. Act based on the information received from the DDIT (Investment)-II, Indore that there were discrepancies in payment for purchase to farmers as per Bikri Pramanak and as per cash book.

3. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal."

Assessee's Cross-Objection:

1.That on the facts and in the circumstances of the case the Ld. CIT (A) erred in not deciding following grounds of appeal on merits:

2. That on the facts and in the circumstances of the case learned Assessing Officer erred in rejecting the books of accounts and invoking the provision of section is arbitrary unlawful, ***unwarranted*** *and bad in law.*

3. That Ld.AO erred in making addition of Rs. 20197994/- by applying NP rate of 5% by relying on the ITAT decision and on the basis of ADI as report the addition is based on pure guess work and against the factual position. That addition is arbitrary, unlawful and unwarranted which needs to be deleted.

4. That on the facts and in the circumstance of the case learned Assessee Officer erred in estimating declared N.P. at Rs.4779137/- as against 8827109/- shown by appellant thereby erred in not considering interest receipt as business income whereas over all interest amount is negative. That the estimation of Net Profit and rejecting of declared profit by applying N.P. rate is arbitrary, unlawful and unwarranted thus bad in law.

5. Appellant carves the right to adjustment and raise another ground / grounds at the time of hearing.

Additional Ground raised before the Ld. CIT{A):

6. That on the facts and in the circumstances of the case and in law the Ld.AO erred in not allowing deduction u/s 80IB without mentioning anything in the order passed u/s 143(3) r.w.s. 147 particularly when same is allowed in the original assessment order passed u/s 143(3) by disallowing the same on job work charges which was allowed by the Ld. CIT(A)-22, Delhi Camp at Indore vide appeal no.346/13-14/328 order dated 16.02.2016."

5. We first take up Revenue's appeal and thereafter Assessee's Cross-objection.

Revenue's Appeal:

6. Precisely stated the revenue's grievance emanating from grounds of appeal is such that the Ld. CIT(A) has erred in quashing the proceedings of section 147.

7. With the able assistance of Ld. DR, we are able to observe that the Ld. AO has re-opened assessment for the following reason as noted in assessment-order:

> *"2. Further, on enquiry by DDIT(Investment.)-II, Indore it was revealed that entries regarding purchases of goods and its payment to farmers having been recorded in the books of accounts are not found satisfactory, therefore the books of accounts of the assessee was considered liable for rejection and net profit rate of 5% was need to be applied in view of decision of Hon'ble' I.T.A.T., Indore Bench, Indore in the case of Amar Agrawal Sendhwa in ITA No. 611/Ind/2012 dated 20.08.2013. The total sales have been shown at Rs. 49,95,42,634/- and net profit of 5% worked out at Rs. 2,49,77,131/- whereas the assessee has declared net profit of Rs. 88,27,109/- only. Thus, it was found that the income of Rs. 1,61,50,022/- has escaped assessment. Since there was reason to believe that the income of Rs.1,61,50,022/- has escaped assessment, notice u/s 148 was issued on 15.06.2015 in response to which the assessee has filed return of income on 20.07.2015."*

8. Although the assessee filed objections against re-opening of proceeding and also made submissions on merits supported by certain legal precedents, which are re-produced on Page No. 3 to 6 of assessment-order, Ld. AO was not satisfied and completed re-assessment after making addition.

9. During first-appeal, the assessee again made a detailed submission before Ld. CIT(A). The Ld. CIT(A) has dealt the case of assessee in detail as under:

> ***"4.0** This ground of appeal is with regard to reopening the case u/s 148 of the IT Act, 1961. I have carefully gone through the assessment order as well as submission of the appellant in this regard.*
>
> ***4.1** The brief facts of the case are that the appellant had derived income from trading and Manufacturing of Cotton & Cotton Seeds, Cotton Seeds Cake, Oil and Ginning & Pressing of Cotton. The original assessment was completed by the AO u/s 143(3) of the IT Act, 1961 on 31.12.2013. Subsequently, the AO had received information from DDIT(Inv.)-II, Indore. In the said information, the DDIT(Inv.) had mentioned in its report that entries regarding*

purchases of goods and its payment to farmers having been recorded in the books of accounts were not found satisfactory; therefore, the books of the assessee was liable to be rejected. On the basis of the said information, the AO had reopened the appellant's case and had accordingly issued the notice u/s 148 of the IT Act, 1961 to the appellant. The AO had completed the proceedings after making an addition of Rs. 2,01,97,994/- to the appellant's income.

4.2 The appellant has taken the plea in its submission that the. AO had reopened the case on the basis of information received from DDIT(Inv)-II, Indore. The AO had neither made any independent inquiry and nor any fresh material was available with the AO to reopen the case. Further, the appellant has submitted that the reason recorded by the AO in the present case were based on a "borrowed satisfaction" and on the directions of DDIT(Investment.)-II, Indore which was based on the decision of Hon'ble 1TAT, Indore in the case of Amar Agrawal, Sendhwa in ITANo.611/Ind/2012 order dated 20.08.2013.

4.3 The objective of carrying out income escaping assessment u/s 147 of the Act is to bring any income which has escaped assessment in the original assessment under the tax net. The proceedings under section 147 are for the benefit of the revenue and not an assessee and are aimed at gathering the 'escaped income' of an assessee. However, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the AO, thereby making the machinery unworkable.

***4.4** In this case, the following two issues have been raised by the appellant which are as under:-*

01-The AO had adopted borrowed satisfaction.

02-The AO had made change of opinion since In the original assessment all issues relating to GP & NP and payment to farmers were looked into and after examination of the completed books of account and vouchers, it was a considered decision by the AO not to make any addition on this point.

(a) The AO had adopted borrowed satisfaction

***4.5** As per the language of section 147 of the Act, 1961, It is required for the AO to fulfill the condition as mention in the said section i.e. to inquire into the matter and bring on record any fresh evidence to prove that any Income had escaped during" the assessment proceedings. In the instant case, the AO had reopened the case the appellant merely on the basis of information of DDIT(Inv.)-II, Indore and that too on the basis of a decision of Hon'ble Bench of ITAT, Indore.*

After going through the original assessment order passed u/s 143(3) of the Act, it is clear that the AO made the disallowance u/s 80IB of the IT Act, 1961 for the job work receipts. During the course of assessment proceedings, the AO had verified all the documents as well as the return of income so filed by the appellant and after taking into consideration the entire factual matrix of the case, the AO had made the said disallowance. During the reassessment proceedings, the AO had not brought on record any fresh material. Further, the AO had reopened the case on the basis of information received from DDIT(Inv.)-II, Indore which was again primarily based on the decisions of Hon'ble ITAT in another case.

4.7 *The AO had thus proceeded on the basis of borrowed satisfaction and nothing had been placed on record by the AO to show that there was any material to hold that the income had escaped assessment. It was emphasized that since no documents either accompanied or admittedly no independent inquiry was conducted by the AO to form the prime facie belief that income had escaped. It was thus argued that since there was no application of mind by the concerned AO as he had proceeded on borrowed satisfaction and no independent inquiry was done and there was no material before him in order to come to the conclusion to form a prime facie belief that the original proceedings had not rightly been done by then AO.*

4.8 Various judicial authorities had also given their decision on the same issue which are reproduced hereunder:-

(i) ***The Hon'ble Delhi High Court in the case of Pr. CIT vs Meenakshi Overseas (P) Ltd 395 ITR 677 (Del)*** *had held that it the reasons failed to demonstrate the link between the tangible material and formation of the reasons to believe that the income has escaped assessment then, it would amount to borrowed satisfaction and It has to be presumed [hat there 1S no independent application of mind by the AO to the tangible material which forms the basis of the reason to believe that income has escaped assessment.*

(ii) ***The Hon'ble Delhi High Court in the case of CIT vs G & G Pharma (2015) 384 ITR 147 [Del.]*** *wherein the Hon'ble Bench had dealt with a similar instance of reopening of assessment by the AO on the basis of report of DIT(I) without making any effort to discuss the material on the basis of which such belief was formed and the reopening was held invalid by the court.*

(iii) The Hon'ble Bench of ITAT, Lucknow Bench had given their decision on the similar issue in the case of ***DCIT vs Bharat Chandra Seth / Anupama Seth in ITA No 622/623/LKW /2014***

order dated 24.09.2015.

*(iv) In the case of **PCIT vs Manzil Dinesh Kumar Shah (2018) 95 Taxmann.com 46 (Guj) (HC)**, the court held that "even the assessment which is completed u/s 143(1) cannot be reopened without proper 'reason to believe'. If the reasons state that the information was received from the VAT Dept that the assessee had entered into bogus purchase 'needed deep verification', it means the 'AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe which is not permissible. Court also observed that before closing that this can only lament at the possible revenue loss. The law and the principles noted above are far too wen settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it(Tax No.541 of 2018)"*

*(v) **Amar Jewellers Ltd vs DCIT (2018) 254 Taxman 384 (Guj.) (HC).** The court had held that "on verifying the record it was found that there was no nexus with reasons recorded for initiating reassessment proceedings and the information received by the AO from the investigating wing accordingly reassessment was held to be bad in law".*

*(vi) In the case of **Deepraj Hospital (P.) Ltd vs ITO 41/AGRA/2017 AY 2010-11 Dated 01.06.2018 (Agra)(Trib);** the Tribunal . had held that "if the reopening is based on information received from the investigation department, the reasons must show that the AO independently applied his mind to the information and formed his own opinion . If the reopening is done mechanically it is void. Also, if the reasons refer to any document a copy should be provided to the assessee. Failure to do so results in breach of natural justice and renders the reopening void."*

*(vii) **ITO vs Reliance Corporation (2017) 55 ITR 69 (SN) (Mumbai) [Trib].** Reassessment solely made on the basis of information received from investigation wing as assessee as beneficiaries of accommodation entries was held to be valid when no cross examination allowed to the assessee."*

02- The AO had made change of opinion.

4.9 Though the power of the AO to reopen an assessment within a period of four years is indisputable wider than when an assessment is sought to be reopened beyond four years, the power is nonetheless not unbridled. After the amendment which was brought in by the amendment as per Direct tax Laws (Amendment) Act, 1989 w.e.f. April 1, 1989 as also of section 148 to 152 have been elaborated in circular no 549 dated October 31, 1989 . A

perusal of clause 7.2 of the said circular makes it clear that the amendments had been carried out only with a view to allay fears that the omission of the expression reason to believe from section 147 would give arbitrary power to AO to reopen past assessments on a mere change of opinion i.e. a mere change of opinion cannot form basis for reopening a completed assessment.

4.10 In the instant case, the AO had passed the original assessment taking into account all the documents and facts of the case and again, he had reopened the case without bringing out fresh material on record and thus there was a mere change of opinion, When, at the first assessment all the relevant aspects are considered and there is proper applicability of mind ascertainment of the amount of taxable Income and of the tax payable thereon, then in the absence of any error or mistake being discovered or found, the AO later on cannot merely for the sake of giving a different opinion, change the earlier opinion. However, in cases where an error or mistake is detected, it can never be said that there is only a mere change of opinion. The mistake or error which is detected and which constituted a valid decision or cause to form a belief in the first assessment as a result of which the income has escaped assessment, would constitute a reason to believe the that the Income had escaped assessment and such cases where mistakes and error are detected and which constitute a valid justification or cause to form a belief sought to be corrected, cannot be said to be cases of mere change of opinion.

*4.11 In the case of **CIT vs Kelvinator India Ltd 320 ITR 561** is one of the crucial judgment as regards to the change of opinion wherein its was held that*

> *1. Reappraisal of same facts/documents/ information means change of opinion. AO has no power to review his order.*
>
> *2. Order if the which has been passed purportedly without application of mind would itself confer jurisdiction upon the AO to reopen the proceedings without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong.*

*4.12 In the case of **ITO vs Techspan India (P) Ltd (2018) 404 ITR 10/302 CTR 74 (SC)**, it was held that Deduction was allowed in the original assessment, on the same facts to hold that the excess deduction was allowed will be change of opinion therefore reassessment was held to be bad in law.*

4.13 No new material brought on records - reassessment on change of opinion of officer not valid.

a. Asteroids Trading & Investment P Ltd vs DeIT (2009) 308 ITR 190 (Born)

b. Asian Paints Ltd vs DCIT (2008) 308 ITR 195 (Born) (198)

c. ICICI Life Insurance Co Ltd (2010) 325 ITR 471 [Born]

d. Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 570 (Bom)(577)

e. Nirmal Bang Securities (P) Ltd. vs. ACIT (2016) 382 ITR 93(Bom)(HC)

f. Aryan Arcade Ltd vs Den (2017)

4.14 *During the assessment proceedings, if new facts, material or information comes to the knowledge of the AO, which was not on record and available at the time of the assessment order, the principle of- change of opinion will not apply. The reason is that- opinion is formed on fats. Opinion formed or based on wrong and incorrect fats or which are belied and untrue do not get protection and cover under the principle of- change of opinion. Factual information or material which was incorrect or was not available with the AO at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression material facts mean those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made.*

4.15 *When an assessment order was passed u/s 143(3), a presumption could be raised that the order was passed after application of mind. Reference was made to clause (e) to section 114 of the Indian Evidence Act, 1872. The contention if accepted would given premium to the authority exercising quasi-judicial functions to take benefit of its own wrong i.e. failure to discuss or record reasons in the assessment order. The aforesaid observations have been made in the context and for explaining the principle of-change of opinion. The said principle would apply even when there is not discussions in the assessment order but where the AO had applied his mind. A wrong decision, wrong understanding of law or failure to draw proper interference from the material facts already on record and examined, cannot be rectified or corrected by recourse to reassessment proceeding, assessee is required to disclose full and true material facts and need not explain and interpret law. Legal inference has to be drawn by the AO from the facts disclosed. It is for the AO to understand*

and apply the law.

4.16 In the original assessment order, the AO had verified and examined the facts and documents and had accordingly given its opinion on the facts. The AO had only disallowed deduction u] s SOlB of the IT Act, 1961 so claimed by the appellant on job work receipts and had passed the order ul s 143(3) of the IT Act, 1961. The AO had raised a specific query about NP in its questionnaire and the appellant had submitted all the relevant details vide its submission dated 03.02.2014. This clearly demonstrates that the matter did come-for due consideration before the AO and was in fact considered. Thus, this overwhelmingly brings out that the issue was given a serious thought by the AO and an opinion was also formed by consciously not making an addition on this issue despite asking specific query in this regard. Thus, the ratio of the decision of the Hon'ble High Court of Delhi in the case of ***Commissioner of Income Tax Vs Usha International Ltd. 348 ITR 485 (Delhi) (FB) 2012*** *is clearly applicable where it clearly stated vide clause 2 of para 13:-*

> *(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised **I** and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of "change of opinion".*

14. In the second and third situation, the Revenue is not without remedy. In case the assessment order is erroneous and prejudicial to the interest of the Revenue, they are entitled to and can invoke power under section 263 of the Act. This aspect and position has been highlighted in ***DLF Powers Ltd, ITA 973/201 J decided on 29th November', 2011 and BLB Ltd. vs. ACIT Writ Petition (Civil) No.6884/2010 decided on 1st December 2011.*** *In the last decision it has been observed:*

> *"13. Revenue had the option, but did not take recourse to section 263 of the Act, in spite of audit objection. Supervisory and revisionary power under Section 263 of the Act is available, if an order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. An erroneous order contrary to law that has caused prejudiced can be correct, when jurisdiction under Section 263 is invoked."*

4.17 The Hon'ble Delhi High Court elaborately discussed on the Issue of change of opinion. One of the issues of change of opinion so discussed in that order comes into the radius of the instant case. The issue is that "Whether the bar or prohibition under the principle change of opinion will apply even when the AO has not asked any question or query with effect to an entry /note, but there

is evidence and material to show that the AO had raised queries and questions on other aspects? During the assessment proceedings, The AO do examine several aspects and raise various queries but when the written opinion is expressed in form of the assessment order, there is no discussion or elucidation on certain aspects and issues decided or held in favour of assessee. In the instant case, to verify this fact whether the AO had examined all aspects at the time of assessment proceedings or not. It would be pertinent to reproduce the question no. 8 of the questionnaire:-

> 8. इस साल आपका टर्न ओवर रूपए 499542634 है जो कि पिछले वर्ष रुपए 210116150 से अधिक है अतः कुल आय रु. 76.50,400 है जो कि पिछले वर्ष 33,34,210 थी । यदि अन्य आय रु. 26,00,956 को घटा दिया जाए तो आपकी आय की बढोत्तरी टर्न ओवर के हिसाब से नहीं है ।
>
> ***Ans. With regard to your query regarding NET PROFIT for the year, it is submitted that in A.Y.2010-11 turnover of assessee was Rs.21.01 crore with GP rate of 4.51% & NET PROFIT rate of 1.92% whereas in A.Y.2011-12 turnover of the assessee has increased to Rs.49.95 crore. In A.Y. 2011-12 GP rate of assessee is 4.65% and NET PROFIT rate is 1.77% which is slight lower in comparison to previous year. Assessee is engaged in business of Kapas Ginning of Pressing & Cotton and oil mill business. There are the commodities where price fluctuation is very frequent, so one cannot get fixed NP every year. Secondly quantitative details are maintained by the assessee.***

4.18 It is clear from the above questionnaire as well as reply of the appellant that the AO had asked the query about the NP which was properly replied by the appellant. Hence, the view so taken by the Hon'ble High Court of Delhi is squarely applicable in this case. It is clearly a case of change of opinion where the AO had reopened the case without bringing on record any new material fact and without forming an independent opinion about the escapement of Income.

4.19 The relevant findings of the decision of the Hon'ble High Court of Delhi in the case of CIT vs Usha International Ltd(Supra) is reproduced hereunder:-

> ***"In this case, I don't find any difference between a case where a query is raised by the AO which is replied to by the assessee with supporting evidence or material but the opinion of the AO on the assessee's reply is not recorded in the assessment order, and a case where***

even without a query from the AO, the assessee voluntarily disclosers full and true particulars necessary for his assessment, which are not referred to in the assessment order and the opinion of the has not been expressly recorded therein. This distinction which was sought to be made on behalf of the revenue between the two types of cases was that in the former the AO has manifested his intention to examine the matter by raising a query, whereas in the latter type of cases he has not even done that. The distinction is too simplistic for acceptance. The question is not whether any query was raised or not. The question is whether the assessee fulfilled his duty of disclosing fully and truly, all material particulars and primary facts necessary for the assessment: of his income, Even in a case where a query is raised and and a reply is furnished with all supporting material if the AO chooses to keep silent in the assessment order, what difference does it make that he did not even raise a query and also chose to be silent in the assessment order. In both the cases the basil requirement that the assessee should have adduced all material: particulars and primary facts fully and truly stands satisfied. The raising of a query may only indicate that the AO had inquired into the matter; but if nothing is recorded in the assessment order that would still not show what opinion he took of the matter, and one has to only presume that he did accept the assessee's version, which is what the full bench has held. In my opinion, there is thus qualitatively no difference between the two types of cases. The ruling of the full bench of this court would apply with equal force to both types of cases, since the assessee has furnished fully and truly all material particulars and primary facts necessary for his assessment. The presumption under section 114(e) is applicable to both types of cases.

4.20 I think the real principle laid down by the Full Bench in ***Kelvinator (Supra)*** *is that if the assessee had discharged its onus after submitting all the facts and materials at the time of the assessment, it may be fairly taken that the AO has equally discharged his functions in the manner required of him. If he passes an assessment order u/s 143(3) of the Act, it hardly matters that he has not recorded his agreement with the assessee on every issue or point, that could be reasonable inferred.*

4.21 In this case, undisputedly, the AO had-raised-the--specific query about NP and if go deep into the matter, it was also the main reason for selecting the case in scrutiny. Hence, it is clear that there

was no issue left to be examined during the assessment proceedings. The appellant had furnished all the required details and after careful examination and verification of the facts of the case, it was a considered decision taken by the AO to not to make any addition on this issue. He choose to make the addition only respect to 80-IB. Opening the case again on the suspicion of having earned higher NET PROFIT clearly fall into the domain of "change of opinion" as held by the ***Hon'ble Delhi High Court in the case of*** *Usha* ***International(Supra) and Hon'ble Supreme Court in the case of Kelvinator of India(Supra) .***

4.22 Since the AO failed to establish that any fresh material was received by him before reopening the assessment the reopening of assessment was invalid In view of the following decided pronouncements also:

STATE BANK OF INDORE vs. INCOME TAX APPELLATE TRIBUNAL & ORS. HIGH COURT OF MADHYA PRADESH (2005) 73 CCH 0998 MPHC (2006) 200 CTR 0380, (2006) 282ITR 0409, (2006) 752 TAXMAN I0196	*In the instant case, AO had not received any fresh information from any source either, within the Department or outside whereby he could harbour any reason to believe that any income chargeable to tax had escaped assessment –Hence reopening was not valid*
HIND SYNTEX LTD. vs. CIT, HIGH COURT OF MADHYA PRADESH (2009) 77 CCH 1080 MPHC(2011) 37 DTR 0058, (2011) 239CTR 0580, (2011) 331 ITR 0036	*When the claim for depreciation was disclosed at various placed namely, directors report audit report, balance sheet, statement of accounts, accounting policy, notes to accounts and the accounts that were passed in the annual general meeting, it is obvious that the AO had full information bout the same and, therefore, reopening of assessment under s. 147(a) on the ground that depreciation was wrongly claimed on the basis of WDV method was not valid*

4.23 From the above facts it is clear that there was mere change of opinion on the part of AO while recording the Impugned Reason and therefore the reopening of case was invalid.

4.24 It is clear from the above facts and judicial decision so discussed above that the AO had reopened the case solely on the basis of information so

received by him from the Investigation wing. For applicability of section 147 of the Act, it was required to bring on record any new material giving rise to income which had escaped during the original assessment proceedings. After going through the assessment order, this fact is clear that the AO had taken into consideration all the facts of the case as well as the documents and material so submitted by the appellant and had passed the order u/s 143(3) of the Act, 1961. The AO had not brought on record any new fact or evidence for applying the section 147 of the Act. Hence, this ground of appeal is hereby allowed and the proceedings so initiated by the AO u/s 147 of the IT are hereby quashed."

10. During the course of hearing, we have heard the Ld. DR peacefully and at length on the observations, findings and conclusions made by both of the lower authorities in their respective orders. Ld. DR presented a parawise analysis and after discussions and a careful consideration, we observe that the Ld. CIT(A) has made a detailed, extensive analysis of the case of assessee on two fundamental aspects of re-opening, viz. (i) Whether the AO has re-opened assessment merely on the basis of borrowed satisfaction; and (ii) Whether it was a case of mere "change in opinion". Ld. CIT(A) has clearly concluded both of these points in affirmative; in favour of assessee and thereby given relief to the assessee. In relation to first point, Ld. DR submitted that though the report containing DDIT information is not available on record but the Ld. AO, it seems, has applied his mind too in the matter and it is not a case of simply acting on the basis of information from DDIT. Regarding second point, Ld. DR submitted that it should not be termed as a case of "change in opinion" because the revenue-authorities have acted on the basis of some new material and more particularly on the basis of decision of Hon'ble ITAT, Indore Bench in the case of Amar Agarwal, Sendhwa (supra). Thus, Ld. DR supports the order of Ld. AO and declines to accept the order of Ld. CIT(A).

11. We have examined the contentions of Ld. DR and perused the order of Ld. CIT(A) in detail. We observe that the Ld. CIT(A) has dealt the twin-aspects of re-opening in much detail having regard to the facts of the case and in the light of a number of judicial rulings. The order passed by Ld. CIT(A) clearly demonstrates that he has made a thorough analysis of the

material available before him. Ld. CIT(A) has concluded that the assessment was re-opened primarily on the basis of DDIT information which in turn was based on the decision of ITAT, Indore in Amar Agarwal (supra) who happened to be an altogether different assessee. In his own wording, Ld. CIT(A) has categorically mentioned in closing sentence of Para No. 4.6 "Further, the AO had reopened the case on the basis of information received from DDIT(Inv.)-II, Indore which was again primarily based on the decision of Hon'ble ITAT in another case". Thereafter, Ld. CIT(A) has also given a detailed discussion in 4.7 and 4.8 of his order and then came to conclude that the Ld. AO has acted on the basis of borrowed satisfaction without applying his own mind. Thereafter, Ld. CIT(A) has, in Para No. 4.9 to 4.23 of his order, observed that the case of assessee was properly analysed and assessed by Ld. AO during original assessment-proceeding and the present re-opening of assessment is only a review or revision of original assessment, therefore it is a clear case of "change in opinion". Ld. DR could not rebut these findings of Ld. CIT(A). We also note that the order passed by Ld. CIT(A) is not a summary-order, it is a much detailed order. That brings us to observe that the Ld. CIT(A) has adequately examined the foundational aspects of re-opening enshrined in the law and enunciated by various courts in their decisions and after due considerations, quashed the reassessment-proceeding. Hence we do not find any justifiable reason to interfere with the order of Ld. CIT(A). Being so, we are persuaded to uphold the order of Ld. CIT(A) whereby he has quashed the re-assessment proceeding. Resultantly, Revenue fails in its appeal.

Assessee's Cross-Objection:

12. The assessee has raised as many as 6 grounds in its Cross-Objection but the grounds are not very happily worded / paragraphed. With the able assistance of Ld. DR, we are able to understand that in Ground No. 1 to 5, the assessee simply wants to submit that the Ld. CIT(A) has erred by not deciding the assessee's case on merit. To address this grievance of assessee, we reproduce following paragraph of Ld. CIT(A):

"Ground No. 2 to 6:

5.0 As the relief has already been given in the above ground no. 1, hence, these grounds of appeal have become infructuous and are accordingly dismissed."

Thus, the Ld. CIT(A) has not adjudicated assessee's case on merit for the very reason that he had already quashed the re-assessment proceeding itself and hence the grounds on merit became infructuous. We do not find any fallacy in the approach of Ld. CIT(A). Therefore, Ground No. 1 to 5 of cross-objection of assessee are devoid of merit and dismissed.

13. Yet there is last ground No. 6 taken by assessee with the caption **"Additional Ground raised before the Ld. CIT(A)"**. On perusal of ground, it is observed that the assessee is aggrieved *qua* deduction not allowed by revenue-authorities u/s 80-IB in relation to certain income. Ld. DR submits and we also concur that the issue of deduction u/s 80-IB was neither a part of re-assessment nor flowing from re-assessment order passed by Ld. AO u/s 147. Since the present litigation before us is with respect to the order u/s 147, the ground No. 6 raised by us is onerous to present proceeding and not tenable. Therefore, we are inclined to dismiss Ground No. 6 of assessee too.

14. For the reasons stated above, the assessee fails in its Cross-Objection.

15. In the result, Revenue's appeal as well as Assessee's Cross-Objection are dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 21/10/2022.

Sd/- Sd/-

(SIDDARTHA NAUTIYAL) (B.M. BIYANI)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 21.10.2022
Patel/Sr. PS

Copies to: *(1) The appellant*
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	19.10.2022
2.	Date of typing & draft order placed before the Dictating Member	19.10.2022
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	20.10.2022
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	20.10.2022
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	