

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA No. 325/IND/2020
Assessment Year: 2009-10**

Deputy Commissioner of Income Tax, (Central)-I, Bhopal (Appellant)	Vs	M/s. R.K. Gupta Contractors & Engineers Pvt. Ltd. B-72, Basement, Shahpura, Bhopal PAN No: AACCR9291D (Respondent)
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**Appellant by : Shri S.S. Deshpandey, A.R.
Respondent by : Shri Ashish Porwal, Sr. DR**

Date of hearing : 03-11-2022
Date of pronouncement : 03-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue against the Appellate Order dated 28.08.2020 passed by the Commissioner of Income Tax (Appeals)-2, Bhopal, as against the re-assessment order passed under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2009-10.

2. The brief facts of the case is that the assessee is a Private Limited Company engaged in the business of Civil Contractor, Infrastructure Development, Road etc. For the Assessment Year 2009-10, the assessee filed its Return of Income declaring Nil Income. The assessment was taken up for scrutiny assessment and regular assessment u/s. 143(3) dated 30.11.2011 was passed denying the claim of deduction u/s. 80IA(4) and determined the total income as Rs. 1,27,33,201-.

2.1. Thereafter the assessment was reopened by issuing a notice u/s. 148 of the Act on 27.08.2013 on the ground that the A.O. found the stock in the books of account as on 31.03.2009 was Rs. 15,00,000/- whereas in the stock statement submitted to the bank the assessee shown a stock as on 31.03.2009 at Rs. 52.66 lakhs. Thus there is a difference of Rs. 37.66 lakhs which has escaped from assessment within the meaning of Section 147 of the Act and thereby reopened the assessment. In compliance to the notice, the assessee requested to treat the original return in response to u/s. 148 notice. The Assessing Officer after considering the facts of the case and made addition of Rs. 37.66 lakhs on account of suppressed stock and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Bhopal. The assessee submitted that the reopening of assessment proceedings is mere change of opinion as the stock statement as on 31.03.2009 submitted to the bank had been submitted during the original assessment proceedings vide reply dated 22.06.2011 which was in

response to questionnaire u/s. 142(1) dated 19.01.2011. Thus the Ld. A.O. duly considered the above stock position while completing regular assessment under 143(3) of the Act. The assessee further submitted that the above statement was furnished in the first week of March as per the directions of the bank and therefore, the same was on estimate basis only. The assessee further relied upon various judicial rulings on the ground of change of opinion in reopening the assessment. The Ld. CIT(A) after considering the submissions of the assessee held that the Assessing Officer during the original assessment proceedings had examined the issue of stock and found it in order. Later on, when the assessing officer reopened the assessment, on account of difference in stock statement submitted to the bank and that it has shown in the books of account, which is nothing but a “change of opinion” as held by the ITAT Indore Bench in the case of M/s. Kuber Lighting Pvt. Ltd. in ITA No. 529/Ind/2007 vide order dated 29.05.2009, in the case of Brij Builders & Promoters, Bhopal and Hon’ble Supreme Court judgment in the case of Marico Ltd. in SLP (CIVIL) Diary No. 7367/2020 dated 01.06.2020, thus held that the initiation of reassessment proceedings u/s. 147 of the Act is to be invalid in law. Thus the Ld. CIT(A) allowed the assessee’s appeal.

4. Aggrieved against the same, the Revenue is in appeal before us raising the solitary ground as follows:

1. The Ld. CIT(A) erred in allowing the appeal of the assessee against initiation of proceeding u/s.47 of the Act 1961 on the ground that closing stocks figures which is Rs. 15,00,000 as per the balance sheet as on 31.03.2009 & 52,66,000 Rs. Which as per statement furnished to Bank for availing cash credits facilities, results in concealment of income of Rs. 37.661akhs, holding that this is change of opinion without appreciating that AO had never had given any of its opinion.

2. The CIT(A) had failed to appreciate that issue of notice u/s 148 was based on facts leading to concealment of income.

4.1. Ld. Sr. D.R. Mr. Ashish Porwal appearing for the Revenue supported the order of the Assessing Officer and pleaded that the Ld. CIT(A) erred in quashing the reassessment proceedings and requested to uphold the order of the assessing officer and allow the Revenue's appeal.

5. Per Contra, Ld. A.R. Mr. S.S. Deshpandey appearing for the assessee submitted before us, a small compilation of Paper Book which contains the reasons recorded for reopening the assessment, questionnaire issued u/s. 142(1) and replies made by the assessee during the original assessment proceedings and few case laws. The Ld. Counsel taken us through page no. 7 of the Paper Book wherein the questionnaire issued u/s. 142(1) dated 19.01.2011 more particularly Serial no. 14.

14. Submit a copy of stock statement furnished in the bank to avail cash credit facility. Also mention the name and address of the bank.

5.1. And reply filed by the assessee vide letter dated 22.06.2011 at page no. 11 to 13 of the Paper Book, wherein copy of stock statement submitted by the assessee to the bank was furnished to the Assessing Officer. Thus the Ld. A.R. pleaded that during the original assessment proceedings, the Ld. A.O. verified particulars called for regarding the stock statement, the Assessing Officer satisfied with the reply filed by the assessee and no discrepancies is being found, thereby no addition is being made by the A.O. Thus reopening the assessment for the very same assessment year on

the ground of deficit in stock is nothing but a “change of opinion”, therefore the reopening itself is not permissible under the law. Thus the Ld. CIT(A) is correct in quashing the reopening of assessment as bad in law and therefore it does not require any interference and the Revenue’s appeal is liable to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record. It is very clear from the original assessment proceedings, the Assessing Officer vide his notice u/s. 142(1) dated 19.01.2011 requested the assessee to submit copy of the stock statement furnished to the bank to avail cash credit facility by the assessee. The assessee submitted the details to the Assessing Officer vide its reply dated 22.06.2011 enclosed the copies of the stock which is clearly mentioning 52.66 lakhs. Thus the Assessing Officer has examined the issue of stock, during the original assessment proceedings and do not find any discrepancy in the stock submitted by the assessee and completed the assessment order u/s. 143(3) of the Act. It is settled principle of law, no assessment can be reopened on the basis of change of opinion. A Three Judges Bench of the Hon’ble Supreme Court in the case of ACIT vs. Marico Ltd. in Special Leave Peition (Civil) Diary No. 7367/2020 dated 01.06.2020 held as follows:

Delay Condoned.

In the present matter, the assessment order was passed on 30.01.2018 as regards the Assessment Year 2014-15.

According to the record, certain queries were raised by the Assessing Officer on 25.09.2017 during the assessment proceedings which were responded to by the Assessee vide letters dated 10.10.2017 and 21.12.2017.

After considering said responses, the assessment order was passed on 30.01.2018.

Subsequently, by notice dated 27.03.2019 issued under Section 148 of the Income-Tax Act, the matter was sought to be re-opened. While accepting the challenge to the issuance of notice, the High Court in para 12 of its judgment observed as under:

“12. Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 September 2017 during the assessment proceedings and the Petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017 justifying its stand. The non-rejection of the explanation in the Assessment Order would amount to the Assessing Officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set-aside.”

In the circumstances, we see no reason to interfere in the matter. This special leave petition is, accordingly, dismissed.

Pending application(s), if any, also stand disposed of.

6.1. Respectfully following the Constitutional Bench Judgment of the Hon'ble Supreme Court of India, we do not find any infirmity in the order passed by the Ld. CIT(A). Thus the Revenue has not made out any good ground to interfere with the order of the Ld. CIT(A), therefore the same are liable to be rejected.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 03-01-2023

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 03/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue

3. **Concerned CIT**
4. **CIT (A)**
5. **DR, ITAT, Ahmedabad**
6. **Guard file.**

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	30/12/2022
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/01/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/01/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/01/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/01/2023
6) Date on which the file goes to the Bench Clerk	/01/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	