

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 697/Del/2020 : Asstt. Year: 2011-12

ITO, Ward-30(4), New Delhi	Vs.	Amit Mittal, E-325, Greater Kailash, Part-1, New Delhi-110048
(APPELLANT)		(RESPONDENT)
PAN No. AHTPM9396B		

**Assessee by : Sh. Sanjay Kumar, CA
Revenue by : Sh. Kanv Bali, Sr. DR**

Date of Hearing: 08.02.2023

Date of Pronouncement: 14.02.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue against the order of the Id CIT(A)-10, New Delhi dated 28.11.2019.

2. The Revenue has raised the following grounds of appeal:

"1. Whether on facts and circumstances of the case, the Ld. CIT(A) was right in law and on facts for quashing of notice u/s 148 and assessment order passed u/s 143(3)/147 of the Income Tax Act, 1961 despite the fact that the Pr. CIT, Delhi-10 had given approval to the AO u/s 151(2) of the Act for initiation of reassessment proceedings as earlier during the assessment proceedings carried out u/s 143(3) of the Act, the assessee failed to furnish a valid audit report in prescribed Form 56G and consequently the assessee failed to make full and true disclosure of all the facts?

2. Whether on facts and circumstances of the case, the Ld. CIT(A) was right in law and on facts that the assessee is not required to furnish, in time specified u/s 139(1), a valid audit report in prescribed Form 56G duly certified by

the accountant that the deduction has been correctly claimed in accordance with the provisions of the Section 10B?

3. Whether on facts and circumstances of the case, the Ld. CIT(A) was right in law and on facts relying upon the documents submitted by the assessee in the form of audit report, financial statements etc. without examining the assessment records and the e-filed return of the assessee for the AY 2011-12?

4. Whether on facts and circumstances of the case, the Ld. CIT(A) was right in law and on facts in deleting the addition made by the AO u/s 10B by disallowing the exemption of Rs.83,26,950/- claimed by the assessee?."

3. The original assessment was made under section 143(3) on 17.10.2013 allowing the exemption under section 10B and based upon the information received from the Revenue Audit, a proposal for remedial action vide letter dated 12.11.2014 was proposed by the then Assessing Officer, as stated in the reasons recorded under section 147 of the Act which are as under:

"The mistake was apparent from the record. Accordingly my predecessor sent a proposal for remedial action vide letter dated 12.11.2014 which is as under:-

Section	Time Limit	Time Barred
154	March, 2018	No (Best Option-if we take remedial action u/s 147/263 the assessee will provide the signed copies of the above forms and department has to accept the claim of the Assessee)
147	March, 2016	No
263	March, 2016	No

Now, the Pr. CIT-10, New Delhi vide his letter F.No. Pr. CIT-10/Audit/2016-17/3136 dated 14.03.2017 has given approval for taking the remedial action u/s 147 of the I.T. Act, 1961."

4. In the regular assessment order passed u/s 143(3) on 17.10.2013, while allowing exemption u/s 10B, it is stated as under:

"During the year under consideration, the assessee derived income from salary, business and profession and income from other sources. The assessee firm is engaged in the business of software development under the name of proprietorship concern M/s Ashvan Technologies. The assessee is 100% export oriented unit under STP scheme for the development/manufacturing of computer software/IT enabled services. The assess has claimed exemption amounting Rs 8326950/- u/s 10B of the I.T. Act, 1961 for which necessary details have been filed and examined and four correct and placed on record. Further, the CIB information of cash deposit amounting Rs. 5,50,000/- in October, 2010 in HDFC Bank was out of the withdrawn made in June, 2010 in the same bank. The details were verified and found correct.

After discussion and verification of records the revised returned income of Rs. 14,09,060/- is accepted."

5. The Id. CIT(A) held that in view of specific finding in the regular assessment order that necessary details have been filed and examined and found correct and placed on record and coupled with the fact that even in the reasons recorded limitation period for taking action is stated to be March 2016, he was of the considered view that there is no failure on the part of the assessee in making full and true disclosure of all the facts and therefore, in the instant case reopening of assessment after the expiry of four years from the end of relevant assessment year i.e. March 2016 cannot be sustained.

6. Accordingly, the Ld.CIT(A) held that notice under section 148, as well as assessment order passed in pursuance thereof are not valid in the absence of valid jurisdiction for reopening.

7. On the issue of merits on disallowance of exemption under section 10B of Rs. 83,26,950/-, the Id. CIT(A) held that the reassessment proceedings were initiated for the reason that assessee did not produce Form 56G certified by Chartered Accountant. During reassessment, assessee submitted form 56G certified by Chartered Accountant. With regard to the furnishing of Form 56G along with the return of income is concerned, the Id. CIT(A) held that as per sub-rule (3) of Income-tax Rules, 1962 assessee was mandatorily required to file his return for the A.Y. 2011-12 electronically under digital signature. Further, such return was to be filed as per sub-rule (2) of rule 12 of the Income Tax, Rules, 1962 which read as under:

*"(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or Form SUGAM (ITR-4S) or Form No. ITR- 4 or Form No. ITR-5 or Form No. ITR-6 **shall not be accompanied** by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act."*

8. On plain reading of aforesaid, the Id. CIT(A) held that the requirement of furnishing any document or copy of account or form or report of audit required to be attached with the return was dispensed with by the said rule.

9. Having gone through the facts on record, we find that the order of the Id. CIT(A) on the issue of reopening of the case after 4 years without any failure on the part of the assessee to disclose all the material facts and also on the issue of filing of the return ITR-1 (SAHAJ) to ITR-6 wherein it was held that there is no requirement of filing of audit report is on sound legal basis. Hence, we decline to interfere with the order of Id. CIT(A).

10. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 14/02/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 14/02/2023

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR