

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2339/Del/2009 (A.Y.: 1990-91)

Sahara India Financial Corp Ltd, 1-Kapoorthala Complex, Aliganj, Lucknow	Vs.	DCIT, Central Circle-I, Lucknow
(Appellant)		(Respondent)
PAN: AADCS8698C		

ITA No. 2355/Del/2009 (A.Y.: 1990-91)

ITA No. 2356/Del/2009 (A.Y.: 1991-92)

ITA No. 2357/Del/2009 (A.Y.: 1992-93)

ITA No. 2358/Del/2009 (A.Y.: 1993-94)

ACIT, Central Circle-6, New Delhi	Vs.	Sahara India Financial Corp Ltd, 1-Kapoorthala Complex, Aliganj, Lucknow
(Appellant)		(Respondent)
PAN: AADCS8698C		

CO No. 186/Del/2009 (In ITA No. 2356/Del/2009 (A.Y.: 1991-92))

CO No. 187/Del/2009 (In ITA No. 2357/Del/2009 (A.Y.: 1992-93))

CO No. 188/Del/2009 (In ITA No. 2358/Del/2009 (A.Y.: 1993-94))

Sahara India Financial Corp Ltd, 1-Kapoorthala Complex, Aliganj, Lucknow	Vs.	ACIT, Central Circle-6, New Delhi
(Appellant)		(Respondent)
PAN: AADCS8698C		

Assessee by : Shri Ajay Vohra, Sr. Adv
Shri Aditya Vohra, Adv

Revenue by: Shri Kailash Dan Ratnoo, CIT DR

Date of Hearing 08/02/2023
Date of pronouncement 16/02/2023

ORDER

PER ANUBHAV SHARMA, J. M.:

1. These are the appeals and cross objections arise of the orders even dated 25.03.2009, 26.03.2009 passed by CIT(A), for Assessment Years 1990-91 to 1993-94.

ITA No. 2339/Del/2009 (A.Y.: 1990-91) and

ITA No. 2355/Del/2009 (A.Y.: 1990-91)

2. Facts in brief of the case are that the assessee is a non-banking finance company (NBFC), carrying on business of running financial schemes and had filed its return for which original assessment was completed u/s 143(3) of the Act and subsequently revised u/s 154 of the Act. The assessment for AY 1990-91 was reopened vide notice issued u/s 148 of the Act on following grounds:-

"i). the assessee company had kept throughout the year average funds of approximately Rs.8,75,74,400/- with its sister concern M/s Sahara India Firm (Regd), and interest thereon at 18% i.e. Rs.1,57,67,392/- had not been charged and declared as income for the year.

(ii). The assessee company claimed operational expenses being service charges of Rs.1,50,40,582/- as reimbursed to sister concern M/s Sahara India Firm but only 3% i.e. Rs.4,51,215/- were permissible as genuine and the balance of Rs.1,45,89,367/- being not genuine were not allowable as deduction.

(iii). The income from interest on FDRS loans and advances was wrongly charged at a lower rate than chargeable and hence income was declared lower taxable."

3. Accordingly, the reassessment order u/s 143(3)/ 147 of the Act was passed and in appeal the same was set aside by the Id CIT(A)-2, Lucknow on the ground that there was no failure on the part of the assessee to disclose fully and truly all the material of the facts relevant for assessment , therefore, reopening was bad. The order was sustained by the Tribunal.

4. The case of the assessee has been reopened on the following grounds:-

"(i). The assessee is a finance company of the Sahara India Group and collects deposits through its agent M/s Sahara India (which is also a sister concern in which the directors are the partners). According to the arrangement between the assessee and its agent M/s Sahara India, the latter was supposed to be collecting all the amounts from the depositors for and on behalf of the assessee and, in return of the service rendered, receiving its dues. During the previous year, the agent collected Rs.4,95,84,387/- as 'service charges' from depositors but did not remit it to the assessee i.e. the amount was appropriated by the former.

(ii). The assessee collected deposits amounting to Rs. 50,13,52,752/- during the previous year in its various financial schemes. It was a statutory requirement that the particulars of each loan or deposit of Rs.20,000/- or more taken or accepted by the assessee prescribed form had to be furnished in the Tax Audit Report (Colun 10). But the same was not furnished by the auditors.

(iii). Even in the course of assessment proceedings, this information about deposits was not furnished.

In course of assessment proceedings for subsequent years, it has been noticed that the deposits collected by the assessee are not explained within the meaning of section 68 and, hence, are liable to be taxed as income of the assessee. Since the nature of business has remained the same, there is every reason to believe that even the deposits collected during the previous year were unexplained and liable to be taxed as income of the assessee. Since the statutory information was not furnished as mentioned above, the income escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment."

5. The assessee filed objections to the reopening and which were dealt by the Ld. AO at the time of passing the reassessment order. The Id CIT(A) had taken into consideration the pleas of assessee and the observed that the Ld.AO on aforesaid facts far stretched, almost beyond the legal domain, the provision of section 147 of the Act just for sake of issuance of notice u/s 148 of the Act. The addition has been deleted and the appeal of the assessee is partly allowed therefore. Revenue is in appeal vide ITA No. 2355/Del/2009 for AY 1990-91 challenging the deletions on merits and also raising additional grounds. Same are reproduced below for convenience:-

- "1. The order of the Ld. CIT(Appeals) is not correct in law and facts.*
- 2. Whether on the facts and in the circumstances of the case, the CIT(A) was correct in deleting the addition of Rs.17,54,73,463/- made on account of unexplained deposits u/s 68 of the IT Act, 1961.*
- 3. Whether on the facts and in the circumstances of the case, the CIT(A) was correct in deleting the disallowance of interest of Rs.3,54,46,701/- as contingent and unascertained liability, being the interest bearing funds lying with the agent as interest free.*
- 4. Whether on the facts and in the circumstances of the case, the CIT(A) was correct in deleting the addition of Rs.10,49,477/- relating to disallowance of reimbursement of expenses.*
- 5. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in deleting the addition of Rs.4,95,84,337/- made on account of Service Charges. The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal."*

ADDITIONAL GROUNDS

- "1. The CIT(A) erred in observing in last para on page 59 that the AO has far stretched almost beyond the legal domain, the provision of section 147 just for sake of issuing notice u/s 148.*
 - 2. That the Ld. CIT(A) erred on facts and in law in reproducing the adverse submissions made by the assessee, with regard to the validity of the reassessment proceedings without the decision on any such ground before him.*
 - 3. That the Ld.CIT(A) erred on facts and in law in only implicitly and not expressly upholding the validity of reassessment proceedings after extensively quoting the assessee's adverse submissions on the issue of validity of the reassessment proceedings without there being any decision on any such ground raised by the assessee before him."*
6. The assessee filed appeal ITA No. 2339/Del/2009 for AY 1990-91 on the following grounds:-
- "1. That the Ld. CIT(A) is not justified in not giving categorical finding in respect of ground no. 3(a) to 3(d) taken by the appellant challenging the very initiation of the proceedings under section 147 and consequent assumption of jurisdiction and framing of assessment claimed to be void ab-initio and bad in law by the appellant, on the facts and circumstances of the case.*
 - 2. That the Ld. CIT(A) is not justified in confirming the addition of interest on FDR amounting to Rs. 2,94,192/- made by the Assessing Officer relying on his order dated 22.03.1999 which order stands annulled/set aside.*

3. *That once the Id. CIT(A) has deleted the addition made on account of service charges he is not justified in restoring back the same to the file of the Assessing Officer for quantum allowability as held in para 13 of the appellate order."*

7. Heard and perused the record.

8. Arguing on the additional grounds which go to the root of jurisdiction of the reopening, the Id DR submitted that the Id CIT(A) has fallen an error in observing that there was illegal exercise of reopening powers and Ld. CIT(A) was unmindful of the fact that the reasons of second reopening were different. There was concealment of special audit and the issue with regard to special audit should have been taken into consideration by the Id CIT(A) using his plenary powers. It was submitted that issue was not examined by the Tribunal on merits when earlier reopening was in dispute and there was no finding on merits.

9. The Id Sr. Counsel appearing for the assessee however, stressed on the fact that there is complete non application of mind by the Id AO while recording the reasons to believe. It was submitted that in the first round of reassessment proceedings the additions on the same ground were made which was set aside by the Id First Appellate Authority and revenue's appeal before the Tribunal was dismissed and once the reassessment on same ground was examined on merits, reopening on the same ground is beyond jurisdiction.

10. It was submitted that there is no case of non disclosure of material fact on the assessee as during the first reopening itself all the information were duly submitted by the assessee and the books of account were duly examined. It was submitted that deposit ledger were examined by the AO by way of spot survey and no objectionable material was found. It was submitted that there was no tangible material for reopening and on mere change of opinion reopening is proceeded. In support of this contention, catena of judicial pronouncement were relied by the Id. Sr. Counsel.

11. Now, appreciating the matter on record and the submissions the bench is of considered opinion that there is no substance in the dispute raised by Revenue that the grounds of reopening second time are different than those raised earlier. The aforesaid reproduction of reasons show that merely by wording the reasons differently Id AO had tried to invoke the jurisdiction of reassessment. The fundamental question in earlier assessment was the analysis of the income occurring from the deposits collected through its agent. Once the additions from were made in original assessment and re-examined in reassessment proceedings, the same could not have been subject matter of reasons to believe by merely expanding the scope of enquiry of the manner and nature of deposits collected by the assessee.

12. The order of the Id CIT(A) reflects that he had duly taken into consideration all the legal aspect of the issue with regard to reopening while sustaining the submission on behalf of the assessee. The Id AO had certainly far stretched the powers u/s 147. There is no force in the contention of the Id DR that the Id CIT(A) has failed to invoke plenary power by looking at the special audit as in fact the special audit report was dated 02.09.1994 and same was already available at the time of first reassessment itself.

ITA No. 2356/Del/2009 (A.Y.: 1991-92) & CO No. 186/Del/2009

ITA No. 2357/Del/2009 (A.Y.: 1992-93) & CO No. 187/Del/2009

ITA No. 2358/Del/2009 (A.Y.: 1993-94) & CO No. 188/Del/2009

13. As with regard to these appeals of Revenue for A.Y.: 1991-92, 1992-93 and 1993-94 challenging deletions on merits there are cross objections of assessee challenging the failure of CIT(A) in not determining the grounds that the reopening is bad in law. It can be appreciated that the Ld. CIT(A) in his impugned orders while dealing with ground no 3(a) to 3(c) covering the issue of validity of reopening has taken into consideration the

pleas of assessee and observed that the Ld.AO on aforesaid facts far stretched, almost beyond the legal domain, the provision of section 147 of the Act just for sake of issuance of notice u/s 148 of the Act. These findings are not challenged by the revenue in these appeals. Submissions of both the sides were *pari materia* to AY1990-91.

14. After examining the reasons of reopening for Assessment Year 1991-92 available at Page No. 247 to 251, for Assessment Year 1992-93 at page No. 529 to 533, for Assessment Year 1993-94 at page No. 707-711 of the paper book in Volume-II, III and IV respectively, it can be observed that similar to the reasons for reopening for Assessment Year 1990-91 as discussed above, the reopening was in regard to issues already examined and artificially expanding the scope of enquiry on the manner and nature of deposits collected by the assessee. Ld. CIT(A) inspite of appreciating the submissions of assessee failed to benefit the assessee by deciding the grounds in favor of the assessee.

15. In regard to ITA NO. 2358/Del/2009, for AY 1993-94, it can be observed that there is an additional legal issue, of questioning the reopening being barred by limitation provide u/s 149 of the Act as notice was issued on 02.06.2001 i.e. after expiry of six years from the end of assessment year 1993-94. Since amendment in section 149 restricting the limitation of period for reopening the reassessments to six years, had come into effect from 01.06.2001, which being one of the nature of amendment in procedural laws would be applicable to the case of the assessee for AY 1993-94. Reliance in this regard has been rightly placed by the Sr. Counsel on the judgment of Hon'ble Delhi High Court in C. B. Richards Ellis Mauritius Ltd. Vs. ADIT 208 Taxmann 322 (del) and Elam Vs. N. Illamathy Vs. ITO 275 Taxman 25 (Mad) and Mon Mohan Kohli Vs. ACIT 441 ITR 207 (Del). Thus on this basis also the reopening for AY 1993-94 is bad in law, which Ld. CIT(A) failed to appreciate.

16. In the light of the aforesaid discussion the **appeals of the revenue are dismissed and the appeal of the assessee in ITA No.**

2339/Del/2009 for Assessment Year 1990-91 and the Cross Objections of the assessee stands allowed. The impugned reassessment orders in respective Assessment Years are set aside.

Order pronounced in the open court on 16/02/2023.

-Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

-Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 16/02/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi