

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH, 'SMC': AGRA**

**(Through Video Conferencing)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.386/AGR/2017  
[Assessment Year: 2008-09]**

Avnessh Kumar Chaturvedi 29, Shivpuram, Pashcmipuri Near Bansi Vihar, Bodia Road, Agra-282007	Vs	Commissioner of Income Tax (Appeal)-1, Aayakar Bhawan, Sanjay Place, Agra,
<b>PAN-ADMPC8814B</b>		
Assessee		Revenue

Assessee by	Sh. Deependra Mohan, CA
Revenue by	Sh. Shailendra Shrivastava, SR. DR

<b>Date of Hearing</b>	<b>19.07.2023</b>
<b>Date of Pronouncement</b>	<b>25.07.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the Ld. CIT-1, Agra, passed u/s 144/148 of the Act dated 28.03.2017 and pertains to Assessment Year 2008-09.

2. The grounds of appeal raised by the assessee is as under:-

- 1) *That the authorities below have erred in law and on facts in reopening the assessment proceedings u/s 147 of the Income Tax Act, even when there was no failure on part of appellant to disclose fully and truly all material facts.*
- 2) *That the authorities below have erred in law and on facts by confirming addition amounting to Rs.3,61,123/- between the amount shown in audit report and payment as per TDS certificate made on gross receipt of the appellant, difference*

*pertains to VAT and Freight expenses which was not the income of the appellant.*

- 3) *That the authorities below have erred in law and on facts by confirming addition amounting to Rs.4,01,000/- as disallowance u/s 40A(3), however, such amount was only cash withdrawal from the bank.*

3. Brief facts of the case are that the assessee is engaged in the business of advertisement through Hoardings/Signboards, which it does for Govt. Departments in the trade name of M/s A.K. Traders, being the proprietorship firm. The assessee had filed his Income Tax return for the Assessment year 2008-09 on 29.09.2008 declaring income of Rs.1,75,170/-. Thereafter, assessment under section 143(3) was completed on 30.11.2010 at the assessed income of Rs.2,31,541/- after a 25% flat disallowance out of the expenses incurred on Diwali, Salary expense, Miscellaneous expense, and tour and travelling expenses. A notice under section 148 was issued on 19.03.2014 to the assessee in respect of two issues- one, the difference of Rs.3,61,123/- noticed by the A.O. between the figures of gross receipts and the contract receipts as per the TDS certificates, and two, the payments of Rs.15,48,900/-, which had been made through bearer cheques by the assessee which came within the ambit of section 40A(3) of the Act. Thereafter, assessment has been completed us 144/148 vide the impugned order dated 18.02.2015 determining the assessed income at Rs. 9,93,660/- as against the originally assessed income of Rs. 2,31,540/-.

4. Against the above order, the assessee appealed before the Ld. CIT(A).

5. First ground taken before the Ld. CIT(A) was reopening is bad in law. The Ld. CIT(A) did not accept this plea and held that the reopening is valid.

6. Against the above order, the assessee is in appeal before us.
7. We have heard both the parties and perused the records. The Id. Counsel for the assessee submitted that the assessment was reopened after four year and there was no failure on the part of the assessee to disclose fully and truly all material facts. Hence, he pleaded that reopening is bad in law.
8. Per Contra, the Id. DR relied upon the orders of the authorities below.
9. Upon careful consideration, we note that in the reopening, the additions made are with reference to material available on record of the AO. No new material had come. In such circumstances, proviso to section 147 of the Act comes to the rescue of the assessee. It provides that when the assessment has been done u/s 143(3), no action can be taken under taken this section after the expiry of four years from the end of the relevant assessment year's, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose fully and truly all material facts. We find that assessment was completed on 30.11.2010 and a notice u/s 148 was issued to the assessee on 19.03.2014, which shows that the reopening has been done after four years without any new incriminating material available before the Id. CIT(A). Hence, we set-aside the order of the Ld. CIT(A) and decide the issue in favour of the assessee.
10. Since, we have quashed the reopening of assessment, adjudication of other grounds is only of academic interest only, hence, we are not engaging into the same.

11. In the result, this appeal by the assessee stands partly allowed.

Order pronounced in the open court on 25<sup>th</sup> July, 2023.

**Sd/-**  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

**Delhi;** 25.07.2023.

*Shekhar,*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi