

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 52/Mum/2023 (A.Y.2012-13)**

**Mohd. Ishteyaque Anwar,**

Plot No. 141, Swapnapurti CHS  
Hingane Mala, Hadapsar,  
Pune-411028

**PAN: AGHPA8626K**

..... Appellant

Vs.

**ACIT Cen. Cir. 1(3)**

Aayakar Bhavan,  
Mumbai-400 020

..... Respondent

Appellant by : Shri Viraj Mehta, Ld. AR  
Respondent by : Smt. Mahita Nair, CIT-DR

Date of hearing : 15/06/2023  
Date of pronouncement : 07/08/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of Ld. CIT (A)-47, Mumbai dated 09.11.2022 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

*1. Reopening under section 147/148 is bad in law*

*The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the "Ld. CIT(A)"] erred in confirming the action of the Ld. A.O. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without recording valid and proper reasons to show that any income chargeable to tax has escaped assessment. Hence, the notice under section 148 and subsequent assessment order passed under section 144 r.w.s. 147 is bad in law and the same may be quashed and set aside.*

*2. No Proper Sanction u/s 151 and hence order is bad in law*

*The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the "Ld. CIT(A)"] erred in confirming the action of the Ld. A.O. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without having proper sanction u/s 151. Hence, the notice under section 148 and subsequent assessment order passed under section 144 r.w.s. 147 is bad in law and the same may be quashed and set aside.*

*Merit*

*3. Addition of Rs. 72, 53,366/- as undisclosed income*

*The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the "Ld. CIT (A)] erred in confirming the action of the Ld. A.O. by making addition of Rs. 72,53,366/- as undisclosed income without any basis. Hence, addition made is bad in law and the same may be deleted and set aside.*

*4. The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal.*

2. The brief facts of the case are that the assessee individual had not filed any return of income for the year under consideration. Thereafter, AO received information from "Non-Filers Monitoring System" that the assessee has received payments as contractor under section 194C of the Act.

Thereafter, after due verification, case of the assessee was re-opened and notice u/s. 148 was issued and served on assessee. A reminder was issued on 18-19-2019; however, there was no compliance by the assessee. Ultimately, a show cause u/s. 144 of the Act was issued on 16-10-2019. Still, there was no response from the side of assessee.

2. Ultimately, information available in Form No. 26AS was considered for the purposes of assessment proceedings and payments received from M/s. Indus Developers, Safe Air Engineers Pvt. Ltd., LG Electronics India Pvt. Ltd., A2Z Online Services Pvt. Ltd, Amit Prabhakar and Sterling & Wilson Ltd. amounting to Rs. 72,53,366/- was treated as un-disclosed income of the assessee and assessed accordingly. Assessee being aggrieved with this order of AO, preferred an appeal before the Ld. CIT (A)-47, Mumbai, who in turn confirmed the action of AO in his appeal order passed u/s. 250 of the Act. Assessee being further aggrieved preferred present appeal before us.

3. We have gone through the order of AO, order of Ld. CIT(A) and submissions of the assessee along with grounds of appeal. We observed that assessment order was passed u/s. 144 r.w.s. 147 of the Act. Assessee never turned up before the AO to file his replies and explanations about his income to be assessed. Moreover, assessee never filed any return of income before issuance of notice or after issuance of notice u/s. 148 of the Act.

4. Ground Nos. 1 and 2 pertains to Re-opening of assessment u/s. 147/148 of the Act and Sanction u/s. 151 of the Act respectively. We have examined the submissions of assessee and Orders of authorities below:-

**CIT(A)'s Order**

*“6.2 The AO has clearly noted that information available on record and observed from 26AS for A.Y. 2012-13, the appellant has received payments during the financial year 2011-12 from Indus Developers, Safe Air Engineering Pvt Ltd, A2Z Online services Pvt Ltd, Amit Prabhakar Alurkar and Sterling & Wilson Ltd amounting to Rs 72,53,366/-. Opportunity was granted to the appellant to explain the discrepancies, which the appellant failed to avail. Thus, there was new tangible material on record of the AO in the form of information from 26AS on the basis of which the re-assessment proceedings has been initiated.*

*6.6 Any fresh information received by the AO. can entitle him to issue notice u/s. 148 if on the basis of such information he has prima facie reason to believe that income has escaped assessment. So much so that it was held by the Hon'ble Supreme Court in Claggett Brachi Co. Ltd. vs CIT 177 ITR 409 (SC) that information obtained during assessment proceedings of a subsequent year can also validate the proceedings initiated u/s. 147 for earlier year. Similarly, Hon'ble Bombay High Court in the case of Anusandhan Investments Ltd. vs. M.R. Singh, DCIT, 287 ITR 482 held that a notice issued u/s. 148 based on assessment of subsequent assessment year is valid even if the people is pending for such assessment.*

*6.20 In view of the above binding judicial precedents, I am of the considered view that the AO had valid reasons to initiate the reassessment proceedings, which were duly recorded and communicated to the appellant. Thus, the A.O. has rightly assumed jurisdiction and correctly initiated proceedings u/s. 148 of the Act. Accordingly, the Ground of Appeal No. 1 of the present appeal is dismissed.”*

**AO's order**

*“The assessee had not filed return of income for A.Y. 2012-13. Information was received from Non-filers Monitoring System that the "assessee is shown to have made payment to contractors (Section 194C)". The information received was verified from Individual Transaction Statement' details of the assessee. Thereafter, the case was reopened under section 147 of the Income-tax Act 1961, after recording the*

*reasons to believe for re-opening as required u/s 151(1) of the Income-tax Act 1961, with the approval of the Pr. Commissioner of Income-tax Central -1, Mumbai, which is placed on record.*

*4. The reasons for reopening could not be communicated as the assessee had preferred not to respond to any of the statutory notices or to file the return of income as required u/s. 148 of the Income-tax Act 1961. In view of continuous non-compliance from the part of the assessee, the assessment is hereby made under section 144 of the Income-tax Act 1961.”*

5. In view of above settled legal position, without any hesitation it can be concluded that grounds relating to re-opening u/s. 147 and sanction of appropriate authority u/s. 151 raised by assessee is not sustainable, **hence dismissed**. Assessee can't take advantage of its own default in the guise of technical grounds, which are otherwise also not in favour of assessee. Order of AO was amply clear on this issue that proper opportunities were given to assessee to represent his case, but he intentionally avoided the same. Assessee intentionally avoided the assessment proceedings and then suddenly came forward before the First Appellate Authority to present the matter with due explanations and technical grounds to challenge the assessment proceedings itself, which is not sustainable. Return filed by assessee on 05.12.2019 and verified on 07.12.2019 is of no use as without verification of return, same is non-Est in the eye of law and concerned AO can't have any access to the same. So, technically assessment order passed u/s. 144 on 06.12.2019 is perfectly fine as per law and we do not find any ambiguity in the same. **In the result Ground Nos. 1 and 2 raised by the assessee is dismissed.**

6. As far as Ground No. 3 is concerned, we found that assessee has filed his financials as per "Annexure-2" and relevant bank statement of DCB Bank, Central Bank of India and IDBI Bank as per "Annexure-3, 4 and 5 respectively". A table is also enclosed listing the bank wise credits as per "Annexure-6". These documents, assessee filed before the Ld. CIT (A) and not before the AO for his verification. Assessee also tried to convey that figure taken by AO during the assessment proceedings amounting to Rs. 72,53,366/- was wrong, i.e., receipts considered twice, actual number of receipts as per bank statement and reconciliation filed by the assessee was Rs. 36,26,683/-. In this regard, following the basic principle of taxation laws, even in ex-parte assessment, only real income can be assessed. But, as in this case there was no compliance made by the assessee, AO considered the figure based on information in his possession, i.e., Form No. 26AS.

7. We have considered the submissions of assessee alongwith the orders of authorities below. We are of the considered opinion that one more opportunity should be given to assessee to substantiate his claims mentioned (supra), as otherwise it will be an assessment on unfair figures. With this view of ours we restore the matter back to the Jurisdictional AO for verification of the documents claimed in his favour by the assessee before the First Appellate Authority. In view of this we direct the AO to examine the documents relied upon by the assessee to have a fair assessment of income. It is further directed that if claim of assessee is found to be correct as mentioned (supra), figure declared by the assessee for taxation purposes, i.e., 5,13,436/- is to be accepted u/s. 44AD, as the provisions of presumptive section are mandatory in nature to be followed, if no books of accounts are

being maintained. Assessee is also directed to comply with the notices in a time bound manner, without any default. **In these terms ground no. 3 raised by the assessee is partly allowed for statistical purposes.**

**8. In the result, appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 7<sup>th</sup> day of August, 2023.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 07/08/2023

*Sr. PS (Dhananjay)*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai