

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: F: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.6755/Del/2018
Assessment Year: 2009-10

M/s Vishal Shuttering LLP (on behalf of Vishal Shuttering P. Ltd.) D-11/144, 1 st Floor, Sector-8, Rohini, Delhi 110085 PAN AACCV 4580 F	vs.	The ACIT, Circle 26(2), New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Anil Jain, CA
For Revenue :	Shri Vivek Vardhan , Sr. DR

Date of Hearing :	14.09.2023
Date of Pronouncement :	13.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. CIT(A)-9, New Delhi dated 13.08.2018 for AY 2009-10.

2. The grounds have been raised by the assessee are as follows:-

1. That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that the initiation of proceedings u/s 147/148 is illegal and bad in law and consequently the assessment framed being illegal requires to be quashed.

2. That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that the issue of notice u/s 148 and the completion of assessment in the name of non-existent entity is illegal and bad in law and thus requires to be quashed.

3. That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT (A) has erred in sustaining the disallowance of Rs. 19,18,545/- on account of F&O Trading Loss.

4. That on the facts and circumstances of the case and the provisions of the law, the Id. AO has erred in initiation of penalty proceedings u/s 271(1)(c) of the Act.

Ground no. 1 of assessee

3. Apropos ground no. 1 the Id. AR submitted that the copy of the reasons supplied by the Assessing Officer vide letter dated 14.10.2016 clearly reveals that in para 4(a) the Assessing Officer noted that "the assessee has not claimed any current year losses" and in subsequent para 4 (wrongly written as 4 in the place of 5) he drawn a conclusion that "client code modification has been carried out in the case of assessee to shift the ascertained losses of Rs. 17,69,637.50 and by shifting above losses the assessee has artificially reduced/depressed its profits hence he has reason to believe that the income of assessee upto extent of said amount has escaped assessment". The Id. AR vehemently pointed out that the Assessing Officer has noted contradictory facts and findings without application of mind to the material available before him therefore he did not assume valid jurisdiction to have reason to believe that income has escaped assessment particularly when he himself in para 4(a) has noted that the assessee has not claimed any current year losses. The Id. AR has placed reliance on the order of ITAT Delhi in the case of AKG Securities & Consulting Ltd. vs ITO in ITA No. 4395/Del/2019 order dated 27.02.2020 for AY 2010-11.

4. Replying to the above, the Id. Senior DR has placed reliance on the orders of the authority below.

5. On careful consideration of above submissions and careful perusal of reasons recorded by the Assessing Officer available at pages 49 to 51 of assessee paper book we note that the Assessing Officer in para 4(a) noted that the assessee has not claimed any current year loss and in subsequent para 5 which was wrongly numbered as 4, he recorded a conclusion that client code modification has been carried out in the case of assessee to shift ascertained losses with an intention to reduced the taxable profits hence has reason to believe that income has escaped assessment. These contradictory factual notings of the Assessing Officer in the reasons recorded clearly show that the Assessing Officer has proceeded to initiate reassessment proceedings u/s. 147 of the

Act and to issue notice u/s. 148 of the Act based on incorrect and wrong facts and thus we safely hold that he has recorded reason without application of mind to the material received by him for initiation of reassessment proceedings. Therefore he did not assume valid jurisdiction to initiate reassessment proceedings and to issue notice u/s. 148 of the Act which has resulted into inevitable invalidation of entire reassessment proceedings and consequent reassessment order dated 26.12.2016 passed u/s. 147/143(3) of the Act for AY 2009-10 and we hold so. Accordingly, ground no.1 of assessee is allowed and impugned reassessment order is quashed.

6. The AR submitted that the assessee may kindly be allowed to withdrawn ground no. 2 and hence the same is dismissed as withdrawn. The Id. Representative of both the sides have not placed any argument on the other grounds and hence we did not deem it proper to adjudicate the same in absence of any arguments and having become academic.

7. In the result, the appeal of the assessee is allowed in the manner as indicated above.

Order pronounced in the open court on 13.10.2023.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 13th October, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi