

IN THE INCOME TAX APPELLATE TRIBUNAL
[DEHRADUN BENCH "DB" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
A N D
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 171/Del/2013
निर्धारणवर्ष /Assessment Year: 2003-04

ADIT, International Taxation, Dehradun.	बनाम Vs.	M/s. Daelim Industries Co. Limited, C/o. Gurpreet Singh & Co., 15/1, Neshvilla Road, Dehradun - 248 001. Uttarakhand.
		PAN No. AAACD8315N
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	None;
राजस्वकीओरसे / Department by :	Shri Mayank Kumar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	21/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	31/10/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M.

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-II [hereinafter

referred to CIT (Appeals)] Dehradun, dated 23.10.2012 for assessment year 2003-04.

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

“i. Whether on the facts and circumstances of the case, the CIT (A) has erred in failing to appreciate that the assessee had failed to disclose fully and truly all material facts by submitting that ownership in items of supply passed outside India, whereas subsequent assessment years it was found that assessee was executing a turnkey contract and ownership in supplies was transferred only in India.

ii. Whether on the facts and circumstances of the case the CIT (A) has ignored the decision of Mumbai High Court in Ms Indo-European Breweries Ltd. where the Hon'ble High Court has held that findings during subsequent year's assessment constituted sufficient tangible material for reassessment.

iii. Whether on the facts and circumstances of the case the CIT (A) has erred in ignoring the decisions of High Courts where it has been held that where AO has formed no opinion either expressly or otherwise then even if material is available on record reassessment cannot be challenged on ground of change of opinion.

iv. Whether on the facts and circumstances of the case the CIT (A) has erred in relying upon the order of the Hon'ble Court of Uttarakhand quashing the initiation of proceedings u/s 147 when it is distinguishable on facts.

v. Whether on the facts and circumstances of the case the CIT (A) has ignored the fact the Department has filed a special petition before divisional bench of the court in the case of BJ Services and 22 others which is still pending.

vi. Whether On the facts and circumstances of the case the CIT (A) has erred in not adjudicating the findings on the merits of the case.”

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, we dispose off this appeal on hearing the ld. DR.

4. The ld. CIT (Appeals) quashed the re-assessment order passed by the Assessing Officer holding that the re-opening of the assessment is bad in law observing as under:-

“3.3 The Ld. AR has averred that the reopening was done on the basis of a change of opinion in a situation where no new facts have come to light. Also the original assessment was framed u/s 143(3) of the Act and there are a catena of case laws on the issue that once an order is framed u/s 143(3) of the Act then it has to be presumed that all material facts were considered by the AO. The Ld. AR has relied upon a number of case laws to canvass the point that reopening in the instant case was merely due to a change of opinion and not because some new facts or information was in the possession of the AO. It is observed that the facts of this case are similar to the facts adjudicated in the case of B.J. Services Company Middle East Ltd. & Ors. reported in 339 ITR 169 (UK). The observations in para 46 and 47 of this judgment are particularly relevant for this matter wherein it has been stated that the ground reality having remained unchanged from the time of the earlier assessment till the time of reopening leading to the initiation of proceedings u/s 147/148 of the Act not having the support of law since they were initiated merely on a reappraisal of the same set of facts. Since the facts of this case are identical with the B.J. Services (Supra) case it is held that the Ld. A.O's assumption of jurisdiction itself was illegal and thus any proceedings that follow this action also cannot be supported and are hereby quashed.”

5. As could be seen from the above the ld. CIT (Appeals) held that re-opening of assessment is bad in law relying on the judgement of the Hon'ble Uttarakhand High Court in the case

of B.J. Services Company Middle East Ltd. & Ors. (supra). It is observed that the Id. CIT (Appeals) has not discussed thoroughly as to how there is a change of opinion in re-opening the assessment. The Id. CIT (Appeals) did not even refer to the reasons for re-opening the assessment the events occurred while completing the original assessment under section 143(3) of the Act. Nothing has been discussed by the Id. CIT (Appeals) so as to arrive at a conclusion that the re-opening of assessment is merely a change of opinion. The order is too cryptic without any reference to facts. Thus, we set aside the order of the Id. CIT (Appeals) and restore the matter to the file of the Id. CIT (Appeals) for deciding the issues afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

6. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on : 31/10/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/10/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI/
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	30.10.2023
Date on which the typed draft is placed before the dictating Member	31.10.2023
Date on which the typed draft is placed before the Other Member	31.10.2023
Date on which the approved draft comes to the Sr. PS/PS	31.10.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	31.10.2023
Date on which the fair order comes back to the Sr. PS/PS	31.10.2023
Date on which the final order is uploaded on the website of ITAT	31.10.2023
Date on which the file goes to the Bench Clerk	31.10.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

