

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)  
AND  
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.3152/Mum/2023  
(Assessment year : 2015-16)

M/s Ramji Board & Paper Mill Private Limited, B-501, Videocon Towers, Thakur Complex, Kandivali East, Mumbai <b>PAN : AAACR2700F</b>	vs	DCIT-Central Circle 6(2) Room No.1903, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai – 400 021
<b>APPELLANT</b>		<b>RESPONDENT</b>

Present for the Assessee	: Ms. Dinkle Hariya a/w Ms. Simoni Chouhan, Ld. Advs.
Present for the Department	: Shri. Srinivas, Ld. DR

Date of hearing	: 10/01/2024
Date of pronouncement	: 24/01/2024

**ORDER****Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee, against the order dated 07/07/2023 impugned herein passed by the Commissioner of Income-tax (Appeals)-54, Mumbai (in short, 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y.2015-16.

**2.** In the instant case, the case of the Assessee was reopened under section 147 of the Act on the basis of survey action conducted in the case of Assessee and post survey proceedings and analyzing the data back up mainly on the ground that the Assessee has made various payments in cash amounting to Rs.3,82,09,507/- which has escaped assessment.

**3.** The Assessing Officer ultimately made the disallowance of Rs.7,73,929/- on account of unexplained expenditure under section 69C of the Act being salary paid in cash (difference of Rs.15,68,564/- payment made in cash as per salary sheet minus the amount of Rs.7,94,635/- as recorded in daily data base).

**4.** The Ld. Commissioner on the same footing as observed by the Assessing Officer, affirmed the addition against which the Assessee is in appeal before us.

**5.** We have heard the parties and perused the material available on record. As per Ms. Dinkle Hariya, Ld. Counsel of the Assessee, the main allegation for reopening of the case under section 147 of the Act was that the Assessee has made payment in cash and not followed the provisions of section 40A(3) of the Act and, therefore, the amount of Rs.3,82,09,507/- is liable to be disallowed under section 40A(3) of the Act. However,

admittedly, no such addition has been made and, therefore, in view of the judgment passed by the Hon'ble jurisdictional High Court in the case of Commissioner of Income-tax-5, Mumbai vs. Jet Airways (I) Ltd 331 ITR 236 (Bom) wherein it has been held that if after issuing a notice under section 148 of the Act, the Assessing Officer accepted the contention of the Assessee and holds that the income for which he had initially formed a reason to believe had escaped assessment, as a matter of fact not escaped assessment, it is not open to the Assessing Officer independently to Assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be decided in the event of a challenge by the Assessee.

**5.1** Ld. Counsel of the Assessee further emphasized that the Hon'ble Delhi High Court as well, in the case of Ranbaxy Laboratories Ltd. vs CIT 336 ITR 136 (Del) has also dealt with identical issue as involved in the instant case and by considering the judgment in the case of CIT Vs Jet Airways (I) Ltd (supra) ultimately held that where a new issue comes before AO during the course of proceedings of assessment or re-assessment of escaped income and which intends to take into account, he would be required to issue a fresh notice under section 148 of the Act.

**6.** On the contrary Shri. Srinivas, Ld. DR vehemently supported the impugned order by submitting that the impugned

order does not suffers from any perversity, improper and/or illegality.

**7.** We have given thoughtful consideration to the rival claims of the parties. As claimed by Ld. Counsel for the Assessee, admittedly in the instant case, the reasons were recorded for not following the provisions of section 40A(3) of the Act and consequential disallowance of Rs.3,82,09,507/- under section 40A(3) of the Act. But no such disallowance has been made by the Assessing Officer in the assessment order. However, the Assessing Officer proceeded to make the addition of Rs.7,73,929/- as unexplained expenditure under section 69C of the Act being difference between the amount of Rs.15,68,564/- and Rs.7,94,635/- respectively on account of salary paid in cash and daily database and ledger as submitted by the Assessee which, according to our considered opinion and dictum laid down in the cases i.e. Jet Airways and Ranbaxy Laboratories Ltd. (supra), is not warranted being sans recording the proper satisfaction as mandated for issuance of notice under section 148 of the Act and, therefore, we do not have any hesitation to delete the addition by allowing the appeal of the Assessee. As we have deleted the addition on legal aspect, hence not dwelling into other issues/merit of the case, as adjudication of the same would be futile exercise.

**8.** In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open Court on 24//01/2024.**

**Sd/-**

**sd/-**

<b>(MISS. PADMAVATHY S.)</b>	<b>(NARENDER KUMAR CHOUDHRY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Pavanan

**प्रतिलिपि अग्रेषित 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
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar, **ITAT, Mumbai**