

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

ITA No. 2053/Del/2023 : Asstt. Year: 2010-11

M/s Sheetal Impex P. Ltd., 4735/11,22, Prakash Deep Building, Ansari Road, Darya Ganj, New Delhi 110002	Vs	DCIT, Central Circle-26, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCS5322E		

**Assessee by : Sh. Ashok Jain, CA
Revenue by : Sh. Atiq Ahmed, Sr. DR**

Date of Hearing: 16.11.2023	Date of Pronouncement: 09.02.2024
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ORDER

The present appeal has been filed by the assessee against the orders of Id. CIT(A)-29, New Delhi dated 29.05.2023.

2. Following grounds have been raised by the assessee:

"1. That the order of Ld. CIT (A) is against the law, facts, principles of natural justice and all other principles and rules of law and therefore liable to be set aside.

2. That the proceedings and order of Ld CIT (A) are erroneous on law and contrary to principles of natural justice as no notice of hearing of appeal as alleged were received.

3. That the Notice U/s 148 is bad in law in so far as it is based on material discretely collected by the Investigation Wing and mechanically relied upon by Ld AO without verifying the credibility of information which was false & blatantly contrary to information available on record. The proceedings and order are bad in law since passed without disposing of objections of the assessee.

4. That the notice U/s 148, consequent proceedings and order U/s 147/143(3) is time barred, without jurisdiction, bad in law, contrary to provisions of law and material available on record and hence the assessment based thereon must be quashed as erroneous and void.

5. That the order of CIT(A) is mechanical and void in so far as based on submissions filed during the course of other appeal proceedings with Appeal Number CIT

(A), Delhi-29/10326/2019-20 which is against assessment order U/s 153A dated

29.12.2019. As such order passed by Ld CIT(A) is void ab initio and liable to be quashed

6. That the Ld CIT (A) has erred in confirming the addition in the assessment order since Ld CIT(A) ought to have held that Ld. AO has acted arbitrarily and on presumption basis, contrary to principles of natural justice and provisions of law in initiating and conducting assessment without jurisdiction and issuing notices which is erroneous on facts and law and in conducting the assessment proceedings. As such findings and assessments based thereon stands vitiated being bad in law.

7. That the Ld CIT(A) has erred in upholding the addition of Rs. 12,28,249/- made by Ld AO on allegation on account of Client Code Modification which is contrary to facts, provisions of law, principles of natural justice and based on surmises and conjectures and without considering the submissions filed and as such was liable to be deleted.

8. That Ld CIT(A) is not justified in ignoring the submissions filed and evidences on record which is against the provisions of law and principles of natural justice.

9. The Ld AO has erred in initiating penalty proceedings U/s 271(1)(c) of the Income Tax Act, 1961 which is misconceived on facts and in law and liable to be deleted."

3. Pertinent facts examined for adjudication of the case are that,

- (i) The assessee filed return of income for the A.Y 2010-11 on 17.09.2010.
- (ii) The order u/s. 143(3) was passed on 25.03.2013 by ITO Ward, Rohtak.
- (iii) Vide page no. 1 of the Assessment Order, the Assessing Officer has examined the brokerage paid to NCJ Share & Stock Brokers Ltd. and M/s. Vineet Securities P. Ltd.,
- (iv) The notice u/s. 147 was issued on 30.03.2017 for examination of same transactions mentioned above.

4. The provisions of section 147 are as under:

"[Income escaping assessment.

5 147. If the 6[Assessing] Officer 7[has reason to believe 8] that any income chargeable to tax has escaped assessment 8 for any assessment year, he may, subject to the provisions of sections 148 to 153 , assess or reassess 8 such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, 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 make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts 9 necessary for his assessment, for that assessment year:

10 [Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily 9 amount to disclosure within the meaning of the foregoing proviso.

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(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

11 [Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]”

5. Since the same issue of reopening stands examined during the proceedings u/s. 143(3), the reopening of the case of the assessee after four years in the absence of any reason of the failure on the part of the assessee to disclose fully and truly all material facts, the notice issued to examine the same issue is treated as bad in law.

6. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 09/02/2024.

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 09/02/2024

Subodh Kumar/NV, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR