

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No.2891/Mum/2023  
(Assessment Year: 2009-10)

Jayantilal Keshavji Chheda Shop No. 1, Vireshwar Krupa, Tejpal Road, Vile Parle (E), Mumbai – 400 057	Vs.	Income Tax Officer Ward 25(2)(4) Mumbai
PAN/GIR No. AAEPCC 3913 E		
(Assessee)	:	(Respondent)
<b>Assessee by</b>	:	Shri Devendra Jain
<b>Respondent by</b>	:	Shri Surendra Kumar Meena
<b>Date of Hearing</b>	:	07.02.2024
<b>Date of Pronouncement</b>	:	13.02.2024

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2009-10.

2. The assessee in the present appeal has challenged the reassessment proceeding along with the disallowance of Rs.19,22,844/- on account of interest expenses claimed by the assessee against the interest on capital earned from the partnership firm.

3. The brief facts are that the assessee is an individual engaged in the business of trading of electronic goods and home appliances in the partnership concern M/s. Janta

Sales Agency. The assessee had filed his return of income for the year under consideration, declaring total income at Rs.7,85,184/- dated 30.09.2009. The assessee's case was then selected for scrutiny and the assessment order dated 12.12.2011 was passed u/s. 143(3) of the Act, determining the total income at Rs.8,53,063/-. Subsequent to this, the assessee's case was reopened vide notice dated 14.11.2014 u/s. 148 of the Act where the ld. Assessing Officer ('A.O.' for short) furnished the reasons for reopening of the assessment to the assessee. The ld. A.O. vide assessment order dated 31.03.2016 passed u/s. 143(3) r.w.s. 147 of the Act determined the total income at Rs.46,69,560/- after making various additions/disallowances.

4. The assessee was in appeal before the first appellate authority who vide order dated 21.06.2023 upheld the addition made by the ld. A.O. on the ground that the assessee has failed to substantiate his claim by any supporting documentary evidences.

5. Aggrieved, the assessee is in appeal before us.

6. The learned Authorised Representative ('ld. AR' for short) for the assessee made a submission on the legal ground, challenging the reopening of the assessment. The ld. AR contended that the reasons for reopening state that the assessee had claimed deduction of Rs.19,22,854/- as 'expenses' against interest on capital and remuneration from the partnership firm which according to the ld. A.O. has resulted in the escapement of income. The ld. AR further stated that even during the original assessment proceeding, the details of the said expenses were furnished by the assessee where the assessee has disclosed all the material facts before the ld. A.O. The ld. AR further contended that it was a mere change of opinion by the ld. A.O. that the assessee's case has been reopened

where there was no application of mind *per se*. The ld. AR also stated that the reasons for reopening had mentioned the assessment year to be A.Y. 2011-12 instead of A.Y. 2009-10 and prayed that the reassessment proceeding ought to be quashed on the basis of invalid issue of notice.

7. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and stated that the assessment year mentioned in the reasons recorded was a mere typographical error which the assessee cannot take advantage of. The ld. DR further stated that the assessee has not furnished proper details of the expenses claimed by the assessee and that the ld. A.O. had rightly reopened the assessee's case. The ld. DR relied on the orders of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the legal issue raised by the assessee has to be *prima facie* decided before getting into the merits of the case, as this issue would go to the very root of the assessment proceeding. On considering the rival submissions, it is pertinent to point out that the reasons recorded for reopening has not categorically specified why the assessee's case has been reopened. It is necessary to reproduce the reasons recorded for ease of reference:

*In this case, the assessee filed the return of income on 30.09.2009 declaring total income at Rs.7,85,184/- and assessment u/s. 143(3) has been completed on 12.12.2011 determining the total income at Rs.8,53,060/-.*

*The assessee is an individual and proprietor of Janta sales and Marketing, engaged in the business of trading of electronic goods and home appliances. He is also partner in the firm M/s. Janta Sales Agencies.*

*It is seen from the computation of income, that the assessee claimed deduction on Rs.19,22,854/- as expenses against interest on capital and remuneration on firm partnership firm. In the absence of proper details of expenses, prima faice the allowance of expenses resulte in escapement of income to the extent of Rs.19,22,854/-.*

*In the circumstances, I have reason to believe that the income chargeable to tax has escaped assessment for A.Y. 2011-12 within the meaning of section 147 of the Income Tax Act, 1961.*

*The assessment is reopened u/s. 147 of the I T Act after obtaining the necessary sanction from commissioner of Income Tax – 21, Mumbai as per the provision of section 151(1) of the I. T. Act, 1961 vide his letter dated 14.11.2014.*

9. From the above mentioned reasons recorded, it is pertinent to point out that there has been no specific allegation as to what was the failure on the part of the assessee to truly and fully disclose the material facts necessary for the assessment. It is also to be noted that the issue for which the assessee's case has been reopened was well within the knowledge of the Id. A.O. during the original assessment proceeding. The Id. AR's contention that the assessee's case has been reopened beyond period of four years prescribed under the said provision was nevertheless without any new tangible material on record. It is a settled proposition of law that when the case of the assessee has to be reopened, as per section 147 of the Act, there has to be a substantial belief on the part of the Id. A.O. that income has escaped assessment. In the present case in hand, we do not find any such validation for the Id. A.O. to have reopened the assessment of the assessee beyond the period of four years based on the material which was already available in the books of accounts where the Id. A.O. has reappraised the same. We find merit in the submission of the Id. A.R. This case is no doubt an afterthought by the Id. A.O. to have reassessed the assessee's income based on the details which were already before the Id. A.O. during the original assessment proceeding and we do not find any justification as there was no failure on the part of the assessee to fully and truly disclose the material facts necessary for the assessment. We are of the view that the reassessment proceeding does not hold merit and is liable to be quashed. As we have held the reassessment to be invalid, the merits of the case requires no further adjudication.

9. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 13.02.2024.*

Sd/-

(Om Prakash Kant)  
Accountant Member

Mumbai; Dated : 13.02.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai