

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGOOR

[THROUGH HYBRID/VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.101/NAG./2023
Assessment Year 2011-2012

M/s. Vadera Enterprises, Vittal Nagar, GONDIA. PIN – 441 601. Maharashtra. PAN AAEFV2018D	vs.	The Income Tax Officer, Circle-5, Aaykar Bhavan, Nagpur. Maharashtra. PIN – 440 001
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	26.03.2024
Date of Pronouncement :	10.05.2024

ORDER

This assessee's appeal for assessment year 2011-2012 arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2022-23/1050156433(1) dated 27.02.2023, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

I have heard the department at length and perused the case file.

2. Mr. Marathe vehemently argued that both the learned lower authorities have rightly initiated sec.147/148 proceedings thereby making the impugned addition of Rs.2,22,664/- representing disallowance of excess salary paid to partners vis-à-vis the income derived in the relevant previous year. It is made clear that the assessment year herein is A.Y.2011-2012 and that the

assessee *inter alia* had filed its return on 16.03.2012 followed by a regular assessment u/sec.143(3) of the Act on 24.12.2013. The Assessing Officer thereafter initiated the impugned sec.148/147 proceedings by recording his reasons that the assessee's taxable income had 'escaped assessment' and issued his notice dated 24.11.2015 .

3. This tribunal asked the Learned DR during the course of hearing to indicate the tangible material leading the Assessing Officer to form his foregoing reason(s) of assessee's taxable income having escaped assessment. And that too in case of sec.143(3) regular assessment since there is no discussion in the assessment herein about the discovery of any fresh tangible material. No reply came from Revenue side. That being the case, I hereby quote CIT vs. Kelvinator of India Limited [2010] 187 Taxman 312 (SC) to hold that such a reopening is merely a 'change of opinion' which is not sustainable in law. Ordered accordingly.

The assessee succeeds in the instant issue of impugned reopening of assessment thereby rendering all of his other pleadings as academic.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 10.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 10th May, 2024
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "Nagpur-SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.