

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1485 & 1486/Chny/2023
निर्धारण वर्ष/Assessment Years: 2014-15 & 2015-16

The Income Tax Officer, Corporate Ward-6(1), Chennai.	v.	M/s.SPR & RG Constructions- Pvt. Ltd., 57, 1 st Floor, Narayana Mudali Street, Sowcarpet, Chennai.
		[PAN: AANCS 6296 E]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
Department by	:	Shri D. Hema Bhupal, JCIT
Assessee by	:	Shri N. Arjun Raj, Advocate
सुनवाईकीतारीख/Date of Hearing	:	02.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	17.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 17.10.2023 for the Assessment Years (hereinafter 'AY') 2014-15 & 2015-16. Both parties agreed that the issues involved in both the appeals are similar and therefore, appeal for AY 2014-15 is taken as lead case and the result of which will be followed for AY 2015-16.



**ITA Nos.1485 & 1486/Chny/2023 for AYs 2014-15 & 2015-16
M/s.SPR & RG Constructions Pvt. Ltd.**

:: 2 ::

2. The Revenue has challenged the impugned action of the Ld.CIT(A) allowing the legal issue raised by the assessee before him by holding that the AO did not had jurisdiction to reopen the assessment. In order to examine the impugned action of the Ld.CIT(A) allowing the legal issue raised by the assessee, we take note of the brief facts pertaining to the legal issue.

3. The brief facts relevant to the legal issue are that assessee company is a builder-developer viz., M/s.SPR & RG Constructions Pvt. Ltd., engaged in the business of civil construction and had filed its return of income for AY 2014-15 on 30.11.2014 declaring an income of Rs.2,97,87,270/-. Pursuant to a survey conducted on 11.12.2014, the case of the assessee was selected for scrutiny and thereafter, original assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') on 30.12.2016 assessing the total income at Rs.4,16,62,270/-. Thereafter, the AO had issued the impugned notice u/s.148 of the Act on 28.03.2019 conveying his desire to reopen the assessment, since, according to the AO, there was escapement of income which he noticed while perusing Schedule 13 of the Profit & Loss statement of the assessee, which according to him revealed that the assessee had claimed an amount of Rs.1,65,53,568/- as amortization of intangible assets, but had not made such claim in his P & L statement in



**ITA Nos.1485 & 1486/Chny/2023 for AYs 2014-15 & 2015-16
M/s.SPR & RG Constructions Pvt. Ltd.**

:: 3 ::

the AY 2012-13 or earlier years. The AO acknowledged that the assessee had given the particulars of assets in Schedule 13 of the balance sheet which shows "*Model Flats and Site Office Construction Expenses*" which have been shown as intangible assets. According to the AO, assessee was having closing balance for the AY 2012-13 to the tune of Rs.4,89,24,805/-, which was opening balance for AY 2013-14 and addition of Rs.7,35,898/- made during the year. Thus, the assessee has claimed amortization of Rs.1,65,53,568/-. But the AO noted that the assessee had not claimed amortization in respect of the intangible assets during earlier Assessment Year 2013-14 or before that, even though the asset was present in the books of accounts of the assessee. Thus, according to the AO, the assessee had made an incorrect claim and has reduced its income and had accordingly under paid the taxes. In view of the aforesaid facts, he recorded his reason to believe that income chargeable to tax has escaped assessment and issued notice u/s.148 of the Act, for AYs 2014-15 & 2015-16 and re-assessment framed making additional disallowance. This impugned action of the AO was challenged by the assessee before the Ld.CIT(A), who was pleased to allow the same by relying on the decision of the Tribunal in the assessee's own case for AY 2013-14, wherein, the AO on similar / identical reason had reopened assessee's case which was assailed before this Tribunal [in ITA No.2334/Chny/2019 for AY 2013-14] and by order dated 25.02.2020 and



**ITA Nos.1485 & 1486/Chny/2023 for AYs 2014-15 & 2015-16
M/s.SPR & RG Constructions Pvt. Ltd.**

:: 4 ::

the Tribunal was pleased to allow the legal issue raised before it and held that the re-opening made by the AO u/s.147 of the Act, was bad in law, since the AO did not had jurisdiction to re-open the assessment. And the Ld.CIT(A) taking note that the reasons recorded by the AO to re-open for earlier AY 2013-14 and that for AYs 2014-15 and 2015-16 were identical and noticing that the Tribunal had quashed the action of the AO re-opening the assessment for AY 2013-14; and finding there was no change in facts and law, he was pleased to allow the appeal of the assessee for AYs 2014-15 & 2015-16 on the legal issue. This impugned action of the Ld.CIT(A) has been challenged by the Revenue before us.

3. We do not find any infirmity in the impugned action of Ld CIT(A) and find that for AYs 2014-15 & 2015-16, the return of income of the assessee had been scrutinized by the AO originally u/s.143(3) of the Act; and thereafter it had been re-opened u/s.147 of the Act on the very same reasons recorded as it was made for AY 2013-14. As noted (supra), assessee had challenged the action of the AO re-opening of assessment for AY 2013-14, which came up before this Tribunal and the Tribunal was pleased to allow the legal issue by finding that the AO did not had any tangible material to re-open the assessment. The Tribunal held in the assessee's own case (supra) for AY 2013-14 as under:

8. We have heard the rival contentions and perused the material on record. We noted that the original assessment was framed u/s. 143(3) of the Act vide order dated 31.03.2016



**ITA Nos.1485 & 1486/Chny/2023 for AYs 2014-15 & 2015-16
M/s.SPR & RG Constructions Pvt. Ltd.**

:: 5 ::

and from the above reproduced reasons it is clear that the reasons recorded are on the basis of the audited accounts of the assessee i.e., specifically perusal of Schedule 30 of the profit and loss account and on that very basis the reopening is made. From the above reasons recorded, which are reproduced above, it is clear that the AO has reopened the assessment based on the information already available in the assessment record at his disposal and nothing new information has come to his notice based on which the assessment was reopened. We also noted that the claim of the assessee in regard to amortization in respect of model flats and site office construction expenses incurred by the assessee without having regard to the fact that the model flats and site office was demolished after three years and till such period it had persuasive value for deriving sales of the assessee. Even the claim of the amortization even if not allowed then also given that model flats and site office construction claimed to have been in the nature temporary erections and depreciation @ 100% is to be allowed as provided in entry-I(4) of part A to new Appendix-I. We noted that Hon'ble Supreme Court in the case Kelvinator of India Ltd. (supra) has interpreted the words, "reason to believe" wherein it is held the Section 147 would give arbitrary powers to the AO to reopen the assessment on the basis of mere change of opinion failing to give a systematic interpretation. It was held that there is conceptual difference between power to review and power to frame reassessment. It was held that even after 01.04.1999 the AO has power to reopen the assessment provided there is tangible material to come to the conclusion that there is escapement of income. It was further held that there can be no review on an assessment in the guise of reopening and that a bare review without any tangible material, which would tantamount to abuse of power. Hence, in the given facts in the present case, we respectfully follow the decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd. (supra) and the Hon'ble Madras High Court in the case of TANMAC India (supra), quash the reassessment and allow the appeal of the assessee.

9. Coming to the merits of the case, since we have quashed the reassessment, we need not to go into the merits of the appeal.

4. Since, the Ld.DR could not point out any change in facts or law and since, the Ld.CIT(A) has followed the order of this Tribunal in the assessee's own case (supra) for AY 2013-14, we respectfully following the same, uphold the action of the Ld.CIT(A) and dismiss the appeal of the Revenue.

5. In the result, appeals filed by the Revenue are dismissed.

Order pronounced on the 17th day of May, 2024, in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



ITA Nos.1485 & 1486/Chny/2023 for AYs 2014-15 & 2015-16
M/s.SPR & RG Constructions Pvt. Ltd.

:: 6 ::

चेन्नई/Chennai,
दिनांक/Dated: 17th May, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF