

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.1497/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Star Aviation Private Limited Chennai CITI Centre, 4 th floor 10 & 11, Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004.	बनाम/ Vs.	ACIT Corporate Circle-6, Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAJCS-6206-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri V. Padmanabhan & Shri R. Venkata Raman (CAs) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Dr. D. Praveen (JCIT) -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	16-05-2024
घोषणाकीतारीख / Date of Pronouncement	:	11-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 17-10-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Act on 25-03-2015. This is second round of litigation. Earlier, the Tribunal vide its order dated 18-05-2022, set aside ex-parte order of Ld. CIT(A) and restored

the appeal back to the file of Ld. CIT(A) for fresh consideration. Pursuant to the same, impugned order has been passed which is in further appeal before us. The grounds taken by the assessee read as under: -

1. That the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld.CIT(A)") is not justified in upholding the order of assessment dated 25.03.2015 passed by the Assessing Officer u/s.143 r.w.s 147 of the Income-tax Act, 1961.
2. That the Ld. CIT(A) failed to appreciate that the reopening of the assessment is bad in law on various counts and consequently the impugned order of reassessment passed by the Assessing Officer is void ab initio.
3. That the Ld. CIT(A) erred in confirming the reopening of the assessment in the absence of new tangible material and on a mere change of opinion, consequently not justified in not quashing the impugned order of assessment.
4. That without prejudice to the above, the Ld.CIT(A) erred in confirming the action of the Assessing Officer in treating the business expenditure of Rs.8,68,57,231/- incurred by the appellant as preoperative expenses and not allowable as revenue expenditure.
5. That without prejudice to the above, the Ld.CIT(A) ought to have directed the Assessing Officer to reduce the sum of Rs.3,69,91,674/- from the expenditure of Rs.8,68,57,231/- treated as preoperative.

As is evident, the assessee challenges the validity of reassessment proceedings on legal grounds. The assessee also challenges disallowance of business expenditure on merits.

2. The Ld. AR, at the outset, advanced arguments on legal grounds and submitted that the reassessment proceedings were initiated on the basis of existing material on record and without there being any tangible material coming into the possession of Ld. AO subsequent to conclusion of regular assessment proceedings. The Ld. AR also submitted that the reassessment proceedings were, therefore, nothing but mere change of opinion which is impermissible in law. To bolster the submissions, Ld. AR relied on various decision of this Tribunal on identical facts holding that reassessment proceedings thus initiated by Ld. AO would be bad-in-law. The copies of the orders have been placed on record. The Ld. Sr. DR, on the other hand, supported the action of Ld. AO. Having heard rival submissions and upon perusal of case records, our adjudication

would be as under. The assessee being resident corporate assessee is stated to be engaged in aviation business.

Assessment Proceedings

3.1 The return of income as filed by the assessee for this AY was already scrutinized u/s 143(3) vide order dated 22-12-2011. However, the case was reopened and notice u/s 148 was issued on 25-03-2013 which is within 4 years from the end of the relevant AY. The copy of reasons recorded by Ld. AO has been placed on record at Page No.42 & 43 of the paper book. In the reasons, Ld. AO takes note of the fact that the case was scrutinized u/s 143(3). However, it was observed from Profit & Loss Account that the assessee did not receive any business income but it claimed business loss of Rs.498.65 Lacs. The notes to the accounts would show that the assessee was to commence operation of air-services in October, 2009. From the note, it was obvious that the assessee did not commence its activity of aviation business and it was only creating an infrastructure towards the same. Therefore, entire income from other sources was required to be taxed leaving the expenditure incurred by the assessee on business front as pre-operative. It was also noted that the assessee never commenced its aviation business and the company was wound up in February, 2010.

3.2 The assessee objected to reassessment proceedings. However, Ld. AO rejected the same and proceeded with the assessment proceedings and determined total income of Rs.369.91 Lacs after disallowing business losses.

4. Appellate Proceedings in Second Round

Pursuant to the directions of Tribunal, Ld. CIT(A) proceeded to dispose-off the appeal of the assessee. The legal grounds assailing assumption

of jurisdiction were rejected by Ld. CIT(A) in para-6 by holding that the case was reopened as per due process of law. The assessee was provided with the reasons and its objections thereto were duly disposed-off. The action of Ld. AO, on merits, was also confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. The copy of original assessment framed by Ld. AO u/s 143(3) is on record at Page Nos.1 to 5 of the paper-book. During the course of assessment proceedings, notice u/s 142(1) was issued to the assessee calling for various details. The assessee duly responded to the same and furnished the required details. In the second paragraph of assessment order, based on Balance Sheet and P & L Account as furnished by the assessee, Ld. AO invoked the provisions of Sec.2(22)(e) against the assessee. After elaborate discussion, Ld. AO framed the assessment after making addition u/s 2(22)(e). From the assessment order, it is quite clear that the assessee had duly supplied its financial statements and other documents during the course of assessment proceedings. There is nothing on record to show that any details as called for by Ld. AO were not furnished by the assessee. It could very well be said that the assessment was frame with due application of mind.

6. After perusal of reasons recorded by Ld. AO to reopen the case of the assessee, it could very well be seen that formation of belief of escapement of income is on same set of material and financial documents which were already available before Ld. AO during the course of original assessment proceedings. The reasons do not indicate any event as to the receipt of any fresh tangible material coming to the possession of Ld. AO subsequent to culmination of original assessment

proceedings. The formation of belief is on the same set of material as available during assessment proceedings u/s 143(3). This being the case, reopening would be nothing but mere change of opinion on existing material which is impermissible as per the decision of Hon'ble Apex Court in **Kelvinator of India Ltd. (187 Taxman 312)**. It was held that the review of order is impermissible. The ratio of cited decision would squarely apply to the facts of present case. The decision of Hon'ble High Court of Madras in **Cognizant Technology Solutions India P. Ltd. (143 Taxmann.com 351)** is also on the same lines.

7. We find that on similar facts, this Tribunal, in many decisions as cited by Ld. AR, has held that the reassessment proceedings, without there being any fresh tangible material, would be bad-in-law. These decisions include the decision in **Indian Overseas Bank (ITA No.782/Chny/2001 dated 15.06.2022)**; **V.K. Sasikala (ITA No.2785/Chny/2018 dated 23.06.2023)**; **M/s Ramani Timber Corporation (ITA No.1476/Chny/2023 dated 13.03.2024)**.

8. Therefore, considering the facts of the case, we have no hesitation in holding that the reopening, in the present case, was on mere change of opinion which is impermissible. Therefore, the assessment order could not be sustained in law. By quashing the assessment order, we allow the legal grounds as urged by Ld. AR. Delving into merits of the case have been rendered infructuous.

9. The appeal stand allowed in terms of our above order.

Order pronounced on 11th June, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :11-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF