

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.1133/Bang/2023
Assessment Years : 2012-13

Dinesh Kumar Singhi, 101, Pride Elite No.10, Museum Road, Bengaluru-560 001. PAN – AEFPS 2551 F	Vs.	The Dy. Commissioner of Income Tax, Circle-1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri K.R Pradeep & Ms. Girija G.P, Advocates
Revenue by	:	Shri Ramanathan, Addl. CIT (DR)

Date of hearing	:	11.06.2024
Date of Pronouncement	:	18.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 28/11/2023 in DIN No. ITBA/ NFAC/S/ 250/ 2023-24/1058266615(1) for the assessment year 2012-13.

2. The assessee in ground Nos.1 to 13 has challenged the proceedings-initiated u/s 148 of the Act.

2.1 The necessary facts are that the assessee in the present case is an individual and drawing income under the head salary, house property, remuneration from the firm, capital gain and other sources. The assessee filed the return of income declaring a total income of Rs. 5,66,46,210/- dated 30/03/2013, which was subject matter of scrutiny

assessment u/s 143(3) of the Act. As such, the total income declared in the return of income was accepted in the assessment framed u/s 143(3) of the Act vide order dated 25/03/2014. Subsequently, the proceedings u/s 148 of the Act were initiated and assessment was completed u/s 143(3) r.w.s. 147 of the Act after making various additions to the total income of the assessee which was determined at Rs. 25,83,78,730/- vide order dated 27/12/2018. Later, the revenue based on the information received from Director of Income-tax (Investigation), Kolkata dated 11/03/2019 initiated the proceedings for income escapement u/s 148 of the Act vide notice dated 27/03/2019. However, the assessee objected on the initiation of proceedings u/s 148 of the Act vide letter dated 11/07/2019, which was disposed of by the AO by a separate order dated 05/11/2019 rejecting the objections raised by the assessee.

3. On appeal, the Id. CIT(A) also upheld the initiation of proceedings u/s 147 of the Act.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us filed a paper book running from 1 to 104 pages and among various submission, contented that the reopening u/s 147 of the Act was initiated after the period of 4 assessment years from the end of the assessment year in dispute without alleging that there was failure on the part of the assessee to disclose all the material and necessary facts in the return of income. The Id. AR in support of his contention drew our attention on the reasons recorded for initiating the proceedings u/s 147 of the Act by the AO, placed on pages 51 to 52 of the paper book. As per the Id. AR, it was mandatory for the AO to record the satisfaction in the reasons recorded for reopening that there was failure on the part of the assessee to disclose all material facts fully and

truly during the assessment. The Id. AR in support of his contention relied on the judgment of Hon'ble Delhi High Court in the case of Oracle Systems Corporation Vs. DCIT reported in 94 CCH 0045.

6. On the other hand, the Id. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. It is admitted position that the assessment u/s 143(3) of the Act was already completed vide order dated 25/03/2015 and reopening was done after 4 years from the end of the assessment year in dispute. Thus, the proviso attached u/s 147 of the Act comes into operation which states that there should be failure on the part of the assessee to disclose all material facts fully and truly necessary for the assessment after the expiry of 4 years from the end of relevant assessment year. Indeed, the period of 4 years have already expired. Thus, in the absence of such finding in the reasons recorded by the AO, the proceedings under section 147 of the Act in the given facts and circumstances is invalid. In holding so, we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of **Principal Commissioner of Income-tax Vs. Seastem Ltd** reported in 156 taxmann.com 77 wherein it was held as under:

5. In light of the questions already decided by the Supreme Court in case of CIT v. Kelvinator of India Ltd. [2010] 187 Taxman 312/320 ITR 561 the Tribunal found that since the reopening was on the basis of the material already available on record and there was no new tangible material available before the Assessing Officer to reopen the assessment after expiry of period of four years and it was not a case where there was any failure on the part of the assessee to disclose all the material facts necessary for assessment, the Tribunal held as under:

12.1 Moving forward, it is also pertinent to note that in case where the regular assessment under section 143(3) was completed then reopening of assessment after the expiry of four years from the end of relevant

assessment year can only be made if there is failure on the part of the assessee to disclose all the material facts necessary for assessment. In the case on hand, the reopening was made after the expiry of 4 year, however the AO nowhere has brought on record that the assessee failed to disclose all the material facts necessary for assessment.

7.1 In view of the above, we are of the opinion that the initiation of the proceedings u/s 147 of the Act is bad in law and, therefore, the same is liable to be quashed. As such, we quash the proceedings initiated u/s 147 of the Act.

7.2 As the issue on technical ground has been decided in favour of the assessee, we are of the view that the other contentions raised by the assessee in the other grounds of appeal on technical and merit, do not require to be adjudicated separately. As such all other contentions and the issues raised by the assessee, become infructuous and, therefore, we dismiss the same as infructuous. Hence, ground of appeal raised by the assessee is hereby partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in court on 18th day of June, 2024

Sd/-
(GEORGE GEORGE K)
Vice President

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 18th June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore