

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.61/Del/2023**

**[Assessment Year : 2018-19]**

Rajesh Kumar, C/o-Shiva Constructions Co., Plot No.69, Sidharth Enclave, Delhi Road Sonipat, Sonipat, Haryana-131001. <b>PAN-BKSPK2518K</b>	vs	ACIT, Central Circle-2, Gurgaon.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No.82/Del/2023**

**[Assessment Year : 2018-19]**

DCIT, Gurgaon.	vs	Rajesh Kumar, C/o-Shiva Constructions Co., Plot No.69, Sidharth Enclave, Delhi Road, Sonipat, Haryana-131001. <b>PAN-BKSPK2518K</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Umesh Takkar, CA & Shri Saurabh Nagpal, CA	
<b>Respondent by</b>	Shri P N Barnwal, Sr.DR	
<b>Date of Hearing</b>	03.07.2024	
<b>Date of Pronouncement</b>	07.08.2024	

**ORDER**

**PER KUL BHARAT, JM :**

These two cross-appeals filed by the assessee and the Revenue, are directed against the order passed by Ld. Commissioner of Income Tax(Appeals) [“Ld.CIT(A)”]-3, Gurgaon dated 31.10.2022 for the assessment year 2018-19. Both appeals of the assessee and the Revenue are heard together and are being disposed off by way of common order for the sake of brevity.

**ITA No.61/Del/2023 [Assessment Year : 2018-19]**

2. First, we take up the appeal of the assessee for the Assessment Year 2018-19 i.e. ITA No.61/Del/2023. The assessee has raised following grounds of appeal:-

1. *“That on the facts and circumstances of the case Ld. CIT(A) was not justified in confirming the action of the AO of initiating the proceeding u/s 147 of the Act as valid. Ld. Assessing Officer was not justified in initiating the proceeding u/s 147 of the Act, when the original return file u/s 139(1) is not yet processed. It is well settled legal position that no notice can be issued u/s 148 unless the return, already filed is disposed of. Therefore, the action of AO in completing the assessment u/s 147 of the Act is against the provision of the laws and need u be quashed.*
2. *That on the facts and circumstances of the case Ld. CIT(A) was not justified in rejecting the books of account and estimating the income at 8% of the gross receipts. Assessee is duly maintaining books of account and same were available with assessing officer during the course of assessment proceedings. Action of the Ld. CIT (Appeal) rejecting the books only on the basis of surmises and presumption without properly appreciating the peculiar nature of the assessee business is highly unjustified and uncalled for.*
3. *Assessee craves leave to add, amend, alter or withdraw any or all the above grounds of appeal before or at the time of the hearing.”*

3. Facts giving rise to the present appeal are that in this case, the assessee filed his return of income u/s 139(1) of the Income Tax Act, 1961 [“the Act”] through e-mode, declaring total income of INR 1,11,12,390/-. Thereafter, a survey operation u/s 133A of the Act, was carried out at the business premises of the assessee on 30.11.2018 and the Assessing Officer [“AO”] re-opened the

assessment u/s 147 of the Act on the basis of material found and impounded during the course of survey operation. A notice u/s 148 of the Act was issued to the assessee on 28.03.2019. In response thereto, the assessee filed his return of income through e-mode, declaring income of INR 1,06,67,440/- on 20.08.2019. The AO thereafter, issued statutory notices u/s 143(2) of the Act on 27.09.2019 and thereafter, notice u/s 142(1) of the Act were issued to the assessee. In response to the notice, Ld. Authorized Representative ["AR"] of the assessee submitted reply on behalf of the assessee. It is noteworthy that the assessee had filed his objections against re-opening of the assessment and as per the AO, same were disposed off vide order dated 14.11.2019. Thereafter, considering the material on record and submissions of the assessee, the AO made various additions and computed the income of the assessee as under:-

	Rs.
<i>"Income as per original return filed u/s 139(1) of the IT Act</i>	1,11,12,390/-
<i>Addition on a/c of "Mtti Exp" Para 6</i>	9,11,85,602/-
<i>Addition u/s 68 on a/c of creditors for purchase Para 7</i>	3,40,55,423/-
<i>Addition u/s 41(1) Para 8</i>	40,00,000/-
<i>Addition disallowance of bogus expenses Para 9</i>	1,03,80,925/-
<i>Addition u/s 40(a)(ia) Para 10</i>	8,56,214/-
<i>Addition u/s 40(a)(ia) Para 11</i>	6,46,805/-
<i>Addition u/s 43B Para 12</i>	1,32,19,450/-
<i>Addition on a/c of disallowance of expenses Para 13</i>	<u>5,67,25,700/-</u>
<b>Total Income</b>	<b><u>22,21,82,510/-</u></b>

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, the objection regarding the re-opening of the assessment was rejected and in respect of the other additions, Ld.CIT(A) after rejecting the books of accounts, sustained the addition to the extent of INR 1,55,10,214/- against the addition of INR 9,11,85,602/-. He further deleted the addition of

INR 1,03,80,925/- and the addition related to sundry creditors of INR 3,40,55,423/- was also deleted alongwith rest of the additions made by the AO related to cessation of liability and disallowance made on account of the provision of section 40(a)(ia) and 43B of the Act, were also deleted.

5. Aggrieved against the order of Ld.CIT(A), the assessee and the Revenue are in appeal before this Tribunal.

6. At the time of hearing, Ld. Counsel for the assessee submitted that re-opening of proceedings and continuation of such proceedings by the AO is *ex-facie*, illegal and contrary to the settled principles of law. It was stated that the assessment was re-opened despite the fact that the original return filed by the assessee u/s 139(1) of the Act, was not yet processed and therefore, there was time for taking up the assessment for scrutiny u/s 143(3) of the Act. During the course of hearing, it was made clear to the parties that the appeal would be heard on this ground alone. It was also made clear to the parties that in the event, we find that there was no infirmity in the order of Ld.CIT(A) for rejecting the similar grounds raised before him. We would fix the appeal for hearing on merit. Therefore, Ground No.1 raised by the assessee is taken up for adjudication. For the sake of clarity, Ground No.1 raised by the assessee is reproduced as under:-

1. *“That on the facts and circumstances of the case Ld. CIT(A) was not justified in confirming the action of the AO of initiating the proceeding u/s 147 of the Act as valid. Ld. Assessing Officer was not justified in initiating the proceeding u/s 147 of the Act, when the*

*original return file u/s 139(1) is not yet processed. It is well settled legal position that no notice can be issued u/s 148 unless the return, already filed is disposed of. Therefore, the action of AO in completing the assessment u/s 147 of the Act is against the provision of the laws and need u be quashed.*

7. Ld. Counsel for the assessee qua **Ground No.1** reiterated the written submissions. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

1. **“Hon’ble Supreme Court in the case of Trustees of H.E.H The Nizam's Supplemental family Trust vs CIT, 242 ITR 381**

*Held that unless the return of income already filed is disposed of notice for reassessments under Section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.*

2. **CIT vs. Ved and Co. 302 ITR 328**

*Delhi High Court where the lordships have rejected the revenue appeal against the order passed by tribunal and have opined that*

*We are of the view that if no assessment had been made, there was no occasion for the AO to conclude that income had already escaped assessment.*

*The facts of this case are exactly similar to the case of assessee. In this case also notice u/s 148 for reassessment was issued on 05/06/1996 however the return was processed u/s 143(1) on 11/06/1996.*

3. **CIT v Qatalys Software Technologies Ltd 308 ITR 249 (Madras)**

*"Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated under section 147 of the Act, when there is a pendency of the Return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference".*

4 . **[2016] 158 ITD 843 (CHANDIGARH)**

***Vardhman Holding Ltd. vs. ACIT, Circle 1, Ludhiana***

*We do not find the act of the Assessing Officer in issuing notice under section 148 of the Act, within the time limit available for issue of notice under section 143(2) of the Act being as per law. The Income Tax Act is a self contained Act, whereby provisions are made for different situations. Every section, sub-section, clause, proviso, Explanation, etc. are put in the Act at their respective places with some specific intention of the Legislature behind such placement. we also feel that every provision of the Act has a sanctity attached to it, which has to be maintained at any cost. By allowing such leverage to the Department to enter into the territory of any other provision while intending to remain on a specific provision will only lead to a chaotic situation. If the Assessing Officer has time in his hands to issue notice under section 143(2), why is he issuing notice under section 148 of the Act, we do not understand, specifically in the background of the legal position that the scope of assessment made on issue of notice under section 148 of the Act has limited as against the wide scope of assessment available to him by issuing notice under section 143(2) of the Act. Reliance placed by the learned counsel for the assessee on the judgment of Madras High Court in the case of Qatalys Software Technologies Ltd. (supra) is not out of place, whereby the Hon'ble Court, in the similar circumstances,*

allowed the appeal of the assessee, relying on another decision of the Madras High Court in the case of CIT v. K.M. Pachaiyappan [2008] 304 ITR 264 (Mad.), wherein the Court has held that no reassessment proceedings could be initiated so long as the assessment proceedings pending on the basis of return already filed are not terminated. Respectfully following the above case, we hold that the notice issued under section 148 of the Act by the Assessing Officer in the present case is not as per law and the consequential order made is hereby quashed.

5. **Rupal bhupendrasingh Sandhu Vs. ITO ITA No. 2626/Ahd/2016**

Respectfully following the decision of the honourable Supreme Court in the case of Trustees of H.E.H. the Nizam's Supplemental Family Trust v. CIT [2000] 109 Taxman 193 (SC)/[2000] 242 ITR 381 (SC) and the decisions in the case of Qatalysis Software Technologies Ltd 308 ITR 249 (Madras) and KM Pachayappan 304 ITR 264 (Madras), we are of the considered view that the initiation of reassessment proceedings under section 147 of the Act were invalid in law so long as they time-limit for issuance of notice under section 143(2) of the Act had not yet expired.

**Interpretation of clause b to explanation 2 of section 147 of the Income Tax Act**

6. **Super Spinning Mills Ltd. v. Addl. CIT A.Y.: 2002-03. Dated: 12-3-2010 31 (2010) 37 DTR (Chennai) (TM) (Trib) 1**

S. 147-Reassessment proceedings cannot be initiated if time limit for issue of notice u/s.143(2) has not expired.

**Facts:**

Notice u/s.148 was issued to the assessee before the expiry of the time limit for issue of notice u/s.143(2). The assessee preferred an appeal

*before the CIT(A) and challenged the validity of reassessment proceedings. The CIT(A) rejected the plea of the assessee.*

*Upon further appeal to the Tribunal, the learned Accountant Member took a view that the decision in the case of Trustees of H.E.H. The Nizam's Supplemental Family Trust v. CIT, 242 ITR 381 (SC) pertains to A.Y. 1962-63 which was prior to the amendment to S. 147 w.e.f. 1st April, 1989. Prior to the amendment of S. 147, there was no provision equivalent to cl. (b) of Explan. 2 in the amended S. 147. In a subsequent decision of the Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers (P) Ltd., 291 ITR 500 (SC) it has been held that so long as the ingredients of S. 147 are fulfilled, the AO is free to initiate proceeding u/s.147 and failure to take steps u/s.143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation u/s.143(1) had been issued. Applying the jurisdictional High Court's decision in the case of ITO v. K. M. Pachiappan, 311 ITR 31, the validity of reassessment proceedings was upheld.*

*The learned Judicial Member distinguished the decision of Rajesh Jhaveri Stock Brokers (P) Ltd. on the ground that the notice u/s.148 was issued after the expiry of the time available for issuing notice u /s. 143(2) in that case. Following the latest decision of the jurisdictional High Court in the case of CIT v. Qatalys Software Technologies Ltd., 308 ITR 249, the notice issued by the AO u/s.148 was quashed.*

*Upon difference of opinion between the members, the matter was referred to the Third Member.*

**Held:**

*The Department wants to interpret the expression 'no assessment has been made' in the clause (b) of Explan. 2 in the amended S. 147 to mean that it also includes situation where assessment u/s. 143(3) is still possible but not yet made. If this interpretation is to be accepted, it will set at naught the fundamental principles underlying S. 147.*

*As per the principles laid down by the Supreme Court in several cases:*

- (a) *the proceedings are said to have commenced once the return is filed, and*
- (b) *the proceedings terminate when,*
  - (i) *the return is processed u /s.143(1) and the time to issue notice u /s 143(2) is over,*
  - (ii) *assessment is made u/s 143(3) or,*
  - (iii) *assessment is no longer possible u/s. 143(3).*

*Proceedings u/s.147 can be initiated only after the earlier proceedings have terminated as mentioned in (b) above.*

*Observation of the Supreme Court in the case of Rajesh Jhaveri Stock Brokers (P) Ltd. has to be understood in the right perspective. It is mentioned that failure to take steps u/s 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation u/s 143(1) had been issued. The failure of the AO which the Court is talking about will be deemed to have occurred only when the hands of the AO are tied down by law and he is unable to initiate the proceedings u/s 143(3) Hence order passed u/s 143(3) read with S. 147 is quashed.”*

8. On the other hand, Ld. Sr. DR for the Revenue strongly supported the impugned order and relied on the findings of Ld.CIT(A). He contended that there is no infirmity into the impugned order. Ld.CIT(A) has considered the submissions of the assessee and also examined the provisions of section 147 of the Act. He contended that Ld.CIT(A) is justified in retaining the findings that there is no embargo under law for initiating the proceedings u/s 147 of the Act if the conditions so embodied in section 147 of the Act, are satisfied. He further contended that proviso to section 147 of the Act has clarified the position therefore, there is no ambiguity under the law.

9. In re-joinder, Ld. Counsel for the assessee submitted that the Tribunal in the case of ***Super Spinning Mills Ltd. v. Addl. CIT 31 (2010) 37 DTR (Chennai) (TM) (Trib) 1*** following the judgement of Jurisdictional High Court in favour of the assessee. He submitted that in this case, Ld. Third Member affirmed the view of the Ld. Judicial Member by following the judgement of Hon'ble Jurisdictional High Court. Therefore in the light of the binding precedents, the re-opening of the assessment by the AO is illegal and unjustified.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The short question that arises is whether the action of the AO is justified for re-opening of the assessment when the original return filed by the assessee u/s 139(1) of the Act, was not yet processed and no assessment u/s 143(3) of the Act was made. For the sake of clarity, the findings of Ld.CIT(A) in para 7.3 is reproduced as under:-

*7.3. "Further reference is made to clause b to Explanation-2 to section 147 of the Act where it has been provided that where a return of income has been furnished and no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, it will amount to be the case where income chargeable to tax had escaped assessment. Facts of the present case are squarely covered by the said clause as return of income has been furnished, no assessment has been made and the AO observed that the appellant has claimed excessive expenses/deduction/allowances; has understated the income in the*

*return. Further there is no merit in the arguments of the Ld. AR that notice u/s 148 was invalid as the return was still not processed and time limit for issue of notice u/s 143(2) was still available with the AO. On going through provision of section 147 of the Act, it is noted that there is no such requirement in the said provisions that notice u/s 148 cannot be issued when return filed u/s 139 was yet to be processed or there was time available or due date for issue of notice u/s 143(2) has not expired. The only requirement for the AO is to show that there is escapement of income subject to provisions of section 149(time limit for issue of notice) and 151( sanction for issue of notice) of the Act. It is clearly provided in clause b to Explanation-2 to section 147 of the Act that in a case where return of income has been furnished but no assessment has been made and the AD notices escapement of income then such case shall be deemed to be a case where income chargeable to tax has escaped assessment.”*

11. Hon'ble Delhi High Court in the case of **CIT vs Ved & Co. [2008] 302 ITR 328 (Del.)** has held as under:-

10. *“We are of the opinion that in view of the decisions that we have mentioned above, for the purposes of initiating reassessment proceedings, the Assessing Officer could not have made up his mind that the income of the assessee has escaped assessment while a valid return was still pending before him. If the Assessing Officer had allowed the time to elapse for taking action under section 143(2) of the Act, it was entirely his own doing What the Assessing Officer is now trying to do in an indirect (and incorrect) manner is what he could not have done directly.*
11. *The further contention raised on behalf of the Revenue is that even if no assessment order was framed, the Assessing Officer could issue a notice for reassessment. We are of the view that if no assessment*

*had been made, there was no occasion for the Assessing Officer to conclude that income had already escaped assessment.*

12. *This being the position, we are of the opinion that no substantial question of law that arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.*

*Consequently, the appeal is dismissed.”*

12. Further, Hon'ble Madras High Court in the case of **CIT vs Qatalys Software Technologies Ltd. [2009] 308 ITR 249 (Mad.)** has decided the issue by following earlier judgement as under:-

3. *“The assessee is engaged in the business of software export. For the assessment year under consideration, the assessee-company has filed return of income on November 13, 2003, admitting a total income of Rs. 2,34,810 after claiming deduction under section 10A in a sum of Rs. 3,09,382. The return of income was processed under section 143(1) on December 20, 2003. Thereafter, notice under section 148 was issued on October 5, 2004. The assessment was reopened under section 147 as the Assessing Officer was of the view that income chargeable to tax has escaped assessment as the assessee has included interest receipt from bank in a sum of Rs. 17,09,661 in the profits of business eligible for deduction under section 10A of the Act. Subsequently, the Assessing Officer has issued notice under section 143(2) and after calling for further details and clarifications, has completed the assessment on December 23, 2005, whereby he has computed the business loss at Rs. 3,46,544 in respect of the unit eligible for deduction under section 10A and brought to tax the interest income mentioned above as "Income from other sources". The appeal against the order at the instance of the assessee to the Commissioner of Income-tax (Appeals) was not successful, though the point of reopening of*

*assessment has been taken before him. The assessee carried the matter on further appeal to the Tribunal. The Tribunal has taken the issue as to whether the Assessing Officer can take action under section 148 when the time for issuing notice under section 143(2) has not expired. After hearing the parties, the Tribunal held in favour of the assessee on the issue of reopening of the assessment when the time for issuing notice under section 143(2), had not expired, by following the decision of this court in the case of CIT v. K. M. Pachayappan [2008] 304 ITR 264 (Mad) in T. C. A. No. 870 of 2007, dated July 4, 2007, wherein this court has held that no reassessment proceeding could be initiated so long as the assessment proceedings pending on the basis of the return already filed are not terminated. The Revenue, aggrieved over that portion of the order, filed the present appeal by formulating the following questions of law:*

- "1. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that reassessment proceedings are not valid since the Assessing Officer is barred in initiating the proceedings under section 148 when the time for issuance of notice under section 143(2) had not expired*
- 2. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the appeal by the Revenue is infructuous?"*
- 4. We have heard the argument of the learned counsel for the Revenue, who submitted that the issue has already been decided against the revenue by the abovesaid judgment of the Division Bench of this Court.*
- 5. We have also perused the above referred judgment of the Division Bench of this court dated July 4, 2007, wherein it is held as follows (page 268)*

*"Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated under section 147 of the Act, when there is a pendency of the return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference."*

6. *Following the said decision, these appeals are dismissed. Consequently, connected miscellaneous petition is also dismissed."*

13. In the light of the afore-mentioned binding precedents, let us examine the law embodied u/s 147 of the Act on this issue for the relevant Assessment Year. For the sake of clarity, Section 147 of the Act is reproduced as under:-

***[Income escaping assessment].***

147. *"If the [Assessing] officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*

***Provided*** *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee*

to make a return under section 139 or in response to a notice issued under sub section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

**[Provided further]** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.]

**[Provided [also]** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

*Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

*Explanation 2.-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:*

- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

- (ba) *where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]*
- (c) *where an assessment has been made, but-*
- (i) *income chargeable to tax has been underassessed; or*
  - (ii) *such income has been assessed at too low a rate; or*
  - (iii) *such income has been made the subject of excessive relief under this Act; or*
  - (iv) *excessive loss or depreciation allowance or any other allowance under this Act has been computed;]*
- [(ca) *where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]*
- [(d) *where a person is found to have any asset (including financial interest in any entity) located outside India.]*

*Explanation 3.-For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]*

*[Explanation 4.-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]”*

14. As per AO, there is no prohibition under law for invoking the provisions of section 147 of the Act, the only condition is that if the AO has reason to believe that any chargeable to tax has escaped assessment. Further, Ld.CIT(A) referred to Explanation 2 to section 147 of the Act. Sub-clause (b) of explanation (2) makes it clear that even where return of income has been furnished but no assessment is made, the AO would be empowered for invoking the provisions of section 147 of the Act.

15. It is brought to our notice by the Ld. Counsel for the assessee that the similar dispute arose in the case of ***Super Spinning Mills Ltd. vs Addl. CIT 37 DTR (Chennai) (T.M) (Trib)*** and the issue was decided by Hon'ble Third Member in favour of the assessee. Therefore, in the light of binding precedents, the impugned assessment cannot be sustained and same deserves to be quashed, we hold accordingly. The grounds raised by the assessee are allowed.

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

**ITA No.82/Del/2023 [Assessment Year : 2018-19]**

17. Now, we take up the Cross appeal of the Revenue for the Assessment Year 2018-19 i.e. ITA.No.82/Del/2023. The Revenue has raised following grounds of appeal:-

1. *“That on facts and circumstances of the case Ld. Assessing Officer is not justified in initiating the proceeding u/s 147 of the Act, when the original return file u/s 139(1) is not yet processed. It is well settled legal position that no notice can be issued u/s 148 unless the return, already filed is disposed of. Therefore, the action of AO in completing*

*the assessment u/s 147 of the Act is against the provision of the laws and need to be quashed.*

- 2. That on facts and circumstances of the case Ld. AO is not justified in completing the assessment without giving proper opportunity to the assessee to present its case. Date given for the submission 22/12/2019 was Sunday and on Monday when assessee tried to upload the details the submission was closed by the AO. So details desired could not be submitted by the assessee, Assessment order dt. 22/12/2019 was passed and was posted on the portal two days afterwards. Action of the Ld. AO completing the assessment without giving proper opportunity is against the principle of natural justice and uncalled for.*
- 3. Without prejudice to ground no 1 & 2, that on the facts and circumstances of the case Ld. Assessing Officer is not justified in disallowing the amount of Rs. 4,55,92,801 being 50% of expenses claimed under the head mitti. Expenses have been incurred for the purpose of the business of the assessee detail of which were duly submitted during the course of assessment proceedings. Adhoc disallowance made by the Ld. AO without properly appreciating the facts and circumstances of the case in highly unjustified, bad in law and uncalled for.*
- 4. That on fact and circumstance of the case Ld. AO is not justified in making the addition of Rs. 3,40,55,423/- out of sundry creditors. Adhoc addition has been made without giving any basis or pin pointing any specific party which is not genuine. All the creditors are for expenses incurred for the purpose of business are fully genuine. Action of the Ld. AO of making adhoc addition without specifying any particular weakness is highly unjustified and uncalled for.*
- 5. That on fact and circumstances of the case Ld. AO is not justified in making addition of Rs. 40,00,000/- towards the outstanding loan treating the same as income u/s 41(1). Loan was taken from the*

*relative of the assessee and is still outstanding. Treating the same as income of the assessee without any specific reason is highly unjustified and bad in law.*

6. *That on fact and circumstances of the case Ld. AO is not justified in treating the amount of Rs. 1,03,80,925/- incurred towards mitti expenses as bogus expenses. During the course of assessment proceedings details were provided of mitti expenses party wise. Amount has been paid to different person through Vishnu Bhagwan during the whole of the year and not in lumpsum in one go. Addition has been made, when already 50% adhoc disallowance has been made out of total mitti expense. Action of the Ld. AO treating the expenses as bogus expenses is highly unjustified and uncalled for.*
7. *That on facts and circumstances of the case Ld. AO was not justified in making disallowance u/s 40(a) (i) of Rs. 856214/-. While filing the return u/s 139(1), amount was suo-motto disallowed by assessee and the expenses were debited to profit & loss account after disallowance. Therefore, action of AO of again disallowing the same amount is highly unjustified and uncalled for.*
8. *That on facts & circumstances of the case Ld. AO is not justified in disallowing Rs. 646805/- out of interest expenses of Rs. 2156019/- u/s 40(a)(i) of the Act. Interest was paid on the loan taken from bank and no tds is deductible on this amount. Therefore, action of the Ld. AO in disallowing expenses out of interest paid to bank is against the legal provisions of law and uncalled for.*
9. *That on facts and circumstances of the case Ld. AO is not justified in making addition of Rs. 13219450/- u/s 43B of the Act towards GST payable. Amount was already considered as income in the profit & loss account while filing return of income u/s 139(1). Therefore, the action of the AO of making addition of the same amount is highly unjustified and uncalled for.*

10. *That on facts and matter of the case Ld. AO is not justified in making disallowance of Rs. 56725700/- out of total expenses claimed by the assessee. Disallowance has been made on the basis of surmises and presumption without giving any reason or breakup of the expenses disallowed. Adhoc disallowance of 20% made is highly unjustified and uncalled for.*
11. *Without prejudice to ground no. 3, that on facts and circumstances of the case Ld AO is not justified in adding full amount of Rs. 91185602/- of mitti expenses to income of the assessee while calculating assessed income on page 24 of the order when disallowance was made of 50% of the expenses claimed. Disallowance made in para 6 of the order was of Rs. 45592801/- but addition has been made of full amount of Rs. 91185602/- which is not correct and need deletion.*
12. *Assessee craves leave to amend, alter or add to the grounds of appeal before or at the time of hearing and to file additional evidence as per the provisions of rule 46A.”*

18. Since we have allowed the legal ground in assessee's appeal, consequently, the assessment order has been quashed being contrary to the law laid down by the Hon'ble Delhi High Court in the case of *CIT vs Ved Pal & Co. 302 ITR 328* (supra) and decision of the Tribunal (Hon'ble Third Member) in the case of *Super Spinning Mills Ltd.* (supra), therefore, the grounds of appeal raised by the Revenue have become of academic interest only. Hence, same are kept open. Therefore, appeal of the Revenue is dismissed.

19. In the result, cross-appeal filed by the Revenue is dismissed.

20. In the final result, appeal filed by the assessee is allowed and cross-appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 7<sup>th</sup> August, 2024.

**Sd/-**  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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