

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'SMC', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **33/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Sadashiv Ventures, SCO 9, Sector 7, Madhya Marg, Chandigarh	Vs. बनाम	The DCIT, Circle-1, Chandigarh
स्थायी लेखा सं./PAN No: ABUFS6758C		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal, Advocate
& Shri Ashok Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 13.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 04.09.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 13.11.2023 of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. Grounds of appeal are as under: -

1. *That the reopening of the case under section 148 of the Act is bad in law and illegal as reopening was made after completion of proceedings under section 263 of the Act.*
2. *That the Ld. CIT (Appeals) had erred in upholding the order of the Ld. AO making addition of Rs. 29,92,882/- under section 68 of the Income Tax Act, 1961 in respect of losses without any finding substantiating the addition.*
3. *That under the facts and circumstances of the case, the Ld. CIT (Appeals) had erred in upholding the order of the Ld. AO making an addition u/s 68 based on surmises and conjectures and without considering the documents on record.*
4. *That the impugned order was totally based on conjectures and surmises which were the results of borrowed satisfaction.*
5. *That the loss incurred by the Assessee is genuine that can also be justified by the study of SEBI Study dated January 05, 2023 "Analysis of Profit and Loss of Individual Traders dealing in Equity F&O Segment."*
6. *That the impugned Order had been passed in gross violation of the principle of natural justice and without allowing reasonable opportunity of being heard to the Assessee.*
7. *That the Appellant craves leave to add, amend or alter the grounds of appeal before the disposal of appeal.*

3. Brief facts, as enumerated by the Assessee of the case, are as under:-

The Assessee is a firm which is engaged in the trading of stocks. The Assessee filed its income tax return for A.Y. 2011-12 on 30.09.2011 declaring a loss of Rs. 6,46,95,681/-. The Assessee's case was selected for scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 and notices under section 142(1) and 143(2) of the Act dated 28.10.2013 were issued to the Assessee

The Assessee duly filed reply to the same. Considering the reply given by the Assessee, A.O. passed the order under section 143(3) of the Act with a Nil demand.

Afterwards, the case was reopened u/s 263 of the Act. A Show Cause Notice under section 263 of the Act was issued on 01.02.2016, wherein it was mentioned that:

“i)

ii) *In the profit and loss account the net loss has been shown to be from loss on Commodity Trading and loss on Derivative Trading. During the assessment proceedings the nature of these have not been examined.*

iii) *No enquiries have been conducted to certain the genuineness of the losses and no documentary evidence has been called for or produced in support of the loss”*

The Assessee replied to the above notice on 17.02.2016 along with the necessary annexures. Thereafter a questionnaire was issued to M/s Radharamana Commodity Pvt. Limited for calling of information in the case of the Assessee, to which the reply was given. The assessment order under section 143(3) read with section 263 of the Act was passed wherein total additions of Rs. 4,62,708/- was made. Para 5.3 of the order stated that,

"An independent inquiry was also conducted by this office by calling for information u/s 133(6) of the IT Act, 1961 vide letters dated 24.11.2016 from M/s FRR Shares & Securities Ltd and M/s Radharamana Commodities Pvt Ltd. In response to which, information from both parties was received which was cross verified with the accounts of the assessee and it was found that the loss of Commodity Trading with M/s Radharaman Commodities Pvt. Ltd. is in consent with the documents filed by assessee. The loss showed due to derivative trading of the assessee in the books of M/s FRR Shares And Securities Ltd. amounts to Rs. 1,97,98,238/- but the loss as per the books of the assessee amounts to Rs.2,02,60,946/-. The reply filed by the assessee on account of this difference has been considered but is not acceptable. Therefore, difference amounting to Rs. 4,62,708/- of loss which is in excess as claimed by the assessee is being added back to the income of the assessee."

Despite having examined the loss, the case was again reopened under section 147 of the Act on the same issue. A notice u/s 148 was issued to the Assessee on 28.03.2018.

Two issues were given but the issue of Cash Deposits was never considered, and no addition was made in that aspect.

Against these the Assessee has filed Objections. These objections were disposed on 27.11.2018 by the office of ACIT, Circle 2(1), Aayakar Bhawan, Chandigarh and Notice under section 142(1) of the Act was issued on 24.12.2018. The Assessee duly responded to the notice. Thereafter, order under section 143(3) /148 of the Income Tax Act, 1961 was passed on 27.12.2018.

4. Against the order of the Assessing Officer the Assessee filed an appeal before the CIT(A) who dismissed the appeal of the Assessee on the ground that all necessary documents were not filed before him. Against the order of the CIT(A), the Assessee has preferred this appeal before the Tribunal.

5. During the proceedings before us, the Counsel of the Assessee submitted that all the required and relevant documents were filed before the Assessing Officer. The Counsel of the Assessee further submitted that though they have taken many grounds of appeal before the Tribunal, but they want the Bench to consider the legal ground taken by the Assessee.

6. The appeal on ground No.1 is a legal issue raised by the Assessee before us. Here, the Assessee has questioned the reopening

of the assessment u/s 148 of the Income Tax Act, 1961 on the same issue on which as assessment u/s 143(3) / 263 of the Act has already been made by the Assessing Officer earlier. In the written submission, the Counsel of the Assessee has stated as under: -

Reopening of case under section 148 is bad in law since the proceedings have already been completed under section 263 of the Act

It is humbly submitted that the Assessee's case was first selected for scrutiny assessment under section 143(3) of the Income Tax Act and the order for the same was passed on 24.01.2014, under which no adverse opinion was drawn. Afterwards, the case of the Assessee was reopened under section 263 of the Act. An Assessment order was passed by the Assistant Commissioner of Income Tax under section 143 (3) read with section 263 of the Act. Under this reassessment order, some additions were made to the income of the Assessee.

These additions were made by A.O. after considering all the documents and the explanations given by the Assessee. During the assessment proceedings under section 263, the Assessee already submitted the ledger accounts of all sale / purchase along with copy of account of Sadashiv Ventures, in the books of FRR Shares & Securities Ltd. and in the books of Radharaman Commodities Private Ltd. The AO also conducted an independent inquiry by calling for information from both these companies. The information was cross verified with the accounts of the Assessee. After considering

all this information and documents only an order was passed u/s 263. Therefore, since the proceedings have already been completed under section 263 and the required additions have been made, the reopening under section 148 is bad in law.

Reliance is placed on the judgement of High Court of Madhya Pradesh in the case of **Commissioner of Income Tax-II vs. Indira Exports (P.) Ltd. [2014] 45 taxmann.com 295 (Madhya Pradesh) / [2014] 226 Taxman 103 (Madhya Pradesh) (Mag.) [26-09-2013]** in which, it was held that:

"Once an issue has been dealt with by Commissioner under section 263, Assessing Officer cannot reopen that issue under section 147

*In the instant case also, we found that the issue with regard to claim of deduction u/s 80 HHC which has been dealt with by the Id. CIT by issuing notice u/s 263 was dropped after considering AO's report dated 07.10.2002 and it was held that considering this report and the legal position there is no reason to disallow any portion of the deduction allowed u/s 80HHC of the Income Tax Act, 1961, for all the three years under consideration. As the issue has already been examined and held in favour of the Assessee by that Id. CIT on the basis of report of the AO, we do not find any merit in the initiation of proceedings u/s 147 by the same AO. **The reopening of assessment on the same reasons as were recorded for initiation of proceedings u/s 263 is not permissible, particularly in the absence of any new material***

**on the basis of reasonable belief that income has
escaped assessment"**

Proviso (3) of the section 147 states 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."

In the current case also reassessment was done involving the matter against which the proceedings were going on. Hence this reassessment is bad in law.

Quoting the judgement of Madras High Court in the case of **Commissioner of Income Tax v.. Neyveli Lignite Corporation Ltd. [2020] 117 taxmann.com 847 (Madras) / [2020] 273 Taxman 322 (Madras)[13-07-2020]**), in which it was held that:—

"If the very same reasons were the subject matter of the proceedings under section 143(3) of the Act or the proceedings under section 263 of the Act, once again, for the very same reasons, the power under section 147 cannot be invoked and having done so, the CIT(A) as well as the Tribunal were right in coming to the conclusion that the reopening was bad in law."

Analyzing the above judgements, it is clear that once the assessment has been completed under section 263, the same cannot be reopened under section 147.

Also, in the case of **Calcutta Discount Co. Ltd. v. Income-tax Officer [1961] 41 ITR 191**, Hon'ble **Supreme Court** has given the decision that,

"But the question will be decided after taking into consideration the nature of the business of the company, and till that is done, the Income-tax Officer believes that the contention raised before and persisted in is not a mere contention but maintenance of a falsehood about the nature of the transactions and the business of the company. The existence of such a belief is sufficiently established by the report of the Income-tax Officer and the satisfaction of the Commissioner, and this has not been gainsaid. In my opinion, the Divisional Bench of the High Court rightly refused a writ in the circumstances, and I would dismiss this appeal with costs. "

It is respectfully submitted that in the present case, despite the Assessee's income having been reassessed under Section 143(3) / 263 of the Income Tax Act, a notice under Section 148 was subsequently issued to reopen the case, which is entirely unjustified and illegal.

7. The ld. DR relied on the order of the CIT(A).
8. We have considered the issue raised by the Assessee through this legal ground and we find that firstly an assessment order was passed u/s 143(3) of the Act with 'nil' demand. Thereafter, it was reopened u/s 263 by the PCIT. Further, an order u/s 143(3) / 263 of

the Act was passed by the Assessing Officer after due verification of all the issues in this order, an addition of Rs. 4,62,708/- was also made. Later on, as the Assessee has submitted that 147 / 148 on the same issue was issued to the Assessee on 28.3.2018, the Assessee filed objections before the authorities below that all the ledgers and books of account related to the issue u/s 147/148 were already presented before the Assessing Officer during proceedings u/s 143 (3) / 263 and the Assessing Officer had already checked and verified the same but they have not accepted it. In his written submissions, the Assessee has brought on record various case laws, i.e., 'Commissioner of Income Tax-II vs. Indira Exports (P.) Ltd', (supra) in which Hon'ble Madhya Pradesh High Court has clearly held that reopening of the assessment on the same reasons, as were recorded for initiation of proceedings u/s 263, is not permissible particularly in the absence of any new material on the basis of a reasonable belief that the income of the Assessee has escaped assessment.

9. Similarly, the Hon'ble Madras High Court in the case of 'CIT vs. Nayveli Lignite Corporation Ltd.' (supra) has categorically observed that if the very same reasons were the subject matter of the proceedings under section 143(3) of the Act or the proceedings under section 263 of the Act, once again, for the very same reasons, the power under section 147 cannot be invoked and having done so, the

CIT(A) as well as the Tribunal were right in coming to the conclusion that the reopening was bad in law.

10. Likewise, there are many other judgements also which have been brought on record by the Counsel of the Assessee.

11. We have considered the ratio laid down by the different High Courts and the Hon'ble Supreme Court in the cases referred above and we are of the considered opinion that if an issue has already been considered in an assessment u/s 143(3)/263, the same cannot be the basis of reopening of the assessment us 147/148 of the Act. Accordingly, Assessee's appeal on ground No.1 is allowed and the issuance of notice u/s 148 for re-opening of the assessment order passed u/s 143(3) / 263 is quashed.

12. Since the proceedings u/s 147 has been quashed, therefore, there is no need to decide the appeal on other grounds.

13. In the result, the appeal of the Assessee stands allowed.

Order pronounced on 04.09.2024.

Sd/-
(A. D. JAIN)
Vice President

“आर.के.”

Sd/-
(KRINWANT SAHAY)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar