

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 398/KOL/2024  
Assessment Year: 2013-14**

***Big Boss Foods Pvt. Ltd.....Appellant  
[PAN: AABCB 1001 E]***

**Vs.**

***ACIT, Cir.-1, Burdwan.....Respondent***

**Appearances:**

***Assessee represented by:*** P.J. Bhide, AR.

***Department represented by:*** P.P. Barman, Addl, CIT, Sr. DR.

Date of concluding the hearing : July 29<sup>th</sup>, 2024

Date of pronouncing the order : September 11<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

The instant appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 20.12.2023 arising out of the assessment order framed u/s 147/143(3) of the Act dated 13.12.2019.

1.1. The brief facts of the case of the appellant are that the assessee being a private limited company carries on business of manufacturing of bakery products principally biscuits on job work basis. For the AY 2013-14, the

appellant on 31.03.2014 filed its return of income declaring gross total income of Rs. 20,66,570/-. The appellant claimed refund of Rs. 1,38,090/- after making deduction of tax at source, paid tax of Rs. 7,76,664/- being excess tax paid. The appellant has submitted details of its expenditure and other debits and credits of accounts as required by the Assessing Officer (hereinafter referred to as ld. 'AO'). The assessment was completed by the ld. AO on 21.03.2016 at a total income of Rs. 37,15,390/- after addition of Rs. 33,149/- on account of undisclosed interest income and Rs. 16,15,672/- on account of non-deduction of TDS on interest paid u/s 40(a)(ia) of the Income Tax Act, 1961 (in short the 'Act'). On the basis of information gathered on records, ld. AO re-opened the assessment u/s 147 of the Act by issuance of notice u/s 148 of the Act dated 22.12.2018 after obtaining the necessary approval u/s 151(1) of the Act from the Pr. Commissioner of Income Tax, Burdwan [hereinafter referred to as Ld. 'Pr. CIT']. The said order has been challenged by the appellant before the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] wherein also appeal of the assessee has been dismissed by confirming the order of ld. AO.

Being aggrieved and dissatisfied with the impugned order, the appellant preferred the instant appeal.

1.2. Ld. Counsel for the assessee challenges the impugned order on the sole legal ground that issuance of notice income tax returns 148 of the Act which according to him is barred by the law as it was issued beyond four years that is not permissible under the second proviso to Section 147 of the Act. The ld. Counsel by citing following decisions has submitted that-

- i) Shipra Srivastava and Anr. Vs. ACIT (2009) 319 INCOME TAX RETURN 221 (Delhi); 30 DTR (Delhi) 25,*
- ii) Northern Strips Ltd. And Anr. Vs. Income-tax Officer (2009) 31 DTR (Delhi) 225; (2010) 186 Taxman 360,*
- iii) JSRS Udyog Ltd. Vs. Income-tax Officer (2009) 313 INCOME TAX RETURN 321 (Delhi),*
- iv) Jai Hotels Co. Ltd. Vs. ACIT (2009) 24 DTR 37; 184 Taxman 1 (Delhi) and*
- v) CIT Vs. Eicher Ltd. (2011) 239 CTR (Delhi) 65*

vi) *German Remedies Ltd. Vs. DCIT (2006) 285 INCOME TAX RETURN 26*

vii) *Asteriods Trading and Investment (P) Ltd. Vs. DCIT (2009) 308 ITR 190*  
*(Bombay)*

In all the decisions it has been held that there being no new material in the hands of Revenue leading to the view that there was reason to believe that there was escapement of assessment, there was mere change of opinion and hence notice u/s 148 of the Act is liable to be quashed.

1.3. On the contrary, ld. D/R supported the impugned order.

2. We have heard both the Counsels of the respective parties and gone through the facts of the case and also the decisions relied. It is not in dispute that the present case is for the AY 2013-14, assessee filed income tax return on 31.03.2014, original assessment order passed u/s 143(3) of the Act on 21.03.2016 and notice issued u/s 147 of the Act on 22.12.2018 i.e. beyond a period of four years. In the case of *Rakesh Aggarwal vs. Asst. CIT [1997] 225 ITR 496*, Hon'ble Delhi High Court held that *in view of the proviso to section 147, notice for reassessment under section 148 would be illegal if issued more than four years after the end of the relevant assessment year unless failure is ascribed to the assessee in disclosing fully and truly all material facts necessary for his assessment.*

2.1. Hon'ble Gujrat High Court while adjudicating a similar issue held in *Shree Tharad Jain Yuvak Mandal vs. ITO [2000] 242 ITR 612* as under:

*“A perusal of the aforesaid provision goes to show that under the proviso to section 147, the foundation of conferring jurisdiction on the Assessing Officer to assess or reassess the income for any assessment year beyond the end of four years from the end of relevant assessment year must be omission or failure on the part of an assessee to make a return under section 139 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year and that the Income-tax Officer has reason to believe that the income chargeable to tax has escaped assessment for that year. In the absence of any such omission or failure on the part of the assessee, taking action for assessment or reassessment is not permissible for any year after the expiry of four years from the relevant assessment year.*”

*The scope of the assessee's duty to disclose fully and truly all material facts necessary for assessment in the context of the provisions of section 34 of the Indian Income-tax Act, 1922, has been succinctly stated by the Supreme Court by their Lordships in Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191. The court observed:*

*“There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee.”*

The court further said:

*“Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else- far less the assessee-to tell the assessing authority what inferences, whether of facts or law, should be drawn.”*

2.2. Again, in the case of *Patidar Oil Cake Industries vs. DCIT, 270 ITR 347(Guj)*, Hon'ble Gujrat High Court held as under:

*“In the light of the fact that the assessments have been sought to be reopened after a period of four years from the end of each of the assessment years in question, the provisions of section 147 of the Act mandate that the Assessing Officer shall be vested with the jurisdiction to initiate reassessment proceedings only in case there is any omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the year under consideration and such failure should result in income chargeable to tax escaping assessment. On a plain reading of the aforesaid provisions and the reasons recorded, it becomes clear that there cannot be ascribed any failure or omission to the petitioner so as to vest the Assessing Officer with jurisdiction to reopen the assessments which were already finalised. In the 10 ITA no.4033/Del./2011 circumstances, for the assessment years 1986-87, 1987-88 and 1988-89 in the light of the fact that the initiation by issuance of impugned notices is beyond the period of four years and the prerequisite conditions stipulated by section 147 of the Act are not fulfilled, there is no case made out for upholding the proposed reassessment. The notices for all the four years are, therefore, bad in law and are quashed and set aside.”*

2.3. In the case of *Devidayal Rolling Mills & Another vs. ACIT, 285 ITR 514*, Hon'ble Bombay High Court held as under:

*“Where an assessment order passed u/s 143(3) of the Act is sought to be reopened beyond four years from the end of relevant assessment year, the Revenue must establish that there was failure on the part of the assessee to disclose fully and truly all material facts relevant for the purposes of the assessment.”*

2.4. In the case of *Mercury Travels Ltd. Vs. DCIT & Another*, 258 ITR 533(Cal.), Hon'ble High Court in the light of facts of the case concluded as under:

*“No income chargeable to tax had escaped assessment for those assessment years due to failure of the assessee to disclose fully and truly all material facts necessary for its assessment.”*

2.5. In *Priyanka Carbon & Chemical Industries (P) Ltd. vs. DCIT (2008) 15 DTR (Guj.) 31*, Hon'ble High Court held as under:

*“When factual data was available with the AO at the time of assessment, on the same very material, if the AO takes a different view subsequently and that too after expiry of four years from the end of the relevant assessment year, that would not confer any jurisdiction on the AO to issue notice u/s 148 of the Act. Similar view was taken in ACIT vs. Jagdishbhai Nanubhai Tekrawala (2008) 12 DTR (Guj) 270, 11 ITA no.4033/Del./2011 7.5 In *Vareli Weavers Pvt. Ltd. vs. DCIT (1999) 240 ITR 77 (Guj)* also notices under section 148 read with section 147 of the Act were quashed by the Hon'ble High Court, there being no whisper in the reasons recorded by the AO about failure on the part of the assessee to disclose truly and fully all material facts.”*

2.6. In *CIT vs. DCM Ltd., (2009) 24 DTR(Del.) 72*, Hon'ble jurisdictional High Court found as under:

*“There was no allegation in the reasons recorded by the AO that the assessee had failed to file its return or that it had failed to disclose fully and truly all material facts in its return nor was there any allegation by the Assessing Officer that the assessee had failed to disclose fully and truly all material facts in its return of income nor even there was any allegation regarding escapement of income. In these circumstances, Hon'ble High Court upheld that findings of the Tribunal that notice u/s 148 of the Act, having been issued after four years, the reopening of the assessment was not valid.”*

2.7. Likewise in the case of *Gujrat Fluorochemicals Ltd. vs. DCIT [2009] 319 ITR 282 (Guj)*, Hon'ble High Court concluded as under:

*“The assessee having made full disclosure of material facts in the return which was accompanied by several enclosures, assessment could not be reopened beyond four years from the end of the relevant assessment year for the reason that certain income has been wrongly assessed under the head 'Capital gains' instead of 'Profits and gains of business or profession'.”*

3. The fact of the present case at hand is that ld. AO issued notice u/s 148 of the Act by ascribing that on the basis of information gathered on record having reasons the case has been re-opened. Ld. AO has re-opened the assessment on the basis that in this case information has been received from the office of ADIT (Investigation), Unit-4(1), Kolkata and basis of information was the statement of Mr. Manoj Kr. Rameka. There is nothing in the order that there was any failure on the part of the assessee in disclosing material facts at the time of assessment proceedings. There is no whisper evident in the order that ld. AO has recorded reasons or the facts as to whether or not there was any failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment.

3.1. Considering the above circumstances, in absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the assessment year under consideration the notice u/s 148 of the Act having been issued after the expiry of a period of four years from the end of the relevant assessment year, the very initiation of the proceeding u/s 147 of the Act stands vitiated and cannot be sustained. In the present case, the ingredients of Section 147 of the Act have not been fulfilled. In view of the foregoing, especially in the light of consistent view taken in aforesaid decisions of the Hon'ble jurisdictional High Court and other Courts, considering the facts and circumstances of the case, we are of this opinion that there is nothing to suggest that all the primary facts were not disclosed by the assessee at the time of original assessment completed u/s 143(3) of the Act nor any failure on the part of the assessee to disclose fully and truly all the material facts has been ascribed in the circumstances narrated before us. There is nothing in the record that can be said that the assessee suppressed any material facts. It is well-settled that if a notice u/s 148 of the Act has been issued without the jurisdictional foundation u/s 147 of the Act

being available to the AO, the notice and the subsequent proceedings will be without jurisdiction and liable to be struck down. In view of the above discussion, we have no hesitation to set aside the order of the ld. AO as well as the ld. CIT(A). Accordingly, the appeal of the assessee is allowed only on the legal issue.

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

**Order pronounced in the open Court on 11<sup>th</sup> September, 2024.**

*Sd/-*

**[Rajesh Kumar]**

Accountant Member

Dated: 11.09.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Big Boss Foods Pvt. Ltd., Saktighar, Burdwan, West Bengal, 713149.**
2. **ACIT, Cir.-1, Burdwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata