

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.764/Del/2024  
Assessment Year: 2009-10

<b>Regalia Laminates MCD Buliding, Ist Floor DB Gupta Road Paharganj, New Delhi- 110055 PAN No. AAIFR7691F</b>	<b>Vs</b>	<b>Income Tax Officer Ward- 62 (5) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellants by	Sh. Ved Jain, Advocate Ms. Uma Upadhyay, CA
Respondent by	Ms. Shashi Kajle, Sr. DR

Date of hearing:	13/08/2024
Date of Pronouncement:	09/10/2024

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal by the assessee is directed against the order of the National Faceless appeal center Commissioner of Income Tax (Appeals), Delhi, [hereinafter referred to as "CIT(A)"], vide order dated 12.01.2024 pertaining to A.Y. 2009-10 and arises out of the order dated 07-09-2016 passed by the Assessing

Officer under Section 147 of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised the following grounds of appeal :-

*1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department (ITD) National Faceless Appeal Centre (NFAC) is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.*

*3. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are*

*illegal, as the same have been made without assumption of valid jurisdiction.*

*4. (1) On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.*

*(ii) That the learned CIT(A), NFAC has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*

*5. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred in confirming the action the AO despite the fact that the order has been passed by the AO without disposing of the objections file by the assessee against reopening of assessment proceedings.*

*6. On the facts and circumstances of the case, learned CIT(A), NFAC has erred both on facts and in law confirming the reopening despite the fact that the same has been made by the AO on the basis of an objection without independent application of mind.*

*confirming the order passed by the AO despite the fact that the reassessment proceedings initiated by the facts learned AO without obtaining valid approval of the prescribed authority as per section 151 of the Act is bad in law and liable to be quashed.*

7. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law, in confirming the order passed by the AO despite the fact that the reassessment proceedings initiated by the learned AO without obtaining valid approval of the prescribed authority as per section 151 of the Act is bad in law and liable to be quashed.*

8. *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in law, in rejecting the contention as the same has been issued beyond the time-limit prescribed under the Act.*

9(i). *On the facts and circumstances of the case, the learned CIT(A), NFAC has erred, both on facts and in rejecting the contention of the assessee that the order passed by the AO is illegal and void-ab initio since reopening has been made on the basis of reasons without there being any whisper in the reasons recorded that the income has escaped due to the failure on part of the assessee to disclose fully and truly a material facts*

*necessary for assessment, as the same has been reopened after a period of four years from the end of relevant assessment year and the assessment has already been made under Section 143(3).*

*(ii) That the CIT(A), NFAC has erred in upholding the action of the AO despite the fact that the order passed by learned AO is illegal and void ab initio, as the assessee had already disclosed fully and truly all material facts necessary for the assessment under Section 143(3).*

*10. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred in upholding validity of reassessment proceedings, despite the same having been initiated on the basis of mere change of opinion, without any new tangible material/ information coming to the possession of the assessing officer subsequent to completion of assessment under section 143(3) of the Act.*

*11. (i) On the facts and circumstances of the case, the learned CIT(A), NFAC has erred in confirming the disallowance of deduction of Rs. 69,31,555/- claimed under section 80-IC of the Act.*

*(ii) That the above disallowance has been confirmed despite the fact that income on account of Export Incentives and foreign exchange fluctuation derived from*

*the business of the assessee and hence eligible for the deduction allowable under section 80-IC of the Act.*

*12. The appellant craves leave to add, amend or alter any of the grounds of appeal.*

3. Brief fact of the case is that the assessee was involved in the business of manufacturing of decorative & industrial laminated sheets at Baddi, Himachal Pradesh and claiming exemption u/s 80IC of the Act. The assessee has filed its e-return of income on 23-09-2009 declaring total income of Rs 561231/- for A.Y.2009-10. The case of assessee was selected for scrutiny to examine the claim of deductions under chapter VI-A and notice u/s 143(2) was issued and duly served upon the assessee. In the response of the notice the assessee has filed the numerous documents and detailed verification. During the year the assessee has claimed a deduction u/s 80IC of the Act of Rs 74,04,771/-, The issue of deduction claimed u/s 80IC was decided and certain additions were made to the income of the assessee. Subsequently a notice u/s 154 of the Act dated 29-03-2012 was issued in which AO has proposed rectifications to be made in the original assessment order. In the response of the notice the assessee has filed the reply dated 20-04-2012 which were accepted and no rectification was made by the AO.

A notice u/s 148 of the Act was issued on 30-03-2016 to the assessee and according to Assessing officer, the assessee has not disclosed the fully and truly all materials facts necessary as the provision of section 80IC of the Act. The assessee has manipulated the fact and violated the provision of the section 80IC of the Act. The AO has passed the order u/s 147/143(3) of the Act dated 07-09-2016 reducing deduction Rs 5000000/- on account of export incentive and Rs 1931555/- on account of foreign exchange fluctuation income total amount of Rs 6931555/- u/s 80IC of the Act. The AO observed as under :-

*“Satisfaction is hereby recorded that the assessee had concealed the particulars of its correct income or has furnished inaccurate particulars of income, or has furnished inaccurate particulars of income. Penalty proceedings u/s. 271 (1)(c) is initiated on this issue separately.”*

*Assessee at an income of Rs.74,92,786/- issued demand notice and challan. Charge interest u/s. 234B, penalty proceedings u/s. 271 (1) (c) initiate separately, give credit for pre-paid as per record.*

4. Aggrieved by the order of the AO the assessee has filed the appeal before the Ld. CIT(A), who vide order dated 12-01-2024

dismissed the appeal against which the assessee is in appeal before us.

5. The Ld.AR for the assessee has submitted that the assessee has filed return of income with in time and all notices had complied by the assessee. He has further submitted that the assessee case cannot be opened after the time limit of four years because assessee had fully disclosed the deduction claimed u/s 80 IC of the Act. The AO has conducted the detailed verification during the original assessment proceedings. He has also submitted that the assessee had made true and full disclosure of all material facts before the AO.

6. Reliance has placed on the following judgments:-

**1. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District I, Calcutta and other 1960 (11) TMI 8 – Supreme Court**

**2. Gemini Leather Store Vs. Income Tax Officer, B Ward- Agra and Other s 1975 (5) TMI 1- Supreme Court dated 1-5-1975**

**3. Oracle India Private Limited Vs. Assistant Commissioner of Income Tax, Circle -13 (1) New**

***Delhi 2017 (TMI 967 -Delhi High Court dated July, 26 , 2017***

***4. Standard Industries Limited Vs. Deputy Commissioner of Income Tax, Circle - 3 (3) (1), Mumbai Pr. Commissioner of Income Tax Mumbai-3***

***5. Director of Income Tax International Taxation - II Vs. Rolls Royce Industrial Power India Ltd. 2017 (5) TMI Delhi High Court dated 18.05.2017***

***6. Satnam Overseas Ltd. Vs. Additional Commissioner of income Tax 2009 (12) TMI 543 Delhi High Court dated 11.12.2009***

***7. Jal Hotels Co. Ltd. Vs. Asstt. DIR of Income Tax 2009 (5) TMI 24- Delhi High Court dated 25.05.2009***

***8. Nuclear Power Corporation of India Limited Vs. Deputy Commissioner of Income Tax Circle 3 (4) Mumbai, Addl. Commissioner of Income Tax, Range-3 (4) Mumbai 2023 (6) TMI 1292 Bombay High Court dated 27.06.2023***

***9. Axis Bank Limited Vs. Assistant Commissioner of Income tax Circle 1 (1) (1) (1), 2023 (4) TMI 958 Gujarat High Court, dated 20.04.2023***

**10. Ananta Landmark Pvt. Ltd. Vs. Deputy Commissioner of Income Tax Central Circle 5 (3) Mumbai PR. Commissioner of Income Tax, Mumbai Union of India**

7. In the case of **Gemini Leather Store Vs. Income Tax Officer, B-Ward, Agra** and others the Hon'ble Supreme Court held as under :-

*“In the case before us the assessee did not disclose the transactions evidenced by the drafts which the Income-tax Officer discovered. After this discovery the Income-tax Officer had in his possession all the primary facts, and it was for him to make necessary enquiries and draw proper inference as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee during the relevant year. This is the Income-tax Officer did not do. It was plainly a case of oversight, and it cannot be said that the income chargeable to tax for the relevant assessment year had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The Income-tax Officer had all the material facts before him when he made the original*

*assessment. He cannot now take recourse to section 147(a) to remedy the error resulting from his own oversight.*

8. In the case of Oracle India Private Limited Vs. Assistant Commissioner of Income Tax, Circle – 13 (1), New Delhi the Hon'ble Delhi High Court held as under :-

*24. What Explanation (1) does is to clarify that the mere production of the account books or other evidence by the Assessee before an AO from which the AO, with due diligence, could have discovered 'material evidence' would not necessarily amount to disclosure. In other words, the fact of production of the account books and other evidence should not be presumed to be the making Co material facts' by the Assessee. Nevertheless, the burden of a disclosure of 'all is on the AO to show that there has been a failure by the Assessee to disclose fully and truly all material facts necessary for the assessment*

*25. In a situation where the Assessee has already produced all the account books and other evidence, 85 while Explanation (1) may not lead to an automatic presumption of disclosure, unless there is some fresh tangible material available with the AO, he will not be able to show that there was a failure on the part of a Assessee*

*to disclose fully and truly all material facts. If the material is that which was already available during the original assessment proceedings, the AO will be unable to show that there has been a failure 18 by the Assessee to disclose fully and truly all material facts,*

*26. The expression "will not necessarily amount to disclosure as used in Explanation 1 to Section 147 of the Act brings in an element of subjectivity and also the requirement of assessing on a case-to-case basis where in fact there has been a full disclosure by virtue of the Assessee producing the account books and other evidence in the first instance. This explanation, therefore, would not relieve the AO of the burden of demonstrating the Assessee's failure to make a full and true disclosure of all material facts necessary for the assessment for the AY in question.*

*27. A second aspect of the matter is that the above jurisdictional requirement should be shown to have been fulfilled from the reasons for re-opening of the assessment. In other words, the reasons must speak for themselves. The mandatory jurisdictional requirement in terms of the first proviso to Section 147 of the Act will not be fulfilled if the reasons do not themselves clearly indicate that there was in fact a failure by the Assessee to make a full and true disclosure of all material facts. The reasons have to*

*explain what the material was that was not disclosed by the Assessee which the Assessee ought to have disclosed in the first instance. This should be apparent from a reading of the reasons themselves. The reasons have to go beyond merely repeating the language of the provision regarding the failure of the Assessee to make a full and true disclosure of material facts. They should indicate in what manner was there such a failure.*

9. Before us at the outset the Ld DR supported the order of the AO and has submitted that the required details were furnished by the assessee company in compliance of the notice. The AO, therefore, for the reasons noted in the order made the additions. He has submitted that Ld. CIT(A) thereafter for the reasons noted in the order has dismissed the appeal. He has further submitted that the assessee has wrongly claimed the income of export incentive and foreign exchange fluctuation as deduction u/s 80IC of the Act. The assessee has not disclosed fully and truly all material facts necessary for assessment. Therefore, he submitted that the order of Ld.CIT(A) be upheld.

10. We have heard the rival arguments and perused the material available on record.

11. The Ld CIT(A) has observed in his order as under;-

*“5.3 I have carefully considered the findings in assessment order and rival submission of the appellant. It is observed that AO has sufficient reasons to believe that some income has escaped assessment chargeable to tax by the reason of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment. On perusal of record, it is observed that the appellant firm is engaged in the business of manufacturing of decorative and industrial laminated sheets at Baddi, Himachal Pradesh and is eligible for claiming deduction u/s 80-IC of the Act. The appellant has wrongly claimed the income of export incentive and foreign exchange fluctuation as deduction u/s 80-IC of the Act. However, on perusal of P&L A/c, it is noticed that appellant firm itself has shown income of export incentive and foreign exchange fluctuation under the head "Other Income" which clarifies that it is not a profit of income derived from business of manufacture or production of article or thing. It proves that appellant has wrongly claimed the same as deduction u/s 80-IC of the Act and has not disclosed fully and truly all material) facts necessary for assessment.*

*The appellant firm has not disclosed fully and truly all material facts necessary for assessment and as per provision of section 80-IC of the Act. The appellant firm has manipulated the facts which resulted in escapement of income chargeable to tax under the Income Tax Act. The*

*duty drawback and exports incentive cannot be regarded as profit derived from operational activities of the industrial undertaking. The Hon'ble Supreme Court in case of M/s Liberty India Vs CIT (2009) 317 itr 218 has categorically held that duty drawback receipt/DEPB benefit do not form part of the net profit of eligible industrial undertaking for the purpose of section 80I/80-1A/80-1B of the Income Tax*

*It is observed that appellant firm has misinterpreted the reasons of reopening. It is not a matter of claim of export incentive and foreign exchange fluctuation, but is a matter of violation of provisions of section 80-IC. It is a matter of claiming wrong deduction by not disclosing fully and truly all material facts necessary for assessment and because of this failure there has been escaped assessment of true income chargeable to be taxed.*

*The argument of appellant that reassessment proceedings on the basis of audit objections, without any independent satisfaction regarding escapement of income is not founded as Hon'ble Supreme Court, in case of CIT VS PVS Beedies Pvt Ltd (1999 237 ITR 13 SC) has pointed out that "Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under the Law."*

*The argument of appellant that appellant was not given a show cause notice for the proposed disallowance u/s. 801-IC of the Act is not acceptable as it is noticed that appellant was provided reasons of reopening and also provided sufficient opportunities to furnish reply and submission with respect to disallowance u/s. 80-IC of the Act.”*

12. The Ld AR of the assessee has submitted that no action can be taken against the assessee u/s 147 of the Act if assessment was made u/s 143(3) /146 of the Act.

13. The provision of the section 147 explanation 1 as under ;-

*“If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or re-compute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation.—For the purposes of assessment or reassessment or re-computation 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, irrespective of the fact that the provisions of section 148A have not been complied with.”*

14. In the instant case the scrutiny was made and assessment order was passed under section 143(3) of the Act for the A.Y 2009-10 and proposed reassessment is sought to be done after the expiry of four years. As per the provision no action for initiation of reassessment proceedings for A.Y 2009-10 could be initiated unless the income chargeable to tax had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts. In the present case the assessment was completed u/s 143(3) of the Act on 19-10-2011 accepting the return of income of the assessee. In the return of income the assessee has declared export incentive of Rs.50 lac and Rs.1931555/- foreign exchange fluctuation as other income from business in the profit and loss account. Subsequently assessee has again received the notice u/s 154 of the Act dated 29-03-2012 based on the audit objection that Rs 50 lac export incentive and Rs 193155/- foreign exchange requires to be disallowed from the deduction u/s 80IC of the Act was received. After considering the reply no rectification order was passed by the AO u/s 154 of the Act. The assessee has made available all account and record at the time of the original assessment and in the compliance of the notice u/s 154 of the

Act then the reopening of assessment after four years is not permissible. There is no new material with the AO after four years that the assessee has escaped assessment. The assessee has disclosed fully or truly all material facts necessary for assessment. The notice issued by the AO is not valid notice. The assessment made by AO is liable to be set aside.

15. We find, from the above discussion, that the AO has wrongly made the assessment u/s 148 of the Act, therefore, addition made by AO and confirmed by the Ld. CIT(A) is here by deleted. Hence, the appeal of the assessee is liable to be allowed.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.10.2024.

**Sd/-**

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*

Date:- 09.10.2024

Copy forwarded to:

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

**Sd/-**

**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI