

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 723/MUM/2024
Assessment Year: 2011-12**

Assistant Commissioner of Income Tax, Circle 6(1)(2), Mumbai	Vs.	Futura Travels Ltd., Essar House, 11, Keshavrao Khadye Marg, Tulsiwadi, S.O., Mumbai – 400 034 (PAN : AAACF1572F)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Vijay Mehta, CA
Revenue : Shri Ankush Kapoor, CIT, DR

Date of Hearing : 23.07.2024
Date of Pronouncement : 14.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1059410758(1), dated 05.01.2024 passed against the assessment order by the Deputy Commissioner of Income Tax, Circle-6(3)(1), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 28.12.2016 for Assessment Year 2011-12.

2. Grounds taken by the Revenue are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in holding that the re-assessment proceedings initiate by the AO on the same set of facts and as such, the assessment re-opened u/s 147*

by issuing notice u/s 148 amounts to change of opinion and are in violation to the conditions laid down u/s 147 to section 151 of the IT Act, 1961, without appreciating the facts of the case and the reasons recorded by the AO and the facts discussed by the AO in the assessment order?

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in holding that the AO has disposed the objection raised by the assessee company against the initiation of re-assessment proceedings u/s 147 of the I T Act, 1961 in summarily manner, without appreciating the proper facts of the case?*
3. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

3. Brief facts of the case are that assessee filed its return of income on 30.11.2011 which was assessed u/s. 143(3) r.w.s 144C at total income of ₹ 82,35,88,280/- after making various disallowances and additions. Case of the assessee was reopened by issuing notice u/s. 148 on 31.03.2016. Reason to believe recorded by the Ld. Assessing Officer prior to issue of notice is reproduced below:

Reason for reopening

In this case assessment was completed u/s. 143(3) r.w.s 144C of the I.T. Act, 1961 on 29.03.2015 at total income of Rs. 82,35,88,280/-.

On perusal of records it was seen that the assessee has debited Interest on loan (including Rs.141,041 (P.Y Nil))' for prior period. As the assessee is following the mercantile system of accounting, this is not an allowable expense. Further it was also observed that the assessee has debited lease rental expenses of Rs. 12,45,94,612/- in the P&L account, however no TDS has been deducted from these payments.

Considering the above facts, I have reason to believe that income to the extent of Rs. 12,45,94,612/- and interest on loan for prior period has escaped assessment for the A.Y 2011-12 in the case of the assessee within the meaning of section 147 of the Income Tax Act, 1961. Therefore, I am satisfied that this is a fit case for issuing of notice u/s 148 of the I.T.Act, 1961."

3.1. On the above stated reasons to believe recorded by the Ld. Assessing Officer, assessee challenged the reassessment proceedings by the objections on the following aspects:

- a. It is a case of change of opinion

- b. No new tangible material has been brought on record to initiate the impugned reassessment proceedings
- c. The reasons recorded are based on suspicion alone and the reopening had been initiated for fishing and roving enquiries
- d. Absence of application of mind

3.2. Ld. Assessing Officer rejected the objections filed by the assessee by placing reliance on the judgement of Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd vs. ITO 236 ITR 34 (SC) and others to observe that sufficiency or correctness of material is not a thing to be considered at this stage.

3.3. According to the assessee, reading of the reasons would go to show that intention for initiating the impugned proceedings is for verification of further facts and enquiry relating to details of TDS done on the lease rental charges and claim of deduction towards prior period expenses. Assessee claims that doubt raised by the Ld. Assessing Officer is not based on any fresh tangible material but merely an attempt to probe the matter further. On the first issue relating to claim of deduction towards prior period interest cost, it was stated that the same was disclosed in the audited financial statements specifically. Also, in respect of TDS on lease rental charges, all the necessary details were duly disclosed and reported in the tax audit report by the tax auditor after due verification and confirmation of the TDS compliance done by the assessee. Thus, no new material had come on record nor any new information was received to justify initiating the impugned reassessment proceedings. It is a case of mere change of opinion on the same set of facts which does not justify proceedings u/s. 147. According to the assessee, if the reassessment is allowed then it would tantamount to granting an opportunity to the

Ld. Assessing Officer to review the earlier order passed by the predecessor which is not permitted under the law.

3.4. Further, assessee submitted that Ld. Assessing Officer acted on unverified information without applying the mind. According to the assessee, reasons to believe are bereft of disclosures as to how the Ld. Assessing Officer has arrived at the satisfaction that assessee has failed to comply with TDS provisions on lease rental and how the interest to bank is not allowable without appreciating the fact that assessee had complied with TDS provisions which have been duly reported in the tax audit report and that interest due to the bank is allowable on payment basis u/s. 43B of the Act though it is prior period expense, accounted in the books of accounts.

3.5. Assessee contended that Ld. Assessing Officer had made the disallowances which is contrary to the reasons to believe recorded for reopening of assessment, details of which are tabulated as under:

Sr.No.	Reasons recorded	Disallowance in the assessment order passed under section 143(3) r.w.s. 147
1.	Prior period expenses of Rs.1,41,041	This was bank interest which was recognized in the year under consideration on account of past dispute. The Ld. AO did not appreciate that such interest is always allowable under section 43B of the Act. The disallowance was made in a mechanical manner just to legitimate the reassessment proceedings
2.	Lease rental expenses of Rs. 12,45,94,612/-, however, no TDS has been deducted from these payments	As can be seen from the assessment order, though AO has reopened assessment for non deduction of taxes, disallowance of lease rental of Rs. 4,54,23,321 as prior period expenses and further disallowance of lease rental Rs. 82,29,132 was made stating that claim was not supported by proper bill

3.6. Thus, assessee contended that disallowance made are different from the reasons recorded for initiating the proceedings under section 147, making the assessment order liable to be quashed.

4. On the above submissions of the assessee, Ld. CIT(A) has noted that assessee did file the tax audit report giving details of TDS on expenses claimed. In the course of assessment proceedings, Ld. Assessing Officer had asked for details with respect to expenses claimed and whether TDS on such payments have been done or not. Assessee had furnished all the requisite details as apparent from the order itself. Further, in respect of claim of interest on loan as prior period expenses, Ld. CIT(A) observed that payment of interest to banks is allowable u/s. 43B on payment basis and not on accrual basis.

4.1. According to the Ld. CIT(A), belief arrived at by the Ld. Assessing Officer appears to have been drawn without any application of mind for the reason that payment of interest to banks is allowable u/s. 43B of the Act on payment basis, and are not allowable on accrual basis. Even the lease rental payments have been made to foreign company on which tax had been duly withheld. During the assessment, the Assessing Officer has acknowledged the deduction of tax at source on majority of such payments and has only made disallowance u/s. 40(a)(ia) of ₹ 1,25,39,445/- for want of evidence and reason for non-deduction of tax. According to the Ld. CIT(A), these facts at the time of recording of reasons and the facts that transpired during the reassessment clearly shows that there was no application of mind while recording the reasons for reopening. He further observed that Ld. Assessing Officer ought to have carried out some enquiry to determine whether any income has escaped assessment.

4.2. On the order passed by Ld. Assessing Officer disposing of the objections raised by the assessee on the reopening of assessment, he observed that Ld. Assessing Officer had cursorily taken the objection to another tangent by relying on the decision of Raymond Woollen Mills Ltd (supra) to conclude that the assessee cannot challenge sufficiency of belief. According to him, Ld. Assessing Officer had failed to deal with the categorical objections raised by the assessee by passing a speaking order which is in violation of the guidelines laid down by Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC).

4.3. Ld. CIT(A) thus concluded by allowing the appeal of the assessee on the legal ground by holding that reasons recorded are in violation of the conditions laid down u/s. 147 to 151 of the Act and even the disposal of objections has been done by the Ld. Assessing Officer summarily, in violation of the law laid down by the Hon'ble Supreme Court in GKN Driveshafts (supra) and the jurisdictional High Court of Bombay in the case of Tata Capital Financial Services Limited v. ACIT (2022) 443 ITR 127 (Bom).

5. We have heard both the parties and perused the material available on record. On the first issue relating to claim of deduction towards interest on loan to the bank treated as prior period expenses amounting to ₹ 1,41,041/-, it is a fact on record that assessee had obtained a vehicle loan from Bank of India during the financial year 2006 – 07. In order to pay the equated monthly instalments against the loan, assessee had issued post-dated cheques in favour of the bank. Due to oversight from the staff of the bank, it appeared that certain cheques remained to be submitted for payment, resulting into overdue monthly instalments. This overdue payment of monthly

instalments resulted into charging of penal interest for delayed payment for the period July 2006 to January 2010. Bank charged the penal interest for overdue payment of monthly instalments which crystallised during the year under consideration and was paid and accounted for in the books of accounts. For the purpose of reporting in the audited financial statements, it was put under the nomenclature “prior period expenses”.

5.1. In respect of the second issue relating to deduction of tax at source on lease rental charges, assessee had furnished the details of lease rental expenses tabulated below:

Party Name	PAN	Lease Amount	WH Tax
Cessna Finance Corporation <i>Lease rental charges</i>	AADCC6358D	7,91,71,291	87,03,705
Cessna Finance Corporation Lease of Helicopter S76C++ Incurred during FY 2008-09, recognized in FY 2010-11	AADCC6358D	3,28,83,876	32,88,388
Various Expenses related to Helicopter S76 C++ incurred during FY 2008-09, recognized in FY 2010-11		1,25,39,445	Kindly refer submission below
TOTAL EXPENSES		12,45,94,612	

5.2. In the course of assessment proceedings, assessee had furnished the details of challans of TDS. For certain deposit of TDS where challans were not available, assessee furnished screen shots of OLTAS from NSDL website vide letter dated 02.12.2016. On the allegation of TDS not done on various expenses claimed by the assessee of ₹ 1,25,39,445/-, assessee furnished the details of these expenses not liable o TDC and were accounted under the head ‘lease rental charges’, details of the same are reproduced as under:

Futura Travels Limite				
AY 2011-12				
Details of various expenses includeu in lease rental charges of FY 2010-11				
	Particulars	Amount (In Rs.)		
	Bank Charges	52,084		
	Clearing Charges	10,006		
	Courier Exp-Spares	17,069		
	Crew Expenses-Foreign	54,60,581		
	Insurance Charges-Aircrafts	38,29,008		
	License Fees/charges	1,50,000		
	Mobile Expenses	25,469		
	Repairs & Maint-Aircrafts-Variable	2,09,466		
	Spares Purchase	18,22,270		
	Telephone Expenses	62,444		
	Training Expenses	6,53,144		
	Travelling Expenses-Foreign	3,07,957		
	Travelling Expenses-Local	1,947		
	Grand Total	1,26,01,445		
	Less:- Foreign exchange fluctuation	-62,000		
	NET TOTAL	1,25,39,445		

6. We note that penal interest charged by the bank for overdue payment of loan instalments was charged and crystallised in the year under consideration and was recovered from the assessee which is an allowable expense as it is covered by provisions contained in section 43B of the Act. It is not a case of charging of interest for the prior period but relates to monthly instalments which were not deposited in time for which a penal interest has been charged in the year under consideration. Further on the second issue, we note that reassessment has been made by disallowing lease rental of ₹ 4,54,23,321/- as prior period expenses and a further disallowance of ₹ 82,29,132/- by observing that supporting bills were not furnished. However, the reasons to believe recorded in this respect mentioned about lease rental expenses of ₹ 12,45,94,612/- on which TDS has not been done and has therefore has escaped assessment. Thus, we note that reasons so recorded are not based on correct facts to believe that income chargeable to tax has escaped assessment.

6.1. Considering the above stated facts, contentions raised by the assessee as narrated above and observations and findings arrived at by the Ld. CIT(A) on the same, we do not find any reason to interfere with the findings so arrived at by Ld. CIT(A) in allowing the appeal of the assessee on the legal ground of holding the reassessment assessment proceedings as bad in law. To buttress our finding, we place reliance on the decision of Hon'ble jurisdictional High Court of Bombay in the case of Ankita A. Choksey v. ITO (2019) 411 ITR 207 (Bom) which held that condition precedent of reason to believe that income chargeable to tax has escaped assessment on correct facts must be satisfied by the ld. Assessing Officer so as to have jurisdiction to issue reopening notice. In this case, it was held that ld. Assessing Officer has to come to the reasonable belief/conclusion that income chargeable to tax has escaped assessment.

6.2. We also place our reliance on the decision of Hon'ble High Court of Gujarat in case of Saurashtra Cement and Chemical Industries Ltd v. CIT (1995) 213 ITR 523 (Guj) wherein it had held that *“merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallised in the year in question on the basis of maintaining accounts on the mercantile basis. In each case where the accounts are maintained on the mercantile basis it has to be found in respect of any claim, whether such liability was crystallised and quantified during the previous year so as to be required to be adjusted in the books of account of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years it cannot be*

disallowed as deduction merely on the basis the accounts are maintained on mercantile basis and that it related to a transaction of the previous year. The true profits and gains of previous year are required to be computed for the purpose of determining tax liability. The basis of taxing income is accrual of income as well as actual receipt. If for want of necessary material crystallising the expenditure is not in existence in respect of which such income or expenses relate, the mercantile system does not call for adjustment in the books of account on estimated basis. It is actually known income or expenses, the right to receive all the liability to pay which has come to be crystallised, which is to be taken into account under the mercantile system of maintaining books of account.”

6.3. Accordingly, grounds raised by the revenue are dismissed.

7. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 14 October, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 14 October, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai