

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "F" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 2420/Mum/2024  
Assessment Year : 2018-19

Dr. Farokh Master, 1 <sup>st</sup> Floor, Vatcha Gandhi Memorial Bldg., Hughes Road, Babulnath, Mumbai PAN : AALPM3004F	vs.	Dy.Commissioner of Income Tax, Circle-16(2), Aayakar Bhavan, Churchgate, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri V. Chandrasekhar a/w. Shri Harshad Shah
For Revenue :	Shri Aashish Kumar,Sr.DR

Date of Hearing :	28-10-2024
Date of Pronouncement :	28-10-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dt. 09-04-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)'] and it relates to AY. 2018-19.

2. The Ld.AR submitted that the Ld.CIT(A) has dismissed the appeal of the assessee without condoning the delay of 114 days, though there was reasonable cause for the assessee in filing the appeal belated. He submitted that the assessee, *inter alia*, has taken a ground relating to

validity of the addition made in the impugned order passed u/s. 147 r.w.s. 144 of the Income Tax Act, 1961 ('the Act'). The Ld A.R submitted that the same is a pure legal issue and does not require verification of any new fact. Accordingly, we proceed to hear the assessee on this legal issue.

3. The Ld.AR submitted that the assessee has not filed return of income for the year under consideration. The assessment was reopened by the AO on the reasoning that the following transactions entered by the assessee have resulted in escapement of income:

- a. Sale of property;
- b. Cash deposit in one or more account and time deposit of Rs. 52.02 lakhs;
- c. Credit cards payment of Rs. 2.34 lakhs;
- d. TDS statement – Fees for Profession or Technical services of Rs. 8.97 lakhs;
- e. TDS statement – Payment to contractors of Rs. 0.50 lakhs;

However, while completing the assessment, the AO did not make any addition in respect of the above said five items. On the contrary, he has disallowed foreign travel expenses of Rs.13,35,377/-, which is not an item mentioned in the reasons for reopening of the assessment. The Ld A.R submitted that the Hon'ble jurisdictional Bombay High Court has held in the case of Jet Airways (I) Ltd., 331 ITR 236, that *the AO is not entitled to make addition on any fresh issues not mentioned in the reasons for reopening, unless he makes addition in any of the issues on which the re-opening was done.* Accordingly, the Ld.AR submitted that the impugned addition made by the AO is not sustainable, since he has not made any addition on the issues for which the re-opening has been made by the AO.

4. The Ld.DR, on the contrary, supported the orders passed by the tax authorities.

5. Having regard to the rival submissions, we find merit in the submissions made by the AR, since the same would get support from the decision rendered by the Hon'ble jurisdictional High Court in the case of Jet Airways (I) Ltd., 331 ITR 236 (supra). For the sake of convenience, we extract below the observations made by Hon'ble jurisdictional Bombay High Court in the above said case:-

*“16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.”*

Admittedly, in the instant case, the AO did not make any addition on the issues for which he had reopened the assessment. Accordingly, as per the law laid down in the above said case by Hon'ble Bombay High Court, the AO is not entitled to make any addition on any other issues. The impugned addition relating to foreign travel expenses is not an item mentioned in the reasons for reopening and hence the same could not have been added in the facts of the present case. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition relating to foreign travel expenses.

6. Since we have deleted the addition on the above said legal point, we do not find it necessary to address the other grounds urged by the assessee.

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

Order pronounced in the open court on 28-10-2024

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 28-10-2024

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "F" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,  
ITAT, Mumbai