

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 8518/Del/2019  
(Assessment Year: 2011-12)

Shikhar Exports C/O. Pranshu Goel, C.A. 5A/3A, Ansari Road Darya Ganj, New Delhi-110 002	Vs.	AITO, Ward – 54(1) New Delhi
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**PAN: AADFS 6406 M**

(Appellant)

(Respondent)

Assessee by :	Shri Pranshu Goel, C.A. and Shri Aditya Gupta, Adv.
Revenue by:	Shri V. K. Dubey, Sr. D.R.

Date of Hearing	15/10/2024
Date of pronouncement	18/10/2024

ORDER

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No. 8518/Del/2019 for AY 2011-12, arise out of the order of the Commissioner of Income Tax (Appeals)-35, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 55/18-19 dated 13.08.2019 against the order of assessment passed u/s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.11.2016 by the ITO, Ward – 54(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has challenged the validity of assumption of jurisdiction by the learned A.O. for reopening the assessment under section 147 of the Act in the instant case. The assessee had also challenged the denial of deduction under section 10B of the Act in the reassessment proceeding.

3. We have heard the rival submissions and perused the materials available on record. The assessee is a partnership firm carrying on the business of manufacturing and export of garments made up since last several years. There are two partners in the assessee firm Smt. Kalawati Sadh and Shri Rajeev Sadh having equal profit sharing ratio. Since the assessee is a 100% Export Oriented Unit (EOU), it claimed deduction under section 10B of the Act for the profits derived from the said 100 % EOU. This claim has been made by the assessee since several years. The year under consideration is the 8<sup>th</sup> consecutive year for which the claim was made. The return of income for the A.Y. 2011-12 was electronically filed by the assessee on 29.09.2011 declaring total income of Rs. 27,820/- after claiming deduction of Rs. 2,02,26,318/- under section 10B of the Act on the declared turnover of Rs. 18,14,80,686/-. The learned A.O. during the course of original scrutiny assessment proceedings thoroughly examined the claim of deduction under section 10B of the Act and also observed in para 2 of the scrutiny order under section 143(3) of the Act dated 29.06.2013 that assessee firm is registered with Development Commissioner, Noida, Special Economic Zone, Phase-II , Noida under EOU scheme and as such it is entitled for deduction under section 10B of the Act. Further, the learned A.O.

examined the detailed working of each and every item reflected in the audit report in Form No. 56G filed for claiming deduction under section 10B of the Act. A copy of registration / Permission of Development Commissioner, Noida, Special Economic Zone and details of duty draw back received from the Customs Department in lieu of exports made by the assessee were also duly furnished before the learned A.O. and were thoroughly examined by the learned A.O. The learned A.O. on being satisfied with the documents furnished by the assessee and after thorough examination of the same, accepted the claim of deduction under section 10B of the Act in the scrutiny assessment framed under section 143(3) of the Act dated 29.06.2013. This assessment was sought to be reopened by the learned A.O. vide issuance of notice under section 148 of the Act dated 15.03.2016 after recording the following reasons:

**“Form for recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of the AddL/Jt. CTT/Pr. CIT**

1.	Name & address of the assessee	M/s Shikhar Exports M-61, Lajpat Nagar-11. New Delhi-110 024
2.	PAN	AADFS6406M
3.	Status	Firm
4.	Ward/Circle	Ward – 54(1)
5.	AY in respect of which it is Proposed to issue Notice u/s 148	2011.12
6.	The quantum of income which has Escaped assessment	Rs.2,02,26,318/-
7.	Whether the assessment is proposed to be made for the first time	Yes

8.	<i>answer to item 7 above is no</i> <i>a) Income originally assessed</i> <i>b) Whether it is case of under assessment, at lower rate, asstt., which has been made the subject of excessive relief of allowing excess Loss/depreciation</i>	N.A.
9.	<i>Whether the provision of Section 150(1) are applicable. If the reply in affirmative the relevant facts may be stated against Item No. 11 &amp; 8 May also be brought out that the provisions of Section 150(2) would not stand in the way of initiating proceedings u/s 147</i>	No.

10. *Reasons for the belief that income has escaped assessment*

*There is information on record from Asstt. Development Commissioner, Noida Special Economic Zone that in the case of above mentioned assessee, LOP No.04-963/2006- 100%EOU/3673 dated 29.06.2007 for setting up a new 100% EOU for the manufacture and export of readymade garments, made Ups & Accessories has been cancelled.*

*Return of income in the case was filed on 29.09.2011 declaring an income of Rs.27,820/- after claiming deduction u/s 10A/10AA/10B/10BA of the Act of Rs.2,02,26,318/-.*

*Accordingly, in view of above, I am satisfied that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the said assessment year and income of Rs.2,02,26,318/- chargeable to tax, has escaped assessment for the assessment year 2011-12 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for A.Y 2011-12. I have, therefore, reason to believe that the sum of Rs.2,02,26,318/- chargeable to tax, has escaped assessment in the hands of the assessee for the A Y 2011-12. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act, 1961.*

*The necessary approval u/s 151(2) may kindly be accorded for issuing the notice u/s 148 of the Income Tax Act, 1961 for AY: 2011-12.*

*Income Tax Officer,  
Ward-54(1), New Delhi"*

4. The learned A.O. relied on the information received from Assistant Development Commissioner, Noida Special Economic Zone letter dated 26.02.2016 wherein the letter of Permission (LOP) granted to the assessee firm for setting up for new 100% EOU for the manufacture and export of readymade garments and made ups and accessories was cancelled. This cancellation order was passed on the ground that the assessee had not intimated the commencement of production to Assistant Development Commissioner, Noida, Special Economic Zone. It is pertinent to note that this order has been issued on 26.02.2016, whereas the original scrutiny assessment was already completed under section 143(3) of the Act on 29.06.2013. Hence, at the time of framing of scrutiny assessment proceeding, the assessee indeed had the letter of permission in existence and had duly enclosed the same during the course of original scrutiny assessment proceeding before the learned A.O. At that point in time, the assessee could not have pre-empted that 3 years down the line his letter of permission would get cancelled by Assistant Development Commissioner, Noida Special Economic Zone. Hence, there cannot be any failure at all on the part of the assessee to make full and true disclosure of all material facts relevant for the purpose of assessment in the original scrutiny assessment proceeding. Further, the A.Y. 2011-12 is the 8<sup>th</sup> year of the claim of the assessee. Every year the claim of deduction under section 10B of the Act has been granted to the assessee. Since, the reopening in the instant case has been made beyond 4 years from the end of the relevant assessment year where original assessment has been

made under section 143(3) of the Act, the applicability of proviso to section 147 of the Act comes in to operation and the same is not complied with by the learned A.O. As stated earlier, the assessee had duly furnished all the relevant details before the learned A.O. and the same had been thoroughly examined by the learned A.O. Hence, there cannot be any failure on the part of the assessee to make full and true disclosure of all material facts that are relevant for the purpose of assessment. Accordingly, the reopening of assessment deserves to be quashed on this count itself.

5. Moreover, the learned A.O. in the original scrutiny assessment proceedings had thoroughly examined the claim of deduction under section 10B of the Act with requisite documents and the year under consideration being 8<sup>th</sup> year of such claim, this is a clear case of change of opinion by the learned A.O. in the reassessment proceeding. Reliance in this regard is made on the celebrated decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Limited reported in 320 ITR 561 (SC) wherein it has been held that reopening of an assessment cannot be made merely on change of opinion.

6. In view of the aforesaid observations and respectfully following the judicial precedent relied upon herein above, we have no hesitation to quash the reassessment proceedings under section 147 of the Act in the facts and circumstances of the instant case. Accordingly the grounds raised by the assessee challenging the validity of assessment of jurisdiction under

section 147 of the Act are hereby allowed and other grounds raised on merits are left open as adjudication of the same would be merely academic in nature.

**Order was pronounced in the open court on 18/10/2024.**

Sd/-  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 18/10/2024  
*Priti Yadav, Sr. PS\**

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi