

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “H” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.730/Del/2021

[Assessment Year : 2012-13]

DCIT, Central Circle-26, Room No.323, E-2, ARA Centre, Jhandewalan Ext., Delhi-110055.	vs	Venus Contractors Pvt.Ltd., 6, Biplabi, FF, Rash Behari Basu Road, Kolkata, West Bengal-700001. PAN-AAACV5396B
APPELLANT		RESPONDENT
Appellant by	S/Shri Ashok Jain, CA, Ashu Goel, CA & Naman Gupta, Adv.	
Respondent by	Ms. Sapna Bhatia, CIT DR	
Date of Hearing	28.08.2024	
Date of Pronouncement	28.11.2024	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the Revenue seeking to assail the First Appellate order dated 04.03.2021 passed by Ld. Commissioner of Income Tax (A)-29, New Delhi [“Ld.CIT(A)”] arising from the assessment order dated 31.12.2019 passed u/s 147 r.w.s 148 of the Act pertaining to Assessment Year 2012-13.

2. Ground of appeal raised by the Revenue reads as under:-

1. *“On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 10,85,00,000/- made by the AO on account of undisclosed income without appreciating the fact that the information was received by the ITO Ward-4, Rohtak on 25.03.2019 while the assessment order u/s 143(3) was passed on 30.12.2014.*

3. As per ground of appeal, the Revenue has challenged the deletion of additions towards undisclosed income on merits.

4. When the matter was called for hearing, the Ld. Counsel for the assessee pointed out that legal defect in assumption of jurisdiction by the AO u/s 147 r.w.s 148 of the Act was pointed out to the Ld.CIT(A). The Ld.CIT(A) on consideration of facts and circumstances of the case found that in the absence of compliance of the conditions of the first proviso to section 147 of the Act, the action of re-opening of assessment under section 147 of the Act and issuance of notice under section 148 of the Act, is bad in law. The Ld. CIT(A) thus held that the re-opening of the assessment is bad in law and consequently quashed the re-assessment order. The Ld. Counsel for the assessee pointed out that the relief granted by the Ld.CIT(A) on jurisdictional issue has not been challenged by the Revenue and therefore, irrespective of the outcome of the decision on merits under challenge, in the absence of any valid jurisdiction under section 147 of the Act, the ground raised by the Revenue is meaningless and thus would not survive.

5. The Ld.CIT DR for the Revenue relied upon the assessment order and the ground raised against the first appellate order.

6. We have carefully considered the rival submissions and perused the first appellate order. On perusal, it is observed that the assessee has raised Ground No.2 before the Ld.CIT(A) seeking to challenge the jurisdiction assumption under section 147 r.w.s 151 of the Act. The assessee filed detailed written submissions contesting the assumption of jurisdiction as noted in para 6 of the first appellate order. The Ld. CIT(A) eventually determined the issue of jurisdiction in favour of the assessee and against the Revenue which reads as under:-

7.13.

“It may also be noted here that original assessment have been passed under section 143(3) on 30.12.2014 and A.O. recorded the reasons for reopening of the assessment 26.03.2019. Since, there is no failure on the part of assessee to disclose fully and truly all material facts necessary for assessment, therefore, action under section 147 initiated after expiry of 04 years from the end of the relevant assessment year, the re-assessment

would be bad in Law and is clearly hit by First Proviso to Section 147 of the I.T. Act, 1961. Thus, the A.O. did not apply his mind to the reasons recorded for reopening of the assessment. Considering the above discussion in the light of material on record and relying on the judicial pronouncements as quoted above, I am of the view that the reopening of the assessment is clearly bad in law and quashed. These grounds of appeal are accordingly allowed.”

7. In the absence of any challenge to such finding of the Ld. CIT(A), the appeal of the Revenue seeking to challenge the merits of the relief granted on factual aspects is irrelevant for the reasons that once it is held that the jurisdiction assumed under section 147 of the Act, itself is bad in law consequent additions on merits fades into insignificance and do not call for any adjudication on merits. The appeal filed by the Revenue is a non-starter in the absence of any challenge to the action of the CIT(A) wherein the jurisdiction assumed under section 147 was quashed.

8. In the result, the appeal of the Revenue is dismissed *in limine*.

Order pronounced in the open Court on 28th November, 2024

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI