

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H(SMC)' BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4010/MUM/2024
(Assessment Year: 2013-14)**

Saraswati Mukund Education Society

Plot No.15, Jeal Park, Bhayander – East,
Thane – 401105, Maharashtra.

[PAN:AAFTS4158Q]

..... **Appellant**

Vs

Income Tax Officer Exemption, Thane

208-209, 2nd Floor, Qureshi Mansion,
Teen Hath Naka, Opp. Malhar Talkes,
Thane – West, Thane - 400602,
Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Bhuvanesh V. Kankani

For the Respondent/Department : Shri Rajesh Kumar Yadav

Date

Conclusion of hearing : 13.11.2024

Pronouncement of order : 28.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the order, dated 29/07/2024, passed by the National Faceless Appeal Centre (NFAC), New Delhi [hereinafter referred to as the '**CIT**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 21/03/2022, passed under Section 147 read with Section 144B of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'].
2. The Appellant has raised following grounds of appeal :

- "1. *Without prejudice to other grounds, and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('the Act') it be held that the re-assessment proceedings initiated beyond 4 years is invalid and void-ab-initio, since there was no failure on the part of Appellant as required in the 1st proviso to section 147 of the Act. Accordingly, the re-assessment proceedings so initiated be kindly quashed and appropriate relief be granted in this regard.*
2. *Without prejudice to other grounds, and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('the Act') it be held that the re-assessment proceeding completed are invalid, since Ld. Assessing Officer failed to provide copy of 'reasons to believe' during the course of assessment proceedings to completed be kindly quashed and appropriate relief be granted in this regard.*
3. *Without prejudice to other grounds, and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('the Act') it be held that the re-assessment proceeding completed are invalid, since the same has been completed without granting an opportunity of being heard through Virtual Conference, leading to gross violation of principle of natural justice. Accordingly, the re-assessment proceeding so completed be kindly quashed and appropriate relief be granted in this regard.*
4. *On the facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the additions of Rs.5,70,000/- made by Ld. Assessing Officer and that upheld by Ld. CIT(A) is not in accordance to the facts and provisions of the Act. Accordingly, the additions so made and that upheld be kindly deleted and appellant be granted just and proper relief in this respect.*
5. *Without prejudice to other grounds, on the facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the addition of Rs.5,70,000/- so made by Ld. Assessing Officer and that upheld by Ld. CIT(A) by invoking provisions of section 13(1)(c) of the Act is incorrect and not in accordance with the provisions of section 13 of the Act. Accordingly, the*

additions so made and that upheld be kindly deleted and Appellant be granted just and proper relief in this respect."

3. The relevant facts are in brief that in the present case the reassessment proceedings were initiated and assessment was framed under Section 147 read with Section 144B of the Act vide Assessment Order, dated 21/03/2023. The Assessing Officer had assessed the income of the Assessee at INR. 12,96,352/- after (a) making addition of INR.5,70,000/- by disallowing deduction for payment of car hire charged made to Shri Deepak More and (b) making addition of INR.7,26,352/- by invoking contained in Section 13(1)(c)(ii) read with Section 13(3)(cc) of the Act and withdrawing the benefit exemption under section 11 of the Act in respect of the aforesaid surplus amount of INR.7,26,352/-.
4. Being aggrieved, the Appellant preferred appeal before the CIT(A) against the above Assessment Order, dated 21/03/2022, challenging the validity of the reassessment proceedings as well as the additions/disallowances made by the Assessing Officer. The CIT(A) upheld the validity of the reassessment proceedings but granted partial relief to the Appellant by restricting the aggregate addition/disallowance to INR.5,70,000/-. The CIT(A) granted relief to the Appellant by accepting Appellants claim for exemption of INR.7,26,352/- under Section 11 of the Act.
5. Not being satisfied with the above relief granted by the CIT(A) the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. When the appeal was taken up for hearing the Learned Authorized Representative for the Appellant pressed into service Ground No.1 raised in the present appeal challenging the validity of reassessment proceedings. The Learned Authorized

Representative for the Appellant submitted that for the Assessment Year 2013-14 regular assessment under Section 143(3) of the Act was framed vide Assessment Order, dated 25/08/2015. During the course of assessment proceedings specific queries in relation to car hire expenses. He submitted that during the original assessment proceedings specific query in relation to the car hire expenses was sought by the Assessing Officer and in response to the Appellant had furnished explanation vide letter, dated 24/08/2015. The Appellant had also placed before the Assessing Officer the copy of relevant Agreement and Ledger Account to support the payments made for car hiring charges as Annexure 3 to the aforesaid reply/letter. After taking all the facts into consideration the Assessing Officer had accepted the explanation/submission of the Appellant and not made any addition while passing the Assessment Order, dated 25/08/2015 under Section 143(3) of the Act. Subsequently, after the expiry of more than five years, the reassessment proceedings were initiated in the case of the Appellant on the basis of same material forming part of the assessment record. It was vehemently contended that the reassessment proceedings were initiated in the case of Appellant only on account of change of opinion and in absence of any tangible material to form the belief that income had escaped assessment. It was further submitted that there was no failure on the part of the Appellant to disclose facts relevant for framing assessment. The Assessing Officer has failed to specify any default committed by the Appellant in disclosing true and full facts during the assessment proceedings. Reliance in this regard was placed on the judgment of the Hon'ble Bombay High Court in the case of IPCA Laboratories Ltd. Vs. DCIT [2002] 124 Taxman 556 (Bombay) *[placed at page 5 to 7 of the paper-book]*.

7. Per contra the Learned Departmental Representative vehemently

submitted that the Assessing Officer had failed to apply mind to the material furnished by the Appellant during course of original assessment. Since no opinion was formed, the question of change of opinion did not arise. Learned Departmental Representative further submitted that the order of the regular Assessment under Section 143(3) was completely silent on the aspect of car hire charges. Further, the reasonableness of car hire expenses was also not examined during the original assessment proceedings. Thus, the Learned Departmental Representative supported the reasons recorded for reopening the assessment and the validity of the reassessment proceedings. The Learned Departmental Representative also pointed out that no specific ground was raised by the Appellant before CIT(A) challenging the validity of the reassessment proceedings.

8. In rejoinder the Learned Authorized Representative for the Appellant submitted that despite repeated requests copy of reasons recorded for reopening assessment were never furnished to the Appellant. Thus, denying to the Appellant the opportunity of filing objection against the initiation of reassessment proceedings. He further, submitted that during the Appellate proceedings before the CIT(A), the Appellant had challenged the validity of reassessment proceedings and made specific submission in this regard. In this regard, the Learned Authorised Representative for the Appellant placed on paragraph 5 of the order impugned passed by the CIT(A) *[at page 7 of 14]* wherein written submissions dated 04/06/2024 have been reproduced by the CIT(A).
9. We have given thoughtful consideration to the rival submissions and perused on the record.
10. In the case of **Commissioner of Income-tax, Central-I Vs.**

Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bombay)/[2012] it was held by the Hon'ble Bombay High Court that the Appellant is entitled to raise fresh legal plea before the appellate authorized provided the relevant facts are on record, as is the case in the present appeal. Further, the plea challenged validity of reassessment proceedings was taken by the Appellant before the CIT(A), vide submission dated 04/06/2024 [*reproduced at page 7 of 14 of the order passed by the CIT(A)*]. Accordingly, given the facts and circumstance of the present case, we admit the additional plea raised by the Appellant and proceed to examine the reasons recorded for reopening of Assessment for the Assessment Year 2013-2014 [*as reproduced in Assessment Order, dated 21/03/2022 at page 1 & 2 of 10*] which read as under:

"The assessee is charitable trust engaged in educational activities and running high school in the name of S M Public High School'. The assessee trust is registered under Bombay Public Trust Act, 1950 and also under the Societies Registration Act 1860. Also, the assessee trust has also been granted registration u/s.12AA of the Income Tax Act 1961 vide order dated 29.08.2006.

2. *For A.Y. 2013-14, the assessee trust has filed its return of income on 29/09/2013, declaring a total income at Rs. Nil, after claiming deduction u/s.11 of the I.T. Act. The case was selected for Scrutiny as per norms of CASS. The assessment was completed under Section 143(3) of the I.T, Act, 1961 on 25/08/2015 with assesseed income at Rs.Nil.*

3. *It is also seen that the return of income filed by the assessee trust for A.Y.2015-16 was selected for scrutiny and assessment was finalized on 30/12/2014. During the scrutiny proceedings, it was noticed that payment made to Shri Deepak More towards car hire charges were disallowed being unjustified and unwarranted as car was never given on rent to the assessee trust and in violation of the fiduciary relation between trust and trustee in guise of leasing of car.*

Thus, in view of facts of the case for the Assessment Year 2015-16 and provisions of section 13(1)(c) of the Act, car hire charges of Rs.5,70,000/- paid to Shri Deepak More by the assessee trust during the AY2013-14 is also violation of fiduciary relation between

trust and trustee and thereby reduced its taxable income. Therefore, the income chargeable to tax for the Assessment Year 2013-14 has been under assesseed." (Emphasis Supplied)

11. Thus, the only reason stated in the reasons recorded for re-opening assessment for the Assessment Year 2013-2014 is that for the Assessment Year 2015-16 assessment was framed on the Appellant vide order, dated 30/12/2014, and payments made towards car hire charges were disallowed as unjustified/unwarranted and in violation of fiduciary relationship between the trust and trustee. There is no averment or allegation to the effect that the Appellant had failed to disclose truly and full any material fact relevant for framing assessment for the Assessment Year 2013-2014. It was contended on behalf of the Appellant that in absence of the aforesaid allegation/averment, the reassessment proceedings are bad in law being in violation of the provisions contained in proviso to Section 147 of the Act. Reliance in this regard was placed on the judgment of the Hon'ble Bombay High Court in the case of **IPCA Laboratories Ltd. (supra)** relevant extract of which reads as under:

"3. Mr. Trivedi, the learned senior counsel appearing on behalf of the assessee, submitted that the original assessment was made on 31-3-1995. It was for the assessment year 1992-93. It was made under section 143(3). He contended that under the proviso to section 147 of the Act, no action can be taken for reopening such assessment after the expiry of four years from the end of the assessment year 1992-93 on 31-3-1997 unless the respondent No. 1 has reason to believe that the assessee's income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. It was urged that, in the present case, an affidavit-in-reply has been filed on behalf of the department which clearly indicates that the reopening of the assessment by the department was based on change of opinion. It was, therefore, contended that the reopening of the assessment was bad in law as the pre-condition for

issue of a valid notice and for valid initiation of reassessment proceedings had not been fulfilled.

4. *In reply, it was urged on behalf of the department that under Explanation 2 to section 147, it is clearly laid down that for the purposes of section 147, certain cases of escapement of income as mentioned in the Explanation shall be deemed to be cases where income chargeable to tax has escaped assessment. In this connection, reliance was placed by the department on clause (c) of Explanation 2 to section 147. It was argued that, in the present case, although an assessment was made under section 143(3) earlier, the income has been made the subject of excessive relief and, therefore, the deeming provision of Explanation 2 would apply. It was also urged that under section 149 assessment can be reopened even after four years if the income escaping assessment is of a specified amount. In this connection, reliance was placed on section 149(1)(a)(ii) of the Act.*

Findings :

5. *We find merit in this petition. We are confining this judgment to the facts of the case. In the present case, the period of four years came to an end on 31-3-1997. In the present case, an affidavit has been filed on behalf of the department. In the present case, it is the case of the department in the affidavit that the predecessor of the respondent No. 1 had passed an order of assessment under section 143(3) on 31-3-1995, computing the total income of the assessee at Rs. 2.86 crores (approx.). That, subsequently, another predecessor in office of the respondent No. 1 formed an opinion that the income chargeable to tax had escaped assessment. This was on 16-3-1999. We have gone through the reasons. The position of law after 1-4-1989, is not in dispute. By virtue of a proviso to section 147, no action can be taken for reopening after four years unless the Assessing Officer has reason to believe that income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. In the present case, the affidavit and the reasons disclosed indicate that the department has purported to reopen the assessment only on the basis of change of opinion. This position is, in fact, conceded vide para 3 of the affidavit-in-reply dated 13-3-2001. The reasons also do not spell out*

failure on the part of the assessee to disclose fully and truly all material facts. In the circumstances, the deeming provision in Explanation 2 to section 147 has no application to the facts of the present case. Section 149 only prescribes the time-limit for giving notice. We are required in this case to look into the facts in order to ascertain whether the pre-condition for the issue of a valid notice under section 148 has been fulfilled or not. We are satisfied on the facts of the present case that reopening is sought on the basis of change of opinion. Further, even in the reasons, there is nothing to indicate that reopening is sought on the ground of the failure on the part of the petitioner to disclose fully and truly all material facts.

Conclusion:

6. *In the circumstances, the impugned notice is set aside. Both the above writ petitions are made absolute in terms of prayer (b) with no order as to costs.” (Emphasis Supplied)*
12. In our view, the above judgment is applicable to the facts of the present case. In the present case also the reasons recorded do not spell out failure on the part of the Appellant to disclose fully and truly any material facts. Further, we find merit in the contention advanced on behalf of the Appellant that specific query in relation to vehicle hiring charges was raised during the relevant assessment proceedings and in response to the same the Appellant had made disclosure of primary facts and furnished supporting documents during the assessment proceedings. We note that during the assessment proceedings the Appellant had filed letter dated 24/08/2015 giving justification regarding car hiring charges of INR.5,70,000/- paid to Shri Deepak More for hiring of three vehicles. As Annexure 3 of the aforesaid letter, the Appellant had also filed Vehicle Hiring Agreement [*placed at page 13 to 16 of paper book*]. It is admitted position that re-assessment proceedings have been initiated in the present case after the expiry of 4 years from the end of the relevant assessment year. As per Proviso to Section 147 of the Act, no

action can be taken for reopening after four years unless the Assessing Officer has reason to believe that income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Since in the case before us in the reasons recorded there is nothing to indicate that reopening is sought on the ground of the failure on the part of the petitioner to disclose fully and truly material facts, the initiation of re-assessment proceedings under Section 147 of the Act cannot be sustained and is, therefore, held to be bad in law. Accordingly, Assessment Order, dated 21/03/2022, passed under Section 147 read with Section 144B of the Act is quashed and consequently additions/disallowances made in the hands of the Appellant stand deleted. Thus, Ground No. 1 raised by the Appellant is allowed while all the other grounds raised by the Appellant are dismissed as having been rendered infructuous.

13. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 28.11.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.11.2024
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT,
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