

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1549/PUN/2024
निर्धारण वर्ष / Assessment Year: 2014-15

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| Dhoot Compack Private Limited, D-88, MIDC, Nagapur, Ahmednagar- 414111. PAN : AAACD8904B | Vs. | DCIT, Ahmednagar Circle, Ahmednagar. |
| Appellant | | Respondent |

Assessee by : Shri Prasad S. Bhandari
Revenue by : Shri Ramnath P. Murkunde
Date of hearing : 18.11.2024
Date of pronouncement : 13.12.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 24.06.2024 passed by Ld. Addl./JCIT(A), Thiruvananthapuram for the assessment year 2014-15.

2. The appellant has raised the following grounds of appeal :-

"1. On the facts and in the prevailing circumstances of the case and in law the Resp. CIT(A)-NFAC erred in confirming the addition made by the Ld. Assessing Officer on the ground which was not forming the reason for issue of notice under section 148 of the Act and there is no

addition on account of the reason for which notice under section 148 was issued. Thus the Ld. Assessing Officer failed to issue a fresh notice under section 148. Hence the reassessment becomes bad in law and accordingly the addition made of Rs. 726485/- may please be deleted.

Without prejudice to the above ground following grounds may please be considered.

2. On the facts and in the prevailing circumstances of the case and in law the Resp. CIT(A)-NFAC erred in confirming the addition made by the Ld. Assessing Officer without appreciating the submission made by the assessee. Hence such addition of Rs. 726485/- may please be deleted.

3. The Appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in manufacturing business. The return of income was filed on 23.09.2014 declaring total income of Rs.4,51,55,230/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) on 23.12.2016 determining total income of Rs.4,84,34,560/-.

4. Subsequently, the Department received information that the assessee company has purchased shares from Navratanmal Gupta and Borosil Glass Works but the shares are not reflected in current assets of the assessee company. Therefore, the case was reopened and notice u/s 148 and 143(2) were issued to the assessee. During

the course of reassessment proceedings, the assessee company denied from making any such purchase of shares. However, it was noted by the Assessing Officer that the assessee company has undertaken commodity trading on National Spot Exchange Ltd. through its broker M/s. Anand Rathi Commodities Ltd.. From a perusal of Sauda Summary Report provided by M/s. Anand Rathi Commodities Ltd., the Assessing Officer observed that the assessee company has earned profit of Rs.16,68,485/- in commodity trading but have only disclosed the profit of Rs. 9,41,200/- on this account. On enquiry, the assessee company replied that the profit of Rs.16,68,485/- included notional profits also but the assessee company has disclosed the actual profit of Rs.9,42,000/- only.

5. Being unsatisfied with the reply of the assessee, the Assessing Officer made addition of Rs.7,26,485/- and determined the total income at Rs.4,91,61,045/- as against the income already assessed u/s 143(3) at Rs.4,84,34,560/-. The above assessed income includes Rs.7,26,485/- [i.e. difference of Rs.16,68,485/- minus Rs.9,42,000/-].

6. In first appeal, after considering the reply of the assessee, Ld. Addl./JCIT(A), Thiruvananthapuram dismissed the appeal of the assessee and confirmed the addition made by the Assessing Officer by observing as under :-

“1. The Appeal was filed by the appellant on 31-01-2020 for the AY 2014-15 against the Order of AO passed u/s 143(3) r.w.s. 147 on 26-12-2019 and served on 02-01-2020. In this case, an amount of Rs. 7,26,485/- was added being the amount of profit not disclosed by the appellant. The appellant company had undertaken commodity trading on National Spot Exchange Ltd through its broker M/s Anand Rathi Commodities Ltd. As per the Souda summary report provided by Anand Rathi Commodities Ltd u/s 133(6) of the act. There were sales in the case of the applicant of Rs. 10,93,33,955/- and purchases of Rs.10,76,65,470/-. Appellant earned profit of Rs. 16,68,485/- on these transaction but the appellant offered profit of Rs. 9,41,200/-.

2. Vide this office notice dated 07-06-2024, the appellant was asked to explain the discrepancy. Appellant replied that Rs. 9,41,200/- was the actual profit earned by him. According to him, it was the profit actually booked by him. A show cause notice dated 13-06-2024 was issued asking the appellant to show cause why profit of Rs.16,68,485/- should not be taxed when the appellant was following mercantile system of accounting. In response, appellant replied that profit of Rs. 7,26,485/ was notional profit and it was neither received nor accrued to him - It is to be noted that purchases of Rs.10,76,65,470/- and sales of Rs. 10,93,33,955/- actually took place as per the souda report provided by Anand Rathi Commodities Ltd and therefore, profit of Rs. 16,68,485/- was accruing to the appellant. Therefore, the addition made of Rs. 7,26,485/- is confirmed.”

7. It is this order against which the assessee is in appeal before this Tribunal.

8. Ld. AR appearing from the side of the assessee company submitted before us that the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram is not justified. Ld. AR submitted before us that only two effective grounds were raised before Ld. Addl./JCIT(A), Thiruvananthapuram, first was legal ground & second was factual ground. But Ld. Addl./JCIT(A), Thiruvananthapuram has only decided the factual ground and the legal ground was not adjudicated by him which is in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. reported in 331 ITR 236 (Bombay). Accordingly, it was requested before the Bench to set-aside the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram and further requested to delete the addition made by the Assessing Officer on the basis of reason other than that which was subject matter of proceedings u/s 147/148 of the IT Act. It is contended that in the light of judgement in the case of CIT vs. Jet Airways (I) Ltd., the Assessing Officer was bound to issue fresh notice u/s 148 of the IT Act on the basis of new reason.

9. Ld. DR appearing from the side of the Revenue relied on the orders passed by the subordinate authorities and requested to confirm the same.

10. We have heard Ld. Counsels from both the sides and perused the material available on record including the case law relied on by the assessee. We find that the assessment was reopened on the basis of reason that the assessee company has purchased certain shares from Navratanmal Gupta and Borosil Glass Works, however in reassessment the addition was made on the basis of lesser profit shown in commodity trading as appearing in Suda Summary Report provided by M/s Anand Rathi Commodities Ltd. It is the contention of Ld. Counsel of the assessee that in the light of judgement passed in the case of CIT vs. Jet Airways (I) Ltd. a fresh notice u/s 148 was required to be issued by the Assessing Officer if the addition cannot be made on the basis of original reason on the basis of which case was reopened.

11. Admittedly, in the instant case the addition was not made on the basis of original reasons which were recorded by the Assessing Officer and informed to the assessee but the addition was made on

the basis of some other reasons. It is the contention of Ld. Counsel of the assessee that the Assessing Officer was required to issue a fresh notice u/s 148 and admittedly no fresh notice was issued by the Assessing Officer on the basis of new reasons. Although, this ground was raised before Ld. Addl./JCIT(A), Thiruvananthapuram as a legal ground, however Ld. Addl./JCIT(A), Thiruvananthapuram failed to adjudicate this ground of appeal. Accordingly, the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram becomes bad in law to the extent in not deciding each and every ground of appeal raised by the assessee.

12. We find that the assessee has relied on the judgement passed in the case of CIT vs. Jet Airways (I) Ltd. 331 ITR 236, wherein necessity of fresh notice u/s 148 was directed by observing as under :-

“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."

13. Since in the instant case, the Assessing Officer has not issued fresh notice u/s 148, we find force in the arguments of Ld. Counsel of the assessee that the reassessment order passed u/s 148 of the IT Act on the basis of new reasons and without issuing a fresh notice u/s 148 is illegal and bad in law. Therefore, respectfully following the above judgement of the Hon'ble Jurisdictional High Court in the case of Jet Airways (I) Ltd. (supra), we set-aside the first appeal order passed by Ld. Addl./JCIT(A), Thiruvananthapuram and quash the reassessment order dated 26.12.2019 passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the IT Act. Thus, the grounds of appeal raised by the assessee in this appeal are allowed.

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

Order pronounced on this 13th day of December, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13th December, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A), Thiruvananthapuram.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.