

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

मजनीय श्री एस. एस. विस्वनेत्र रवि, न्यायिक सदस्य एवं
मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI S.S. VISWANETHRA RAVI, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.408/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Ramad Ventures Private Ltd. Old No.23, New No.18, Chellammal Street, Shenoy Nagar, Chennai-600 030.	बनाम / Vs.	DCIT Corporate Circle-5(1) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECR-7531-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri K.G. Raghunath (Advocate) - Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri R. Raghupathy (Addl.CIT) - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	16-12-2024
घोषणा की तारीख / Date of Pronouncement	:	02-01-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 19-12-2023 in the matter of an assessment framed by Ld. AO u/s.143(3) r.w.s 147 of the Act on 16-12-2019. The grounds taken by the assessee read as under:-

1. The Assessment Order for the Assessment Year-2013-14, passed under Sec.143(3) rws 147 of the Act, by the Learned Assessing Officer was arbitrary and is

against law and contrary to facts of the case and hence Erroneous and untenable in Law.

2. The Assessing Officer ought not to have re-opened the Assessment, which was completed earlier (original assessment) u/s 143(3), when all the material facts and information, were already disclosed fully and truly, in the course of original assessment, in utter violation of First Proviso to sec. 147 of the Act, which prohibits passing of any assessment order under sec. 143(3) rws 147, after expiry of four years from the end of the relevant assessment year.

3. The Re-assessment order passed by the Learned assessing officer is vitiated by the First Proviso to the sec. 147 of the Act and the assessment order passed by the assessment officer in utter violation of the sec. 147 is liable to be set aside/quashed.

4. The assessing Officer has grossly erred in making additions on the basis of change of opinion, when all the material facts, were already in the possession of the assessing officer.

5. The Assessing Officer, has issued the notice U/s 156 of the Act, on 16.12.2019, which has apparent arithmetical errors, and therefore this notice of Demand ought to be withdrawn and justice rendered to the appellants.

6. In view of the above and in view of further grounds that may be advanced, as the circumstances may warrant, in the interest of deliverance of justice, during the course of hearing u/s 250 of the Act, it is prayed that the Hon'ble CIT(A) may kindly be pleased to grant suitable relief after considering all the evidences and explanations that the assessee could produce, during the course of hearing on appeals, on the issues raised, hereinabove and in the assessment order concerned.

2. The Ld. AR advanced arguments and assailed the reassessment proceeding on legal grounds. The Ld. AR also advance argument on merits and submitted that the business had already commenced and therefore interest expenditure was allowable to the assessee. The Ld. Sr. DR also advanced arguments and supported the assessment framed by Ld. AO. Having heard rival submissions, the appeal is disposed-off as under.

Proceedings before lower authorities

3.1 The assessee being resident corporate assessee is stated to be engaged in infrastructure development and construction. The assessee admitted loss of Rs.51.35 Lacs which was accepted in scrutiny assessment u/s 143(3) on 26-02-2016.

3.2 However, subsequently upon perusal of Profit & Loss Account, it was noted by Ld. AO that though the assessee had claimed loss, it did not reflect any business income. The only income was interest on fixed deposits for Rs.20.80 Lacs against which the assessee claimed business expense of Rs.72.46 Lacs. Therefore, the business expenditure was to be treated as pre-operative expenditure only and the same could not be adjusted against interest income. Therefore, the case was reopened and notice was issued u/s 148 on 22-03-2019. After rejecting assessee's submissions, Ld. AO framed impugned assessment and disallowed business expenditure in *toto*.

3.3 During first appeal, the assessee assailed the validity of reassessment proceedings and also assailed the disallowance of business expenditure by relying upon various judicial decisions. On legal ground, it was submitted that the case was reopened beyond 4 years and no additional material was referred to by Ld. AO to reopen the case of the assessee. It could not be said that the assessee did not disclose all material facts for computation of income. The assessment could not be reopened on mere change of opinion.

3.4 However, Ld. CIT(A) held that it was for the assessee to lead evidences that the material was not only furnished but the same was also actively considered by Ld. AO. The Explanation-1 to Sec.147 would apply in assessee's case. No evidence was furnished by the assessee to show that some opinion was framed on the impugned issue during the course of regular assessment proceedings. The assessee was in the process of bringing into existence new source of income by letting out of property. The warehouse being constructed by the assessee was intended to be let out. This issue was not considered in the regular

assessment proceedings resulting into over allowance of expenditure. Therefore, the case was covered under Explanation 2(c)(iv) to Sec. 147 which provide that excessive loss or depreciation or any allowance shall be a case where the income had escaped assessment. Accordingly, the legal grounds were dismissed. On merits, part-relief was granted to the assessee and Ld. AO was directed to allow administrative expenditure and depreciation. The interest disallowance was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the returned loss as filed by the assessee for this year was subjected to scrutiny and an assessment was framed u/s 143(3) on 26-02-2016 accepting the returned loss. Upon perusal of paper-book, it could be seen that during the course of regular assessment proceedings, notice u/s 142(1) was issued to the assessee on 19.06.2015 (Page No.2 to 4) calling for various details. The same include Copy of ITR, Computation of income. Annual Return, Tax Audit Report, Details of immovable properties as owned by the assessee, details of all bank accounts, details of loans etc. The assessment order take note of the fact that the representative of the assessee appeared and furnished the details as called for. Considering all these submissions, an assessment was framed u/s 143(3) accepting the returned loss of Rs.51.35 Lacs.

5. Subsequently, the case of the assessee has been reopened and notice u/s 148 was issued on 22-03-2019 which is beyond 4 years from the end of the relevant assessment year. The case has been reopened on the ground that upon perusal of Profit & Loss Account, it was noted that though the assessee claimed loss, it did not reflect any business

income. The only income was interest on fixed deposits for Rs.20.80 Lacs against which the assessee claimed business expenditure of Rs.72.46 Lacs. Therefore, the business expenditure was to be treated as pre-operative expenditure only and the same could not be adjusted against interest income. It is quite clear that the case has been reopened on the basis of same material which was available before Ld. AO during the course of regular assessment proceedings. Nothing has been shown to us that some new tangible material came to the possession of Ld. AO which would justify reopening beyond 4 years. In such a case, the reassessment proceedings become review of the order which is impermissible. Upon perusal of reasons recorded by Ld. AO to reopen the case of the assessee, it could very well be seen that formation of belief of escapement of income is on same set of material and financial documents which were already available before Ld. AO during the course of original assessment proceedings. The reasons do not indicate any event as to the receipt of any fresh tangible material coming to the possession of Ld. AO subsequent to culmination of original assessment proceedings. The formation of belief is on the same set of material as available during assessment proceedings u/s 143(3). This being the case, reopening would be nothing but mere change of opinion on existing material which is impermissible as per the decision of Hon'ble Apex Court in **Kelvinator of India Ltd. (187 Taxman 312)**. It was held that the review of order is impermissible. The ratio of cited decision would squarely apply to the facts of present case.

6. Therefore, considering the aforesaid factual position, we have no hesitation in holding that the reopening, in the present case, was on mere change of opinion without there being any fresh tangible material

which is impermissible. Therefore, the assessment order could not be sustained in law on legal grounds. By quashing the assessment order, we allow the legal grounds as urged by Ld. AR. Delving into merits of the case have been rendered infructuous.

7. The appeal stand allowed in terms of our above order.

Order pronounced on

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 02-01-2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF