

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.6978/DEL/2014
(Assessment Year: 2005-06)**

M/s. Vimoni India Pvt. Ltd.,
3-D, Vandana Building,
11, Tolstoy Marg,
New Delhi – 110 001.

vs.

DCIT, Circle 17 (1),
New Delhi.

(PAN : AAACV3859K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Wadhwa, Advocate
Ms. Ragini Handa, Advocate

REVENUE BY : Shri Anirudh Saran Singh, Sr. DR

Date of Hearing : 07.11.2024

Date of Order : 22.01.2025

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax (Appeals)-19, New Delhi (hereinafter referred to as 'ld. CIT (A)) dated 03.11.2014 for the assessment year 2005-06 raising following grounds of appeal :-

*“1. The order dated 03.11.2014 passed by the learned
Commissioner of Income-tax (Appeal) is bad in law and in facts.*

2. *That the Ld. CIT(A) has erred in upholding the reopening of assessment despite the fact that no fresh material was available with the AO warranting issue of notice u/s. 148 of the I.T. Act.*

2.1 *That all the facts related to actual payment/non payment of sales tax, provident fund and ESI were available in Annexure H and Annexure I to the tax audit report filed in the form no. 3CD and hence, notice issued u/s. 148 tantamount to change of opinion which is not permissible under the law.*

2.2 *That the Id. CIT(A) has erred in not considering the fact that prior to issue of notice u/s. 148, the AO had issued notice u/s. 154 which was not disposed off and therefore the reassessment proceedings were bad in law and liable to be quashed.*

3. *Without prejudice to the above, the amount disallowed u/s. 43(8) in respect of unpaid sales tax liability, provident fund and ESI is not correct and hence, the Assessing Officer may kindly be directed to make correct disallowance if any, in accordance with law.”*

2. At the time of hearing, ld. AR of the assessee made the submissions mainly on ground no.2 raised by the assessee which is a legal issue. Ld. AR submitted

that the AO has issued notice under section 154 of the Income-tax Act, 1961 (for short 'the Act') which is placed on record at page 57 of the paper book and further submitted that within seven days, the AO has issued section 148 notice which is placed at page 58 of the paper book. Further he submitted that section 154 proceedings were initiated by the AO, however same was not disposed off. He submitted that the reasons recorded in the notice u/s 154 are exactly similar to the reasons recorded for reopening the assessment. He brought to our notice Annexure-1 submitted which is an approval form for initiating the proceedings u/s 148 submitted by the AO before the ACIT. As per the reasons recorded in the approval form, the reasons recorded therein are exactly similar to the reasons recorded in the notice issued u/s 154 proceedings. In this regard, he submitted that the issue under consideration is covered and brought to our notice decision of Hon'ble Supreme Court in the case of SM Overseas Pvt. Ltd. vs. CIT in Civil Appeal Nos.3612-3613 of 2012 dated 7th December, 2022, which is placed at page 215A of the paper book.

3. On the other hand, ld. DR of the Revenue relied on the orders of the authorities below.
4. Considered the rival submissions and material placed on record. We observed from the record submitted before us mainly the approval form submitted by the AO before the ACIT/Commissioner of Income-tax dated 27.03.2012. As per the reasons to believe recorded by the AO are as under :-

ANNEXURE - I

FORM FOR RECORDING THE REASONS FOR INITIATING FOR PROCEEDING U/S 148 AND FOR OBTAINING THE APPROVAL OF THE ADDL. COMMISSIONER OF INCOME TAX/ COMMISSIONER OF INCOME TAX

1.	Name and address of the assessee	M/s Vimoni India Pvt. Ltd., 78, Nehru Place, New Delhi
2.	PAN	AAACV3859K
3.	Status	Company
4.	Range/ Ward	ACIT, Circle-17(1), New Delhi
5.	Assessment in respect of which it is proposed to issue notice u/s 148	A.Y. 2005-06
6.	Quantum of income which had escaped assessment	Rs.16,45,937/-
7.	Whether provisions of section 147 (a), (b) and (c) is applicable or all	147(c)
8.	Whether the assessment is proposed to be made for the first time, if affirmative, please state	Yes
	Whether any voluntary return has been filed	Yes
	If so, date of filing of return	
9.	If the answer to item 8 is negative, please state	
	(a) Income originally assessed	1068980/-
	(b) Whether it is a case of under assessment, assessment at too low rate, assessment which had made subject of excessive relief or depreciation	Under assessment.
10.	Whether the provisions of section 150(1) are applicable, if the reply is affirmative the relevant facts may be stated against No. 11 and it may also be brought out that provisions of section 125(2) would not stand in the way of initiating proceedings u/s 147	
11.	Reasons to believe that income has escaped assessment	As per the 3CD report Sales of 2 units amounting to Rs.21,80,587/- were to be disallowed and PF and ESI contribution amounting to Rs.18,35,500/- were not paid yet. These expenditure should have been disallowed. The omission to do so resulted in under assessment of income by Rs.40,16,087/- and short levy of tax of Rs.16,45,937/-. In view of the above facts, I have therefore, reason to believe that by reason of omission or failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and by claiming wrong deductions, income chargeable to tax has escaped assessment.

N. D. Gupta
(N. D. Gupta)

Asstt. Commissioner of Income Tax,
Circle-17(1), New Delhi

12	Whether the Addl. CIT/CIT is satisfied on the reasons recorded by the I.T.O. that it is a fit case for issue of notice u/s 148	I am satisfied that this is a fit case for reopening u/s 147.
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Sunita Singh
27/3/2012

(Sunita Singh)
Addl. Commissioner of Income Tax,
Range-31, New Delhi

And notice issued u/s 154 of the Act for rectification of mistake u/s 154 of the Act, for the sake of clarity, the same is reproduced below :-

(S)

NOTICE UNDER SECTION 154 OF THE INCOME TAX ACT, 1961

PAN - AAACV3859K

**Office of the
Asstt. Commissioner of Income-tax,
Circle - 17(1), Room No. 221,
C.R. Bldg., I.P. Estate,
New Delhi**

Dated: 20-03-2012

To

The Principal Officer
M/s Vimoni India Pvt. Ltd.,
3-D, Vandana Building, 11, Tolstoy Marg,
New Delhi-110001

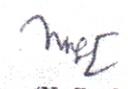
Sir/Madam,

Order under section 143(3) for the assessment year 2005-06 requires to be amended as there is a mistake apparent from the record within the meaning of section 154/155 of the Income-tax Act, 1961. The rectification of the mistake, as per details given below will have the effect of enhancing the assessment reducing the refund/ increasing your liability and if you wish to be heard you are requested to appear in person or by an authorized representative in my office **on or before 23-03-2012 at 11:30 A.M.** If however, you intend sending a written reply to this notice and do not wish to be heard in person, you are requested to ensure that your reply reaches me on or before the date mentioned above.

Nature of mistake proposed to be rectified

As per the 3CD report Sales of 2 units amounting to Rs.21,80,587/- and PF and ESI contribution amounting to Rs.18,35,500/- were not paid yet. These expenditure should have been disallowed. The omission to do so resulted in under assessment of income by Rs.40,16,087/- and short levy of tax of Rs.16,45,937/-.

SEAL: 

Yours faithfully,

(N. D. Gupta)
ACIT, Circle-17(1), New Delhi

Asstt. Commissioner of Income Tax
Circle-17(1), New Delhi

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5. From the above, we noticed that the reasons recorded for both the proceedings are exactly similar and in the similar facts on record, Hon'ble

Supreme Court in the case of S.M. Overseas Pvt. Ltd. (supra) has considered the same and adjudicated as under :-

“ Having heard learned counsel appearing on behalf of the respective parties and having gone through the impugned judgment and order passed by the High Court, we are of the opinion that the High Court has committed serious error in observing and holding that the notice under Section 154 was invalid as the same was beyond the period of limitation as prescribed/provided under Section 154(7) of the Act. It is required to be noted that the proceedings under Section 154 of the Act were not the subject-matter before the High Court. Nothing was on record that, in fact, the notice under Section 154 of the Act was withdrawn on the ground that the same was beyond the period of limitation prescribed under Section 154(7) of the Act. In the absence of any specific order of withdrawal of the proceedings under Section 154 of the Act, the proceedings initiated under Section 154 of the Act can be said to have been pending.

In that view of the matter, during the pendency of the proceedings under Section 154 of the Act, it was not permissible on the part of the Revenue to initiate the proceedings under Section 147/148 of the Act pending the proceedings under Section 154 of the Act. The High Court has erred in presuming and observing that the proceedings under Section 154 were invalid because the same were beyond the period of limitation.”

6. Respectfully following the above decision, we are of the view that in the proceedings initiated u/s 154, the AO has not acted upon pending proceedings u/s 154, the AO cannot initiate the proceedings u/s 148 of the Act which is beyond his jurisdiction. Two simultaneous proceedings cannot be initiated. Respectfully following the decision of Hon'ble

Supreme Court in the case of S.M. Overseas Pvt. Ltd. (supra), we are inclined to quash 148 proceedings as bad in law. Accordingly, ground no.2 is allowed.

7. All other grounds are not adjudicated at this stage and kept them open.
8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 22nd day of January, 2025.

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

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 22.01.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-19, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**