

आयकर अपीलीय अधिकरण
कोलकाता 'B' पीठ, कोलकाता में

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष

Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1769/KOL/2024
Assessment Year: 2009-10

Adonis Marketing (P) Ltd. *Appellant*
C/o Manoj Kain,
15-B, Clive Row, Ground Floor,
Kolkata-700001.
(PAN: AAHCA1673P)

Vs.

ITO, Ward-9(1), Kolkata *Respondent*

Appearances:

Appellant represented by : *Shri Miraj D. Shah, AR*
Respondent represented by : *Shri Rajat Mitra, CIT, DR*

Date of concluding the hearing : 06.02.2025

Date of pronouncing the order : 06.02.2025

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Ld. Commissioner of income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi [hereinafter referred to as Ld. "CIT(A)"] dated 16.08.2024 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year 2009-10.

2. The assessee in this appeal has agitated against the confirmation of addition of Rs.14,40,00,000/- made by the Assessing Officer u/s. 68 of the act by treating the share capital and share premium received by the assessee as income of the assessee from unexplained sources.

3. The assessee in this appeal apart from contesting the validity of the additions made by the lower authorities on merits has also taken the legal ground that since the reassessment proceedings were initiated in this case, by issuing of notice u/s. 148 of the Act dated 03.09.2010, prior to the end of the limitation period to issue notice u/s. 143(2) of the Act, therefore, the assessment order passed u/s. 143(3)/147 of the Act was null and void. The Ld. Counsel in this respect has relied on the decision of the Hon'ble Madras High Court in the case of Commissioner of Income Tax Vs. Qatalys Software Technologies Ltd. reported in 2008 (7) TMI 240 (Mad.) and further in the case of CIT Vs. K. M. Pachayappan reported in (2008) 304 ITR 264 (Mad); 2007 (7) TMI 229 (Mad), wherein the Hon'ble Madras High Court has further relied on the decision of the Hon'ble Supreme Court in the case of H.H.E The Nizam's Supplemental Family Trust Vs. CIT (2000) 242 ITR 381 (SC) which has been further followed by the Hon'ble Delhi High Court in the case of KLM Royal Dutch Airlines Vs. Asstt. Director of Income Tax (2017) 292 ITR 49 (Del.).

4. The Ld. DR, however, has relied upon the decision of the Hon'ble Allahabad High court in the case of "CIT Vs. Jora Singh reported in (2013) 32 taxmann.com 263".

5. We have considered the rival contentions and gone through the records. We note that the Hon'ble Allahabad High Court in the case of CIT Vs. Jora Singh (supra) has relied upon the decision of the Hon'ble Apex Court in the case of Asstt. CIT Vs. Rajesh Javeri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500/161 taxmann 316 (SC) to hold that so long as the incidence of section

147 are fulfilled, the Assessing Officer is free to initiate proceedings u/s. 147 of the Act and failure to take step u/s. 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when an intimation u/s. 143(1) had been issued. We note that in the case of “Rajesh Javery Stock Brokers Pvt. Ltd.” (Supra) the question before the Hon’ble Supreme Court was as to whether both the conditions as were applicable prior to the amendment of section 147 of the Act w.e.f. 01.04.1989, that is firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly, he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year will be applicable post amendment of the provisions of section 147 of the Act, whereby only the first condition of Assessing Officer having reasons to believe that the income has escaped assessment confers jurisdiction upon the Assessing Officer to reopen the assessment u/s. 147 of the Act. The Hon’ble Supreme Court thus held that post amendment/substitution of the provisions of section 147 w.e.f. 01.04.1999, the only condition to assume jurisdiction to reopen the assessment was that the Assessing Officer must have reasons to believe that the income of the assessee has escaped assessment. The question that whether the initiation of reassessment proceedings by issue of notice u/s. 148 of the Act can be made when the time period for initiation of scrutiny assessment proceedings u/s. 143(3) by issuing notice u/s. 143(2) of the Act has not expired was not for consideration before the Hon’ble Supreme Court in that case. However, the said issue has been directly dealt with by the Hon’ble Supreme Court in the case of HHE The Nizam’s Supplemental Family Trust (supra), wherein, the Hon’ble Supreme Court has held that unless the return of income already filed is disposed of, notice for reassessment u/s. 148 cannot be issued, i.e. no reassessment proceedings could be initiated as long as assessment proceedings pending on the basis of the return already filed are not terminated. Further, the Hon’ble Delhi High Court in the case of KLM Dutch Airlines (supra) by following the decision of the Hon’ble Supreme Court

has categorically held that the recourse can be taken to section 147 after the expiry of the limitation fixed for framing the original assessment. The said decision has been further followed by the Hon'ble Madras High court in the case of CIT Vs. KLM Royal Dutch Airlines (supra) relevant part of the order of the Hon'ble Madras High court has reproduced as under:

"5. Heard the counsel. In this case, Return of income was filed under [Section 139\(4\)](#) of the Act on 15.03.2000 and notice under [Section 143\(2\)](#) for framing assessment under [Section 143\(3\)](#) could have been issued upto 31.03.2000. Therefore, a valid Return of income was pending as on 15.03.2000. The Assessing Officer issued notice under [Section 148](#) on 15.03.2000 when a valid Return under [Section 139\(4\)](#) was pending. In this case the Return was filed and the same is pending, which means that the proceeding is still pending. In such a situation, the Revenue could not have issued notice for the purpose of reopening under [Section 147](#) of the Act. In the case of [Trustees Of H.E.H. The Nizam's Supplemental Family Trust Vs. Commissioner of Income-tax](#) [2000] 242 ITR 381 (SC), the Supreme Court considered the scope of reopening the assessment and held as follows:

"It is settled law that unless the return of income already filed is disposed of, notice for reassessment under [section 148](#) cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated. According to the Revenue it is immaterial whether the order is communicated or not and the only bar to the reassessment proceedings is that proceedings on the return already filed should have been terminated."

".... A mere glance at this note would show that it could not be said that the Income-tax Officer gave finality to the refund since no refund is granted either in the hands of the trust or in the hands of the beneficiaries. It is an inconclusive note where the Income-tax Officer left the matter at the stage of consideration even with regard to refund in the hands of the beneficiaries. This note was also not communicated to the trustees. When we examine the note dated November 10, 1965, on the file of 1963-64 nothing flows from that as well. In any case if it is an order, it would be appealable under [section 249](#) of the Act. Since the period of limitation starts from the date of intimation of such an order, it is imperative that such an order be communicated to the assessee. Had the Income-tax Officer passed any final order, it would have been communicated to the assessee within a reasonable period. In any case, what we find is that the note dated November 10, 1965, is merely an internal endorsement on the file without there being an indication if the refund application has been finally rejected. By merely recording that in his opinion, no credit for tax deducted at source is to be allowed, the Income-tax Officer cannot be said to have closed the proceedings finally. The decisions referred to by the Revenue are of no help in the present case. We are, thus, of the opinion that during the pendency of the return filed under [section 139](#) of the Act along with the refund application under [section 237](#) of the Act, action could not have been taken

under [section 147/148](#) of the Act. Our answer to the question, therefore, is in the negative, i.e., against the Revenue."

6. In the case of [KLM Royal Dutch Airlines Vs. Assistant Director of Income-tax](#) [2007] 292 ITR 49 (Delhi), the Delhi High Court, following the above Supreme Court judgment, considered the scope of provision of [Sections 139](#) and [147](#) of the Act and held as follows:

"Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no "fresh evidence or material" could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under [section 143\(2\)](#), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to [section 147](#), provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned, we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of [section 147](#) in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law.

7. Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited *supra*, the Tribunal is right in coming to a conclusion that no action could be initiated under [Section 147](#) of the Act, when there is a pendency of the Return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference."

6. The Hon'ble Allahabad High Court, itself, in *Jhunjhunwala Vanaspati Ltd. vs. ACIT (no. 2)* [2004] 266 ITR 664 (All) has observed as under:

"It is well settled that notice under section 148 cannot be issued when assessment proceedings are pending vide *CIT v. Ranchhoddas Karsondas* [1959] [36 ITR 569](#) (SC), *CIT v. S.RamanChettiar* [1965] [55 ITR 630](#) (SC), *N.Naganathalyer v. CIT* [1966] [60 ITR 647](#) (Mad.), *Ram Bilas Kedar Nath v. ITO* [1963] [47 ITR 586](#) (All.), *Dr. Onkar Dutta Sharma v. CIT* [1967] [65 ITR 359](#) (All.), *Sool Chand RamSewak v. CIT* [1969] [73 ITR 466](#) (All.), *S.P.Kochhar v. ITO* [1984] [145 ITR 255](#)¹ (All.) *Trustees of H.E.H. Nizam's Supplemental Family Trust v. CIT* [2000] [242 ITR 381](#)² (SC) and *CIT v. M.K.K.R. Muthu Karuppan Chettiar* [1970] [78 ITR 69](#) (SC), etc.

7. It has been held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. reported in 88 ITR 192 (SC) that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted.

8. In view of this, the reopening of the assessment by issue of notice u/s. 148 of the Act in this case was not valid and, therefore, consequential assessment framed u/s. 147 of the Act is not sustainable and the same is hereby quashed. Appeal of the assessee stands allowed.

9. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 6th February, 2025.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 06.02.2025

Jd., Sr.P.S)

Copy of the order forwarded to:

1. **Appellant – Adonis Marketing Pvt. Ltd.**
2. **Respondent – ITO, Ward-9(1), Kolkata.**
3. *CIT(A), NFAC, Delhi*
4. Pr. CIT
5. DR, Kolkata Benches, Kolkata.
6. Guard file.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches