

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3558/DEL/2024[A.Y.2015-16]

Karambir Singh
Plot No. 91, Near Neelkamal
Water Factory, Transport Nagar,
Ballabgarh Sector - 58,
Haryana

Vs. The Income-tax Officer
Ward - 1(4)
Faridabad

PAN: AQIPS 3287 P

(Applicant)

(Respondent)

Assessee By : ShriJitender Wadhwa, CA

Department By :ShriOm Parkash, Sr. DR

Date of Hearing : 28.01.2025

Date of Pronouncement : 19.02.2025

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 27.06.2024 for A.Y 2015-16.

2. The grounds raised by the assessee read as under:

"1. That the appellant denies its liability to be assessed at a total income of Rs. 5,56,17590/- after making an addition of Rs. 5,39,34,469/- and accordingly denies his liability to pay tax and interest thereon.

2. That having regards to the facts and circumstances of the case, the reassessment order passed U/s 147 of the Act is void as the Hon'ble Bombay High Court in the case of Knight Riders Sports (P.) Ltd. v. Astit. CIT [2023] 155 taxmann.com 11/295 Taxman 537/459 ITR 16 has clearly stated that reopening of assessment is not permissible based on change of opinions as the AO does not have any power to review his own assessment when during the original assessment Petitioner has provided all the relevant information which was considered by the AO before passing the assessment order under section 143(3) of the Act. This would be their position even if there is an audit objection. In the present case also, the Ld. A.O had originally completed the scrutiny proceeding U/s 143(3) and thereafter initiated the reassessment proceeding U/s 147 for the same assessment year.

3. That the Hon'ble CIT(A) has erred in law and on facts in upholding the disallowance of Rs. 2,90,49,919/- made by the Ld. A.O, on account of alleged double claim of the diesel expenses whereas the assessee had already clarified it during the assessment proceeding as well as the appeal proceedings the diesel expenses were not claimed twice, only transfer entries were passed in the books of accounts which reduced the balance of one expense and increased the balance of other expense.

4. That the Hon'ble CIT(A) has erred in law and on facts in upholding the disallowance of Rs. 2,48,84,551/- made U/s 40(a)(ia) by the Ld. A.O, on account of non-deduction of tax at source on freight payment of Rs. 8,29,48,503/- whereas as per law there was no requirement to deduct tax at source U/s 194C when the transporter has less than 10 vehicles.
 5. That having regard to the facts and circumstances of the case, the assessment made U/s 147 was bad in law as recording of reasons and approval by higher authority U/s 151 both are totally mechanical. Reliance is placed on the judgement of the Hon'ble Delhi High Court in case of SABH Infrastructure Ltd V/s Asst. Commissioner of Income Tax dated 25.09.2017 [W.P. (C) 1357/2016].
 6. That having regards to the facts and circumstances of the case, the reassessment order passed U/s 147 was against the Principal of Natural Justice.
 7. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.:
3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.
4. Briefly stated, the facts of the case are that the assessee is an individual and filed its Return of Income for the A.Y under consideration declaring an income of Rs. 16,83,120/-. Return was selected for scrutiny assessment through CASS and assessment u/s

143(3) was completed on returned income only. Thereafter, the Assessing Officer issued notice u/s 154 to examine for the following two issues:

- i. assessee has claimed the Diesel expense twice i.e., Rs 2,90,49,919/-
- ii. Non-deduction of tax at source u/s 194C of the Act on freight payment of Rs 8,29,48,503/- resulting in disallowance of Rs 2,48,84,551/- u/s 40(a)(ia).

5. Thereafter, the AO reopened the case u/s 148 on the basis of the above same issues. The Assessing Officer passed a re-assessment order on 23.03.2022 making total disallowance of expenses of Rs. 5,39,34,469/-.

6. Aggrieved, the assessee went in appeal before the ld. CIT(A) who upheld the additions made by the Assessing Officer and dismissed the appeal of the assessee.

7. Now the further aggrieved assessee is in appeal before us.

8. Before us, the ld. counsel for the assessee vehemently stated the Assessing Officer had wrongly invoked his power to reassess u/s 147 of the Act when the proceedings u/s 154 were already pending on the same matter and final conclusion was not drawn. The ld AR stated that the Assessing Officer does not have any power to review his own assessment when during the original assessment, petitioner has

provided all the relevant information on the same issues which was considered by the Assessing Officer before passing the assessment order under section 143(3) of the Act and no new tangible matter was found by the Assessing Officer.

9. The ld. counsel for the assessee further submitted that in the present case also, the Assessing Officer had again reopened the case which was originally settled u/s 143(3) of the Act. Hence, the reopening of the case in present matter was not permissible as it was completely based on the records already available with the Assessing Officer at the time of original assessment proceedings and not on any new tangible material. For this proposition, the ld. counsel for the assessee relied on the judgement of the Hon'ble Supreme Court in the case of *CIT Vs. Kelvinator of India Ltd.*, reported in 320 ITR 561.

10. The ld. counsel for the assessee further contended that reopening of the assessment on the basis of audit objection is not permissible. A report of the revenue audit party is merely information and opinion, it is not new or fresh or tangible material. If the reassessment notice is solely based on an audit opinion, it means it is issued on change of opinion which is not permissible. It is the say of the ld. counsel for the assessee that the Assessing Officer has also mentioned in the reply to the audit observations that "remedial action

had been initiated u/s 147 of the Income Tax Act" which clearly implies that the initiation of proceedings u/s 147 were as a consequence of audit objection only and no fresh tangible material was available with the department at that time.

11. In the absence of any new and/or fresh materials, on the basis of which the Assessing Officer could have formed the opinion that income has escaped assessment, the Assessing Officer lacked jurisdiction to reopen assessment. Reliance was placed on the judgement of the Hon'ble Delhi High Court in the case of *FIS Global Business Solutions India Pvt. Ltd vs. PCIT* dated 16.11.2018 [+W.P.(C) 12277/2018, C.M. APPL.47539/2018].

12. It is also the say of the ld. counsel for the assessee that in the first notice dated 02.04.2019, the department raised the issue of claim of diesel expense twice and then in another notice dated 30.04.2019 they raised the issue of non- deduction of tax source on freight payment. The assessee duly submitted the reply to both the notices. However, the department did not reach to the finality either by dropping the same or passing any order u/s 154 of the Act and simply initiated the proceedings u/s 147 through notice u/s 148 of the Act dated 29.03.2021 on the same matters which were pending in the proceedings u/s 154 of the Act. The ld AR submitted that there cannot

be two parallel proceedings on the same issue. For this proposition, the ld. counsel for the assessee placed reliance on the judgement of the Hon'ble Supreme Court in the case of *S. M. Overseas (P.) Ltd. vs Commissioner of Income- tax* [2023] 291 Taxman 441 (SC) in which they held that 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 u/s 147/148 of the Act pending the proceedings u/s 154 of the Act.

13. The ld. DR relied upon the orders of the ld. CIT(A) and continued by saying that the audit party of the department raised objections and, therefore, reopening on the basis of objections of the audit party is valid. The ld. DR submitted that where the audit objections relate to factual error pointed out by the audit party, reopening is valid.

14. We have heard the rival submissions and have perused the relevant material on record. In the present case we find that original assessment u/s 143(3) was made on 21.11.2017 accepting the returned income of Rs 16,83,120/-. It is however, not clear from the assessment order whether issues in contest was examined by the AO in the original assessment order. The assessee also has not produced before us any evidence that the issues in contest was raised by the AO and the assessee has supplied any response to it. We are therefore of the

considered view that during the assessment proceedings, the AO in the assessment originally made has neither expressly or by necessary implication, has expressed an opinion on the issues.

15. Apparently, the AO received audit objections of the Internal Audit Wing of the Income tax Department dated 29.11.2018 and 19.12.2018 whereafter the AO initiated rectification proceedings vide notice u/s 154 dated 02.04.2019 for rectifying the mistake on the issue of claim of diesel expense twice and notice u/s 154 dated 30.04.2019 for non-deduction of TDS on freight charges paid to contractors for disallowance u/s 40(a)(ai). The assessee replied to both issues. From the perusal of records, we find that the AO was satisfied with replies as the same is reflected in the AO annotated report to the PCIT for inclusion in the report of the CAG. The report stated on the issue of twice claim of diesel expense that the audit objection is not maintainable as the same flows from incorrect appreciation of accounting method followed by the assessee. We also find that the proceedings u/s 154, however, remained pending, it was neither dropped nor concluded.

16. The AO thereafter, issued a notice u/s 148 dated 29.03.2021 to bring to tax income on the same issues for which proceedings u/s 154 was started. We are now to adjudicate whether there was change of

opinion involved and whether the notice u/s 148 was validly issued. We have held elsewhere that in the original assessment there is no evidence that the AO had formulated an opinion on the issues in contest. Therefore, we are of the opinion that there was no change of opinion and hence the decision of *Kelvinator of India Ltd* and *TechSpan India (P.) Ltd* doesn't apply.

17. We however now have to decide whether the notice u/s 148 issued on the basis of audit objection is valid or not and whether during the pendency of rectification proceedings any notice u/s 148 can be issued. On the issue whether audit objection can be considered as 'information' u/s 147(b), the decision of hon'ble Delhi High Court in the case of *FIS Global Business Solutions India Pvt Ltd* Vs. PCIT is very illuminating. This decision squarely applies to the instant case where vide order dated 16.11.2018 it has elucidated as under:

"3. It is urged that the Revenue is doing no more than re-visiting the merits of the original scrutiny assessment which it was especially barred from conducting afresh. Learned counsel relied upon the previous Division Bench's judgment in Carlton Overseas Pvt. Ltd. v. Income Tax officer & Ors., (2009) 318 ITR 295 and Torrent Power S.E.C. Ltd. v. Assistant Commissioner of Income-Tax (2017) 392 ITR 330 (Guj), to contend that the rulings in Commissioner of Income Tax v. Kelvinator of India Ltd., 320 ITR 561 authorises review of the completed scrutiny only and only if tangible material is made available to the revenue. It is emphasised that these rulings of Carlton and Torrent (supra) have stated that a subsequent audit objection or audit

reports of the Income Tax Department does not constitute objective material.

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6. *This Court is of the opinion that Carlton (supra) concludes the issue in the present case; the audit objection merely is an information. As reiterated in Kelvinator (supra) by the Supreme Court, change of opinion is impermissible. The Revenue was clearly barred by provisions of Section 147/148 of the Act.*

7. *In the present case, the reassessment notice is solely based on an audit opinion. Having regard to the fact that the assessee's challenge to the previous year's re-assessment orders was successful - in FIS Global Business Solutions India Pvt. Ltd. v. ACIT 2018 (408) ITR 75 (Del), the reassessment proceedings are unsustainable.*

8. *In view of the above discussion, the impugned re-assessment notice dated 31.03.2018, cannot be sustained. It is hereby quashed; all consequential proceedings issued and conducted pursuant to the said re-assessment notice are also hereby quashed."*

18. In the above factual matrix, we find that in the present case, the re-assessment notice u/s 148 is solely based on the audit objection which as per the decision of Carlton Overseas Pvt. Ltd. v. Income Tax officer (supra) and Torrent Power S.E.C. Ltd. v. Assistant Commissioner of Income-Tax (supra) above, does not constitute objective material. It is therefore held that initiating reassessment proceedings on the basis of audit objection with no new tangible material, is not permissible in law.

19. We also find that the judgement of the Hon'ble Supreme Court in the case of *S. M. Overseas (P.) Ltd. vs Commissioner of Income- tax* [2023] 291 Taxman 441 (SC) fully applies to the facts of the case where the hon'ble Supreme Court had held that 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 u/s 147/148 of the Act. In the instant case, the proceedings u/s 154 were still pending when the AO initiated reassessment proceedings u/s 148 and since two parallel proceedings on the same issue can't exist at the same time therefore, the issue of notice u/s 148 in the instant case can not be sustained.

20. Considering the totality of the facts in light of the aforementioned decisions, we are of the considered view that the assumption of jurisdiction for reopening the assessment by the Assessing Officer is bad in law and notice u/s 148 of the Act deserves to be quashed and consequent re-assessment order also deserves to be quashed. We therefore, quash the reopening proceedings and accordingly, the re-assessment order so framed is also quashed.

Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

21. In the result, the appeal of the assessee in ITA No.3558/DEL/2024 is allowed.

The order is pronounced in the open court on 19.02.2025.

Sd/-

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Dated: 19th FEBRUARY, 2025.
VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi