

आयर अपीलीय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया जी, माननीय लेखा
सदस्य

SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT
MEMBER

आयकर अपील सं./I.T.A.No.1347/Hyd/2024 &
1291/Hyd/2024
(निर्धारण वर्ष/ **Assessment Year : 2012-13 & 2013-14**)

Eyegear Optics India Private Limited Hyderabad PAN : AACCE0350Q	Vs.	Dy.Commissioner of Income Tax Circle-8(1) Hyderabad
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Ms.Suvibha Nolkha, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Srinath Sadanala, DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	16.04.2025
घोषणा की तारीख/Date of Pronouncement	:	14.05.2025

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ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The captioned appeals filed by the assessee company are directed against the respective orders passed by the Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC) dated 08.11.2024 and 18.10.2024, which in turn arises from the respective orders passed by the Assessing Officer (“the AO”) u/s 147 r.w.s 144 of the Income Tax Act, 1961 (for short “Act”) dated 16.12.2019 and 09.12.2019 for the A.Y.2012-13 and A.Y. 2013-14 respectively. As common issues are involved in all these appeals, therefore, the same are taken up and disposed of vide this consolidated order.

2. We shall first take up the appeal filed by the assessee company for the A.Y. 2012-13 in ITA No.1347/Hyd/2024, wherein the impugned order has been assailed on the following grounds of appeal before us:

On the facts and circumstances of the case and in law, the Ld.CIT(A), NFAC erred in:

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1. Passing an order under section 250 of the Income Tax Act, 1961 (“the Act”) which is bad in law and liable to be quashed.
2. Remanding the matter back to the Assessing Officer (AO), which is without jurisdiction and hence unsustainable in law.
3. Not appreciating that the CIT(A) does not possess the power to set aside or remand the assessment proceedings back to the AO, thereby exceeding the jurisdiction conferred under Section 250 of the Act.

Ground relating to order passed by the AO

On the facts and circumstances of the case and in law, the Ld.AO erred in:

4. Without prejudice to the above, the Ld.AO erred in issuing order without a Document Identification Number (“DIN”), as required in accordance with CBDT Circular No.19/2019 dated August 14, 2019 and hence bad in law and ought to be quashed.
5. Initiating the reassessment proceedings beyond the time-limit prescribed under the first proviso to section 147 of the Act.
6. Not appreciating that the Appellant was not in receipt of any of the notices/summons issued, and hence could not adhere to its compliance.
7. Not provided the reasons for him to believe that income has escaped assessment as required under section 147 of the Act.
8. Reassessing the income based on a mere change of opinion on the existing facts.

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9. Holding that the alleged referral fees paid to Doctors is in violation of public policy and regulations formulated by the Medical Council of India (“MCI”).
 10. Not understanding that the alleged payments are made to various eye hospitals/ophthalmologists towards consideration for use of designated space infrastructure in their premises for its business.
 11. Not appreciating that the MCI regulations were not binding on all businesses including that of Appellant.
 12. Not appreciating that the Appellant’s business and facts did not fall under any of the classes specified in the MCI regulation.
 13. Not appreciating that, assuming without admitting, the alleged contravention of MCI Regulations, should have been decided by MCI and not at the judgement of the Income Tax Authorities.
 14. Levying interest u/s 234A and 234B of the Act.
 15. Initiating penalty proceedings u/s 271(1)(c) of the Act.
3. Succinctly stated, the assessee company, which is engaged in the business of retail trading in ophthalmic lenses, frames, sunglasses and medicines had filed its return of income for the A.Y.2012-13 on 29.09.2012, declaring an income of Rs. Nil under normal provisions of the Income Tax Act, 1961 (for short “the Act”).

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The return of income filed by the assessee company was initially processed as such u/s 143(1) of the Act.

4. Original assessment was framed by the Assessing Officer (“the AO”) u/s 143(3) of the Act dated 26.03.2016, wherein, the loss returned by the assessee company was scaled down to Rs.4,00,31,066/-.

5. Subsequently, the AO based on information available with his office that the assessee company had debited an amount of Rs.4.17 crores (Approx.) towards referral fees paid to doctors, which was not an allowable expenditure u/s 37(1) of the Act, reopened its case u/s 147 of the Act. Notice u/s 148 of the Act dated 31.03.2019 was duly served upon the assessee company. However, the assessee company failed to file its return of income in compliance to the aforesaid notice. As the assessee company had neither filed its return of income nor complied with the notices that were issued by the AO, therefore, the latter was constrained to frame the assessment to the best of his judgment u/s 144 of the Act. Accordingly, the AO vide his order passed u/s 144 r.w.s 147 of the Act dated 16.12.2019, after disallowing the assessee’s claim

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for deduction of referral fees paid to doctors of Rs.4.17 crores (supra) determined its income at Rs.16,91,181/-.

6. Aggrieved, the assessee company carried the matter in appeal before the CIT(A). Although the assessee company despite having been afforded sufficient opportunities, had either not participated in the proceedings or had furnished part replies/ sought adjournments, therefore, the CIT(A) taking cognizance of the fact that the assessment order was passed by the AO u/s 144 r.w.s 147 of the Act, set aside the assessment to the file of the AO with a direction to decide the matter afresh after affording a proper opportunity of being heard to the assessee company.

7. The assessee company being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Mrs. Suvibha Nolkha, Ld.AR (for the assessee company), at the threshold of the hearing, submitted that the Ld.CIT(A) had grossly erred in law and facts of the case in remanding the matter to the file of the AO. Elaborating on her contention, the Ld. AR submitted that the CIT(A) had grossly erred in not dealing with the specific issues based on which the validity of the jurisdiction that was assumed

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by the AO for framing the impugned assessment was assailed before him. Carrying her contention further, the Ld.AR submitted that though the assessee company had specifically challenged the validity of the jurisdiction that was assumed by the AO for reopening of its concluded assessment, which was earlier framed by his predecessor vide order u/s 143(3) of the Act, dated 26.03.2015 for the reason that the same was reopened beyond the prescribed time limit contemplated in the “1st Proviso” to section 147 of the Act, but, the CIT(A) instead of taking a call on the said material aspect had summarily restored the matter to the file of the AO. The Ld.AR submitted that the CIT(A) by refraining from adjudicating the aforesaid legal issue based on which the validity of jurisdiction assumed by the AO was specifically assailed before him, had in fact by adopting an evasive approach afforded a second innings to the department to undo the said lapse.

8. Elaborating further on her contention, the Ld.AR had drawn our attention to “Ground of appeal No.2” which was raised by the assessee company before the Ld.CIT(A). The Ld.AR had further drawn our attention to the notice u/s 148 of the Act, dated

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31.03.2019, that was issued to the assessee company, Page 46 of APB. The Ld.AR submitted that as the original assessment in the case of the assessee company was framed by the AO vide his order u/s 143(3) of the Act, dated 26.03.2016, therefore, as per the “1st Proviso” to section 147 of the Act, in the absence of any failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment for the subject year, its case could have been validly reopened upto 31.03.2017. The Ld.AR to fortify her aforesaid contention had drawn support from the judgment of the Hon’ble Supreme Court in the case of New Delhi Television Ltd. Vs. DCIT in Civil Appeal No.1008 of 2020. Apart from that, it was submitted by her that as the concluded assessment of the assessee company that was originally framed by the AO vide his order u/s 143(3) dated 26.03.2016, had been reopened by the AO merely based on a “change of opinion” i.e., on the same set of facts as were available before his predecessor in the course of original assessment proceedings, therefore, for the said reason also, the AO had traversed beyond the scope of his jurisdiction and initiated the impugned reassessment proceedings.

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The Ld.AR to fortify her aforesaid contention had pressed into service, the judgment of the Hon'ble Supreme Court in the case of Kelvinator of India Ltd. [2010] 187 taxman 312(SC). The Ld.AR based on her aforesaid contentions vehemently submitted that as the AO had grossly erred in the law and facts of the case in assuming jurisdiction and reopening a concluded assessment of the assessee company, therefore, the Ld.CIT(A) was obligated to have quashed the impugned reassessment order passed by him u/s 147 r.w.s 144 of the Act dated 16.12.2019.

9. Per contra, the learned Departmental Representative (for short "the Ld. DR") relied on the orders of the lower authorities. It was submitted by him that as the assessee company had neither participated in the assessment proceedings nor prosecuted the matter before the Ld.CIT(A), therefore, the latter taking cognizance of the fact that the A.O. had framed the reassessment vide a best judgment assessment order, thus, in all fairness had rightly restored the matter to the file of the AO for fresh adjudication.

10. We have heard the learned authorized representatives of both parties, perused the orders of the lower authorities as well as

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considered the judicial pronouncements that were pressed into service by the Ld.AR.

11. Ostensibly, it is a matter of fact apparent from the record that the assessee company in the course of assessment proceedings had adopted an evasive approach, wherein, it had neither complied with the notice issued u/s 148 of the Act; nor replied/furnished the details as were called for by the AO in the course of the reassessment proceedings. Also, the conduct of the assessee company was no better before the Ld.CIT(A), wherein, it had once again adopted an evasive approach and not participated /filed the requisite details before him.

12. Be that as it may, it is however a matter of fact borne from record that the assessee company in its “Ground of appeal No.2” before the Ld.CIT(A), had specifically assailed the validity of jurisdiction that was assumed by the AO for initiating the reassessment proceedings, on the ground, that the same was beyond the time limit prescribed under the “1st proviso” to section 147 of the Act. For the sake of clarity, the “Ground of appeal No.2”

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raised by the assessee company before the CIT(A) is being culled out as under:

“2. Initiating the reassessment proceedings beyond the time-limit prescribed under the first proviso to section 147 of the Act.

13. Admittedly, the legislature in all its wisdom had vide the Finance (No.2) Act 2024 w.e.f. 01.10.2024 inserted the “Proviso” to section 251(1)(a) of the Act, as per which the CIT(A) has been vested with the power to set-aside the assessment and refer the case back to the AO for making afresh the assessment, in a case, where the appeal filed before him is against the order of assessment made u/s 144 of the Act. For the sake of clarity, section 251(1) is culled out as under:

“251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers –

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.”

(emphasis supplied by us)

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14. We are of the firm conviction that though the CIT(A) pursuant to the aforesaid amendment in Section 251 of the Act, now stands vested with the jurisdiction to set-aside and refer back a best judgment assessment order passed u/s 144 of the Act to the file of the AO for framing a fresh assessment, but the same cannot justify the refraining on his part from adjudicating the legal issues based on which the validity of the jurisdiction assumed by the A.O for framing the assessment or reassessment has been assailed before him. Rather, we find that as per Section 251(1) of the Act, the CIT(A) in disposing of an appeal is vested with the power to confirm, reduce, enhance or annul the assessment. We, thus, are of the firm conviction that in case an assessee appellant, based on the facts available on record, has assailed before the CIT(A) the validity of the jurisdiction that was assumed by the A.O for framing the impugned assessment or reassessment, then, if the said claim is found to be in order, the CIT(A) in the exercise of the powers vested with him under sub-section (1) of Section 251 of the Act is obligated to annul the assessment or reassessment rather than adopting an evasive approach, and in the garb of the powers

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vested with him as per the “Proviso” to Section 251(1) of the Act set aside and refer back the impugned best judgment assessment order passed u/s 144 of the Act for framing of fresh assessment by the AO. To sum up, the CIT(A) is obligated to address and adjudicate the grievance of the assessee appellant, as regards the validity of the jurisdiction assumed by the A.O for initiating the assessment or reassessment proceedings to the extent the same can safely be done based on the facts discernible from the record before him. Our aforesaid conviction can safely be gathered from the “Memorandum Explaining the Provisions in the Finance Bill, 2024”, which to the extent relevant to the “Proviso” to Section 251(1) of the Act, reads as under:

“4. Considering the huge pendency of appeals and disputed tax demands at the Commissioner (Appeals) stage, it is proposed that the cases where assessment order was passed as best judgement case under section 144 of the Act, Commissioner (Appeals) shall be empowered to set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.....”.

Although the “Proviso” to Section 251(1) is an enabling proviso that further vests jurisdiction with the CIT(A) to set-aside a best judgment assessment order, but, the same cannot be construed in a manner that the same, inter alia, takes away his power to annul

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an assessment or reassessment which is framed *de hors* valid assumption of jurisdiction by the A.O. As a word of caution, if a best judgment assessment or reassessment framed u/s 144 of the Act, despite an invalid assumption of jurisdiction by the A.O is set aside and referred back to his file by the CIT(A) for framing of a fresh assessment, then, impliedly the lack of jurisdiction by the A.O will be given a go by and the challenge of the assessee-appellant to the validity of the assumption of jurisdiction would stand frustrated. We are of the firm conviction that the purpose of insertion of the “Proviso” to Section 251(1) by the legislature vide the Finance (No.2) Act, 2024 w.e.f 01.10.2024 can by no means be stretched to the extent of using it for validating an assessment or reassessment framed *de hors* valid assumption of jurisdiction by the A.O.

15. Adverting to the facts pertaining to the challenge thrown by the assessee company, qua the validity of the jurisdiction assumed by the AO for initiation of the reassessment proceedings, on the ground that the same was beyond the prescribed time limit as contemplated under the “1st Proviso” to section 147 of the Act, we

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are of the view that the Ld.CIT(A) ought to have adjudicated the same instead of adopting an evasive approach in the guise of exercise of the extended jurisdiction vested with him vide the “Proviso” to section 251(1)(a) of the Act as made available on the statute by the Finance (No.2) Act 2024 w.e.f. 01.10.2024. We find substance in the Ld. AR’s contention that in case the lack of jurisdiction on the part of the A.O for framing the assessment is not addressed by the CIT(A), but, in the garb of the powers vested with him as per the “Proviso” to Section 251(1) of the Act the matter is referred back to the file of the AO for fresh adjudication, then, it would afford a second inning to the A.O who would simply give effect to the directions of the CIT(A) and reframe the re-assessment order despite lack of valid assumption of jurisdiction which was the very foundation for initiating the impugned proceedings.

16. Be that as it may, we are of the firm conviction that in the totality of the facts involved in the present appeal before us, the CIT(A) instead of summarily setting aside the matter to the file of the AO for making a fresh assessment, ought to have taken a call as regards the specific ground based on which the validity of the

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jurisdiction that was assumed by the AO for framing the reassessment was assailed by the assessee-appellant before him. Our aforesaid conviction that it is not obligatory on the part of the CIT(A) to set aside all best judgment assessment orders passed u/s 144 of the Act to the file of the AO is further fortified on looking at the language used by the legislature in the “Proviso” to Section 251(1) of the Act, i.e, “.....may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment” which, thus, does not compulsorily require the CIT(A) to set aside and refer the assessment in every case where it is made u/s 144 of the Act.

17. We thus, in terms of our aforesaid deliberations set aside the order of the CIT(A), and restore the matter to his file with a direction to adjudicate the specific “Ground of appeal No.2” based on which the jurisdiction assumed by the A.O for framing the impugned reassessment order u/s 147 r.w.s 144 of the Act dated 16.12.2019 was assailed by the assessee appellant before him.

18. Before parting, we may herein clarify, that as we have in terms of our aforesaid observations set aside the matter to the file

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of the CIT(A), therefore, we have refrained from expressing any view, regarding the issues based on which validity of jurisdiction assumed by the AO for initiating the reassessment proceedings, and also the merits of the addition have been assailed by the assessee appellant before us. The **Ground of appeal No.3** is allowed for statistical purposes in terms of our aforesaid observations.

19. The **Grounds of appeal Nos.4 to 15** are disposed off in terms of our aforesaid observations.

20. Resultantly, the appeal filed by the assessee company is allowed for statistical purposes in terms of our aforesaid observations.

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21. As the facts and the issue involved in the present appeal principally remain the same as were there before us in the appeal filed by the assessee company for the A.Y.2012-13 in ITA No.1347/Hyd/2024, therefore, the order therein passed shall

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apply *mutatis mutandis* for the purpose of disposing of the present appeal.

22. Resultantly, the appeal filed by the assessee company is on the same terms allowed for statistical purposes.

23. In the result, both the captioned appeals are allowed for statistical purposes in terms of our aforesaid observations.

14 मई, 2025 को खुली अदालत में सुनाया गया आदेश।

Order pronounced in the Open Court on 14th May, 2025.

<p>Sd/- (मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad,
dated 14.05.2025.
***L.Rama /SPS

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आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	M/s EyeGear Optics India Private Limited, 8-2-277/A & A9, Plot No.9, Soudagar's Silver Breeze, Road No.2, Banjara Hills, Hyderabad
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle-8(1), Signature Towers, Kondapur, Hyderabad
3.	The Principal Commissioner of Income Tax, Hyderabad		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad