

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI 'E' Bench : NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 5358/DEL/2024
(AY 2013-14)

M/s O.K. AUTO COMPONENTS (P) LTD., A-131, SGM NAGAR, FARIDABAD HARYANA – 121001 (PAN: AAAC05770E) (APPELLANT)	VS. DCIT, CIRCLE-1, HARYANA (RESPONDENT)
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Appellant by	: Shri Vijay Kumar Singla, CA
Respondent by	: Sh. Choudhary N.C. Roy, Sr. DR.

Date of hearing	: 21.05.2025
Date of pronouncement	: 21.05.2025

ORDER

PER SHAMIM YAHYA, AM :

This appeal by the Assessee is directed against the Order dated 23.09.2024 of NFAC, Delhi relating to assessment year 2013-14.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of automobiles and auto parts and filed return of income on 27.09.2013 declaring total income at Rs. 1,33,85,610/- for AY 2013-14. Subsequently, the case of the assessee was selected under CASS and

assessment u/s. 143(3) was completed on 25.01.2016 after accepting the returned income. From the examination of the case records, AO noted that a survey was conducted at the business premises of assessee u/s. 133A on 20.12.2012. During the survey assessee surrendered additional income / unexplained investment u/s. 68/69 amounting to Rs. 1.10 Crore with the breakup as Rs. 10 lakhs as cash, Rs. 40 lacs as excess stock, Rs. 30 lakhs as unexplained creditors, Rs. 20 lakhs in Plant and Machinery and Rs. 10 lakhs in building investment. On perusal of records, AO further noted that declared income credited is only Rs. 70 lakhs but Rs. 40 lakhss on account of excess stock has not been credited which was required to be credited separately as excess / unexplained investment. Notice u/s. 148A(b) of the Act was issued and duly served. In response to the same, the assessee had not filed any return of income. During the course of assessment proceedings, the AO issued notice u/s. 142(1) and show cause notice. In response to the same, the assessee has submitted partially details. AO completed the assessment u/s. 143(3) r.w.s. 144B by assessing the total income Rs. 1,73,84,610/- thereby raising the tax demand of Rs. 28,16,230/-.

2. Upon assessee's appeal, Ld. CIT(A) confirmed the AO's order.
3. Against this order, assessee is in appeal before us.

4. We have heard both the parties and perused the records. Ld. Counsel for the assessee submitted that the reassessment in this case has arisen due to change of opinion by the AO. He submitted that reopening upon change of opinion is not permissible in the eyes of law. He further submitted that more than 4 years have been elapsed from the earlier assessment order passed u/s. 143(3) of the Act. Per contra, Ld. DR relied upon the orders of the authorities below.

5. We have carefully considered the submissions and perused the records. We note that reasons recorded for reopening are reproduced as under:-

“The assessee had filed its return of income for assessment year 2013-14 on 27.9.2013 showing income of Rs. 1,33,85,610/-. The case was selected for scrutiny through CASS. Assessment was completed u/s. 143(3) on 25.01.2016 on income of Rs. 1,33,84,610/-.

In this case a return of income was filed for the year under consideration and regular assessment u/s. 143(3) was made on 25.1.2016. Since, 4 years from the end of the relevant year has expired in this case the requirements to initiate proceeding u/s. 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all materials facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment

proceedings and have noted that the assessee has not fully and truly disclosed the following material facts necessary for his assessment for the year consideration.

From the examination of the case records, it is revealed that a survey was conducted at the business premises of assessee u/s. 133A on 20.12.2012. During the survey assessee surrendered additional income / unexplained investment u/s. 68/69 amounting to Rs. 1.10 crore with the breakup as Rs. 10 lakh as cash, Rs. 40 lacs as excess stock, Rs. 30 lakhs as unexplained creditors, Rs. 20 lakhs in Plant & Machinery and Rs. 10 lakhs in building investment. On perusal of records, it is seen that declared income credited is only Rs. 70 lakhs but Rs. 40 lakhs on account of excess stock has not been credited which was required to be credited separately as excess/ unexplained investment.

It is true that the assessee has filed a copy of P&L account and other relevant documents alongwith return of income where various information material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced P&L Account or other evidences as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of explanation 1 of Section 147 of the Act.

It is evident from the above discussion that in this case the issues under consideration were never examined by the AO during the course of regular assessment. This fact is corroborated from the contents of notices issued by the AO u/s. 143(2)/142(1) and order sheet entries recorded during the 143(3) proceedings.

For above narrated reasons, it is not a case of change of opinion by the AO.

In view of all these facts, I have reason to believe that amount of Rs. 40,00,000/- has escaped assessment in this case for AY 2013-14.”

5.1 From the above, it is evident that AO has referred the survey which was conducted in the business premises of the assessee u/s. 133A of the Act on 20.12.2012 and AO observed as under:-

“From the examination of the case records, it is revealed that a survey was conducted at the business premises of assessee u/s. 133A on 20.12.2012. During the survey assessee surrendered additional income / unexplained investment u/s. 68/69 amounting to Rs. 1.10 crore with the breakup as Rs. 10 lakh as cash, Rs. 40 lacs as excess stock, Rs. 30 lakhs as unexplained creditors, Rs. 20 lakhs in Plant & Machinery and Rs. 10 lakhs in building investment. On perusal of records, it is seen that declared income credited is only Rs. 70 lakhs but Rs. 40 lakhs on account of excess stock has not been credited which was required to be credited separately as excess/ unexplained investment.”

6. Against the above reasons recorded, we find that in the assessment order dated 25.01.2016, which has been passed u/s. 143(3), wherein, the AO noted as under:-

“The assessee company is engaged in the business of manufacturing of automobiles and auto parts. Survey u/s. 133A was conducted on 20.12.2012 at the business premises of the assessee. During the course of survey, the assessee surrendered an additional income of Rs. 1.10. Crores under the heads (excess cash found Rs. 10 lakh, excess stocks found Rs. 40 lacs, unexplained creditors Rs. 30 lacs, unexplained investment in plant and machinery Rs. 20 lacs and unexplained addition in building Rs. 10 lacs) over and above its regular business income for the relevant period under consideration. Further, upon examination, it was found that above disclosure of

additional income on account of various heads has been incorporated in the original return of income filed by the assessee on 27.09.2023 for assessment year 2013-14.”

6.1 Reading of the above makes it amply clear that assessee has surrendered additional income of Rs. 1.10 crore under the different heads viz. Rs. 10 lakh as excess cash found, Rs. 40 lakh as excess stocks, Rs. 30 lakhs as unexplained creditors, Rs. 20 lacs as unexplained investment in plant and Machinery and Rs. 10 lacs as unexplained addition in building over and above the regular business income. AO noted that upon examination that there was a disclosure of additional income on account of various heads which have been incorporated in the return of income filed by the assessee on 27.09.2023 for assessment year 2013-14. Thus, it is amply clear that AO found after due examination that assessee has offered the income including Rs. 40 lacs for excess stock for taxation in the return of income. In this view of the matter now, in the reassessment, AO has given the reason that reassessment is being done to bring into tax Rs. 40 lacs on account of excess stocks, which was not taxed earlier and not disclosed. This clearly establishes that it is a case of ‘change of opinion’ on the part of the Assessing Officer. It is a settled law that change of opinion is not permissible for reopening. In this regard, we draw support from the decision of Hon’ble Supreme Court of India in the case of CIT vs. Kelvinator of India Limited reported in 320 ITR 561.

7. In the background of the aforesaid discussions and respectfully following the aforesaid binding precedent, we are of the considered view that change of opinion on the reassessment is not sustainable in the eyes of law, hence, we quash the reassessment.

8. Since we have quashed the reassessment, hence, the other grounds have become academic and need not be adjudicated.

9. In the result, the appeal filed by the assessee stand allowed.

Order pronounced in the Open Court on 2105.2025.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBhatnagar

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Assessee/AO/CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi