

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
I.T.A. No. 2661/Mum/2024
Assessment Year: 2011-12

ACIT - 221, Mumbai	Vs	Jyoti Structures Limited, Mumbai Andheri West 6 th Floor, Valecha Chambers Maharashtra - 400053 [PAN: AAAC]2499R]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Madhur Agrawal, A/R
Revenue by :	Ms. Kavita P. Kaushik, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/06/2025
घोषणा की तारीख /Date of Pronouncement: 13/06/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the Id. CIT(A) – 49, Mumbai [hereinafter “the Id. CIT(A)”] dated 14/03/2024 pertaining to AY 2011-12.

2. The grievance of the revenue reads as under:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in quashing the notice u/s.148 dated 27.03.2018 despite the fact that assessing officer is in receipt of information that Shri. Santosh Vasantrao Khasare admitted in the statement recorded by the Investigation Wing, Nagpur on 23.11.2012 & 07.12.2012 that the bank account of ICICI Bank, Ahmadnagar was opened by employees of M/s. Jyoti Structures Ltd. i.e. Sudipto Chattergee GM & Chandrakant Hundikar, Accountant and out of Rs.2.67Cr. receipt from Jyoti Structures Limited shown in Khasare's return of income for the A.Y. 2011-12, Rs. 2,18Cr. was non genuine and he has no idea regarding the same. ”

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in quashing the notice u/s. 148 dated 27.03.2018 without appreciating the decision of Hon'ble Supreme Court in the case of DCIT / Central Circle 1(2)) Vs. M/s. M. R. Shah Logistics Put. Ltd. in SLP (C) No.

22921/2019 wherein it was held that the Assessing Officer has the power to re-assess and re-assessment has to be based on fresh "tangible material" to come the conclusion that there is escapement of income from assessment and that the entire assessment (for the concerned year) is at large; the revenue would then get to examine the returns for the previous year, on a clean slate."

3. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in not deciding the issues, as follows, on merits:

- a) Addition of Rs.2.18Cr. u/s. 68 of the Act.
- b) Levy of interest u/s. 234B and u/s. 234C of the Act.

4. "The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal as above."

3. Briefly stated the facts of the case are that the assessee filed its return of income on 29/11/2011 declaring total income at Rs. 1,59,23,90,660/-. The returned income was assessed at Rs. 1,61,15,33,070/- vide assessment order dated 30/03/2015. The completed assessment was reopened and the reasons for reopening the assessment, read as under:-

"A search action u/s 132(1) was conducted on the Jyoti/Valechha Group. The assessee's premise was also covered during the search. Assessment order u/s 143(3) r.w.s. 153A r.w.s. 144C(13) was passed on 31.12.2015 determining total income at Rs. 159,74,95,000/- for the A.Y. 2011-12.

An information was received by this office from the O/o The Income Tax Officer. Ward - 4. Chandrapur that their office received information from the Dy. DI (Inv)-II, Nagpur in the case of Shri Santosh Vasantrao Khasare who was working as labour contractor and an amount of Rs. 2.46 crores was credited to the account of the Shri Khasare by cheque received from M/s Jyoti Structures Ltd. Shri Khasare was doing labour contractor work for M/s JSL for which cheque payments were made by the company to him. Statements of Shri Khasare was recorded by the Investigation Wing. Nagpur on 23.11.2012 & 07.12.2012, where he has categorically stated that bank account bearing no. 645801502040 of ICICI Bank. Savedi Branch, Ahmednagar was opened by employees of M/s Jyoti Structures Lid. namely Shri Sudipto Chatterjee, GM & Shri Chandrakant Hundikar. Accountant. who got blank cheques signed by him. Out of Rs. 2.67 crores receipts from M/s JSL shown in Shri Khasare's return of income for the A.Y. 2011-12, Rs. 2.18 crores was non genuine and he has no idea regarding the same.

The case of Shri Santosh Khasare for the A.Y. 2011-12 was reopened by the ITO, Wd-4, Chandrapur and addition of 2.18 crores was made in the assessment order to his return of income. The addition was made on protective basis as the direct beneficiary in this case is M/s Jyoti Structures Ltd. The addition is to be made on substantive basis in the hands of M/s Jyoti Structure Ltd. for the A.Y. 2011-12. As the addition is not made in the previous assessment order u/s 143(3) r.w.s. 153A r.w.s. 144C(13) dated 31.12.2015. hence in my opinion this is a fit case for reopening the assessment u/s 147 of the IT. Act as income of the assessee of Rs. 2.18 crores has escaped assessment, by failure on the part of the assessee to disclose fully and truly material facts necessary for its assessment, for that assessment year. within the meaning of section 147 of the I.T. act, 1961 for A.Y. 2010-11. Therefore, the assessment for A.Y 20:0-11 is proposed to be reopened u - 147 of the I.T. Act.

However. as per the amended Section 151(1) of the I.T. Act /w.e.f. 1.6.3015), no notice shall be issued u/s. 148 by an Assessing Officer. after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

In view of the above, the Pr.CIT Central-4, Mumbai may kindly peruse the reasons recorded for reopening the case and accord necessary approval for issuing notice w/s. 148 of the I. T. Act. if satisfied that, this is a fit case for is wing the said notice."

4. The reopening was challenged before the ld. CIT(A). It was strongly contended that the notice u/s 148 of the Act dated 27/03/2018 is issued beyond four years from the end of assessment year and, therefore, first proviso to Section 147 of the Act is applicable. It was also pointed out that in terms of the proviso, notice u/s 148 of the Act can only be issued if escapement is for reasons of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. It was strongly contended that the evidence on record indicates that the AO was in possession of the statement of Shri Santosh V. Khasare, as recorded by the investigation wing, Nagpur on 23/11/2013 and 07/12/2012 at the time of assessment framed on 31/12/2015. It was brought to the notice of the ld. CIT(A) that the AO has re-examined Shri Santosh V. Khasare by issue of

summon u/s 131 of the Act and recorded his statement on oath on 24/02/2014. Therefore, there is no new tangible material brought on record to justify the reopening.

5. After considering the facts and the submissions, the Id. CIT(A) was convinced that the belief formed by the AO that income has escaped assessment in the hands of the assessee is based on the statement given by Shri Santosh V. Khasare before the investigation wing, Nagpur, which was very much available with the AO while framing the original assessment order. The Id. CIT(A) also found that the AO himself has recorded the statement of Shri Santosh V. Khasare while framing the original assessment order. Therefore, reopening of the completed assessment on the basis of all the evidence considered at the time of original assessment order is nothing but change of opinion. Drawing support from the decision of the Hon'ble Supreme Court in the case of *CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)*, the Id. CIT(A) set aside the notice issued u/s 148 of the Act and the subsequent re-assessment order was held to be no in accordance with law and hence not valid.

6. Before us, the Id. D/R strongly supported the findings of the AO and relied upon the reasons given for the reopening of the assessment.

7. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the statement of Shri Santosh V. Khasare, recorded by the investigation wing at Nagpur was very much part of the assessment record of the AO when he was framing the original assessment order. Not only that, the AO himself has summoned Shri Santosh V. Khasare and examined him on oath.

Therefore, we are of the considered view that on the basis of the very same evidence, the reopening is bad in law as there is no intangible material brought on record and the ratio laid down by the Hon'ble Supreme Court in the case of *CIT Vs. Kelvinator of India Ltd. (supra)*, squarely applies, we decline to interfere with the findings of the Id. CIT(A) and dismiss the effective ground/s raised by the revenue.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 13th June, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 13/06/2025

S.S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai