IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
MS. PADMAVATHY S., AM

ITA No. 1265/Mum/2024
(Assessment Year: 2014-15)

Vidarbha Mining Private Limited 703, Samarpan Complex, Near Mirador Hotel, New Link Road, Chakala, Andheri (East), Mumbai – 400099.	Vs.	**Deputy Commissioner of Income Tax, Circle-1(3)(2), Mumbai** Room No. 540, 5th Floor, Aayakar Bhavan, Maharshi Karve Rd, New Marine Lines, Churchgate, Mumbai – 400020.
PAN/GIR No. AACCV2506M		
(**Assessee**)	:	(**Respondent**)

Assessee by	:	Shri. Gaurav Kabra
Respondent by	:	Shri. G. J. Ninawe, SR. DR

Date of Hearing	:	01.05.2025
Date of Pronouncement	:	30.07.2025

O R D E R

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-Delhi ('ld. CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has raised the following grounds of appeal and has also filed additional grounds which are as follows:

Grounds of Appeal:

"1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the assessment u/s.147 of the Act, without appreciating the fact and circumstances of the case.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not adjudicating the ground of addition made by the Learned Assessing Officer by treating the Long Term Capital Gain of Rs.6,43,67,864/- on account Slump sale, as alleged Short Term Capital gain, without considering the facts and circumstances of the case and without providing sufficient opportunity of being heard to the appellant.

3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not adjudicating the ground of addition made by the Learned Assessing Officer of Rs.50,00,000/-u/s.68 of the Income Tax Act, 1961 by treating the amount received on account of repayment of loan from M/s. Rangoli Plaza Private Limited as alleged Unexplained Cash Credit, without considering the facts and circumstances of the case and without providing sufficient opportunity of being heard to the appellant.

Additional Grounds of appeal:

Filing of Additional Ground in addition and without prejudice and in addition to grounds raised in the appeal filed before the Hon'ble ITAT:

1) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the assessment order u/s.143(3) r.w.s 147 instead of u/s.153C of the Income Tax Act, 1961, without considering the facts and circumstances of the case.

2) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in reopening the assessment u/s.147 of the Income Tax Act, 1961 on the basis of change of opinion, without appreciating the fact and circumstances of the case.

The appellant prays to Your Honours' kindly allow to raise the additional ground, which is purely legal in the nature and matter of interpretation of the law."

3. As the additional grounds raised by the assessee requires no new facts which are on record in the assessment proceeding, the same is admitted in view of the decision of the Hon'ble Apex Court in the case of ***National Thermal Power Corporation vs. CIT (1999) 97 Taxmann.com 358/(1998) 229 ITR 383 (SC).***

4. Brief facts of the case are that the assessee company had filed its return of income dated 08.11.2014 declaring total loss of Rs. 3,18,04,157/-, the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny and the assessment order dated 28.12.2016 was passed by the ld. AO u/s. 143(3) of the Act

determining total income at Rs. 12,56,80,380/-. Subsequently, the assessee's case was reopened vide notice dated 30.03.2019 u/s.148 of the Act for the reason that pursuant to a search and seizer action carried out in the case of Banka Group dated 21.05.2018 which was alleged to be an accommodation entry provider in which the assessee was said to be one of the beneficiary of the bogus accommodation entries amounting to Rs. 50,00,116/- and further the assessee has shown long term capital gain on sale of excavation business for a consideration of Rs. 5,01,00,000 instead of the same being shown as short term capital gain. The ld. AO then passed the assessment order dated 28.12.2019 declaring total income at Rs. 13,06,71,318/- under the normal provision and Rs. 3,53,78,509/- as book profit u/s. 115JB of the Act after making an addition of Rs. 5,71,14,142/- u/s. 68 of the Act as unexplained cash credit.

5. Aggrieved the assessee was in appeal before the First Appellate Authority challenging the order of the ld. AO in reopening the assessment and on the additions made by the ld. AO. The ld. CIT(A) dismissed the appeal of the assessee upholding the reassessment to be valid and as per law and also dismissed the grounds challenging the addition on the ground that the assessee has failed to make any submission on the merits of the case inspite of several opportunities given to the assessee.
6. The assessee is in appeal before us challenging the order of the ld. CIT(A) on the abovementioned grounds.
7. The ld. AR for the assessee had challenged the assessment order on the reopening and argued extensively on the legal ground challenging the reassessment on various contentions that the ld. AO had reopened the assessee's case with the materials that were already available during the original assessment proceedings which was merely

change of opinion by the ld. AO. The ld. AR further stated that during the scrutiny assessment the issue of capital gain on sale of mining business by the assessee to Seven Mining Pvt. Ltd. via a Slump Sale Agreement has already been dealt with and considered by the ld. AO.

8. The ld. AR further argued on the additional ground raised by the assessee that the assessee's case was reopened subsequent to the search action carried out in the case of Banka Group and since the same is a concluded assessment, the ld. AO ought to have passed the assessment order u/s. 153C instead of Section 147 of the Act. The ld. AR relied on the decision of the Hon'ble High Court of Rajasthan in the case of ***Tirupati Construction Company Vs. ITO [2024] 465 ITR 611 (Rajasthan)***. The ld. AR also relied on the decision of the coordinate bench in the case of ***ITA No. 612/Mum/2020, for A.Y. 2011-12, Mr. Nilesh Bharani Vs. DCIT CC-4(1) Mumbai, order dated 28.02.2023*** and also relied on the decision of Hon'ble Jurisdictional High Court in the case of ***Sejal Jewellery v. Union of India [2025] 171 taxmann.com 846 (Bombay)*** for the said proposition.

9. The learned Departmental Representative (ld. DR for short) on the other hand vehemently opposed for the admission of the additional grounds and stated that it was not mandatory for the ld. AO to initiate proceedings u/s. 153C in case where information of other person were found during search conducted in the case of the searched person. The ld. DR relied on the decision of the Hon'ble Delhi High Court in the case of ***Pr. Commissioner of Income Tax-7, Delhi v. Navin Kumar Gupta, ITA No. 401/2022, order dated 20.11.2024,*** for the said proposition. The ld. DR relied on the order of the lower authorities on the merits of the case.

10. We have heard the rival submissions and perused the materials available on record. Before getting into the merits of the case, we deem it fit to decide the additional grounds raised by the assessee as to whether the assessment order passed u/s. 143(3) r.w.s. 147 of the Act instead of Section 153C is to be declared as null and void and whether the reopening was on the basis of change of opinion. It is observed that the assessee has challenged the notice u/s. 148 for the reason that the reopening of the assessment was merely on the basis of material and information obtained during the search conducted in the case of Banka Group and that the ld. AO should have invoked Section 153C of the Act to assess or reassess the total income of the assessee in accordance with the provision of Section 153A.

11. In the present case in hand, the ld. AO had issued the impugned notice u/s. 148, dated 30.03.2019, and that the reasons for reopening was based on the seized/impounded materials post search where it was found that Shri Mukesh Banka was an entry operator and a key controlling person providing accommodation entry through various concerns of Banka Group. It was further observed that from the information received post search, the assessee was said to be one of the beneficiary of availing bogus accommodation entry amounting to Rs. 50,00,116/- during the year under consideration. It is also pertinent to point out that the other reason specified by the ld. AO for reopening the assessment was that the assessee has declared Long Term Capital Gain (long term capital gain (LTCG for short)) on sale of excavation business to M/s. Seven Mining Pvt. Ltd. in a slum sale for a consideration of Rs. 5,01,00,000/- which according to the ld. AO was to be treated as Short Term Capital Gain (STCG).

12. As far as the first issue is concerned, the same is covered by the decision of the Hon'ble Jurisdictional High Court in the case of ***Sejal Jewellery (supra)*** and also the decision of the Hon'ble High Court of Rajasthan in the case of ***Tirupati Construction (Supra),*** wherein it has been held that in case where reassessment is initiated based on search action, then, only the provision of Section 153C r.w.s. 153A would be applicable as per the decision of the Hon'ble Apex Court in the case of ***Principal Commissioner of Income Tax, Circle-3, vs. Abhisar Buildwell P. Ltd. in Civil Appeal No. 6580 of 2021, order dated 24.04.2023***. In the present case in hand, the proceedings initiated by the ld. AO u/s. 147 and 148 of the Act are against the proposition laid down by the above mentioned decision, for the reason that the intention of the legislature to insert Section 153A and 153C of the Act was to distinguish such proceeding from the regular provision of Section 147 where the ld. AO has extensively relying on the material/information received pursuant to a search action. The relevant extract of the decision of the Hon'ble High Court in the case of ***Sejal Jewellary (supra)*** is cited herein under for ease of reference:

> ***22.*** *Applying the principles of law as discussed hereinabove, we are of the clear opinion that the foundation of the present case was certainly a search action which was undertaken by the Revenue against one Shilpi Jewellers Pvt. Ltd. and in such search and seizure action, materials were seized and such materials were further explored and enquired. Such enquiry revealed significant information in regard to M/s. Green Valley Gems Pvt. Ltd., which according to the Revenue had provided accommodation entries to the petitioner, in which it was also revealed that Green Valley Gems Pvt. Ltd. was a shell company. We do not find that the record would indicate something which is not on the basis of such new materials gathered under the search and seizure action under Section 132. If this be the case, then certainly the provisions of Section 153C read with Section 153A would be applicable, as held by the Supreme Court in Abhisar Buildwell (P) Ltd. (supra) when the Court interpreted the effect and purport of Section 153C and 153A, as also held by the Rajasthan High Court in Shyam Sunder Khandelwal (supra).*
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> ***23.*** *Insofar as Mr. Suresh Kumar's contention supporting the proceedings under Section 147 and 148 of I.T. Act are concerned, for the aforesaid reasons, such contention would*

in fact go contrary to the intention of the legislature as depicted by the provisions of Section 153A and 153C of the I.T. Act. There would not be any difficulty in accepting the proposition as canvassed by Mr. Suresh Kumar, referring to the decision of the Supreme Court in Phool Chand Bajrang Lal (supra), however, the facts in the present case are distinct. There cannot be any doubt on the position in law when the Revenue intends to proceed purely on materials relevant for an action under Section 148 read with Section 147. We have already observed that the provisions of Sections 147, 148 vis-a-vis Section 153A and Section 153 are quite compartmentalized. To avoid any overlapping of these provisions, the legislature in its wisdom has thought it appropriate to provide for an independent effect, to be given under Section 153A read with Section 153C by incorporating the "non-obstante" clause, in these provisions, which carves out an exception to any normal/regular action being resorted under Section 147.

***24.** In this view of the matter, we are of the clear opinion that the impugned notice under Section 147 of the I.T. Act and all actions consequent thereto are required to be held to be without jurisdiction and bad in law. The petition is accordingly allowed in terms of prayer clauses (a) and (b).”*

13. Though the ld. DR placed reliance on the contrary decision of the Hon'ble Delhi High Court which has been decided in favour of the revenue in the case of ***Navin Kumar Gupta (supra)***, we are bound to follow the decision of the Hon'ble Jurisdictional High Court which has been decided this issue in favour of the assessee. From the above observation, we are of the considered view that the initiation of proceeding u/s. 147 by issuance of notice u/s. 148 is bad in law and the same is liable to be quashed and set aside.

14. As far as the second issue is concerned, the ld. AR had relied on the decision of the Jurisdictional High Court in the case of ***Godrej Products Development (P.) Ltd. vs. Income Tax Officer, [2024] 159 taxmann.com 32 (Bombay)*** and ***Piem Hotels Ltd. vs. Assistant Commissioner of Income Tax, [2024] 162 taxmann.com 703, (Bombay),*** where it has been held that when facts leading to the reopening was already available before the ld. AO during the original assessment, the ld. AO is not

justified in reopening the assessment on the same facts and would tantamount to change of opinion which is again liable to be quashed and set aside.

15. In the present case in hand, the assessee had already offered the same as Long Term Capital Gain (LTCG) in its return of income and the same was duly considered by the ld. AO during the original assessment. The subsequent reopening of the assessment on the ground that the same has to be taxed as Short Term Capital Gain (STCG) is merely a change of opinion not permissible in law.

16. From the above observations, on both the reasons stated above, the reassessment initiated by the ld. AO and upheld by the ld. CIT(A) does not hold merit and is hereby quashed and set aside. We therefore allow additional ground no. 1 and 2 raised by the assessee. As we have held the reassessment to be invalid, the other grounds of appeal raised by the assessee on the merits require no further adjudication and is hereby rendered academic.

17. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced on 30.07.2025 under Rule 34 of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-	**Sd/-**
(PADMAVATHY S.)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 30.07.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned

4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai