

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
DELHI BENCH 'DEHRADUN/' NEW DELHI
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER
I.T.A. No. 40/DDN/2022 (A.Y 2006-07)
I.T.A. No. 41/DDN/2022 (A.Y 2007-08)**

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| M/s Sharda Exports C/o. Sh. Jitenera Kumar Gupta 219, Railway Road, Meerut- 250001, Uttar Pradesh PAN: AAYFS1694N | Vs | ACIT Central Circle, Income Tax Office, 16-A, cross Road, Dehradun |
| Appellant | | Respondent |

I.T.A. No. 44/DDN/2022 (A.Y 2006-07)
I.T.A. No. 45/DDN/2022 (A.Y 2007-08)

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| ACIT Central Circle, Income Tax Office, 16-A, cross Road, Dehradun | Vs | M/s Sharda Exports C/o. Sh. Jitenera Kumar Gupta 219, Railway Road, Meerut-250001, Uttar Pradesh PAN: AAYFS1694N |
| Appellant | | Respondent |
| Assessee by | Sh. Rajkumar, CA & Sh. J. P. Sharma, CA | |
| Revenue by | Sh. S. K. Chatterjee, CIT, DR | |
| Date of Hearing | 11/09/2025 | |
| Date of Pronouncement | 26/09/2025 | |

ORDER

PER YOGESH KUMAR, U.S. JM:

The Assessee as well as the Revenue preferred the captioned Appeals aggrieved by the orders of the Ld. Commissioner of Income Tax (Appeals) ('Ld. CIT(A)' for short) dated 27/04/2022 for A.Y 2006-07 and 2007-08 respectively.

2. Brief facts of the case are that, the Assessee furnished return of income for both the Assessment Years under consideration declaring NIL income. The return filed by the Assessee was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short). Subsequently a notice u/s 143(2) of the Act was issued and assessments were completed u/s 143(3) of the Act on 08/06/2007 for Assessment Year 2006-07 and on 30/07/2009 for Assessment Year 2007-08 on total income of NIL. Subsequently, a notice u/s 148 of the Act were issued on the Assessee on 05/06/2012 for both the Assessment Years under consideration. The assessment orders came to be passed on 29/09/2021 u/s 147/143(3) of the Act by making certain additions in both the Assessment Years. Aggrieved by the assessment orders dated 29/09/2021, the Assessee preferred two Appeals before the Ld. CIT(A). The Ld. CIT(A) vide orders dated 27/04/2022 partly allowed the Appeals of the Assessee. Aggrieved by the orders of the Ld. CIT(A) dated 27/04/2022, both assessee as well as the Revenue questioned the order of the Ld. CIT(A).

3. The Ld. Counsel for the Assessee submitted at the outset that the notice u/s 148 of the Act were issued beyond four years from the end of Financial Year relevant to Assessment Year. Further submitted that, the A.O. can apply the provisions of Section 147 of the Act only if there is 'any failure on the part of the Assessee to make full and true

disclosure of all material fact that are relevant for the purpose of the assessment'. The Ld. Assessee's Representative drawn our attention to the Assessee's own case for Assessment Year 2005-06 in ITA No. 39/DDN/2022 and 43/DDN/2022, wherein in an identical facts, the Co-ordinate Bench of the Tribunal vide order dated 15/09/2023, quashed the assessment for invalid assumption of jurisdiction. Thus, relying on the Assessee's own case for Assessment Year 2005-06(supra), sought for quashing the subject assessment orders.

4. Per contra, the Ld. Departmental Representative vehemently submitted that the A.O. has passed the assessment orders strictly in accordance with law, therefore, there is no requirement of interference in the order of the Ld. CIT(A) by the Tribunal. Thus, sought for dismissal of the Ground of Appeal of the Assessee on invalid assumption of the jurisdiction by the A.O.

5. We have heard both the parties and perused the material available on record. On perusal of the reasons recorded placed in the paper books, it is found that nowhere the Ld. A.O. whispered about 'failure on the part of the Assessee on disclosed fully and truly all material facts that are relevant for the purpose'. Admittedly in both the cases, the notice u/s 148 of the Act was issued on 05/06/2012 which is after expiry of four years from the end of relevant Assessment Year. Therefore, first proviso to Section 147 of the Act comes into

operation, wherein the A.O. can invoke provisions of Section 148 of the Act only in case if there was a failure on the part of the Assessee to disclose fully and truly all material fact necessary for his assumption for the Assessment .

6. For the sake of ready reference, the first proviso to Section 147 is reproduced as under:-

“Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:”

7. The Co-ordinate Bench of the Tribunal in Assessee’s own case for Assessment Year 2005-06 (supra), having similar set of facts and circumstances, quashed the assessment on the ground of invalid assumption of jurisdiction in following manners:

“5. We have heard the rival submissions and perused the materials available on record. The Assessee is a partnership firm and had filed its return of income for AY 2005-06 on 25.07.2005 declaring Nil income. The Assessee is engaged in the business of manufacturing and exports of hand-made, hand-tufted and hand woven carpets and its factory is located at Plot No. 11, Sector-4, Sidcul Industrial Estate, Ranipur, Hardwar. The Assessee commenced its production on 18.10.2004. Accordingly, this is first year of operation of Assessee firm. The total turnover of the Assessee firm for the AY 2005-06 is Rs. 30,11,37,925/- with a profit of Rs. 15,69,73,241/- including duty draw back claim of

Rs. 2,72,99,429/-. The Assessee firm claimed deduction u/s 80IC of the Act @100% of its profits and accordingly, filed Nil income in the return of income. The original assessment was completed u/s 143(3) of the Act on 08.06.2007 accepting the returned income. In the said assessment order, there is elaborate discussion with regard to entire activities carried out by the Assessee firm together with the details that were called for by the ld AO and the replies filed by the Assessee thereon. The details of various expenses debited in trading and profit and loss account and details of loan taken by the Assessee were subject matter of examination by the ld AO along with documentary evidences. The ld AO also observed that the Assessee had invested in new plant and machinery for its factory location. The Assessee furnished the details of purchase of raw material along with copy of suppliers bill, details of all expenses debited in the profit and loss account, details of sales and all other income heads credited in profit and loss account, employee wise details of establishment, details of payment of bonus on subsequent dates in the next financial year, party wise details of job work charges, party wise details of clearing and forwarding expenses, person wise details of foreign tour expenses, party wise details of commission paid, details of party wise purchase over Rs. 1000000, confirmation from partners with regard to balance lying in their capital and current account of the firm, copy of the ledger accounts of all the items appearing on liabilities and assets side of balance sheet along with the confirmation of sundry creditors having balance of Rs. 1 lac or more as on 31.03.2005 and confirmation of loans and advances having balance of Rs. 1 lakh or more as on 31.03.2005. The Assessee also furnished details of source of revenue of the partners to make contribution in the Assessee firm. A categorical finding was given by the ld AO at page 2 last para of his order that on perusal of the details filed, the partners are having sufficient funds to invest in the firm and they are assessed individually to income tax. Further, the ld AO observed that the Assessee had taken secured loan amounting to Rs. 1,65,96,659/- from Standard Chartered Bank and ICICI Bank which was also verified with documentary evidences. No discrepancies were noticed on the various expenses debited in the trading account and profit and loss account of the AO. The ld AO also observed that the entire turnover of the Assessee is export turnover and there is no domestic sale. All the entire exports were being done from the Assessee's factory at Hardwar and for which the Assessee has filed the copies of all the Export Sales Bills and the documentary proof for the dispatches being done from Hardwar in the form of shipping bills, bills of lading and Inland Containers Depot, Surajpur, bills and documents for transporting containers of the goods from Haridwar to Surajpur for the purpose of exports and copy of monthly Sales Tax Returns filed with the Sales Tax Authorities of Haridwar. The ld AO also observed that Assessee

firm was allotted industrial plot admeasuring 13600 SqMtrs at Sector 4, Plot -11, Sidcul Integrated Industrial Estate, Ranipur, Haridwar by State Industrial Development Corporation Ltd, Uttrakhand, Dehradun at a cost of Rs. 81,57,157/- and on which the Assessee firm constructed the factory building at a cost of Rs. 1,42,07,835/-. A valuation report from an approved valuer was also filed before the ld AO, which in fact is also acknowledged by the ld AO at page 3 of his assessment order. Further, the ld AO also observed in page 3, the Assessee has received export incentives in the form of Duty Draw Bank claim amounting to Rs. 2,72,99,429/- from Govt of India and being satisfied with the eligibility conditions for claiming deduction u/s 80IC of the Act, the ld AO gave a categorical finding that the Assessee firm had fulfilled all the conditions laid down in section 80IC(2)(b)(ii) of the Act and the claim suffers from no deficiency. Accordingly, the ld AO granted deduction u/s 80IC of the Act and accepted the Nil income declared by the Assessee.

6. Later this assessment was sought to be reopened by the revenue. For this assessment, the ld AO issued first notice u/s 148 of the Act later on 17.08.2010. This notice is enclosed at page 5 of the PB. The reasons for reopening the assessment was to deny deduction u/s 80IC of the Act on the duty draw back claim amounting to Rs. 2,72,99,429/- as not eligible for deduction u/s 80IC of the Act. The Assessee filed objections to the said reasons recorded which were not disposed of by the ld AO by passing a speaking order.

7. Later, a second notice u/s 148 of the Act was issued by the ld AO on 29.03.2012 which is enclosed at page 18 of the PB. The reasons recorded for the second reopening is to deny the deduction u/s 80IC of the Act in its entirety on the ground that the Assessee had not carried out any manufacturing activity at all. The second reopening was based on survey operation conducted on 23.03.2012. The reasons recorded mentioning that during the course of survey it revealed that certain activities such as latexing, tufting, packing, finishing and passing were performed at Partapur, Meerut through Assessee and related concerns and so concluded that activities are not performed at Haridwar. It was also alleged that there was an old firm which carried out manufacturing activities at Haridwar premises and claimed deduction u/s 80IC of the Act and that said firm got dissolved on 01.04.2009 and the new firm is carrying the business at the same premises without any manufacturing activities. Accordingly, the ld AO had concluded that Assessee was entitled for deduction u/s 80IC of the Act for the reasons recorded.

8. The ld DR argued that against the first 148 notice dated 17.08.2010, the Assessee filed writ petition before the Hon'ble Uttarakhand High Court and interim order was passed staying the reopening proceedings. Against the second 148 notice, the Assessee filed writ petition before the Uttarakhand High Court and the Hon'ble High Court vide order dated 04.01.2013 stayed the second 148 notice. On 19.07.2019, the Hon'ble High Court dismissed the writ petition of the Assessee and its interim order passed staying the proceedings, got vacated by a single judge of the High Court. The Assessee went on further appeal before the Division Bench of the High Court and the Division Bench vide its order dated 07.11.2019 directed the AO to consider all the objections of the Assessee and to pass order. With regard to this Division Bench order dated 07.11.2019 of Hon'ble Uttarakhand High Court the ld AR submitted that in para 5 of the said order it has been categorically stated that the AO was to pass the reassessment order strictly in accordance with the law uninfluenced by any observation made by the Single Judge of Uttarakhand in his order. Moreover the ld AR also argued that the validity of the reopening u/s 148 of the Act was never decided by the Division Bench. Accordingly, he submitted that the arguments advanced by the ld DR that AO was directed by the High Court only to pass the order on merit and the assumption of jurisdiction u/s 147 of the Act has been held to be valid by High Court, is factually incorrect. In this background of the case, let us now examine whether the ld AO validly assumed jurisdiction u/s 147 of the Act.

9. At the outset, we find that both the notices issued u/s 148 of the Act dated 17.08.2010 and 29.03.2012 were issued beyond four years from the end of the financial year relevant to assessment year 2005-06. Hence, the applicability of the proviso to section 147 of the Act would certainly come into operation wherein, the ld AO is bound to disclose the fact that there was a failure on the part of the Assessee to make full and true disclosure of all material facts that are relevant for the purpose of assessment. On perusal of the reasons recorded in page 6 (for first notice u/s 148) and page 19 to 24 (for second 148 notice), nowhere the AO had even whispered about the failure on the part of the Assessee to disclose fully and truly all material facts that are relevant for the purpose of assessment. Hence, as per proviso to section 147 of the Act, the reassessment deserves to be quashed. Reliance in this regard has been rightly placed by the ld AO on the decision of the Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Manufacturing Company Vs. CIT reported in 308 ITR 38 and CIT Vs. Suren International Pvt. Ltd reported in 357 ITR 24 (Delhi).

10. We find that the ld AO had adjudicated the reasons recorded for both the notices issued u/s 148 of the Act in a single reassessment order and completely denied the deduction u/s 80IC of the Act. Admittedly, for the first notice u/s 148 dated 17.08.2010, neither the same was withdrawn by the ld AO nor any reassessment was framed for the same by the ld AO. Hence, this has lead to a situation that without withdrawal of the first notice, the ld AO had issued second 148 notice and framed the assessment clubbing both together. It is trite law that without withdrawal of first 148 notice, the ld AO is debarred from issuing second 148 notice. This issue is no longer Res Integra in view of the decision of the Hon'ble Jurisdictional High Court in the case Kamdhenu Enterprises Pvt. Ltd Vs. ITO reported in 146 taxmann.com 417 (Delhi) and decision of the Hon'ble Rajasthan High court in the case of CIT Vs. Ram KishanLeena reported in 295 ITR 525. In both these cases, it was held that during the subsistence of reassessment proceeding, another reassessment notice could not be issued for the same assessment year and thus, second notice is required to be quashed. Hence, the denial of deduction u/s 80IC of the Act which was subject matter of reasons recorded in the second 148 notice cannot survive in the eyes of law. However, with regard to first 148 notice wherein, it was sought to withdraw 80IC deduction only in respect of duty draw back claim, we have held that said reassessment is bad in law on the ground that the failure on the part of the Assessee to make fully and truly disclosure of all material facts that are relevant for the purpose of assessment has not been mentioned by the ld AO in the reasons recorded. Hence, first 148 notice dated 17.08.2010 also deserves to be quashed.”

8. As could be seen from the above, the Tribunal has already dealt with the issue in detail and quashed the assessment for valid assumption of jurisdiction in Assessee's own case for Assessment Year 2005-06. By respectfully following the order of the Co-ordinate Bench of the Tribunal in Assessee's own case (supra), we quash the subject Assessment Orders for Assessment Year 2006-07 and 2007-08.

9. Since, we have set aside the re-assessments for invalid assumption of jurisdiction, other grounds of appeal urged by the

Assessee require no adjudication. Further, as we have quashed the subject assessment orders, the Appeals of the Revenue become infructuous.

10. In the result, appeal of the Assessee in ITA No. 40/DDN/2022 and 41/DDN/2022 are allowed and Appeals of the Revenue in ITA Nos. 44/DDN/2022 and 45/DDN/2025 are dismissed.

Order pronounced in the open court on 26th September, 2025

Sd/-

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Date:- 26.09.2025

R.N, Sr.P.S*

Copy forwarded to:

1. **Appellant**
2. **Respondent**
3. **CIT**
4. **CIT(Appeals)**
5. **DR: ITAT**

ASSISTANT REGISTRAR
ITAT, NEW DELHI