

**+IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 2625/Del/2015
AY: 2006-07**

Chaudhary Road Lines
Kairana Road
Shamli, UP

vs.

ITO, Ward 1
Shamli

PAN: AACFC 0682 N
(Appellant)

(Respondent)

Appellant by : Sh. Ramit Kakkar, Adv. &
Sh. Rajiv Singhal, Adv.

Respondent by : Sh. Amrit Lal, Sr.D.R.

ORDER

This is an appeal filed by the assessee directed against the order of the Ld. Commissioner of Income Tax (Appeals), Muzaffarnagar dt. 02.02.2015 pertaining to the assessment year (A.Y.) 2006-07 on the following grounds.

“1. On the facts and circumstances of the case, the Ld.CIT(Appeals) has erred in sustaining notice u/s 148 while even going beyond the binding judgement of the Hon’ble Allahabad High Court in Aci Oils Pvt.Ltd. vs. DCIT (2015) 370 ITR 561.

2. That the Ld.CIT(Appeals) has erred in justifying issue of notice u/s 148 although it was based on change of opinion only.

3. On the facts and circumstances of the case, the Ld.CIT(Appeals) has wrongly and illegally sustained the addition of Rs.12,50,250/-. Although the said expenditure was neither been found to be claimed in the books of the assessee nor the third party claiming to have paid the same on behalf of the assessee been produced for cross examination despite repeated request.”

2. After hearing rival contentions I find that the reasons for reopening are as follows.

"Assessment in the above noted case for the A. Y 2006-07 was completed under section 143(3) vide order dated 26-12-2008 on total income of Rs.75,060/-, as against returned loss of Rs.1,75,060/.

In the case of M/s Pragasti Trade Links (P) Ltd, Narayanpuri, Saharanpur, survey under section 133A was conducted on 11-07-2006 and during the course of survey, statement on oath of Sh. Neeraj Maheshwari S/o Sh. Raj Kumar Maheshwari, Rio Mohalla Sangyan, Near Jain Mandir, Saharanpur was recorded Sh. Neeraj Maheshwari used to entry the vouchers of expenses in computer. In his statement he admitted that in the laptop of Sh. Punit Mittal, Director and all the data is feeded from his computer through pen-drive. This laptop contains the account of CRL (Chaudhary Road Lines) in Group one. In a specific question No. 11, regarding the monthly account of Rs.12,50,250/-, Sh.Maheshwari admitted that this payment relates to monthly payments sent to various departments ie. RTO, Police, DTO etc. This all payments is made in

cash We use to pay this money and afterwards debit the account of CRL.

Sh. YPB Singh, Dy. Commissioner of Income tax, Circle, Saharanpur vide letter F.No. DCIT/Cir./Puneet Mittal/2007-08/583 dated 04-06-2007 informed the A. O.. Ward-1. Shamli that the sum of Rs.12,50, 000/- and odd expenses on account of running of the trucks are not incidental to the business and are not allowable in the hands of M/s Chaudhary Road Lines (C R. L.). Along with this letter, statement of Sh. Neeraj maheshwari (employee of the assessee) was also enclosed.

Since the expenses of Rs.12,50,500/- were not incidental to the business and the assessee has paid the same out of the books of accounts, the income to the extent of Rs.12,50,000/- is escaped assessment.”

2.1. Admittedly the reopening is beyond a period of 4 years. The original assessment in this case was passed under section 143(3) of the Income Tax Act, 1961 (the Act). Thus the first proviso to Section 147 of the Act comes into operation in this case. A perusal of the reasons recorded for reopening demonstrate that the A.O. has not made any allegation that the assessee has failed to fully and truly disclose all the material facts necessary for the assessment. When no such allegation is made in the reasons recorded, the assessment would be bad in law as held by the Hon'ble Allahabad High Court in the case of CIT vs. Hemkunt Timbers Ltd. 370 ITR 569 (Alla). Applying the propositions laid down in this case to the facts of the case on hand I hold that the

reopening is bad in law. In the result the reassessment is quashed and the appeal of the assessee is allowed.

3. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 05th January, 2017.

Sd/-

**(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 05th January, 2017.

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Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar