

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - 'SMC' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA Nos. 706, 707,708/Del/2017
ASSESSMENT YEARS : 2009-10,2010-11,2011-12

Lamba Bricks Pvt. Ltd. H.No. 1751 HUDA, Sector – 13, Bhiwani 127021 PAN AABCL0419J	Vs.	ACIT SCO 222, Office of Income Tax, HUDA City Center Bhiwani 127021
(Appellant)		(Respondent)

Assessee by :	Shri N.K. Jain, Advocate Ms. Natasha, Advocate
Department by:	Ms.Bedobani, Sr. DR
Date of Hearing	24/05/2017
Date of pronouncement	07 /06/2017

Per BHAVNESH SAINI, Judicial Member

ORDER

All the appeals by assessee are directed against different orders of Ld. CIT(A) Rohtak dated 25th November, 2016 for asstt. Years 2009-10, 2010-11, 2011-12.

2. Ld. Representatives of both the parties mainly argued in assessment year 2009-10 and submitted that issues are same in the remaining appeals. Therefore, order for asstt. year 2009-10 may be followed in other years.

3. I have heard Ld. Representatives of both the parties and perused the material on record. For the purpose of disposal of all the appeals, the appeal for asstt. Year 2009-10 is decided as under :-

Assessment Year- 2009-10

4. Briefly, the facts of the case are that return declaring of income of Rs. 1,99,990/- was filed on 14th September, 2009, same was processed u/s 143(1). In the return of income, all the columns of the balance sheet as well as profit and loss account have been filled, the gross receipts have been shown at Rs. 69,67,218/- from where net profits of Rs. 1,99,990/- have been declared. In the computation of income, assessee has not shown income under other heads. A survey u/s 133A of the Act was conducted at the business premises of the assessee on 21st March, 2012. Thereafter reasons u/s 147 of the I.T. Act were recorded by the AO and notice u/s 148 of the I.T. Act was issued on 17th February, 2014 which was served upon assessee. The assessee stated that return already filed u/s 139 (1) may be treated as return filed in response to notice u/s 148 of the I.T. Act. The objections of the assessee regarding issuance of notice u/s 148 were rejected. The AO accordingly framed the reassessment order u/s 143 (3) /147 of the I.T. Act vide order dated 30th March, 2015 whereby the returned income declared in a sum of Rs. 1,99,990/- was accepted and further additions were made on account of disallowance of rent and electricity charges for a sum of Rs.30,000/- and

Rs.36,294/-. Further addition was made on account of unexplained share application money for a sum of Rs. 14,50,000/- u/s 68 of the I.T. Act.

5. The assessee challenged the reopening of the assessment and additions on merit. However, appeal of assessee has been dismissed.

6. The assessee in the present appeal challenged the assumption of jurisdiction u/s 147 / 148 of the I.T. Act as well as above additions on merits.

7. Ld. Counsel for assessee submitted that AO has recorded reasons on 13th February 2014 copy of which is filed at page 1 of the paper book in which AO recorded the reasons for escapement of income on account of lower net profit declared by the assessee in a sum of Rs. 59,725/- however this addition was not made in the reassessment order. AO did not record in the reasons about disallowance of the expenses on account of rent and electricity and addition on account of unexplained share application money. Therefore the AO accepted the contention of the assessee and holds that the income on which he has initially formed a belief had escaped assessment, has as a matter of fact has not escaped assessment, it is not open to him to independently assess some other income. If he intends to do so, a fresh notice u/s 148 should be necessarily issued. He has relied upon decision of Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. 239 CTR 183 and

decision of Delhi High Court in the case of Oriental Bank of Commerce vs. Addl. CIT 272 CTR 56. He has therefore submitted that reassessment proceedings may be quashed. On the other hand, Ld. DR relied upon orders of the authorities below and submitted that reassessment proceedings were initiated after survey was conducted in the premises of the assessee where no books of accounts were found and produced. The objections of the assessee against reopening of assessment has been rejected. There were discrepancy in the books of accounts. Therefore prima facie case was made out for reopening of the assessment. Ld. DR submitted that on making the above additions the profit of the assessee has increased. Therefore, there is no illegality in initiation of the reassessment proceedings.

8. I have considered the rival submissions. It is well settled law that validity of the reassessment proceedings have to be determined with reference to the reasons recorded for reopening of the assessment. Copy of which is filed at page 1 of the paper book which reads as under :-

*"M/s. Lamba Bricks Co. Pvt. Ltd.
H. No. 1751, Sec-13, Bhiwani
A.Y. 2009-10
PAN-AABCL0419J*

Reasons for re-opening the case u/s 148 read with section 147 of the Income-tax Act, 1961.

Return declaring an income of Rs. 1,99,990/- filed on 14.09.2009 and same was processed u/s 143(1). The assessee derieves income from running of BKO.

Subsequently survey operation u/s 133A of the income-tax Act, 1961 was carryout on 21.3.2012 at the business premises of M/s. Lamba Bricks Co. Pvt. Ltd. No books of A/cs and any other documents founded belonging to the assessee M/s. Lamba Bricks Co. Pvt. Ltd. The assessee stated about below Banks A/cs numbers in his statement during survey operation. Later on, the information was called for u/s 133(6) of the Income-tax Act, 1961 from the Bank is as under :-

<i>Sr. No.</i>	<i>Name of Bank</i>	<i>Account No.</i>	<i>Amt. Deposited (Rs.)</i>
<i>1.</i>	<i>Indian Bank, Bhiwani</i>	<i>527103076</i>	<i>70,000/-</i>
<i>2.</i>	<i>Axis Bank, Bhiwani</i>	<i>40201200001878</i>	<i>86,16,110/-</i>
		<i>Grand Total Rs.</i>	<i>86,86,110/-</i>

The assessee has filed his return for A.Y. 2009-10 in which gross turnover has shown at Rs. 66,91,608/- with net profit declared at Rs. 1,99,990/-. As per banks statements total turnover works out at Rs. 86,86,110/-. As per return of income for A.Y. 2009-10, net profit rate of the assessee's company works out at @2.99% by applying the same rate. Income of the assessee for the A.Y. 2009-10 works out at Rs. 2,59,715/-. Adding disallowance of Rs. 59,725/- and total income is works out at Rs. 2,59,715/-.

I have therefore reasons to believe that income of Rs. 59,725/- chargeable to tax has escaped assessment for the A.Y. 2009-10 and also any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of the proceedings under this section.

Notice under section 148 of the Income Tax Act, 1961 issued.

Date 13.2.2014

*(Jitender Singh)
Asstt. Commissioner of Income-tax
Bhiwani"*

8.1 It is admitted fact that the assessee filed return of income declaring income of Rs. 1,99,990/-. The AO while passing the reassessment order accepted the returned income but made other independent additions on account of disallowance of rent and electricity charges and addition made on account of unexplained share application

money. The AO however in the reasons recorded for reopening of the assessment formed his belief on sole reason that assessee has shown the lessor net profit in the return of income, in a sum of Rs. 59,725/- . The AO however in the reassessment order did not make any addition of Rs. 59,725/- and accepted the returned income of Rs. 1,99,990/- .Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. 239 CTR 183 held as under :-

"Conclusion : AO may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice ; however, if after issuing a notice under s. 148, the AO accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assessee some other income."

9. Hon'ble Delhi High Court in the case of Oriental Bank of Commerce vs. ACIT 272 CTR 56 held as under :-

"Conclusion : If no additions were made in respect of the reasons (a) and/or (b) it was not open to the AO to make additions on some other ground such as the disallowance of the deduction under section 36(1) (viiia) without first issuing a note under section 148."

10. Hon'ble Delhi High Court in the case of Ranbaxy Laboratory Pvt. Ltd. vs. CIT 336 ITR 136 similarly held that "items of income said to have escaped assessment on which reassessment proposed not added but other deductions reduced not permissible".

11. Considering the above discussion, in the light of the reasons recorded for reopening of assessment and in the light of above

decisions, it is clear that the very basis of initiation of reassessment proceedings for which reasons to believe were recorded were income escaping assessment in respect of lower net profit, the same having not been escaped, the AO proceeded to make additions on account of disallowance of rent and electricity charges and additions made on account of share application money which as per the above decisions was not permissible u/s 148 of the I.T. Act. In my humble view if no additions were made in respect of the reasons i.e. lower net profit, it was not open to the AO to make additions on other grounds such as disallowance of expenses and addition on account of share capital money without first issue a notice 148 of the I.T. Act. The AO was therefore not justified in reopening of the assessment when the reasons for the initiation of reassessment proceedings ceased to survive/exist.

12. In view of the above discussion and reasons given above, the reassessment order and the resultant proceedings to the notices u/s 148 can not be sustained. I accordingly set aside and quash the reassessment proceedings. Resultantly all additions stand deleted. In the result appeal of assessee is allowed.

Assessment Year : 2010-11

Assessment year : 2011-12

13. In these appeals same issue arises. Therefore following the reasons for decisions for asstt. Year 2009-10, I set aside and quash the

reopening of the assessment u/s 147 / 148 of the I.T. Act and delete the entire additions. Both appeals of assessee are allowed.

14. In the result appeals of assessee are allowed.

Pronounced in the Open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 7th June, 2017

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Copy forwarded to: -

1. Appellant
2. Respondent
3. Principal CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSISTANT REGISTRAR